

New York State Department of Environmental Conservation

Division of Environmental Permits, Region 6

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ORIGINAL



Denise M. Sheehan
Commissioner

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October 13, 2006

OFFICE OF THE
COMMISSIONER

Mr. Samuel S. Hirschey, Manager
Environmental, Licensing & Land Use
ERIE BOULEVARD HYDROPOWER, LP
225 Greenfield Parkway, Suite 201
Liverpool, NY 13088

RE: LOWER RAQUETTE RIVER HYDROELECTRIC PROJECT
DEC ID #6-4099-00006/00001 - FERC PROJECT 2330
POTSDAM (T) & NORFOLK (T), ST. LAWRENCE COUNTY

Dear Mr. Hirschey:

Enclosed is the Water Quality Certificate for the Lower Raquette River Hydroelectric Project. The Certificate is being issued pursuant to Section 401 of the Federal Water Pollution Control Act (33 USC 1341) and section 608.9 of the New York Department of Environmental Conservation's regulations pertaining to the Use and Protection of Waters (6 NYCRR Part 608).

Should you have any questions regarding the Water Quality Certificate, please contact me.

Sincerely,

Brian D. Fenlon
Regional Permit Administrator
Region 6

BDF:sgs

cc: M. Salas, FERC
Jack Nasca, NYSDEC
Service List



WATER QUALITY
Certificate

DEC APPLICATION NUMBER 6-4099-00006/00001		EFFECTIVE DATE October 13, 2006	
FACILITY/PROGRAM NUMBER(S) FERC Project # 2330		EXPIRATION DATE(S) COINCIDENT WITH EXPIRATION DATE OF THE LICENSE ISSUED BY THE FEDERAL ENERGY REGULATORY COMMISSION (FERC) FOR FERC PROJECT #2330	
CERTIFICATE ISSUED TO Erie Boulevard Hydropower L.P.		TELEPHONE NUMBER (315) 413 - 2792	
ADDRESS OF RECIPIENT 225 Greenfield Parkway, Suite 201 Liverpool, NY 13088			
CONTACT PERSON FOR RECIPIENT David Culligan, P.E.		TELEPHONE NUMBER (315) 413 - 2792	
NAME AND ADDRESS OF PROJECT/FACILITY Raquette River, St., Lawrence County, NY			
LOCATION OF PROJECT/FACILITY On the Raquette River, within and between Norwood and Raymondville, NY			
COUNTY St. Lawrence	TOWN Potsdam and Norfolk	WATERCOURSE Raquette River	NYTM COORDINATES E: N:
DESCRIPTION: Operation and Maintenance of the Lower Raquette River Hydroelectric Project in accordance with the attached Conditions and the applicable provisions of the Raquette River Projects Settlement Offer dated November March 13, 1998 and Application for Amendment of License for the Lower Raquette Hydroelectric Project, dated June 30, 2006.			

By acceptance of this certificate, the certificate holder agrees that it will act in strict compliance with the applicable water quality sections of the Environmental Conservation Law (ECL), all water quality regulations, the conditions included as part of this certificate and the provisions of the Raquette River Hydroelectric Project 'Settlement Offer' (Settlement) dated March 13, 1998, and Application for amendment of License, Lower Raquette Hydroelectric Project filed with the Federal Energy Regulatory Commission FERC on June 30, 2006.

REGIONAL PERMIT ADMINISTRATOR Brian D. Fenlon	ADDRESS 317 Washington St., Watertown, NY 13601	
AUTHORIZED SIGNATURE <i>Brian D. Fenlon</i>	DATE October 13, 2006	PAGE 1 OF 7

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS**Item A: Permittee Accepts Legal Responsibility and Agrees to Indemnification**

The permittee expressly agrees to indemnify and hold harmless the Department of Environmental Conservation of the State of New York, its representatives, employees, and agents ("DEC") for all claims, suits, actions, and damages, to the extent attributable to the permittee's acts or omissions in connection with the permittee's undertaking of activities in connection with, or operation and maintenance of, the facility or facilities authorized by the permit whether in compliance or not in compliance with the terms and conditions of the permit. This indemnification does not extend to any claims, suits, actions, or damages to the extent attributable to DEC's own negligent or intentional acts or omissions, or to any claims, suits, or actions naming the DEC and arising under article 78 of the New York Civil Practice Laws and Rules or any citizen suit or civil rights provision under federal or state laws.

Item B: Permittee's Contractors to Comply with Permit

The permittee is responsible for informing its independent contractors, employees, agents and assigns of their responsibility to comply with this permit, including all special conditions while acting as the permittee's agent with respect to the permitted activities, and such persons shall be subject to the same sanctions for violations of the Environmental Conservation Law as those prescribed for the permittee.

Item C: Permittee Responsible for Obtaining Other Required Permits

The permittee is responsible for obtaining any other permits, approvals, lands, easements and rights-of-way that may be required to carry out the activities that are authorized by this permit.

Item D: No Right to Trespass or Interfere with Riparian Rights

This permit does not convey to the permittee any right to trespass upon the lands or interfere with the riparian rights of others in order to perform the permitted work nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.

GENERAL CONDITIONS**General Condition 1: Facility Inspection by the Department**

The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department of Environmental Conservation (the Department) to determine whether the permittee is complying with this permit and the ECL. Such representative may order the work suspended pursuant to ECL 71-0301 and SAPA 401(3).

The permittee shall provide a person to accompany the Department's representative during an inspection to the permit area when requested by the Department.

A copy of this permit, including all referenced maps, drawings and special conditions, must be available for inspection by the Department at all times at the project site or facility. Failure to produce a copy of the permit upon request by a Department representative is a violation of this permit.

General Condition 2: Relationship of this Permit to Other Department Orders and Determinations

Unless expressly provided for by the Department, issuance of this permit does not modify, supersede or rescind any order or determination previously issued by the Department or any of the terms, conditions or requirements contained in such order or determination.

General Condition 3: Applications for Permit Renewals or Modifications

The permittee must submit a separate written application to the Department for renewal, modification or transfer of this permit. Such application must include any forms or supplemental information the Department requires. Any renewal, modification or transfer granted by the Department must be in writing.

The permittee must submit a renewal application at least:

- a) 180 days before expiration of permits for State Pollutant Discharge Elimination System (SPDES), Hazardous Waste Management Facilities (HWMF), major Air Pollution Control (APC) and Solid Waste Management Facilities (SWMF); and
- b) 30 days before expiration of all other permit types.

Submission of applications for permit renewal or modification are to be submitted to:

NYSDEC Chief Permit Administrator,
625 Broadway, Albany NY 12233-1750, Telephone (518) 402-9167

General Condition 4: Permit Modifications, Suspensions and Revocations by the Department

The Department reserves the right to modify, suspend or revoke this permit in accordance with 6 NYCRR Part 621.

The grounds for modification, suspension or revocation include:

- a) materially false or inaccurate statements in the permit application or supporting papers;
- b) failure by the permittee to comply with any terms or conditions of the permit;
- c) exceeding the scope of the project as described in the permit application;
- d) newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing permit;
- e) noncompliance with previously issued permit conditions, orders of the commissioner, any provisions of the Environmental Conservation Law or regulations of the Department related to the permitted activity.

WATER QUALITY CERTIFICATION**CERTIFICATION**

1. The New York State Department of Environmental Conservation ("Department" or "NYS DEC") hereby certifies:
 - the Department has reviewed the certificate holder's Application for Federal Hydroelectric License Amendment (hereafter referred to as the "Amendment Application") and all other available pertinent information, including the Settlement;
 - the project will comply with Sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act as amended and as implemented by the limitations, standards and criteria of the state statutory and regulatory requirements set forth in 6NYCRR Section 608.9(a); and
 - the project will comply with applicable New York State effluent limitations, water quality standards and thermal discharge criteria set forth in 6NYCRR Parts 700-706.

This Water Quality Certification is issued pursuant to Section 401 of the Federal Water Pollution Control Act (33 USC 1341).

CONTACTS: Except as otherwise specified, all contacts with the Department concerning this certificate shall be addressed to:

New York State Department of Environmental Conservation
Regional Permit Administrator
317 Washington Street
Watertown, NY 13601

Written submissions to the Department must include five (5) complete copies of the submission.

SPECIAL CONDITIONS**A. ADMINISTRATION**

1. This certificate includes and incorporates the Raquette River Settlement Offer ("Settlement") dated March 13, 1998, and Application for License Amendment for Lower Raquette Hydroelectric Project, FERC Project #2330, ("Amendment Application") dated June 2006. Pursuant to the Settlement, on June 11, 1998 the Department issued a water quality certification for the Lower Raquette River Project and the Middle Raquette River Project. The June 11, 1998 water quality certification for the Lower Raquette River Project continues to be in full force and effect except as modified by this water quality certification.
2. **Inspections:** The project, including relevant records, is subject to inspection at reasonable hours and intervals, upon reasonable notice to the certificate holder, by an authorized representative of the Department to determine whether the applicant is complying with this certification. A copy of this certification, including the Settlement and Amendment Application, as well as the FERC license and all pertinent maps, drawings and special conditions must be available for inspection by Department staff during such inspections at the project.
3. **Emergencies:** With the exception of emergency provisions described in the Settlement (see subsections 3.4.1, 4.4.1, 6.4.1 and 7.4.1), the following procedures shall apply to activities conducted at the Project in response to an emergency:

Prior to commencement of emergency activities, the NYS DEC must be notified and must determine whether to grant approval. If circumstances require that emergency activities be taken immediately such that prior notice to the NYS DEC is not possible, then the NYS DEC must be notified by the Certificate Holder(s) within 24 hours of commencement of the emergency activities. In either case, notification must be by certified mail, telegram, or other written form of communication, including fax and electronic mail. This notification must be followed within 3 weeks by submission of the following information:

- (1) a description of the action;
- (2) location map and plan of the proposed action;
- (3) reasons why the situation is an emergency

All notifications, requests for emergency authorizations and information submitted to support such requests shall be sent to the Regional Permit Administrator at the address listed above.

4. **Modifications and Revocations:** The DEC reserves the right to exercise all available authority to modify or revoke this certificate when:
 1. the scope of the authorized activity is exceeded or a violation of any condition of this certificate or provisions of the ECL and pertinent regulation is found;
 2. the certificate was obtained by misrepresentation or failure to disclose relevant facts;
 3. new material information is discovered;
 4. environmental conditions, relevant technology, or applicable law or regulation have materially changed since the certificate was issued.
5. **State May Require Site Restoration:** If any work authorized by this certificate has not been completed, the applicant shall, without expense to the State, and to such extent and in such time and manner as the Department may with authority require, remove all or any portion of the uncompleted structure or fill and restore the site to its former condition. No claim shall be made against the State of New York on account of any such removal or alteration.

B. OPERATING CONDITIONS

6. **Base Flows:** Baseflow requirements as required by Section 5.2.3 and 5.3.3 of the Settlement will remain in effect until the License Amendment has been granted, turbine equipment upgrades (installation of Kaplan runners) are in service at all developments, and the revised Stream Flow and Water Level Monitoring Plan (SFWLMP) has been approved by the Department and fully implemented.
7. **Bypass Flows:** The certificate holder shall maintain bypass flows in accordance with the Settlement, in particular, Section 3.3.4.
8. **Project Operations and Impoundment Fluctuations:** The project's reservoirs shall be operated in a run-of-river mode in accordance with the Amendment Application (see Section B- 1.0). Impoundment level set points shall be at crest of dam or top of flashboards, whichever is higher. Proper instrumentation to ensure instantaneous run-or-river operations at each development will be required as part of this certificate.
9. **Flow Monitoring:** The certificate holder shall develop and submit to the Department a revised Stream Flow and Water Level Monitoring Plan (SFWLMP) within six months after issuance of the license amendment. This plan will include instrumentation to ensure instantaneous run-of-river operations at each development in the project. The proposed plan will identify the type of instrumentation appropriate to monitor instantaneous run-of-river operations and, upon approval by the Department, it will become part of this certificate. Operational bandwidths as proposed in the Amendment Application and associated correspondence have not yet been approved by the Department for monitoring compliance with instantaneous run-of-river operations. Such operations will be subject to final definition within the SFWLMP and must be approved by the Department prior to filing the SFWLMP with FERC. Alternate impoundment operating plans must be reviewed and approved by NYS DEC prior to being implemented. Emergencies shall be dealt with in accordance with Special Condition #3 of this Certificate.
10. **Fish Protection and Downstream Fish Movement:** Fish protection provisions and downstream fish movement provisions shall be provided in accordance with the Settlement (see Section 6.0). The one-inch trashrack installation and fish movement flow requirement at Norwood will be fully installed in 2007 (instead of 2010 (see Amendment Application Appendix E, Section 3.1.4)). Upstream eel passage will be installed at all four developments (see Section Exhibit E Section 3.1.4 of the Amendment Application).

C. PROJECT MAINTENANCE AND CONSTRUCTION

11. **NOTE:** All matters pertaining to "Project Maintenance and Construction" work affecting water quality, compliance with water quality standards, and this certificate shall be addressed to:

Regional Permit Administrator
New York State Department of Environmental Conservation
317 Washington Street
Watertown, NY 13601

12. **Maintenance Dredging:** The certificate holder shall install and maintain appropriate turbidity control structures while conducting any maintenance dredging activities in the intake/forebay area of the Project.
13. **Sediment Analysis and Disposal:** The certificate holder must sample any sediments to be disturbed or removed from the project waters and test them for contaminants. Sampling and testing shall be accomplished according to a protocol that is consistent with the Department's Technical and Operations Guidance 5.1.9 or applicable guidelines/regulations. The sampling protocol shall include a disposal protocol based on analytical sediment sampling results and current applicable regulations/guidelines. The sampling results are required to be submitted to the Department at least 45 days prior to the commencement of dredging or work that will disturb sediment in the project waters. Dredging or other excavation can not commence until the certificate holder also secures the Department's approval for the disposal or interim holding locations for any sediments to be removed from the project waters.
14. **Erosion and Sediment Control:** The certificate holder shall ensure that the following erosion and sediment/contaminant control measures, at a minimum, are adhered to during routine maintenance and construction that may result in sediments/contaminants entering any wetland or waterbody.
1. Isolate in-stream work from the flow of water and prevent discolored (turbid) discharges and sediments caused by excavation, dewatering and construction activities from entering any waterbody or wetland.
 2. Prohibit heavy construction equipment from operating below the mean high water level of project reservoirs and the Raquette River until the work area is protected by a watertight structure and dewatered.
 3. Stabilize any disturbed banks by grading to an appropriate slope, followed by armoring or vegetating as appropriate, to prevent erosion and sedimentation into any wetland or waterbody.
 4. Minimize soil disturbance, provide appropriate grading and temporary and permanent revegetation of stockpiles and other disturbed areas to minimize erosion/sedimentation potential.
 5. Protect all waters from contamination by deleterious materials such as wet concrete, gasoline, solvents, epoxy resins or other materials used in construction, maintenance and operation of the project.
 6. *Install and maintain erosion control structures on the down slope of all disturbed areas to prevent eroded material from entering any wetland or waterbody. Erosion control structures must be installed before commencing any activities involving soil disturbance and all erosion control structures must be maintained in a fully functional condition.*
 7. Ensure complete removal of all dredged/excavated material and construction debris from the bed and banks of all water areas to an approved upland disposal site.
 8. Ensure that all temporary fill and other materials placed in the waters of the river are completely removed, immediately upon completion of construction, unless otherwise directed by the Department.

15. Placement of cofferdams, construction of temporary access roads or ramps, or other temporary structures which encroach upon the bed or banks of the Raquette River or project reservoirs: The proposed design of all such structures as they pertain to water quality, to compliance with water quality standards, and to this certificate must be submitted to and approved by the Department prior to installation. The Department will conduct its review of the proposed design within 60 days after receipt of all materials it determines are necessary for completing such review.
16. River Flow: During any period of maintenance and/or construction activity, the certificate holder shall continuously maintain adequate flows immediately downstream of work sites to ensure that the water quality standards established for the Lower Raquette River as well as any special provisions of this certificate are met. If adequate river flows are not maintained, the certificate holder is required to notify the Department's Region 6 office in Watertown, within 24 hours of the incident.
17. Construction Drawdowns:
 - a. Whenever construction and/or maintenance activities require that the water level of project reservoirs be lowered and refilled, it shall be done gradually, as not to strand fish and other water dependent fauna. Until run-of-river operations are established, as required by this certification and the Amended License, baseflow requirements below the Raymondville Development, (Sections 5.2.3 and 5.3.3 of the Settlement) will be maintained during all construction drawdowns and refilling operations.
 - b. Once run-of-river operations are established, as required by this certification and the Amended License, for all Lower Raquette River developments, drawdowns must maintain run-of-river once the drawdown has been established and until refilling begins. During refilling operations, once run-of-river operations are established, a baseflow of at least 560 cfs (during normal or wet conditions) or 290 cfs (during drought conditions) will be maintained below the affected impoundment while other developments in the Project are required to maintain run-of-river operations. These baseflow requirements are consistent with baseflows established under Sections 5.2.3 and 5.3.3 of the Settlement for Raymondville to ensure water quality standards established for the Lower Raquette River are maintained as well as any special provisions of this certificate are met.
 - c. As to (a) and (b) above, the certificate holder shall consult with the Department prior to construction drawdowns to establish acceptable drawdown and refill timing, drawdown rates, and other special provisions. Such consultation shall also be appropriate in the event of a need for a deviation from the above provisions.
18. Turbidity Monitoring: During maintenance or construction-related activities in or near the Raquette River or project reservoirs, the certificate holder will monitor the turbidity of project waters at a point immediately upstream of the work area and at a point no more than 100 feet downstream from the work area. The certificate holder specifically agrees that if, at any time, turbidity measurements from the downstream locations exceed the measurements from the upstream locations, all related construction on the project will cease until the source of the turbidity is discovered and the situation is corrected. The certificate holder is required to report any events where turbidity measurements from the downstream locations exceed the measurements from the upstream locations to the Department's Region 6 office, Watertown, within 24 hours of the incident.
19. Precautions Against Contamination of Waters: All necessary precautions shall be taken to preclude contamination of any wetland or waterway by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate or any other environmentally deleterious materials associated with the project.
20. No Interference With Navigation: There shall be no unreasonable interference with navigation by the work herein authorized.
21. SPDES General Permit for Stormwater: All Activities at the project requiring the disturbance of greater than one acre must obtain coverage under the SPDES General Permit for Stormwater Discharges from Construction Activities (GP-02-01).
22. Notifications: The Regional Permit Administrator must be notified in writing at least 60 days prior to commencing any project maintenance or construction work pertaining to water quality, compliance with water quality standards or to this certificate.

D. PUBLIC ACCESS AND RECREATION

23. Public access and recreational opportunities shall be provided in conformance with the Settlement, (see Section 3.8).

cc: Settlement Participants
M. Salas, FERC
Service List, FERC Project #2330