UPPER ANDROSCOGGIN RIVER STORAGE PROJECTS SETTLEMENT AGREEMENT

August 28, 1998
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Attachment A: Maps of the vicinity of the Upper and Middle Dam developments, showing the proposed Project boundary, and for non-Project lands, agreed upon conservation easements and development restrictions.

Attachment B: Prelicensing Studies

Attachment C: Post-licensing Studies

Attachment D: LURC Standards in effect in February 1998, Great Ponds Protection District (PGP)
UPPER ANDROSCOGGIN RIVER STORAGE PROJECTS SETTLEMENT
AGREEMENT
Privileged and Confidential; Not for Distribution
August 28, 1998

The Parties to this Settlement Agreement, dated this 28th day of August 1998, are Union Water Power Company ("Union Water Power"), which, together with the following, are referred to collectively as the "Parties": the State of Maine, by and through its State Planning Office ("SPO"), its Department of Conservation ("DOC"), and its Department of Inland Fisheries and Wildlife ("DIFW"); the State of New Hampshire, by and through its Department of Environmental Services ("NHDES"); the United States Environmental Protection Agency ("EPA"); the US Department of the Interior through its United States Fish and Wildlife Service ("USFWS") and its National Park Service ("NPS"); the Appalachian Mountain Club ("AMC"); the Conservation Law Foundation ("CLF"); the Rangeley Lakes Heritage Trust ("RLHT"); the Mooselookmeguntic Improvement Association ("MIA"); New England FLOW ("NE FLOW"); Saco Bound/Dowmeast; American Whitewater Affiliation ("AWA"); Trout Unlimited ("TU") and its Maine Council ("Maine TU"); American Rivers; the City of Berlin, New Hampshire ("Berlin"); the Town of Gorham, New Hampshire ("Gorham"); and the Androscoggin Reservoir Company ("ARCO") as the owner and co-licensee of the Aziscohos Project.

I. Background:

A. Union Water Power is the owner and operator of the Upper Androscoggin River Storage Projects which includes "Upper and Middle Dams" on the eastern, or Rapid River, branch of the watershed. Union Water Power is a wholly owned subsidiary of Central Maine Power Company. In 1994, the Federal Energy Regulatory Commission ("FERC") determined that the Upper and Middle Dams were subject to Federal jurisdiction and ordered Union Water Power to prepare and file an application to license these dams. Union Water Power, with the active participation of the Parties, is in the process of preparing an application, including an Applicant Prepared Draft Environmental Assessment ("APDEA"), in order to obtain an original license for the Upper Androscoggin River Storage Projects.

B. The Aziscohos Project, including the dam, Aziscohos Lake, the penstock and powerhouse (FERC No. 4026) is located on the western or Magalloway River branch of the watershed. The Licensees for the Aziscohos Project are ARCO (Union Water Power has a 25% ownership interest in ARCO) and Aziscohos Hydro Co. Inc.; however, as between ARCO and Aziscohos Hydro Co. Inc., ARCO has sole discretion to regulate the flow of
water at the Azisohos Dam and has the right to modify the present scheme of water flow regulation as a result of negotiation with third parties. The dam is owned by ARCO but is operated and maintained by Union Water Power. Azisohos Hydro Co. Inc. operates a powerhouse downstream served by a penstock from the dam. The Azisohos Project license was issued by FERC in 1985 and expires in 2025. Article 31 of the FERC license requires that a minimum flow of 50 cfs be released through the dam’s gates during the period April 1 through September 30. Article 30 requires that an interim minimum flow of 107 cfs, or inflow, be released downstream of the Azisohos powerhouse, which is some distance downstream of the dam. FERC has ordered that the Azisohos Project interim minimum flows remain in effect until FERC has issued a license for the Upper Androscoggin River Storage Projects, at which time permanent minimum flows will be established for the three dams.

C. This Settlement Agreement serves to strike a carefully considered balance between maintaining the energy, flood protection, wastewater assimilative capacity, ecological, and recreational values of the Upper Androscoggin River Storage and Azisohos Projects, while mitigating for the Projects’ impacts on and enhancing the natural environment, and protecting other resources that are impacted by or directly related to the Upper Androscoggin River Storage Projects and flows from the Azisohos Project.

D. The Parties have expressed strong interest in the licensing of the Upper Androscoggin River Storage Projects and in the flows released from the Azisohos Project. The undersigned Parties represent a broad range of interests that will be impacted by the terms and conditions of a FERC license for the Upper Androscoggin River Storage Projects and amendments to the Azisohos Project license. The various interests and goals represented by the Parties include, but are not limited to: maintaining the character of the area in which the Projects are located (an environment which is scenic, still almost entirely forested and undeveloped, and where access is, for the most part, by boat, logging road, or trail); improving water quality; enhancing habitat for fish and other aquatic biota; improving wildlife habitat; protecting threatened and endangered plant and animal species; protecting and enhancing wetlands; preserving undeveloped lands; management of the working forest in the vicinity of the Projects for timber; maintaining existing Public access and recreational opportunities; protecting aesthetic values; maintaining flood control and wastewater assimilation benefits; fostering economic development and preserving the local tax base; and, maintaining the enhanced generation capability provided by the Projects.

E. Union Water Power has offered the Upper Androscoggin River Storage Projects (or, for the Azisohos Project, its ownership interest) for sale to a willing buyer. Union Water Power and the other Parties agree that it is in their and the public’s best interest to reach a
binding agreement on the appropriate terms and conditions to be incorporated in a license for the Upper Androscoggin River Storage Projects and amendments to the Aziscohos Project license, and that these terms and conditions be binding on any successor in interest of the Projects or parts thereof. By entering into this Settlement Agreement, the Parties have the opportunity to acquire and conserve significant riparian lands from willing landowners. This land conservation provides important public benefits. In light of these facts, the Parties believe it is advantageous to reach a legally binding agreement now on how the Upper Androscoggin River Storage Projects and Union Water Power's lands around it will be managed in a mutually acceptable and publicly beneficial way for the term of the FERC license.

F. The initial licensing of the Upper Androscoggin River Storage Projects along with amending the flow provisions of the Aziscohos Project License, presents important, complex and unique resource issues as well as competing public and private interests. The Parties have investigated these issues and interests, assembled the facts available to inform their decisions, considered the options available, and believe that the agreement contained herein strikes the optimal balance among the competing interests. More specifically, the Parties agree that the terms and conditions and other commitments contained herein were developed mindful of the importance of the Projects to energy production, flood control, environmental quality, and downstream industries and municipalities; and provide a broad and balanced range of environmental enhancements and other public benefits. The Parties also believe that, based upon the factual knowledge presently available, the terms and conditions specified in this Settlement Agreement satisfy all applicable law as of the date hereof, although additional conditions or requirements may be imposed in order to meet Maine's water quality standards as they relate to aquatic habitat.

Therefore, in Consideration of the mutual covenants contained herein, the Parties covenant and agree as follows:

II. General Provisions:

A. Definitions.

1. "Union Water Power" shall mean Union Water Power Company as constituted on the day of execution of this Settlement Agreement.

2. "Project" shall, depending on its context in the document, mean the Upper Androscoggin River Storage Projects, consisting of Upper and Middle Dams,
Mooselookmeguntic and Richardson Lakes, the Rapid River and Upper Dam tailrace, and certain lands owned by Union Water Power in the vicinity of the dams and shown on Attachment A to this Settlement Agreement which includes both lands proposed to be within the Project boundaries, as defined in FERC's regulations, and lands outside those boundaries; or the aspects of the Aziscohos Project covered by this Settlement Agreement, which are minimum flows, whitewater boating flows, Public access to the Magalloway River over the Project Owner(s) lands, and certain recreational improvements for access to the Magalloway River.

3. "Projects" shall mean both the Upper Androscoggin River Storage Projects as defined in II.A.2. above, and the aspects of the Aziscohos Project covered by this Settlement Agreement as defined in II.A.2. above.

4. "Project Owner(s)" shall mean, depending upon its context in the document, for the Upper Androscoggin River Storage Projects, Union Water Power Company and any successor owner and/or licensee of that Project or of any part or interest in that Project; and for the Aziscohos Project, shall mean ARCO and any successor owner(s) and/or licensee of the portions of that Project covered in this Settlement Agreement, or any part or interest thereof.

5. "Projects Owners" shall mean owners, and any owner(s) of a part of or an interest in, both the Upper Androscoggin River Storage Projects as defined in II.A.2. above, and the aspects of the Aziscohos Project covered by this Settlement Agreement as defined in II.A.2. above.

6. "Completion of licensing" shall mean the date upon which all appeal periods have expired for the later occurring of: a) the issuance of a FERC license for the Upper Androscoggin River Storage Projects, in conformance with the terms of this Settlement Agreement; b) the issuance of water quality certification for the Project by the Maine Department of Environmental Protection ("MDEP") pursuant to Section 401 of the Clean Water Act, in conformance with the terms of this Settlement Agreement, or c) the issuance of FERC amendments to the Aziscohos Project License, in conformance with the terms of this Settlement Agreement.

7. "MSL" shall mean feet above mean sea level (1467' MSL equals 20.5' on the staff gauge at Upper Dam, and 1450' MSL equals 20.5' on the staff gauge at Middle Dam).

8. "Public access" shall mean access across the Projects Owners property.
9. All dollar amounts are in 1998 dollars adjusted for inflation based on the GNP implicit price deflator.

10. “Start of refill”, for the purposes of Section III of this Settlement Agreement, is defined as that time when the impoundment level begins to rise at the end of the winter drawdown. The end of the winter drawdown typically occurs in late March to early April.

11. “Governmental land holding resource agency” shall mean a government agency exercising administration over the areas of recreation, fish and wildlife, forestry, or cultural resources, and authorized by law to hold lands.

12. “Terms of the respective FERC licenses” shall mean, for the Aziscohos Project, the current license term ending March 31, 2025, or, if prior to this date, the effective date of a Non-appealable FERC order approving surrender of the license as defined by and pursuant to 18 CFR Part 6; and for the Upper Androscoggin River Storage Projects, the license term to be specified by FERC in its original license order, or, if prior to this date, the effective date of a Non-appealable FERC order approving surrender of the license as defined above.

13. “Non-appealable” shall mean, after expiration of all appeal periods (including administrative and judicial appeal processes).

B. This Settlement Agreement is entered into with full knowledge and understanding by all Parties that the Upper Androscoggin River Storage Projects (or, for the Aziscohos Project, a partial share) is for sale. Union Water Power agrees that the contract for the sale shall contain a provision stating that the buyer will assume all Union Water Power’s responsibility under this Settlement Agreement as a condition of the sale. The buyer(s) and any successor owner(s) shall be bound by the commitments made herein, and upon the closing of the transaction, the buyer (or any successor owner(s)) will assume exclusive responsibility for fulfilling those commitments (except as set forth below in subparagraph C). Similarly, the Settlement Agreement shall apply to, and be binding on, the Parties and their successors and assigns, but only with regard to the subject matter herein. Each signatory to the Settlement Agreement certifies that he or she is authorized to execute the Settlement Agreement and legally bind the party he or she represents.

C. Not withstanding the provisions of subparagraph II.B, if after a sale, Union Water Power retains a portion of the Projects, Union Water Power, and any successor owner(s), will continue to be the Project Owners as to that portion of the Projects; and, to the extent that portion of the Projects is impacted by this Settlement Agreement, shall retain the
responsibility for fulfilling the commitments contained in this Settlement Agreement as to that portion.

D. Many of the commitments contained herein will not take effect until the Completion of licensing. The Parties recognize that it is to their mutual advantage for the Upper Androscoggin River Storage Projects to receive a FERC license in a timely manner, and for the Aziscohos Project License to be amended in a timely way, and therefore, the Parties further agree that:

1. The Parties will support and take reasonable steps to facilitate the issuance of a FERC license for the Upper Androscoggin River Storage Projects and amendments to the Aziscohos Project License. Reasonable steps include the support of applications to FERC that are consistent with the terms of this Settlement Agreement, filings by the Parties in support of said applications and active participation by the Parties as intervenors in any challenges to said applications or to a subsequently issued FERC license, or in the case of the Aziscohos Project License, amendments that are consistent with the terms of the Settlement Agreement. The Parties agree that reasonable steps do not include financial contributions by the Parties for any costs that the owners of either Project may incur as a result of said challenges.

2. The commitments made herein and the requirements and obligations placed on the Projects Owners through laws and regulations fully mitigate and resolve all concerns involving any environmental impacts associated with the licensing of the Projects, including the transfer of the Projects to a new owner or owners. Notwithstanding the preceding sentence, in the event of a transfer proceeding before FERC for the Projects, nothing herein shall restrict the Parties from investigating, commenting on, and if necessary objecting to, the qualifications of the buyer(s) based upon the buyer(s)' past financial history or compliance record. Nothing herein prejudices the Parties' position in any other proceeding involving the transfer of other projects or parts thereof.

3. The Parties have entered into this Settlement Agreement with the intent that this Settlement Agreement, the performance of all obligations hereunder, and implementation of the measures needed to comply with applicable regulations and requirements, will resolve all issues associated with issuance of a license for the Upper Androscoggin River Storage Projects involving water flow, fisheries, fish passage, wildlife, water quality (with the potential exception of aquatic life as may be required by the MDEP's 401 Water Quality Certificate), lands management and control, recreation, aesthetics, and cultural resources, to the satisfaction of the Parties. The Parties also agree that provisions herein applicable to the Aziscohos Project will
resolve all issues associated with the issuance of a FERC license amendment for the Azischohos Project involving minimum and maximum water flow, water quality and whitewater recreation on the Magalloway River to the satisfaction of the Parties.

4. Union Water Power has completed and provided to the Parties an analysis which states that the Water Management Plan specified in this Settlement Agreement will not have a significant adverse impact on the flow regime provided for downstream hydropower production, waste load assimilative capacity, or the magnitude of the 100 year flood flow. Union Water Power has further represented to Berlin and Gorham that, based on the provisions of the Settlement Agreement, Union Water Power maintains the ability to operate the reservoirs in a manner similar to historic operations. Berlin and Gorham have entered into this Settlement Agreement in full reliance upon the forgoing analysis and representation which has caused them to believe that the implementation of the provisions of the Settlement Agreement will not result in any significant additional costs to their downstream municipal wastewater treatment plants; will not have any significant adverse impact on the tax valuation of the facilities or property of the major residential, commercial, or industrial tax payers in any of the downstream municipalities located in Coos County, New Hampshire; will not have any significant adverse impact on the 100 year flood plain in the Androscoggin River; will not have a significant adverse impact upon downstream hydropower production and will not result in lowered tax revenues to them by reason of the acquisition of riparian lands pursuant to Section IV (with the possible exception of land owned by Union Water Power, if such land is selected for acquisition). These understandings are essential to Berlin and Gorham, and without them, Berlin and Gorham would not have agreed to the terms of the Settlement Agreement. Because these understandings are central to Berlin and Gorham if they, or either of them, shall conclude that the said analysis or representation was not correct or accurate, they, collectively or individually, reserve the right to withdraw from this Settlement Agreement, notwithstanding any other provision of the Settlement Agreement to the contrary, and/or pursue any remedies available to them under the Settlement Agreement or at law or in equity.

5. Upon Completion of licensing, the Projects Owners agree to implement the various obligations and requirements as set forth herein. The Parties agree to support a 50 year license for the Upper Androscoggin River Storage Projects incorporating and implementing the provisions contained herein. This support shall include preparing a collaboratively written APDEA and License Application consistent with the terms of this Settlement Agreement. For those issues addressed herein, including those related to the Azischohos Project License amendments, except as otherwise provided in Sections, II.E.4, II.F.1, II.F.5, II.J, VI.C, and VIII.A., the Parties agree not to propose,
support, or otherwise communicate to FERC, or any other resource agency with jurisdiction directly related to the licensing process, any comments or license conditions other than ones consistent with the terms of this Settlement Agreement. Further, the Parties agree not to support any competing license application for the Upper Androscoggin River Storage Projects. However, this Settlement Agreement shall not be interpreted to restrict any Party's participation or comments in future relicensing of either the Upper Androscoggin River Storage Projects or the Azischohos Project.

6. The Parties agree that this Settlement Agreement fairly and appropriately balances the environmental, recreational, fishery, energy, flood control, and other uses and interests served by the Upper Androscoggin River Storage Projects and the aspects of the Azischohos Project covered herein. The Parties further agree that this balance is specific to these Projects. No Party shall be deemed, by virtue of participation in this Settlement Agreement, to have established precedent, or admitted or consented to any approach, methodology, or principle except as expressly provided for herein. In the event that this Settlement Agreement, or part thereof, is accepted by FERC, such acceptance shall not be deemed precedential or controlling regarding any particular issue or contention in any other proceeding.

E. Dam Rebuild

1. The Parties have entered into this Settlement Agreement with the understanding that it is possible that, as a condition of the FERC license, FERC may order the Project Owner(s) to rebuild or undertake major repairs to Upper and/or Middle Dams due to "Part 12" recommendations (18 CFR Pt.12). The Parties understand "rebuild" or "major repairs" to include work undertaken on the dams or other areas needed for functioning of the dams (e.g. emergency spillways in locations either at, near, or removed from the dams), which involves either replacing all or portions of the dams or major earth moving or construction work undertaken to improve the dams and their safety.

2. The Parties agree that the objectives for such dam rebuild/major repairs are to ensure that the dams are safe, as determined by FERC, and to maintain the current environmental values and character of the area, including the existing character of access, with lowest cost necessary to accomplish these objectives.

3. The Parties agree not to oppose construction ordered by FERC pursuant to Part 12 recommendations by an Independent Consultant that meet the objectives in II.E.2. above. Further, the Parties will work in good faith to support and take reasonable
steps to facilitate the issuance of such a FERC order, including working collaboratively to prepare filings as appropriate, and participating as intervenors for any Part 12 proceedings, in support of repair, maintenance, or rebuild options that are consistent with the Settlement Agreement objectives to maintain the current environmental values and character of the area around Upper and Middle Dams. If FERC issues an order to rebuild or repair the Project dams that is inconsistent with the Settlement Agreement provisions or objectives, and such order would result in a Project that significantly and adversely alters the character of the area, the Water Management Plan agreed to herein, or would cause significant adverse impacts to the important natural resources associated with the Upper Androscoggin River Storage Projects, the Parties shall continue to work collaboratively, and, if agreement is reached among all or some of the Parties on an acceptable course of action, those Parties shall actively participate as intervenors through requests for rehearings for a FERC order and other such appeals and remedies available through the FERC process or the courts in order to seek changes to any such FERC order that would meet the Settlement Agreement provisions and objectives as defined in II.E.2.

4. If collaborative efforts pursuant to Section II.E.3 fail to resolve the issues identified in II.E.3, then any Party or Parties may independently seek any such remedies as it/they may deem appropriate to ensure consistency with this Settlement Agreement through intervention in the FERC process and/or appeals through the courts.

5. The Parties further agree not to use the rebuilds/major repairs to request or leverage studies, mitigation and enhancement unrelated to the impacts of the rebuilds/major repairs. Notwithstanding the previous sentence, the Project Owner(s) understands that the direct impacts of rebuilds/major repairs may require additional mitigation and that nothing herein will prevent the Parties from seeking such mitigation. The Project Owner(s) does not anticipate and will make all reasonable efforts not to, change the location of, or increase the size or capacity of the access roads to Upper and Middle Dams to accommodate a dam rebuild/major repair Project. In addition, upon completion of the reconstruction, the Project Owner(s) agrees to return to their existing condition any access roads controlled by the Project Owner(s) that have been improved in order to provide access for the reconstruction.

6. Further, the Project Owner(s) agrees that it will work collaboratively with fisheries agencies and other Parties to capitalize on opportunities that may be created by rebuilding or reconstructing Upper Dam to improve spawning conditions for brook trout in Richardson Lake. More specifically, the Project Owner(s) agrees to create a spawning channel with appropriate size substrate for brook trout spawning in the tailrace area adjacent to Upper Dam. The spawning channel shall be no larger than an
area measuring 150 feet wide by 200 feet long, or as otherwise mutually agreeable, but in no event larger than 30,000 square feet. The Project Owner(s) shall also provide a gate, or gates, that would water this area during the spawning and incubation period with appropriate flows. The Parties agree that these flows would be a part of, and not in addition to, the flows called for in the Water Management Plan as further defined herein. The obligation to create said spawning channel and to provide said gate, or gates, shall arise only if, in the view of the DIFW and the USFWS, the fisheries benefits achievable are significant.

7. If a Non-appealable FERC order to rebuild or implement major repairs to Upper and/or Middle Dams would result in a Project that alters the Water Management Plan such that the Project Owner(s) interests are materially and substantially adversely affected, the Parties recognize that such event would trigger the right of the Project Owner(s) to withdraw from the Settlement Agreement.

F. Relation of Settlement Agreement to State and Federal Laws

1. Nothing in this Settlement Agreement shall preclude the state and Federal resource agencies from complying with their obligations under the National Environmental Policy Act, the Clean Water Act, the Endangered Species Act, the Federal Power Act, the Fish and Wildlife Coordination Act or any other applicable state or Federal laws or regulations. However, by entering into this Settlement Agreement, the resource agencies represent that they believe their statutory obligations are, or can be, met consistent with this Settlement Agreement.

2. Notwithstanding the previous sentence, the Parties recognize that the State of Maine has not completed its review of Union Water Power’s water quality certification application for the Upper Androscoggin River Storage Projects and that the Water Management Plan, as further defined herein, has not yet been determined to be consistent with the State’s water quality standards and the Clean Water Act. The Parties agree to work collaboratively to resolve any new issues raised by the MDEP with regard to its water quality standards. The Parties further agree not to oppose an application for a water quality certification that is consistent with the terms and conditions of this Settlement Agreement. In the event that the State of Maine issues a final, Non-appealable water quality certification that is materially and significantly inconsistent with the terms and conditions of this Settlement Agreement, the Parties shall seek, using the dispute resolution process defined in Section VIII.D., to amend the Settlement Agreement to conform to the water quality certificate. If no agreement can be reached to amend the Settlement Agreement, the Settlement Agreement shall be rendered null and void.
3. This Settlement Agreement shall not be read to predetermine the outcome of the NEPA analysis. If such NEPA analysis leads to the addition of any Non-appealable license conditions materially and significantly inconsistent with the terms and conditions contained herein, the Parties recognize that such addition would trigger the rights of the Parties to withdraw from the Settlement Agreement pursuant to Section VIII A. of this Settlement Agreement.

4. Nothing in this Settlement Agreement shall be construed as binding the USFWS or NPS to expend, in any one fiscal year, any sum in excess of appropriations made by Congress or administratively allocated for the purpose of this Settlement Agreement for the fiscal year, or to involve USFWS or NPS in any contract or other obligation for the future expenditure of money in excess of such appropriations or allocations.

5. Nothing in this Settlement Agreement shall be interpreted to preclude or otherwise limit the State of Maine or EPA from complying with its obligations under the Clean Water Act, Clean Air Act, and National Environmental Policy Act, or other state or Federal statutes. Nothing herein shall preclude EPA or the State of Maine from fully and objectively considering all public comments received in any regulatory process related to the Projects, from conducting an independent review of the Projects under applicable statutes, or from providing comments to FERC in these regards.

G. Disclosure of Information

The Parties have entered into the negotiations and discussions leading to this Settlement Agreement with the explicit understanding that, to the fullest extent allowed by law, all offers of settlement and the discussions relating thereto are privileged, shall not prejudice the position of any Party or participant taking part in such discussions and negotiations, and are not to be used by any entity in any manner, including admission into evidence, in connection with these or any other proceedings related to the subject matter of this Settlement Agreement. This provision shall not preclude any Party from discussing or disclosing any terms of this Settlement Agreement pursuant to any "Right to Know" laws.

H. By entering into this Settlement Agreement, the Parties other than the Projects Owner(s) shall not be considered to have accepted any legal liability related to the Projects.

I. Term of the Settlement Agreement.

This Settlement Agreement shall be effective upon execution by the Parties and shall remain in effect (unless terminated as otherwise provided herein) through the Terms of the respective FERC licenses for the Projects issued in conformance with this Settlement Agreement and
any subsequent annual licenses issued for the respective Projects or the effective date of a Non-appealable FERC order finding the Projects nonjurisdictional. Notwithstanding the preceding sentence, once implemented, the provisions of Sections IV., V.A., and V.C. of this Settlement Agreement shall not automatically expire with the Settlement Agreement, but the Project Owner(s) shall be left with whatever judicial or other remedies are available to them. However, many of the commitments made herein have other conditions precedent which must occur prior to their implementation. The Parties intend that this Settlement Agreement be filed with FERC as an Offer of Settlement in conjunction with the filing of the Application for License for the Upper Androscoggin River Storage Projects.

J. Amendments to the Settlement Agreement

While in paragraph II.D.5 the Parties have agreed not to independently request FERC to change license conditions, prior to Completion of licensing, and for a period of 5 years after the Completion of licensing, this Settlement Agreement may be amended with the unanimous consent of all Parties, and may be thereafter amended after adequate notice to all Parties, with the consent of three fourths of the Parties existent at that time, provided however, that no amendment will be effective which does not have the consent of the Project Owner(s) and the state and Federal agencies.

III. Water Management Plan: -- Water Management, and related Protection, Mitigation and Enhancement Measures

A. Upper Dam Tailrace; Mooselookmeguntic Lake.

1. Minimum Flows. From Labor Day through May 31 the Project Owner(s) shall release a guaranteed minimum flow of 202 cfs. During the period from June 1 through Labor Day, the Project Owner(s) shall release a minimum flow of 202 cfs or inflow, whichever is less; however, in the event that the lake level at Richardson Lake reaches 1444' MSL during this period, the minimum flow may be reduced to a guaranteed flow of 100 cfs.

2. Headwater Restrictions.

a. By June 1 of each year, the Project Owner(s) shall attain a target lake level of 1467' MSL, if at all possible. If a target of 1467' MSL can not be attained by June 15, then the Project Owner(s) agrees to notify and consult with interested Parties. The Project Owner(s) shall give serious consideration to the concerns and recommendations of said Parties, but the Parties acknowledge that the Project
Owner(s) retains the final decision on how to operate the dams, within the restrictions described herein.

b. From June 1 through July 15 of each year, if the lake achieves a level of 1467' or higher by June 1, the Project Owner(s) shall maintain the lake level within the range defined by a maximum lake level of 0.5' above the June 1 elevation to a minimum lake level of 1' below the June 1 elevation. If 1467' is not achieved by June 1, the lake may be allowed to fill up to 1467'.

c. From July 16 through Labor Day, the Project Owner(s) shall maintain the lake at a level greater than 1465' MSL unless the lake level at Richardson Lake reaches 1444' MSL, in which case the Project Owner(s) may drop the lake level of Mooseookmeguntic to a minimum level of 1464' MSL. In no event, however, shall the lake level go below 1464' MSL, except as needed to meet the requirements of Section III.A.1 (minimum flows) and as allowed by Section III.D (high water emergencies).

d. From the day after Labor Day through May 31, there shall be no specific headwater restrictions. However, the Project Owner(s) agrees that it will continue to draw the lake down gradually after Labor Day and in general conformity with historic operation of the lake.

B. Rapid River; Richardson Lake.


a. From the start of the refill of Richardson Lake through September 15, the Project Owner(s) shall release a guaranteed minimum flow of 382 cfs. In the event, however, that the water level in Richardson Lake reaches 1444' MSL during the period June 1 through Labor Day, then the Project Owner(s) shall release a guaranteed minimum flow of 310 cfs.

b. For the period September 16 through the start of the refill of Richardson Lake, the Project Owner(s) shall release a guaranteed minimum flow of 472 cfs.

2. Maximum flows. From the period July 15 through Labor Day, the Project Owner(s) shall not release any flow from Middle Dam greater than 1200 cfs (as measured at the dam) except for whitewater boating releases as set forth below; or as required due to the emergencies as provided in Section III.D.
3. Whitewater Flows. During the 3rd weekend of July, the Project Owner(s) shall release a whitewater flow of 1300 cfs on Friday and Saturday and a whitewater flow of 1800 cfs on Sunday. During the 4th weekend of July, the Project Owner(s) shall release a whitewater flow of 1300 cfs on Saturday and 1800 cfs on Sunday. During the 1st weekend of August, the Project Owner(s) shall release a whitewater flow of 1300 cfs on Saturday and Sunday. During the 2nd weekend of August, the Project Owner(s) shall release a whitewater flow of 1300 cfs on Friday and Saturday and a whitewater flow of 1800 cfs on Sunday. In those years when the lake level of Richardson Lake reaches 1444' MSL during the period June 1 through Labor Day, then the Project Owner(s) shall release a maximum whitewater flow of 1300 cfs for eight days (3rd and 4th weekends in July and 1st and 2nd weekends in August). All whitewater flows on the Rapid River will start at 6 p.m. the day before the first day of the scheduled release and shall end at 12:00 noon on the last day of the scheduled release.

   a. From July 16 through September 30, the Project Owner(s) shall maintain Richardson Lake at a level greater than 1444' MSL. The lake level may be permitted to go below 1444 MSL to meet the minimum flow requirements of IH.B.1.a.
   b. From October 1 through May 31, there shall be no restriction except that, after October 15, the Project Owner(s) shall drop the lake level five feet from the October 1 level. The purpose of this restriction is to preclude togue (lake trout) spawning. It shall remain in effect until such time as DIFW determines that this restriction is not needed to control togue populations.

C. Magalloway River; Aziscohos Lake.

   a. From the Start of refill of Aziscohos Lake through September 15, the Project Owner(s) shall release, at the powerhouse, a guaranteed minimum flow of 130 cfs.
   b. From September 16 until the start of the refill, the Project Owner(s) shall release, at the powerhouse, a guaranteed minimum flow of 214 cfs.
   c. The Project Owner(s) shall release a year round guaranteed minimum flow of 50 cfs in the bypass reach, which is the area between the dam and the powerhouse.
2. Whitewater Flows. The Project Owner(s) shall release during the 4th weekend of June, the 1st weekend of July and the 1st weekend of September a whitewater flow of 900 cfs. During the 2nd weekend of July and the 3rd and 4th weekends of August, the Project Owner(s) shall release a whitewater flow of 1200 cfs. For the purposes of this subparagraph, weekend is defined as Saturday and Sunday. Whitewater flows will be released from 10 am to 3 pm.

D. High Water Emergency Conditions. The Parties recognize that the Upper Androscoggin River Storage Projects' operation is often dictated by the size and frequency of natural precipitation events and the timing and distribution of seasonal runoff. Occasionally, emergency conditions, beyond the control of the Project Owner(s), including but not limited to anticipation of, or the occurrence of, extreme runoff events, equipment failure, flood storage requirements, or ice conditions, may result in conditions such that the operational restrictions and requirements contained herein are impossible to achieve or are inconsistent with the prudent and safe operation of the Upper Androscoggin River Storage Projects. Under such extreme conditions, operation at variance with the commitments made in this Section shall not be deemed to violate the Settlement Agreement. This section shall not be interpreted as providing the Project Owner(s) broader authorization to operate at variance with the requirement provided herein than is provided for in the FERC license issued pursuant to this Settlement Agreement. The Project Owner(s) shall notify FERC, with a copy to DIFW, RLHT and TU within 72 hours, or as soon as practical, of such an emergency event; and shall prepare and provide each agency a report of each incident, identifying the variances from normal operations that occurred and identifying ways of avoiding future occurrences.

E. Flow Measurement. None of the flows referenced in the Settlement Agreement include leakage. All flows will be measured by using the gate opening rating curves or flow gauges immediately downstream of the dams.

F. Loon Nesting. As mitigation for the lake level fluctuations allowed on Richardson and Mooselockmeguntic Lakes during the loon nesting season, the Project Owner(s) shall develop, in consultation with USFWS, and DIFW, other interested Parties, and abutting large private shoreland owners, and implement a plan(s) for loon nesting on said lakes. The plan(s) may include, but is not limited to, the placement of loon nesting platforms on both lakes. The effectiveness of the plan(s) will be reviewed by the parties listed above every five (5) years, and the plan(s) will be modified, if necessary, to improve the effectiveness; however, modifications will expressly not include changing the Water Management Plan specified herein.
G. Fall spawning: In order for fall spawning fish to access tributaries for spawning, the Project Owner(s) shall maintain conditions appropriate for their passage across the reservoir drawdown zone of Richardson and Mooselookmeguntic Lakes. For the purposes of this paragraph, the reservoir drawdown zone is defined as the area from the lowest water level attainable up to the high water mark. Following the fall 1998 tributary access survey called for in Attachment B, the Project Owner(s) shall ensure, through remedial measures if necessary, that fish access across the drawdown zone is adequate in the following tributaries to Mooselookmeguntic Lake: Kennebago River, Rangeley River, Cupsuptic River, Bemis Stream, Cold Brook, and Toothaker Brook No. 2.; and in the following tributaries to the Richardson lakes: Mill Brook, Metallak Stream, Mosquito Brook, Fish Pond Brook, and Bailey Brook. Subsequently, for the term of the license, the Project Owner(s) shall be required annually to restore, if necessary, the tributaries to the baseline condition, which baseline condition is defined as the condition of these tributaries after any necessary remedial action is taken based on the 1998 tributary access study. The Project Owner(s) shall perform an annual survey documenting at least maximum length, minimum width, and minimum depth for each tributary as it passes across the drawdown zone, to assess tributary access conditions at the specified tributaries, to ensure that said tributaries remain suitable for access throughout the fall spawning period; shall issue a report on the results of the survey; and shall perform maintenance to restore passage if necessary. Maintenance activities will be remedial measures to correct any blockages occurring since the previous fall. It is anticipated that the work necessary, if any, to restore fish passage on these tributaries is removal of debris and unconsolidated sand, gravel, and boulders. Representatives of TU, DIFW, the RLHT, shall be invited to participate in the annual survey to assess tributary access conditions, and shall receive a copy of the report on the results of the annual survey. Annual maintenance activities shall be completed annually by September 15; however, the completion date may be changed in any year by agreement among the Project Owner(s), the USFWS, and the DIFW based on: (a) lake levels; (b) expected flow and weather conditions; or (c) biological factors such as fish movement or spawning periods.

IV. Upper Androscoggin River Storage Projects Protection and Enhancement Fund:

A. Fund established. Within 120 days of Completion of licensing, the Projects Owners will contribute $1.5 million to a protection and enhancement fund.

B. Purposes and Uses of the Fund.

1. The Fund will be used for the following purposes and activities: $600,000 for stewardship activities undertaken by RLHT or its successor (with similar charitable purposes) for lands conserved in the Project's vicinity; $750,000 for the acquisition of
additional riparian lands or conservation easements with significant public value from willing sellers; and $150,000 for protection and enhancement measures for water quality, fish and wildlife habitat, and wetlands.

2. The Fund is intended to be used to maintain the back country, undeveloped character of the Upper Androscoggin River Storage Projects' vicinity (especially with regard to the acquisition of additional riparian land or conservation easements); to protect and enhance environmental resources including fish, wildlife, wetlands, water quality, and recreational resources; and, to the maximum extent possible, to use the Fund as a match for other state, Federal, foundation, or other moneys.

3. The principal target area for the use of the Fund is those areas around the storage reservoirs and lakes in the Upper Androscoggin River basin, from Bragg's Bay north, and the river stretches that connect and feed them. With the possible exception of lands Union Water Power owns, in the event they are selected for acquisition or purchase of easements, the Fund will not be used to acquire land or easements in New Hampshire south of the Wentworth Location town line.

4. Lands or easements acquired with these funds will be held for the purposes outlined in Section IV.B.2 above by a qualified conservation organization, or such an organization and a Governmental land holding resource agency.

5. The Fund is expressly not intended to be used to defray costs incurred by the Owner(s) of the Upper Androscoggin River Storage Projects in conducting and implementing the resource studies needed for obtaining a water quality certification from the State of Maine, or for the studies required by Attachment B. The Fund is also expressly not intended to be used to defray the Projects Owners' costs in implementing the mitigation and enhancement measures called for in the other sections (III, V, VI) of this Settlement Agreement, unless otherwise agreed to by all Parties.

C. Fund Administration.

1. Decisions regarding the use of the $750,000 land acquisition and easement funds, and the $150,000 fish and wildlife enhancement portions of the Fund, including any accrued interest or dividends, will be made by a Committee constituted as described in Section IV.C.2 below, and which shall convene within 120 days of the Completion of Project.

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1 The Project Owner(s) will not have any responsibility to provide stewardship funds, beyond the $600,000 for lands or easements acquired with these funds.
of licensing. The Committee shall develop bylaws governing its function which adhere to the intent outlined in IV.B.2. The Committee may solicit proposals from nonprofit organizations, educational institutions, and units of government, for projects which address any of the above purposes, and may target a specified portion of the funds to specific protection, mitigation or enhancement objectives or to specific areas which are encompassed within the purposes and geographic scope defined above. The acquisition of land shall be consistent with the following principles:

a. Consistent with the purposes stated in IV.B.2., land acquisition will maximize the public benefits achieved for the dollars spent.

b. Actions of the Committee will fully respect the rights of private landowners and ensure that all acquisitions occur on a willing seller--willing buyer basis;

c. In considering parcels for acquisition, the Committee will weigh the potential impacts and benefits of land acquisition to local communities;

d. Sporting traditions will be respected by providing for hunting, fishing, and trapping opportunities; and

e. The Committee will seek to secure legal access appropriate for the parcel to all acquired properties. This should at least include pedestrian access whenever possible.

2. Membership. The Committee shall be comprised of 9 members, including one representative or designee of the Upper Androscoggin Storage Projects Owner(s), plus one representative from each of the following: USFWS, the State of Maine, AWA, AMC, TU, RLHT, CLF and, to the extent that the Fund is being considered for measures in Coos County, New Hampshire, a single designee representing the interest of the Coos County Commissioners or other designee of the municipalities of Berlin, Gorham and Errol. In the event that a member of the Committee ceases to be a Party to the Settlement Agreement, that Party’s membership on the Committee shall cease.

3. The Rangeley Lakes Heritage Trust, Inc. shall be the recipient of the $600,000 fund for stewardship activities.

a. This portion of the Fund shall be used for stewardship of land and natural resources in the general vicinity of the Projects, including expenses related to monitoring, enforcing and accepting conservation easements, natural resource
inventories, natural resource management, primitive recreation management, environmental education, scientific study, and such other land and natural resource stewardship activities as may be approved from time to time by the Board of Directors of the Trust, not to include payments to landowners for interests in real estate. Expenditures from the dedicated fund may include direct costs and allocable staff, overhead, and professional costs related to such stewardship purposes.

b. The dedicated fund may also be used as a revolving fund for interest free loans for the acquisition and conservation of additional lands in the general vicinity of the Projects from willing sellers, provided that the term of loans from the dedicated fund may not exceed five years. The total outstanding principal of such loans shall not exceed $250,000 at any time without the prior approval of the Review Committee established pursuant to Section IV.C.3.c below.

c. A financial report on the dedicated fund shall be prepared annually by the outside public accountants engaged to provide services to the Trust generally. This financial report shall be submitted annually to a three person Review Committee made up of the Commissioner of the Maine Department of Conservation or other State Executive serving in an appointed position, the President of Union Water Power (or successor Owner(s) of the Upper Androscoggin River Storage Projects), and the President of RLHT. In the event that the State no longer wishes to serve on the Review Committee, the remaining Review Committee members shall select a third Review Committee member from an organization having a statewide interest or perspective in conservation and land trust matters. The Review Committee shall hold a meeting in Rangeley, at the request of any two members of the Review Committee, to review the expenditures from the dedicated fund for the previous year. If within 90 days of receipt of the report, the Review Committee determines that expenditures have been made from the dedicated fund during the prior year which were not reasonably related to the stewardship purposes of the dedicated fund as stated herein, the Review Committee shall give written notice to the Trust by certified mail, return receipt requested, describing the amount and purpose of the questioned expenditures. The Trust shall have 90 days from the receipt of such notice either to satisfy the Review Committee that the expenditures were appropriate, or to replenish the dedicated fund to the satisfaction of the Review Committee. Any disagreement or dispute between the Trust and the Review Committee concerning the appropriateness of an expenditure from the dedicated fund shall be resolved by arbitration using a mutually agreed upon arbitrator selected from the names of qualified persons provided by the American Arbitration Association.
d. Subject to the requirements of this subparagraph 3 and notwithstanding any other provisions of this agreement, upon payment of the $600,000 stewardship fund to RLHT, the stewardship fund shall become the property of RLHT and shall remain the property of RLHT and its successors for all purposes unless 1) the Project Owners withdraw from this agreement in accordance with Section II.E.7; 2) RLHT or its successor fails to comply with an arbitration award under this paragraph; 3) RLHT or its successor withdraws from this agreement pursuant to Section VIII.A; or 4) a court of competent jurisdiction determines that RLHT or its successor has committed a material breach of this agreement which is not cured by RLHT or its successor within 90 days after the date that such determination becomes final. Except in the event that the Project Owners withdraw from this agreement in accordance with Section II.E.7, it is the express intent of the Parties that, following payment of the stewardship fund to RLHT hereunder, the stewardship fund shall remain the property of RLHT or its successor.

V. Watershed Land Protection:

A. Conservation Easements.

1. Lands Included. Within one year of the Completion of licensing, the Project Owner(s) of the Upper Androscoggin River Storage Projects agrees to donate permanent conservation easements for the purposes defined below in Section V.A.2, acceptable to the other Parties as identified in Section V.A.4, on the portions of their land holdings described below and shown in Attachment A.

a. The two small islands above Upper Dam.

b. The strip of shoreline extending from the edge of the field east of the dam keeper's house at Upper Dam, north and east along the shore to the northern edge of the Project Owner(s)' property. The development strip that lies immediately west of this easement and east of the access road will be one hundred (100) feet wide, thus defining the width of the easement as the land remaining down to the shore.

c. A 250' easement on both sides of the Upper Dam tailrace extending from the Project boundary, as determined by FERC, north and west along the shoreline to the end of the Project Owner(s)' ownership on the north side of the tailrace, and south and west along the shoreline from the proposed Project boundary south of the dam down to the end of the point extending into Richardson Lake on the
south. On the north side of the tailrace, the 250' conservation easement begins at the end of the 35 foot strip described in Section V.B.1. The total acreage of this easement is approximately 35 acres.

d. A 250’ conservation easement on both sides of the Rapid River below Middle Dam extending from the Project boundary, as established by FERC, to the end of the Project Owner(s)’ 160 acre dam lot. The total acreage of this easement is approximately 23 acres.

e. The 10 rod strip (167’ wide) on both sides of the Rapid River at Middle Dam beginning at the end of the 250’ conservation easement described in subparagraph V.A.1.d., immediately above, extending to Lake Umbagog on land owned by the Project Owner(s). The total acreage is approximately 260 acres and is approximately 62,700’ of river frontage. The three small lots that are privately owned and the two existing lots leased out by the Project Owner(s) are specifically excluded from this easement.

2. Purposes of the Easements. The easements shall be for the purpose of maintaining the undeveloped, back country character of the area; and to protect and enhance environmental resources including fish, wildlife, wetlands, water quality, scenic quality and recreational resources. In addition, the easements shall provide for free Public access without charge for traditional recreational uses such as hunting, fishing, boating, and other forms of recreation where this is compatible with the above purposes, and shall maintain but not improve existing access.

3. Establishing the easements. The Project Owner(s) shall establish the easements described in this section and shall be responsible for the costs of preparing any necessary legal documents and a Phase 1 site assessment. The Project Owner(s) will not be responsible for stewardship activities for these easements once donated; this will be the responsibility of the recipient organization.

4. Easement Holder. To provide for the continued preservation of these lands in a natural state and in accordance with the purposes outlined in subsection V.A.2. above these easements will be donated to a qualified land conservation organization(s) or such an organization and a Governmental land holding resource agency. The easement holder(s) shall be selected by majority vote of a Committee composed of a representative from the State of Maine, USFWS, AMC, CLF, RLHT and TU. The easement holder also must be acceptable to the Project Owner(s), in its sole discretion. The intent in selecting the easement holder(s) is to consolidate the holdings and management of the easements as much as possible. The holder(s) of the
easements shall not transfer the easements if any of the above named selection committee members or the Project Owner(s) objects. Any member may, in its sole discretion, object to said transfer. In the event that a Party represented on the Committee ceases to be a Party to the Agreement, that Party’s membership on the Committee shall cease.

5. Exclusions and Exceptions. The easement holder(s) may choose to exclude any lands which may present a liability exposure (e.g. contaminated areas). With concurrence from the Project Owner(s), the easement holder may permit the use or development of specific parcels for a public purpose which is consistent with the purposes outlined in subsection V.A.2 above.

6. Specific provisions regarding the campground at Cedar Stump. The six campsites at Cedar Stump will be maintained as primitive campsites available to the public when not being used in conjunction with a Lessee’s rafting business. The number and size of these campsites will not be expanded unless consistent with the Recreation Facilities and Management Plan developed and periodically updated as called for in Section VI.D. The campsites will be maintained by the lessee. The Cedar Stump lessee shall retain the right to access the Rapid River across the Project Owner(s) property for rafting purposes in a manner similar to historic and existing practice.

B. Project Boundaries. The Parties shall propose to FERC Project boundaries and lands to be included in the Project boundary for the Upper Androscoggin River Storage Projects, as described below and delineated in Attachment A; which attachment also delineates certain lands owned by the Project Owner(s) that are subject to the terms of this Settlement Agreement, but are outside of the proposed Project boundary.

1. Upper Dam North. Lands around the dam including a narrow strip of land 35 feet wide southwest of the line of twelve camps on the northeast side of the tailrace, extending to the conservation easement on the west. The purpose of including the 35 foot strip within the Project Area is to ensure that traditional public foot access will continue. In the event that FERC does not include this strip within the Project boundary, the Project Owner(s) will donate a permanent easement allowing the public to use this area.

2. Upper Dam South.
   a. The lands adjacent to the tailrace from the dam to the conservation easement in the southwest; and the area south of the dam bounded by the west and south, or landward, side of the dike, which area makes up the shoreline of
Mooselookmeguntic Lake in this area. The Parties acknowledge that FERC may require that the existing camp lots in this area be excluded from the Project boundary. The Parties further recognize that the Maine Land Use Regulation Commission ("LURC") may require that these lots be reconfigured.

b. The portage road that runs southwest from Upper Dam down to Richardson Lake. The purpose of including the portage road is to ensure that traditional public foot passage between the two lakes will continue. This area is designated as the official portage trail between the two lakes. In the event that FERC does not include this area within the Project boundary, the Project Owner(s) will donate a permanent easement allowing the public to use this area.

3. Middle Dam. An area around the dam, extending west along the tailrace on both sides to the conservation easements on the Rapid River.

C. Agreement on use of the Project Owner(s)' land around Upper and Middle Dams.

1. Limitations on the character of development around Upper and Middle Dams. The Parties agree that the Project Owner(s) shall have the ability to develop its remaining lands not included in the proposed Project boundaries or easements, as shown in Attachment A, but only in a manner consistent with the terms of this Settlement Agreement.

   a. Development shall be limited to seasonal residences. For the purposes of this Settlement Agreement, a seasonal residence is defined as a residence that is not the owner’s or occupant’s primary residence and is not occupied on a continual, year-round basis.

   b. No additional commercial development is permitted on the Project Owner(s)’ land as shown in Attachment A.

   c. Buildings shall have a maximum building height of 25 feet, or alternatively, the height reasonably necessary for a one and one-half story building.

   d. Buildings exteriors shall be of rustic materials (e.g. wood siding) and shall blend with the natural surroundings.

   e. Access from any new seasonal residences to the river or lake shall be by unimproved foot trail only.
f. Vehicle access to and parking for all new development at Upper Dam will be as follows:

i. For the 3 new lots north and west of the dam in the area north of the conservation easement along the tailrace, parking will be allowed on each lot.

ii. For the other seasonal residences north of the dam, vehicles may be driven to the individual lots only for the purpose of loading and unloading. Vehicles serving these lots shall be parked in the existing common parking lot.

iii. For new lots south of the dam, vehicles may be driven to the individual lots only for the purpose of loading and unloading. Vehicles shall be parked only at the existing common parking area south of the dike in the small gravel pit.

g. Vehicle access to and parking for all new developments at Middle Dam shall be as follows:

i. For seasonal residences south of the dam, vehicles may be parked at each lot.

ii. For seasonal residences north of the dam, vehicles may be driven to the individual lots only for the purpose of loading and unloading; vehicles shall be parked at one or more common parking areas in an area yet to be defined, but not on conservation easement lands.

h. The restrictions contained in this Section V.C.1. shall apply to changes made to existing development, as well as any new development.

i. Limitations on setbacks, clearing and lot sizes. For new development, the Project Owner(s) shall use the LURC Protection - Great Ponds district standards in effect in February 1998 (Attachment D) as minimum standards for requirements for setbacks, shoreline clearing, lot sizes and other applicable requirements.

2. Limitations on the degree of new development on the Project Owner(s)' lands around Upper and Middle Dams as shown on Attachment A.

a. Upper Dam.

i. At Upper Dam, the Project Owner(s) shall develop no more than sixteen (16) new seasonal residential lots (with one seasonal residence per lot). The maximum number of lots allowed in any sub-area shall be as shown on
Attachment A and as further described herein. The sub-areas that are shown with fine cross-hatching shall not be developed or included in any lot and shall be placed in conservation easements pursuant to Sections V.A.1.b, and c. The sub-areas that are shown with coarse cross-hatching shall contain relatively compact development. The numbers included within the circles on Attachment A indicate the maximum number of new lots allowed in each sub-area. The areas depicted for relatively compact development are an approximation as LURC may require that the existing leased lots be reconfigured. (This applies to all existing lots.)

ii. North side of Upper Dam. The Project Owner(s) shall develop no more than two (2) lots in the coarse cross-hatched area east of the access road to Upper Dam and north of the dam keeper's house. These lots shall not be waterfront lots.

iii. North side of Upper Dam. The Project Owner(s) shall develop no more than three (3) lots in the coarse cross-hatched area west of the access road to Upper Dam and north of the line of 12 camps north of the tailrace at Upper Dam. These 3 lots shall not be waterfront lots. However, up to two of the lots may abut the 35 foot strip proposed to be included in the Project boundary.

iv. North side of Upper Dam. The Project Owner(s) shall develop no more than three (3) lots in the area extending west of the coarse cross-hatched area referred to in the preceding section and landward of the 250' conservation easement which runs along the north side of the tailrace and the eastern shore of Upper Richardson Lake. These three lots shall not be waterfront lots and may be dispersed rather than clustered.

v. South side of Upper Dam. The Project Owner(s) shall develop no more than five (5) lots in the coarse cross-hatched area north of the portage trail road, east of the Bellview lease and the shore of Richardson Lake, south of the conservation easement along the south side of the Upper Dam tailrace, and west of the proposed Project boundary. No more than two of these lots (those just north of the portage road) shall be waterfront lots.

vi. South side of Upper Dam. The Project Owner(s) shall develop no more than three (3) lots in the coarse cross-hatched area south of the portage trail road, east of the existing leased lot and the shore of Richardson Lake, west of the proposed Project boundary which runs along the dike south of Upper Dam, and extending south to the limits of the LURC residential development district.
as defined by LURC, February 1998 district maps. These lots shall not be waterfront lots.

vii. Islands above Upper Dam: No new lots shall be created.

viii. Subject to the limitations in V.C.2.c (limitations on docks) below, the Project Owner(s) reserves the right to provide shoreline access, including seasonal docks, for the three seasonal residences to be located south of the portage trail road; for the five seasonal residences north of the portage trail; for the two seasonal residences to be located north of the dam keeper’s house and east of the access road; and for the three lots located on the opposite side of the access road. The Project Owner(s) also reserves the right to provide shoreline access, including seasonal docks, across the conservation easement for the three lots that may be developed in the area behind the conservation easement in the northwestern portion of the Project Owner(s)’ property.

b. Middle Dam.

i. The Project Owner(s) shall develop no more than a total of twelve (12) new seasonal residential lots (with one seasonal residence per lot). The subareas that are shown with the cross-hatching shall not be developed or included in any lot, and shall be placed in a conservation easement pursuant to Section V.A.1.d.

ii. South of Middle Dam. No more than three (3) lots will be developed. These will be located west and north of the Project Owner(s)’ eastern and southern property lines, south of the Richardson Lake shoreline in this area, south of the proposed Project boundary, and south and east of the proposed easement along the Rapid River. These may be waterfront lots.

iii. North of Middle Dam. The Project Owner(s) shall develop no more than ten (10) seasonal residences to be located in the area west of Lakewood Camps, south and east of the Project Owner(s)’ northern and western property lines, and north of the proposed Project boundaries and the proposed conservation easement along the Rapid River. These lots shall not be waterfront lots.

iv. Regarding access to lots on the south side of Middle Dam, the Project Owner(s) agrees that the existing access on its property will remain a primitive dirt road. The existing road on the Project Owner(s)’ property will be used to
provide vehicle access to lots created on the shoreline of Richardson Lake south of the Dam.

v. Regarding the character of the Carry Road near Middle Dam, the Project Owner(s) agrees to maintain the undeveloped character of the Carry Road corridor by setting any new development back at least 100 ft from the road and to maintain this buffer as wooded. Further, the Project Owner(s) agrees that, to the maximum extent practicable, development on the north side of Middle Dam will be served by a common access road (or roads), rather than individual driveways. As a result, new development shall be clustered and screened from public view.

c. Limitations on docks.

i. All existing private docks are reserved and grandfathered.

ii. The Project Owner(s) agrees that any new docks will be designed to handle no more than six (6) boats each; and that they will, to the extent practicable, be located and designed to blend with the existing shoreline. The Project Owner(s) also agrees that the docks will be accessible by trail rather than by road.

iii. At the Upper Dam, in the areas to be covered by the conservation easements, the Project Owner(s) agrees to limit the number of new docks to no more than three. One dock shall be in the area of the conservation easement north of the dam keeper's at Upper Dam. A maximum of two docks shall be located in the easement area that runs along the north side of the Upper Dam tailrace. If two docks are developed in this latter area, one will be public and the other private and designated for the use of camp owners. If only one dock is developed, it will be available for both public and private use with slips specifically reserved for camp owner use.

iv. At Upper Dam, to maintain Public access by boat from the Mooselookmeguntic side, the Project Owner(s) agrees to maintain the existing public dock, or a dock similar to the existing dock, on the Mooselookmeguntic side of Upper Dam.

v. At Middle Dam, the Project Owner(s) agrees that no more than one dock (located near the dam keeper's house) will be provided to serve the new development on the north side of the Dam. The Project Owner(s) also agrees
that no more than one dock will be developed on the south side of Middle Dam to serve the new lots to be created in that area. However, if state regulations require additional docks to serve the new seasonal residential lots, the one-dock limit may be exceeded.

3. Limitations on the character and degree of development, as outlined in Sections V.C.1 and V.C.2, shall be implemented through a legally binding instrument, in addition to the Settlement Agreement, acceptable to the Committee established in Section V.A.4., that will restrict the use of these lands in perpetuity.

VI. Studies and Management Plans:

A. The Parties agree that the studies provided for in this section will provide the necessary biological and ecological information to complete the license and license amendment applications for the Projects, and that barring extraordinary results, or the need to rebuild or perform major repairs of the dams, that additional studies will not be needed and will not be requested.

B. The studies to be performed pursuant to this section shall not be financed through the Protection and Enhancement Fund, but shall be the sole obligation of the Owner(s) of the Upper Androscoggin River Storage Projects.

1. Pre-licensing studies. The Parties agree that no more than $100,000 will be needed for pre-licensing studies identified in Attachment B (6 study plans, consisting of Completion of the Historic Fisheries Timeline, Upper Androscoggin Fisheries Surveys, Tributary Access and Enhancements, Impacts of Project Operation on the Littoral Zone and Lake Fisheries, Mitigation for the Impacts of Project Operations on Wetlands, and Boatability of Magalloway River Upper Reach) appended hereto.

2. Post-licensing studies. The Upper Androscoggin River Storage Projects Owner(s) agree that they will budget an amount not to exceed an average of $7000 annually for the term of the license for the Rapid River trout spawning and the Phase 2 fisheries monitoring post-licensing studies identified in Attachment C.

3. The Parties agree that the results of pre-licensing and post-licensing studies identified in Attachment B shall not be used: to require additional mitigation and enhancement measures over and above those called for herein; to alter the terms of the Settlement Agreement, except as expressly provided in Section 11.7; or to reopen the FERC
license for either the Upper Androscoggin River Storage Projects or the Aziscohos Project with respect to the aspects covered by this Settlement Agreement.

C. The Upper Androscoggin River Storage Projects Owner(s) agrees that, if at any time during the term of the FERC license, a definitive link (i.e. to a scientific certainty) between the operation of the dams and the bioavailability of mercury is established, the Projects Owners will develop and implement a plan, as may be ordered by FERC upon its own motion, the motion of any intervening party, including the Parties hereto, or upon recommendation of state or Federal resource agencies, after notice and opportunity for hearing, to address localized and cumulative impacts.

D. Recreational Facilities and Management Plan.

1. In preparing the license application, the Upper Androscoggin River Storage Projects Owner(s) will develop a Recreational Facilities and Management Plan for the Upper Androscoggin River Storage Projects (the Aziscohos Project is expressly excluded from this Plan), and one improved facility for foot access to the Magalloway River. This plan shall be prepared in consultation with MDOC, DIFW, USFWS, NPS, AMC, RLHT, TU, Saco Bound/Downeast, the Rapid River Fly Fishing School, and AWA and will be updated every 6 years, coinciding with the years when FERC requires Form 80 assessments of recreational use.

2. The Plan shall cover:

a. Recreation Management Policies. The Plan shall be prepared consistent with the following goal. Management of the area will: 1) maintain its existing character, that is an environment which is scenic, still almost entirely forested and undeveloped, and where access is for the most part by boat, logging road, or trail; 2) maintain its natural resources; 3) maintain the existing character of the resources and quality of recreational opportunities available to visitors, which are largely low impact uses (e.g. hunting, fishing, boating, and hiking) consistent with back country values and traditional uses; and 4) specifically discourage uses, or increases in levels of use, that would disrupt the existing character and use of the area. Consistent with this overarching goal, management will: provide free access across the Projects Owner(s)' property, without charges or fee, to the water and undeveloped Project lands. Facilities and management will be designed to ensure low-impact use, protection of wildlife habitat and the values outlined above.

b. Public Access. The Parties agree that while existing Public access to the Project impoundments and the Rapid and Magalloway Rivers will be maintained, routes
of Public access, to the extent that they are controlled by the Projects Owners, will not be improved except as provided for in Section II.E.5. However, the Projects Owners shall have the ability to maintain trails and to correct any erosion problems that may exist on footpaths leading to the shoreline.

c. New and Improved Facilities. The Project Owner(s) agrees to provide the following new or improved recreational facilities:

i. Canoe portage trails at Upper Dam and Middle Dam;

ii. Recreation signs at Public access points, at canoe trails and at key fishing trails along the Rapid River;

iii. Continuation of the flow phone service and posting of flows at Middle and Upper Dams;

iv. Walkway or stairs and path maintenance at Magalloway River whitewater boating put-in;

v. Handicap access points meeting ADA standards at both Richardson and Mooselookmeguntic Lakes at existing points of Public access. The access point on Richardson Lake shall be at the Oxford County boat launch area on the South Arm. The access point on Mooselookmeguntic Lake shall be at the State owned public launch ramp;

vi. Privies at the Upper Dam gate, Middle Dam, and the Lower Dam;

vii. Upper Dam picnic tables (2);

viii. Maintenance of the Oxford County boat ramp on the South Arm of Richardson Lake to keep it in good and serviceable condition; and

ix. At the Town of Rangeley’s Haines Landing Boat Launch, the Project Owner(s) shall improve or pay for improvements to allow for safe boat launching. Said improvements may include periodic dredging, as necessary, in order to provide for launching at a water level of 1464' MSL as allowed for herein.

d. Plans for Operation and Maintenance. The Projects Owners will maintain all new and improved facilities during the term of the license with the exception of
improvements on State of Maine property. Ongoing maintenance of these facilities will be the responsibility of the State of Maine.

e. Schedule of Implementation. With the exception of Sections VI.D.2.c.i, ii, iv, vii, which will be completed within 1 year, the work described in paragraph VI.D.2.c. will be completed within two calendar years of the issuance of a FERC license for the Upper Androscoggin River Storage Projects.

VII. Continuation of Collaborative Process; Preparation of Applications and Draft Environmental Assessment Process:

A. The Parties agree to continue the collaborative process through the preparation of the license application and the Applicant Prepared Draft Environmental Assessment (“APDEA”) for the Upper Androscoggin River Storage Projects, including study development and implementation, and potential FERC ordered dam rebuild/major repair. The Parties will work together in good faith and a spirit of true collaboration in order to make the preparation of the license application and the APDEA as efficient as possible without compromising the quality of the analysis. The Parties also agree to prepare the application for a license amendment for the Aziscohos Project in the same manner.

B. The issues addressed in the APDEA will be presented in a fair and balanced manner, especially with regard to addressing the positive and negative impacts of the dams and other Androscoggin River hydro developments.

C. The license applications and the APDEA will be mutually acceptable to the Parties.

VIII. Approval of the Settlement Agreement, Dispute Resolution and Termination of Settlement Agreement:

A. The Parties have entered into and will jointly submit this Settlement Agreement with the express expectation that FERC will not contravene any provisions herein and will issue a license and amendments to the Aziscohos License in conformance with the terms of the Settlement Agreement, although it may not include them all. In the event that FERC substantially and materially changes, conditions, modifies, or supplements any provision contained herein in its order issuing or amending an original license for the Upper Androscoggin River Storage Projects or amending the Aziscohos License, whether as a result of the NEPA analysis as contemplated in Section II.F.3, or otherwise through its own action, the Settlement Agreement shall be considered modified to conform to the
FERC order unless any Party to the Settlement Agreement within 30 days of FERC's action notifies the other Parties that it objects to such action. Upon such notice the Parties agree, consistent with Section II.D.1, to intervene in support of the Settlement Agreement, including filing a petition for reconsideration to FERC, and taking other such measures as are available through the FERC process, to seek a modification to the order to comply with the Settlement Agreement. If, at the completion of licensing or, if applicable, the close of all appeal periods for an order amending the license(s), the FERC order or amendment for the Upper Androscoggin River Storage Projects, or an amendment to the Aziscohos License, substantially and materially changes, conditions, modifies, or supplements any provision contained herein, the Parties will then work to resolve the issue by amending the Settlement Agreement to conform to FERC order, using the dispute resolution process described in Paragraph VIII.D., below. If agreement is not reached on modifying the Settlement Agreement, any dissenting Party whose interests are materially and substantially adversely affected by the FERC order may withdraw from the Settlement Agreement. Procedures to address FERC decisions related to repairing or rebuilding either Upper or Middle dam are not covered by this Section but are covered by Section II.E.

B. If FERC issues a final order that is otherwise consistent with the terms of this Settlement Agreement, but does not include conditions consistent with Section IV (Upper Androscoggin River Storage Projects Protection and Enhancement Fund) and/or Section V (Watershed Land Protection), this shall not, in itself, constitute cause for any Party’s withdrawal under Section VIII.A. Moreover, in the absence of any other grounds for withdrawal, the Projects Owners agree to comply with and implement the terms of Sections IV and V regardless of whether the FERC Order contains such sections.

C. In the event that any study required by Section VI.B.1' documents or predicts that operation of the Projects in accordance with Section III (Water Management) will cause substantial environmental impacts which are not mitigated by this Settlement Agreement and/or which result in noncompliance with the Clean Water Act or the applicable Water Quality Standards, the affected state and/or Federal agencies (State of Maine, EPA, and USFWS) may withdraw from this Settlement Agreement pursuant to Section VIII.D. and the Settlement Agreement shall be deemed null and void.

D. No Party may exercise its right to withdraw pursuant to the terms of this Settlement Agreement unless such Party has attempted to resolve its issues by engaging in good faith negotiations with the other Parties for a period of at least 60 days, with a minimum of two meetings to be held during the 60 day period; and in the event the negotiations fail, has attempted to reach consensus with the other Parties through a nonbinding alternative dispute resolution (ADR) process. The Parties shall, within 60 days, endeavor in good
faith to jointly select a neutral mediator for the ADR process which shall run for no less than 60 days.

E. The withdrawal of any other Party as provided for in Section VIII.A. of this Settlement Agreement does not, in itself, give the Projects Owners the right to withdraw. Notwithstanding any other provision of this Settlement Agreement, the withdrawal of the City of Berlin and/or the Town of Gorham pursuant to Section II.D.4 shall not directly or indirectly trigger the rights of the Projects Owners to withdraw from this Settlement Agreement pursuant to Sections II.E.7 or VIII.A.

F. In the event that the Settlement Agreement is rendered null and void or is terminated as provided herein, to the fullest extent allowed by law, the Settlement Agreement, and all drafts, work papers, and notes related to its development shall be deemed Settlement Agreement materials and shall not constitute a part of the record in any proceeding, nor be admissible into evidence in any proceeding related to the subject matter of this Settlement Agreement. This provision shall not preclude the use of the studies already prepared pursuant to developing the license application or pursuant to Section VI (and the accompanying consultation record, if any) from being used in the licensing process for this Project subject to the limitations defined under Section VI.B.3.

G. If the Projects Owners withdraw from this Settlement Agreement pursuant to the provisions for withdrawal contained herein, the Settlement Agreement shall be deemed null and void and neither the Projects Owners nor any Party shall be bound by the terms contained herein, except as provided in VIII.F above. Withdrawal from this Agreement by any other Party, except as explicitly provided herein, shall not, in itself, render this Settlement Agreement null and void.

H. Notwithstanding any other provision of this Settlement Agreement, this Settlement Agreement is enforceable in the courts of the State of Maine and shall be governed by the laws of the State of Maine. Any Party may seek relief in the appropriate forum for noncompliance with this Settlement Agreement by any Party hereto.

I. Intending to be legally bound, the Parties have executed this Settlement Agreement through their duly authorized representatives.
Upper Androscoggin River Storage Projects Settlement Agreement
August 28, 1998

Union Water Power Company
Normand V. Rodrigue
Senior Vice President

Androscoggin Reservoir Company
Gerald C. Poulin
President

Town of Gorham
New Hampshire
Michael L. Waddell, Chairman
Gorham Selectman
Glen R. Eastman
Gorham Selectman
Yves Zorge
Gorham Selectman

City of Berlin
New Hampshire
Richard Huot
Mayor on behalf of the Berlin City Council

State of Maine
State Planning Office
Evan Richert
Director

State of New Hampshire
Department of Environmental Services
Robert W. Varney
Commissioner

State of Maine
Department of Inland Fisheries and Wildlife
Ronald Levasseur
Commissioner

State of Maine
Department of Conservation
Lee E. Perry
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Rangeley Lakes Heritage Trust

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Trout Unlimited-Maine Council
Jeff Reardon

American Rivers
Margaret Bowman
Director of Hydropower Programs

American Whitewater
Richard Bowes
Executive Director
United States Environmental Protective Agency

John DeVillars
Regional Administrator
EPA-New England
Attachment A

Maps in the vicinity of the Upper and Middle dam developments showing the proposed Project boundary, and for non-Project lands, agreed upon conservation easements and development restrictions.