

174 FERC ¶ 62,189
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Brookfield White Pine Hydro, LLC
Merimil Limited Partnership
Eagle Creek Kennebec Hydro, LLC

Project No. 2615-048

ORDER MODIFYING AND APPROVING RECREATION FACILITIES
MANAGEMENT PLAN PURSUANT TO ARTICLE 407

(Issued March 30, 2021)

1. On September 28, 2020, as supplemented on February 24, 2021, Brookfield White Pine Hydro, LLC, Merimil Limited Partnership, and Eagle Creek Kennebec Hydro, LLC, licensees for the Brassua Hydroelectric Project No. 2615, filed the Recreation Facilities Management Plan (Recreation Plan) required by Article 407 of the project license.¹ The Brassua Project is located on the Moose River in Somerset County, Maine, and does not occupy federal lands.

I. Background

2. The licensees proposed a recreation plan in their license application and Commission staff recommended implementation of the plan, with some modifications, in the final Environmental Assessment² for relicensing of the project. Article 407 requires the licensees to revise, and file for Commission approval, a Recreation Plan, within six months of license issuance. Revision of the Recreation Plan is to be done in consultation with the Maine Department of Inland Fisheries and Wildlife (Maine DIFW), Maine Bureau of Parks and Lands (Maine Parks), Maine Department of Conservation (Maine DOC), and the U.S. Fish and Wildlife Service (FWS) and must include documentation of consultation, and copies of consulting entity comments and recommendations on the completed plan and schedule, after they have been prepared and provided to consulting

¹ Order Issuing New License (171 FERC ¶ 62,044) issued April 15, 2020.

² On September 14, 2019, Commission staff issued a final Environmental Assessment which analyzed the effects of relicensing the project as proposed by the licensees and alternatives to it.

entities, and specific descriptions of how the entities' comments are accommodated by the plan and schedule.

3. Article 407 also requires the Recreation Plan be updated to reflect any improvements or modifications that have been made to project recreation facilities since the plan was originally filed and any references to the FERC Form 80 reporting requirements must be removed. Additionally, the Recreation Plan must include the following measures: (1) monitor and conduct periodic excavation of the gravel bar at the Misery Cove Boat Launch to ensure that boating access is maintained at elevations of 1,067.0 feet mean sea level (msl); (2) conduct the proposed recreation use survey every five years instead of every six years; (3) during the recreation use survey, conduct spot counts at each project recreation facility to determine site utilization and capacity on eight weekdays and five weekends, including one holiday weekend (Memorial Day, Independence Day, or Labor Day) between May 31 and October 1, and between the hours of 8 a.m. and 5 p.m.; (4) continue to maintain a toll-free phone system that is updated daily at 6 p.m. from April to October to provide the anticipated elevation levels of Brassua Lake and river flow from the dam for the following day; (5) provide a public internet site that: (a) describes recreational access at the project; (b) describes the amenities available at each project recreation facility; (c) includes a map of the project recreation facilities; and (d) displays the telephone number for the toll-free phone system; and (6) file with the Commission the results of the recreation use survey, including any comments received from interested parties about the survey, and any conclusions regarding the need for additional access areas or expansion of existing project recreation sites, by April 1 of each year following the recreation use survey.

II. Licensee's Proposal

4. The licensees' plan includes a detailed description of existing recreation facilities located at the Brassua Dam river access area, the canoe portage trail (links Brassua Reservoir with the Moose River below the dam), and the Misery Cove Boat Launch. The additional requirements specified in Article 407, except for modifying the frequency of the recreation survey are also incorporated into the plan. No improvements or modifications have been made to project recreation sites since the Recreation Plan was originally filed as part of the relicense application.

5. The licensees propose future recreation facility improvements at several recreation sites, as follows: (1) grading and leveling the trail leading to the south bank of the Moose River at the Brassua Dam and River Access Area to enhance access; (2) two or three picnic tables and a portable toilet at the Misery Cove Boat Launch; and (3) developing a group campsite near the Canoe Portage Trail and installing a canoe rest (two if deemed necessary) along the portage route. Improvements at the first two sites are scheduled for

completion within one year of the issuance date of this order and improvements at the portage trail are scheduled for completion with two years of issuance.

III. Agency Consultation and Public Notice

6. By email dated July 20, 2020, the licensees provided a copy of the draft Recreation Plan to consulting parties. No comments were received.

7. On October 20, 2020, the Commission issued a public notice of the Recreation Plan, establishing November 19, 2020, as the deadline to file comments, motions to intervene, and protests regarding the plan. On November 30, 2020, the Maine Council of Trout Unlimited (Maine TU) filed a late response to the notice. Maine TU's comments encouraged the licensees to provide web-based information for anglers and to enhance angling access below the dam. No other responses to the public notice were filed.

IV. Discussion

8. In its initial filing, the licensees proposed to provide information to the public regarding recreation opportunities at the project via the publication of a notice in a local newspaper once each week for four weeks, rather than by a public internet site as required by Article 407. In response to Commission staff's additional information request issued February 10, 2021, the licensees' February 24, 2021 filing indicated that they now have the capability to modify an existing public internet site to incorporate the information required by Article 407(5).³ Licensees are thus able to comply with the license article condition regarding the format for sharing recreation information with potential visitors.

9. The proposed Recreation Plan includes a provision to monitor recreation use and to file a recreation use report on a six-year cycle, rather than the five-year cycle required by Article 407. In their February 24, 2021 filing, the licensees state that the Land Use Planning Commission has reclassified lands that were proposed for residential development to a protected status, thus expected recreation use at the project is lower than was anticipated during the relicensing process. The licensees propose to file the next recreation survey report by April 1, 2022. Ordering paragraph (B) approves the change to the reporting cycle.

10. Primitive camping is a historical use at the project and there are four existing primitive campsites. Two primitive campsites are located outside of the project boundary

³ Recreation information has been added to the Safewaters website (<https://safewaters.com/facility/23>).

on private land (Site 1 maintained by Weyerhaeuser Company and Site 4 maintained by the Northern Forest Canoe Trail), and the remaining campsites are located partially within the project boundary and partially on Weyerhaeuser Company land.(Sites 2 & 3 maintained by the licensees). Typically, project recreation sites are required to be incorporated into the project boundary. In this case, the licensees propose to ensure that there are at least four primitive campsites along the shores of Brassua Reservoir through the term of the license, with the exact location of those sites being unspecified. Should an existing site become unusable, an alternative location will be developed for primitive camping in consultation with Maine Parks, Maine DOC, and other interested stakeholders.⁴ While the licensees include regular maintenance of primitive campsites in the Recreation Plan, there is no discussion of criteria to be used to determine when a site would be considered unusable. Conditions at each of the existing primitive campsites should be documented so that characteristics such as the footprint of the site, damage to vegetation, soil erosion or compaction, and other environmental impacts can be tracked during annual site inspections. To ensure that environmental resources are protected over the term of the license, the licensees should identify the criteria used to determine when a primitive campsite should be closed and rehabilitated. Ordering paragraph (B) requires the inclusion of these criteria in the next recreation use monitoring report.

11. The proposed Recreation Plan includes provisions for the licensees to manage recreation facilities, take steps to ensure public safety, and to conduct periodic maintenance as needed, including annual site inspections. We note that the public safety section of the Recreation Plan does not reference the most recent communication with the Commission's Division of Dam Safety and Inspections (D2SI) regarding public safety measures.⁵ The licensees should ensure future updates to the Recreation Plan reference updated public safety plan information.

12. To accurately document the facilities at the recreation sites required by the project license, below is a table which list the existing and proposed project recreation facilities.

⁴ Any new sites developed will be incorporated into the project boundary if not located on lands currently within the project boundary.

⁵ The Recreation Plan references a 2002 Public Safety Plan and a 2003 communication with D2SI instead of the Public Safety Plan filed with the Commission on May 31, 2016.

Project Recreation Facilities at the Brassua Hydroelectric Project No. 2615.⁶

Recreation Site Name	Recreation Facilities
Brassua Canoe Portage	<u>Existing</u> : Canoe put-in and take-out; ≈800’ portage trail (portion of the trail also serves as angling access to the north bank of the Moose River); directional signage <u>Proposed</u> : canoe rest(s)
Brassua Canoe Portage Group Camp	<u>Proposed</u> : Group campsite with ≈4 campsites; 2 picnic tables; fire ring; privy
Brassua Dam Angling Access Site	<u>Existing</u> : Pedestrian-only angling access trails on both banks of Moose River (each ≈.33 miles in length); parking area (≈10 vehicles)); portable toilet
Misery Cove Boat Launch	<u>Existing</u> : Single-lane concrete boat launch; gravel parking area for ≈10 vehicles with trailers; turn-around <u>Proposed</u> : ≈3 picnic tables; portable toilet
Primitive Camping	<u>Existing</u> : 4 boat-in sites located near the Brassua Reservoir shoreline (locations may shift over the term of the license as needed to protect environmental resources)

13. The proposed Recreation Plan includes a provision to enhance access for anglers downstream of the dam and the February 24, 2021 filing indicates that licensee staff now have the ability to add information regarding recreation opportunities to the existing internet site, thus both of Maine TU’s concerns have been addressed.

14. Recreation facility improvements included in the proposed Recreation Plan will diversify recreation opportunities available and enhance visitor experience at the project. The licensees state that the proposed improvements will be made by August 31 of the summer season following approval of the Recreation Plan, except for development of the Group Camp which will be completed a year later. To keep the Commission informed, the licensee must file a report documenting of completion of recreation improvements. Ordering paragraph (C) requires the filing of documentation of completion of the recreation facilities constructed each year.

15. The licensees’ proposed Recreation Plan includes maps and photographs clearly and accurately describing the recreation sites which the licensees are responsible for under the terms of their license. Implementation of the Recreation Plan will provide

⁶ The “approximately equals” symbol (≈) is included to allow for adaptive management of recreation facilities as needs and use patterns change over time.

enhanced opportunities for outdoor recreation and fulfills the requirements of Article 407, thus the plan should be approved.

The Director orders:

(A) Brookfield White Pine Hydro, LLC, Merimil Limited Partnership, and Eagle Creek Kennebec Hydro, LLC's Recreation Facilities Management Plan, filed on September 28, 2020, as supplemented on February 24, 2021, pursuant to Article 407 for the Brassua Hydroelectric Project No. 2615, as modified by ordering paragraph (B), is approved.

(B) The frequency of recreation use monitoring required pursuant to Article 407 is modified from a five-year cycle to a six-year cycle. A Recreation Use Monitoring Report must be filed the year after monitoring is conducted. The next report is due by April 1, 2022 and every six years thereafter over the term of the license. The April 1, 2022 report must include a description of the criteria that will be used to determine if a primitive campsite should be closed and rehabilitated and be filed for Commission approval. Reports filed in 2028 and beyond are to be filed with the Commission, with any recommendations for changes to the Recreation Facilities Management Plan to be filed for Commission approval.

The reports must be developed in consultation with the Maine Department of Inland Fisheries and Wildlife, Maine Bureau of Parks and Lands, Maine Department of Conservation, and the U.S. Fish and Wildlife Service and must include documentation of consultation, and copies of consulting entity comments and recommendations on the reports, after they have been prepared and provided to consulting entities, and specific descriptions of how the entities' comments are accommodated by the reports. Based on the information provided in the reports, the Commission reserves the right to require changes to the Recreation Facilities Management Plan.

(C) Within 90 days of completion of the recreation facilities proposed in the Recreation Facilities Management Plan, the licensees must file a report documenting the completed recreation facilities approved in this order. The documentation may include photographs, aerial photographs, drawings that reflect the as-built condition, or other methods, provided that the documentation clearly demonstrates that the recreation improvements have been constructed in substantial conformity as approved.

(D) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 825l (2018), and the Commission's regulations at 18 C.F.R. § 385.713 (2020). The filing of a request for rehearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. The licensees' failure to file a request for rehearing shall constitute acceptance of this order.

Robert J. Fletcher
Land Resources Branch
Division of Hydropower Administration
and Compliance



September 28, 2020

Brassua Project
FERC No. 2615-ME

Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street N.E.
Washington, DC 20426

Re: Brassua Project - FERC Project No. 2615-ME
Response to FERC April 15, 2020 Order Issuing New License Article 407
Requirement for Submitting Revised Recreation Facilities Management Plan for
Agency Consultation and FERC Review and Approval

Dear Secretary Bose:

On March 31, 2010, Brookfield White Pine Hydro, LLC (BWPH), Merimil Limited Partnership, and Eagle Creek Kennebec Hydro, LLC (collectively, Licensees) filed, pursuant to sections 4(e) and 15 of the Federal Power Act (FPA), an application for a new license to continue the operation and maintenance of the Brassua Hydroelectric Project (FERC No. 2615) (Brassua Project). The license application included in Appendix E3-5 a Recreation Facilities Management Plan (RFMP) as a protection, mitigation and enhancement measure for the Project's recreation resources. Development of the RFMP was a comprehensive process and included an onsite inventory and condition assessment, angler surveys, and agency consultation.

On April 15, 2020, the Commission issued an Order Issuing New License for the Project. Article 407 of the license requires that the Licensees file with the Commission, for approval, a final RFMP that includes the measures described in the RFMP filed with the license application, as well as several additional measures. In accordance with license Article 407, the RFMP has been updated to include these measures and to remove references to the FERC Form 80 reporting requirement. In addition, two proposed changes to the required measures were included: 1) the Licensees are proposing that recreation monitoring be conducted every six years to align with the monitoring schedule of nearby projects, beginning in 2021; and 2) as BWPH does not currently have website capabilities for the Brassua Project, the Licensees are instead proposing to meet the requirements of 18 CFR § Part 8.1 by providing the required information via publication in a local newspaper as well as by maintaining signage at the Project.

Per license Article 407, the Licensees are required to consult with resource agencies in developing the final RFMP. On July 29, 2020, the Licensees submitted the draft RFMP to the Maine Department of Inland Fisheries and Wildlife, the Maine Bureau of Parks and Lands, the Maine Department of Conservation, and the U.S. Fish and Wildlife Service (collectively, resource agencies) for a 30-day review period. No comments or recommendations were received. Documentation of consultation has been included in the RFMP.

On behalf of the Licensees, Brookfield Renewable hereby submits for your review and approval the final RFMP in accordance with the Commission's April 15, 2020 Order Issuing New License for the Project. If there are any questions regarding the enclosure, please contact Kyle Murphy at kyle.murphy@brookfieldrenewable.com.

Sincerely,

A handwritten signature in black ink that reads "Kelly Maloney". The signature is written in a cursive, flowing style.

Kelly Maloney
Manager Compliance – Northeast

Cc. N. Stevens, S. Michaud, J. Rancourt, D. Watson, J. Seyfried, E. Deluca, K. Murphy

BWPH File: 2615|01

**RECREATION FACILITIES MANAGEMENT PLAN
BRASSUA HYDROELECTRIC PROJECT
(FERC No. 2615)**



Submitted by:

**Brookfield White Pine Hydro, LLC
Merimil Limited Partnership
Eagle Creek Kennebec Hydro, LLC**

Prepared by:



September 2020

Brookfield

TABLE OF CONTENTS

1.0	Introduction and Background	1
2.0	Consultation	3
3.0	Project Lands and Waters	4
4.0	Project-Related Recreation Sites and Facilities	4
4.1	Existing Recreation Sites and Facilities.....	4
4.1.1	Brassua Dam and River Access Area	7
4.1.2	Brassua Dam Canoe Portage.....	14
4.1.3	Misery Cove Boat Launch	16
4.2	Proposed Project-Related Recreation Sites and Facilities	21
4.2.1	Brassua Dam and River Access Area Improvements	21
4.2.2	Misery Cove Boat Launch	21
4.2.3	Primitive Campsites	21
4.2.4	Group Campsite	22
4.2.5	Canoe Portage Trail Improvements	22
5.0	Other Public Access.....	24
5.1	Primitive Campsites	24
5.2	Snowmobile Interconnected Trail System (ITS)	24
6.0	Management Measures	29
6.1	Annual Site Inspection and Facilities Maintenance Program	29
6.2	Public Safety	31
6.3	Recreation Use Monitoring.....	31
6.4	Determining the Need for Additional Measures or Expansion of Existing Sites	32
6.5	Public Information on Project Recreation.....	32

7.0	Cost	33
8.0	Schedule and Reporting	33
9.0	Modifications to Plan	33
10.0	References	34

LIST OF APPENDICES

Appendix A: Documentation of Agency Consultation

Appendix B: Annual Site Inspection and Facilities Maintenance Checklists for the Brassua Project Recreation Areas

LIST OF TABLES

Table 4.1.1-1:	Brassua Dam and River Access Area Facilities	8
Table 4.1.2-1:	Brassua Dam Canoe Portage Facilities	14
Table 4.1.3-1:	Misery Cove Boat Launch Facilities	17

LIST OF FIGURES

Figure 4.1-1:	Brassua Project Recreation Areas	6
Figure 4.1.1-1:	Parking area for Brassua Dam and River Access Area and Brassua Dam Canoe Portage Trail	9
Figure 4.1.1-2:	Sign and trailhead for Brassua Dam and River Access Area located along the south shore of the tailrace downstream of the dam	10
Figure 4.1.1-3:	Trail for Brassua Dam River Access Area located along the south shore of the tailrace downstream of the dam	10
Figure 4.1.1-4:	Brassua Dam and River Access Area located along the south shore of the tailrace downstream of the dam	11
Figure 4.1.1-5:	Brassua Dam River Access Area trail located along the south shore of the tailrace downstream of the dam	11

Figure 4.1.1-6: Brassua Dam and River Access Area Parking and South Shore River Access Area12

Figure 4.1.1-7: Brassua Dam North Shore River Access Area and Brassua Dam Canoe Portage Trail.....13

Figure 4.1.2-1: Brassua Dam Canoe Portage Take-out15

Figure 4.1.2-2: Brassua Dam Portage Put-in15

Figure 4.1.2-3: Brassua Dam Canoe Portage Trail.....16

Figure 4.1.3-1: Misery Cove Boat Launch Parking Area18

Figure 4.1.3-2: Misery Cove Boat Launch (June 25-26, 2008)18

Figure 4.1.3-3: Misery Cove Boat Launch (Reservoir at approx. 6.4 feet below full pool on 10/14/08)19

Figure 4.1.3-4: Misery Cove Boat Launch (reservoir at approx. 6.4 ft below full pool on 10/15/08)19

Figure 4.1.3-5: Misery Cove Boat Launch20

Figure 4.2.4-1: Brassua Project proposed group campsite23

Figure 5.1-1: Map of primitive campsites on Brassua Reservoir25

Figure 5.1-2: Map of primitive campsites on Brassua Reservoir26

Figure 5.1-3: Primitive campsite No. 1 on northern shore of Brassua Reservoir - first fire pit27

Figure 5.1-4: Primitive campsite No.1 on northern shore of Brassua Reservoir - second fire pit.27

Figure 5.1-5: Primitive campsite No.2 at inlet of Moose River into Brassua Reservoir28

Figure 5.1-6: Primitive campsite No.3 near inlet of Moose River into Brassua Reservoir28

1.0 INTRODUCTION AND BACKGROUND

The Brassua Hydroelectric Project (Project) is licensed by the Federal Energy Regulatory Commission (“FERC” or “Commission”) as Project No. 2615. On March 31, 2010, Brookfield White Pine Hydro, LLC (BWPH), Merimil Limited Partnership, and Eagle Creek Kennebec Hydro, LLC (collectively referred to as the “Owners of Brassua Dam” or “Licensees” or “Licensee”) filed, pursuant to sections 4(e) and 15 of the Federal Power Act (FPA), an application for a new license to continue the operation and maintenance of the Brassua Hydroelectric Project No. 2615 (Brassua Project or Project).

To help describe the public recreation facilities available at the Project, their condition, and any operational, maintenance, or safety issues at each recreation area, the Licensees conducted an inventory of all recreation facilities during relicensing. Subsequently, the Licensees proposed in the Preliminary Licensing Proposal (PLP) filed with FERC on November 20, 2009 to develop a Recreation Facilities Management Plan as a protection, mitigation and enhancement (PM&E) measure for the Project’s recreation resources that would incorporate an annual recreation site inspection and maintenance program.

This Recreation Facilities Management Plan (RFMP) was prepared to describe the available public recreation facilities that provide direct access to the Project lands and waters and to identify measures for enhancing public access to Project lands and waters that, collectively, will maintain the existing recreational opportunities provided at the Brassua Project over the term of the new license. The RFMP was filed as Appendix E3-5 of Exhibit E of the March 31, 2010 license application.

On April 15, 2020, the Commission issued an Order Issuing New License for the Project. Article 407 of the license requires the Licensees to file with the Commission for approval the final RFMP that was filed as Appendix E3-5 of Exhibit E of the March 31, 2010 license application, with the following additional measures:

- (a) monitor and conduct periodic excavation of the gravel bar at the Misery Cove Boat Launch to ensure that boating access is maintained at elevations of 1,067.0 feet msl or higher;
- (b) conduct the proposed recreation use survey every five years instead of every six years;
- (c) during the recreation use survey, conduct spot counts at each Project recreation facility to determine site utilization and capacity on eight weekdays and five weekends, including one holiday weekend (Memorial Day, Independence Day, or Labor Day) between May 31 and October 1, and between the hours of 8 a.m. and 5 p.m.;
- (d) continue to maintain a toll-free phone system that is updated daily at 6 p.m. from April to October to provide the anticipated elevation levels of Brassua Lake and river flow from dam for the following day;
- (e) provide a public internet site that: (1) describes recreational access at the Project; (2) describes the amenities available at each Project recreation facility; (3) includes a map of

the Project recreation facilities; and (4) displays the telephone number for the toll-free phone system; and

- (f) file with the Commission the results of the recreation use survey, including any comments received from interested parties about the survey, and any conclusions regarding the need for additional access areas or expansion of existing Project recreation sites, by April 1 of each year following the recreation use survey.

In accordance with license article 407, the RFMP was updated to include the above measures and to remove references to the FERC Form 80 reporting requirement. No substantial modifications have been made to Project recreation facilities since the plan was filed on March 31, 2010. In addition, the following proposed changes to the above measures were included:

- (a) Recreation Monitoring: Recreation monitoring was originally proposed in the draft RFMP, filed with the March 2010 license application, to be conducted concurrent with the FERC Form 80 process every six years. As discussed in the April 15, 2020 FERC Order Issuing License, “However, the Commission has eliminated the Form 80 reporting requirements for hydropower projects and no longer requires the Form 80 report as a recreation use monitoring tool. Based on the potential for future residential development in the immediate vicinity of the Project that could increase the demand for recreation access over the term of the license, Article 407 requires the licensees to conduct the recreation use survey every five years instead of every six years. A five-year cycle will help ensure that the recreation use survey adequately captures changes in recreation use and demand during the term of the license.” The land development plans referenced in FERC’s Environmental Analysis on which the potential demand increase assumption was based included two concept plans approved by the Land Use Planning Commission (LUPC): Moosehead Wildlands Concept Plan and Moosehead Lake Region Concept Plan. Moosehead Wildlands Concept Plan, the smaller of the two developments, has largely been implemented. Ownership of the lands included in Moosehead Lake Region Concept Plan, the larger development, has changed, and the new owners have petitioned LUPC to terminate the concept plan and rezone the land included in development areas under the plan as Protection and Management subdistricts.

In addition, while not required to file a FERC Form 80, BWPH is responsible for monitoring recreational use at other hydroelectric projects in the vicinity on a six-year cycle. Per an order issued on April 17, 2020, BWPH will monitor recreation use at the Moosehead Storage Project (FERC No. 2671) in 2021 and will file a recreation report by April 1, 2022. The Licensees respectfully request that recreation monitoring at the Project be aligned with this schedule, occurring on a six-year cycle. As the majority of the smaller residential development project planned for the Project area has been completed and the larger rescinded, recreation monitoring on a six-year cycle will adequately capture foreseeable changes in recreation use and demand over the term of the new license. Aligning the monitoring cycle with that of the Moosehead Storage Project will allow for a more efficient use of resources. Additionally, conducting recreation use monitoring at the Project in 2021 would provide updated information on any changes in recreation use and demand that have occurred since the 2010 license application.

- (b) Recreation Information: Article 407 also requires that BWPH provide a public internet site that: “(1) describes recreational access at the Project; (2) describes the amenities available at each Project recreation facility; (3) includes a map of the Project recreation facilities; and (4) displays the telephone number for the toll-free phone system.” This requirement is presumably a result of the change in Part 8 regulations wherein the option to provide the required recreational information via a website was added to 18 CFR § Part 8.1 in 2018. As BWPH does not currently have website capabilities for the Brassua Project, BWPH will instead revert to the requirements of 18 CFR § Part 8.1 such that the required information will be communicated to the public via “the publication of notice in a local newspaper once each week for 4 weeks”. Part 8 signage at the site will also be maintained, providing additional information onsite.

Article 407 requires the licensees to maintain a toll-free phone number to provide flow information. In addition to maintaining the toll-free phone number, BWPH has, since 2010, developed a Web based flow information system (currently Safewaters.com) to provide flow information at its projects, including Brassua. BWPH will continue to maintain Safewaters.com and update the website concurrently with the toll-free number (by 6 p.m. daily or as changes occur in real time) to provide the current elevation levels of Brassua Lake and river flow from dam, as well as predictive next day river flow.

2.0 CONSULTATION

Based upon the surveys with outfitters and guides, surveys of anglers in the tailwater/Moose River, and the inventory and condition assessment (provided in Brassua Recreational Resources Inventory Initial Study Report [LVA, 2009a]), minimal changes were suggested for the existing recreational facilities. These suggested changes included the periodic removal of driki and litter from portage take-out area (see Section 6.1 Annual Site Inspection and Facilities Maintenance Program), possible addition of a toilet at the Misery Cove Boat Launch, possible additional primitive campsites in the future if needed, addition of picnic tables to primitive campsites, and possible improvement to the ramp at the Misery Cove Boat Launch. Existing recreation facilities were found to be generally in good condition, and, overall, were adequate to meet current recreational use and demand.

During scoping and study plan development for relicensing, stakeholders did not identify the need for additional recreational studies at the Project. The Brassua Recreational Resources Inventory Initial Study Report and PLP were provided to FERC and participating agencies, tribes, non-governmental organizations (NGOs), local governments, and the public for comment. Comments received generally supported the Licensees’ proposal to develop the RFMP as proposed in the PLP. The draft RFMP was provided to the U.S. Fish and Wildlife Service (USFWS), National Park Service (NPS), Maine Department of Inland Fisheries and Wildlife (MDIFW), Maine Department of Conservation (MDOC) (now referred to as the Maine Department of Agriculture, Conservation and Forestry (MDACF)), and Appalachian Mountain Club (AMC) in March 2010 for review. Comments on the draft plan were received from MDOC (letter dated March 17, 2010) and AMC (letter dated March 17, 2010) and were included in the draft filed with the March 31, 2010 license application.

Per license article 407, the Licensees are required to consult with the MDIFW, the MDACF Bureau of Parks and Lands, and the USFWS (collectively, resource agencies) in developing the final RFMP. The Licensees are required to allow a minimum of 30 days for the resource agencies to comment and to make recommendations before filing the RFMP with the Commission. On July 29, 2020, the Licensees submitted the draft RFMP to the resource agencies for a 30-day review period. No comments or recommendations were received. Documentation of consultation has been included as [Appendix A](#).

3.0 PROJECT LANDS AND WATERS

The normal full pool elevation of Brassua Reservoir is 1,074' USGS. The FERC Project boundary at the Brassua Project generally follows elevation 1,076' around the reservoir, and the Licensees own the land surrounding the reservoir between elevation 1,074 feet and elevation 1,076'. The Project boundary also encompasses the Project works and extends along the Moose River approximately 700 feet downstream of the dam.

Although the Licensees allow public use of the Brassua Project lands and waters for recreation, developed access is limited because the Project is largely surrounded by timber company lands with few public access roads. Logging roads provide informal access to the Project area. The area surrounding the Project is largely undeveloped and heavily forested. The Project recreation areas provide opportunities for bank fishing and motorized and nonmotorized boating. There are no commercial recreation facilities providing direct access to the Project (LVA, 2009a).

4.0 PROJECT-RELATED RECREATION SITES AND FACILITIES

4.1 Existing Recreation Sites and Facilities

This section of the RFMP describes the existing public recreation access facilities maintained by the Licensees at the Brassua Project.

The Project recreation areas consist of three recreational facilities owned and managed by the Licensees: bank fishing and angling river access at the dam, a canoe portage trail, and a boat launch located along Route 15. These recreation areas are shown on [Figure 4.1-1](#).

The Brassua Dam and river access area, located at Brassua Dam on the gravel entrance road off of Route 15, provides a parking area, a portable toilet, and bank fishing accessible to pedestrian traffic for the south and north shores of the Moose River below Brassua Dam. Bank fishing and fishing by wading are the primary recreational activities but sightseers also use this site. The canoe portage trail can also be reached by pedestrian traffic from the access area (LVA, 2009a).

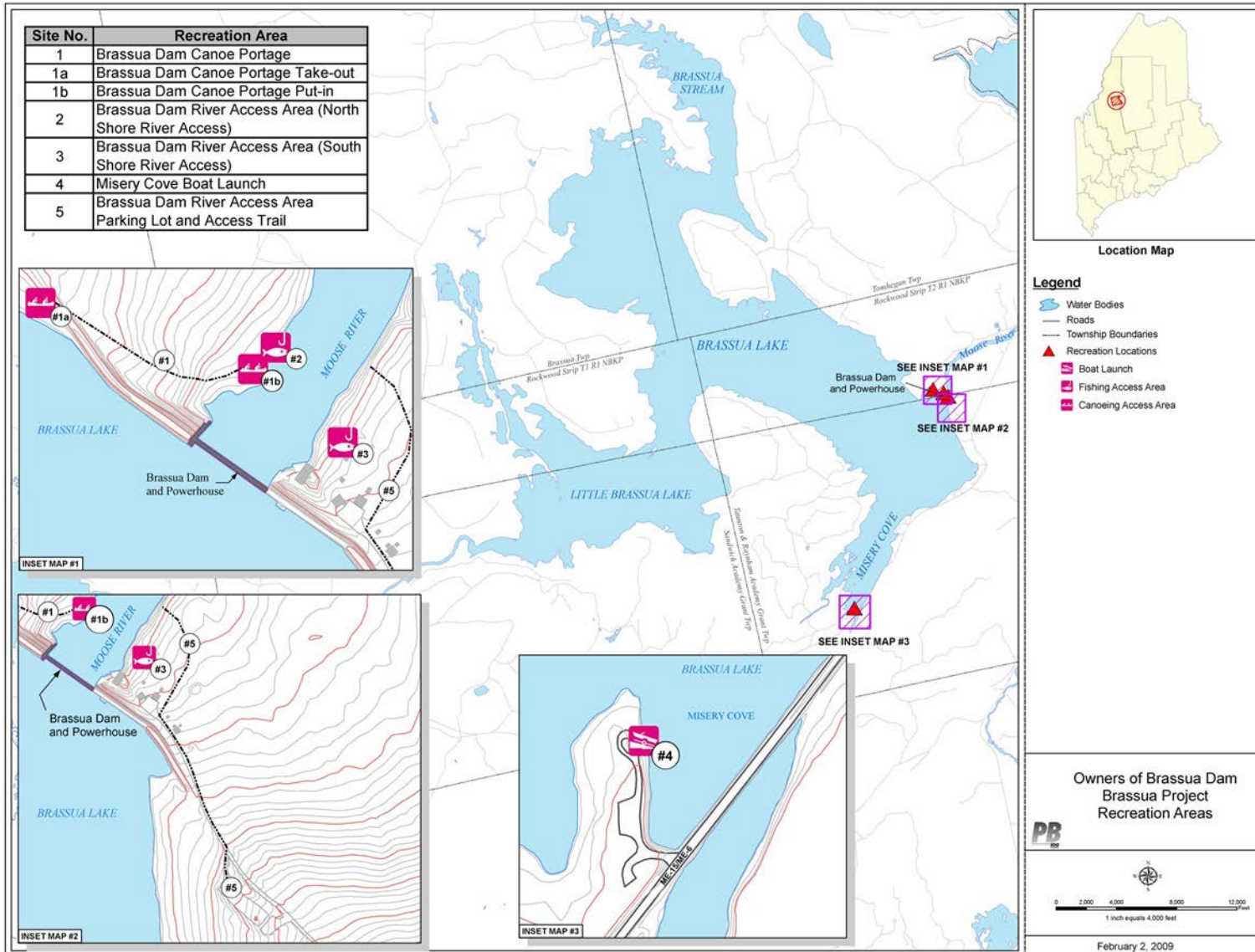
The canoe portage trail, located on the north side of Brassua Dam, allows access to the Moose River. The entire length of the trail is about 800 feet. Usage by paddlers is the primary recreational activity, in addition to bank fishing, along the north shore river access. This canoe portage trail is included as part of the Northern Forest Canoe Trail (NFCT), a 740-mile marked paddling trail in the northeastern United States and Canada extending from Old Forge, New York to Fort Kent, Maine (LVA, 2009a). The Project canoe portage trail around Brassua Dam is marked with a NFCT

sign, a yellow diamond with blue lettering that marks portage trails, campsites, and access areas on some portions of the trail.

The Misery Cove Boat Launch, located on a gravel entrance road off of Route 15 west of Brassua Dam, provides a single lane concrete boat ramp, a turn-around, and a parking lot for about 9 to 10 vehicles with trailers. Motorized boat launching is the primary recreational activity at the access area. The boat launch is useable when the reservoir is within approximately five feet of full pool level (el. 1,074') (LVA, 2009a).

A detailed description of each of these three public access recreation areas and the facilities available at each follows.

Figure 4.1-1: Brassua Project Recreation Areas



4.1.1 Brassua Dam and River Access Area

Site Name: Brassua Dam and River Access Area

Location: The Brassua Dam and River Access Area is located at Brassua Dam on a gravel entrance road off of Route 15. The area is located within the Project boundary.

Description of Facilities and Primary Recreational Activities¹: There is a small parking area and a portable toilet that serves the access area. The parking area and toilet can also be utilized by users of the canoe portage trail. The parking area and portable toilet are located just before a locked gate for authorized vehicles only. The access area for the south shore of the Moose River downstream of Brassua Dam is accessible via a walk of approximately one-third mile along the road and a trail. The access area includes a large, grassy, open area for bank fishing and a path that continues along the south shore of the river. The access area for the north shore of the Moose River downstream of Brassua Dam is accessible via a walk of a little over one-third mile along the road, across the dam, and along the portage trail. A path continues along the river. Bank fishing and wading are the primary recreational activities but sightseers also use this site.

Site Regulations: Daytime use only, no overnight camping

Site Inventory: The recreation facilities available at the Brassua Dam River Access Area are summarized in [Table 4.1.1-1](#).

¹ Primary recreational activities generally correspond to the types of facilities available.

Table 4.1.1-1: Brassua Dam and River Access Area Facilities

Facility	Description	Approximate Dimensions
Fishing		
Large open grassy area	Bank fishing along south shoreline	86' x 30'
Unimproved access along the south shoreline	Bank fishing	N/A
Unimproved access along the north shoreline	Bank fishing	N/A
Pedestrian Access		
Trail	Trail to the south shoreline bank fishing area	413'
Trail/steps	Trail/steps to the north shoreline bank fishing area	197'
Boardwalk	Boardwalk over wet area of footpath along south shoreline	59'
Access road beyond gate	Gravel access road turns to paved road	646' of gravel road and 462' of paved road
Vehicular Access		
Parking	Gravel parking area	48' x 70'
Access road from Rt. 15	Gravel access road	0.1 mile long
Utility/Sanitary		
Toilet	One portable toilet at parking lot	NA
Signs¹		
	1. Small sign on Route 15 for Brassua Project with parking and fishing symbols	2' x 2'
	2. Welcome to the Project sign ²	6' x 6' (2 sections)
	3. Reserved parking sign for disabled	12" x 12"
	4. Public Parking Daytime Use Only No Overnight Camping	32" x 8"
	5. Authorized vehicles only (on gate)	8" x 12"

	6. Welcome to access area sign with directional information for north shore access and south shore access	4' x 3' and 4' x 1'
	7. Notice that tenders of dam reside at the area and requesting that users respect their privacy	8" x 12"
	8. South Shore River Access directional sign	32" x 8"
	9. Fishermen: Please use this path to and from river	32" x 18"
	10. Temporary sign with instructions for anglers catching tagged fish	11" x 14"
	11. River path directional sign	18" x 8"

Notes:

¹The sign numbers correspond to those presented in [Figure 4.1.1-6](#)

²The “Welcome” sign is the Part 8 sign as required by FERC.

Disabled Access Assessment: There is one designated parking space for the disabled. The access area is not fully accessible to the fully disabled. To make this access area fully accessible in accordance with the Americans with Disabilities Act (ADA), certain changes would be needed, however, there is no apparent demand for fully accessible facilities at the Brassua Project’s lightly used recreation areas.

Figure 4.1.1-1: Parking area for Brassua Dam and River Access Area and Brassua Dam Canoe Portage Trail



Figure 4.1.1-2: Sign and trailhead for Brassua Dam and River Access Area located along the south shore of the tailrace downstream of the dam



Figure 4.1.1-3: Trail for Brassua Dam River Access Area located along the south shore of the tailrace downstream of the dam

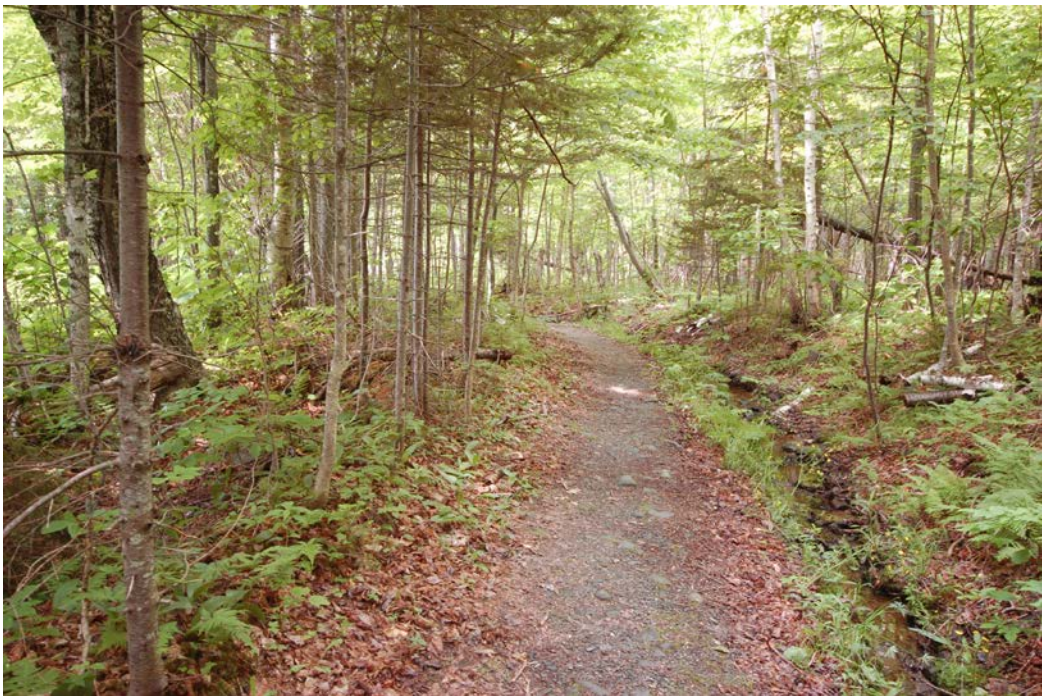


Figure 4.1.1-4: Brassua Dam and River Access Area located along the south shore of the tailrace downstream of the dam



Figure 4.1.1-5: Brassua Dam River Access Area trail located along the south shore of the tailrace downstream of the dam



Figure 4.1.1-6: Brassua Dam and River Access Area Parking and South Shore River Access Area

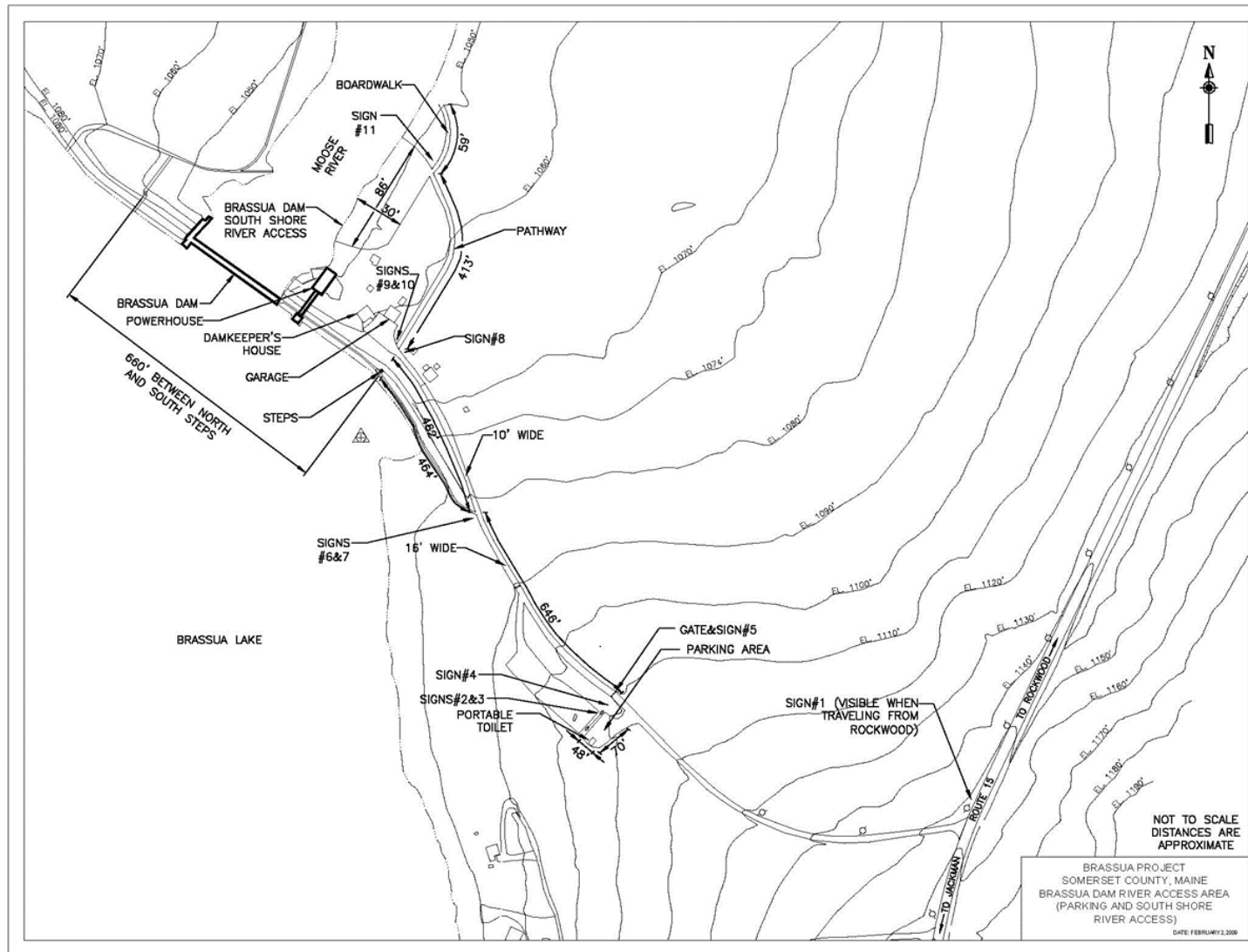
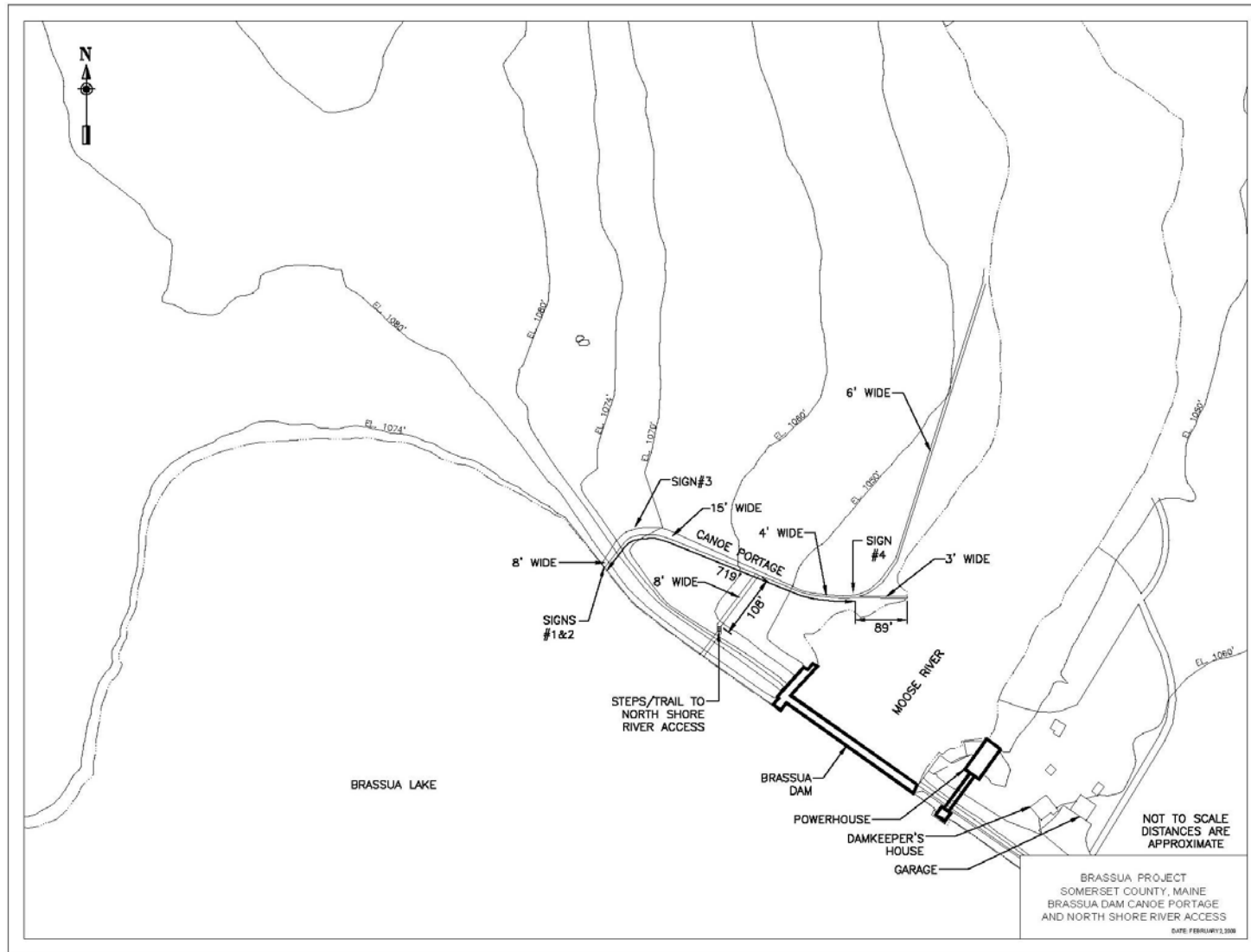


Figure 4.1.1-7: Brassua Dam North Shore River Access Area and Brassua Dam Canoe Portage Trail



4.1.2 Brassua Dam Canoe Portage

Site Name: Brassua Dam Canoe Portage

Location: The Brassua Dam Canoe Portage is located on the north side of the dam. The portage trail is located within the Project boundary.

Description of Facilities and Primary Recreational Activities: There is a small parking area and a portable toilet that serves the Brassua Dam River Access Area. The parking area and toilet can also be utilized by users of the canoe portage trail. From the take-out, the trail is generally wide and level as it crosses the earthen embankment. Once the north shore access trail connects to the portage trail, the trail becomes narrower (approximately four feet wide). The portage trail splits off from the trail that continues to follow the shoreline and the footing becomes more uneven and narrow. The entire length of the trail is about 800 feet. This area is included as part of the Northern Forest Canoe Trail. Usage by paddlers is the primary recreational activity, in addition to bank fishing, along the north shore river access.

Site Regulations: None posted

Site Inventory: The recreation facilities available at the Brassua Dam Canoe Portage are summarized in [Table 4.1.2-1](#). The trail for the Brassua Dam North Shore River Access connects to the canoe portage trail and the parking area for the river access area can be utilized by canoe portage users, a description of those facilities is included above in Brassua Dam and River Access Area.

Table 4.1.2-1: Brassua Dam Canoe Portage Facilities

Facility	Description	Approximate Dimensions
Pedestrian Access		
Trail	Portage trail	800' (from take-out to put-in)
Signs¹		
	1. Canoe portage sign at take-out	32" x 8"
	2. Small gold and navy Northern Forest Canoe Trail sign below portage sign	6" x 6"
	3. Canoe portage directional sign	8" x 12"
	4. Canoe portage directional sign	8" x 12"

Notes:

¹The sign numbers correspond to those presented in [Figure 4.1.1-7](#).

Disabled Access Assessment: The access area does not require full accessibility for the disabled.

Figure 4.1.2-1: Brassua Dam Canoe Portage Take-out



Figure 4.1.2-2: Brassua Dam Portage Put-in



Figure 4.1.2-3: Brassua Dam Canoe Portage Trail



A drawing of the canoe portage is included in [Figure 4.1.1-7](#).

4.1.3 Misery Cove Boat Launch

Site Name: Misery Cove Boat Launch

Location: The Misery Cove Boat Launch is located on a gravel entrance road off of Route 15 west of Brassua Dam.

Description of Facilities and Primary Recreational Activities: The Misery Cove Boat Launch consists of a single lane concrete boat ramp, a turn around, and a parking lot for about 9 - 10 vehicles with trailers. Motorized boat launching is the primary recreational activity at the access area. The public boat launch is available for use when the reservoir is within approximately five feet of full pool level (1,074 feet mean sea level [msl]). Figures [4.1.3-3](#) and [4.1.3-4](#) illustrate the exposed launch ramp when the reservoir is 6.4 feet below full pond.

Site Regulations: Daytime use only, no overnight camping

Site Inventory: The recreation facilities available at the Misery Cove Boat Launch Access Area are summarized in [Table 4.1.3-1](#).

Table 4.1.3-1: Misery Cove Boat Launch Facilities

Facility	Description	Approximate Dimensions
Boating and Fishing		
Boat ramp	Single lane concrete ramp	9' x 44'
Unimproved access along shoreline	Bank fishing	N/A
Vehicular Access		
Turn around	Gravel turn around area for launching boats	
Parking	Gravel parking area	103' x 46'
Access road from Rt. 15	Gravel access road	
Signs¹		
	1. Welcome to access area sign	18" x 24"
	2. No trash disposal carry in/carry out	32" x 8"
	3. Yellow Maine Forest Service Sign: Kindle No fires in this area sign	8" x 12"
	4. Day Use Only No Overnight Camping	32" x 8"
	5. Public Parking Day Use Only No Overnight Camping	8" x 12"
	6. Boat ramp only	8" x 12"
	7. No parking (2 signs)	12" x 12"

Notes:

¹The sign numbers correspond to those presented in [Figure 4.1.3-5](#).

Disabled Access Assessment: There are no designated parking spaces for the disabled. The access area is not fully accessible to the fully disabled. To make this access area fully accessible in accordance with the ADA, certain changes would be needed, however, there is no apparent demand for fully accessible facilities at the Project's lightly used recreation areas.

Figure 4.1.3-1: Misery Cove Boat Launch Parking Area



Figure 4.1.3-2: Misery Cove Boat Launch (June 25-26, 2008)



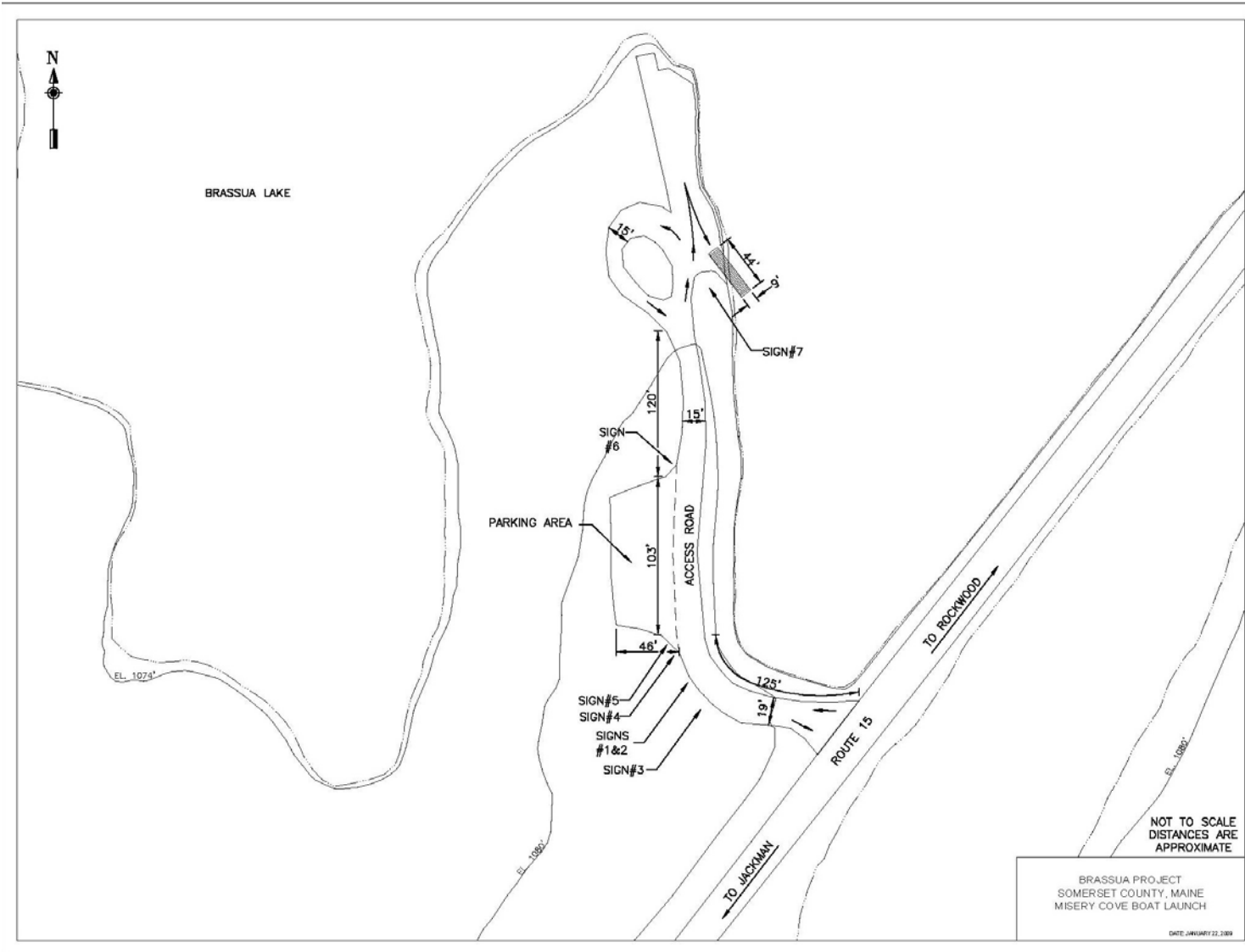
Figure 4.1.3-3: Misery Cove Boat Launch (Reservoir at approx. 6.4 feet below full pool on 10/14/08)



Figure 4.1.3-4: Misery Cove Boat Launch (reservoir at approx. 6.4 ft below full pool on 10/15/08)



Figure 4.1.3-5: Misery Cove Boat Launch



4.2 Proposed Project-Related Recreation Sites and Facilities

4.2.1 Brassua Dam and River Access Area Improvements

As described above, the Brassua Dam and River Access Area includes a parking area, a portable toilet, and trail access to the south shore of the Moose River downstream of Brassua Dam for fishing. Access to the south shore tailwater area is a walk of approximately one-third mile along the road and a trail. The access area itself includes a large, grassy, open area for bank fishing and a path that continues along the south shore of the river. The existing trail to the south shore of the Moose River is not currently ADA accessible, and in keeping with the remote nature of the recreation experience provided at Brassua, the Licensees do not plan to make the major changes to this access that would be necessary to make the access trail and bank fishing area fully ADA accessible. However, to increase accessibility, the Licensees will make improvements to the access trail to the south shore of the Moose River. Improvements will include grading and leveling of the trail to improve access. The access trail improvements will be made by August 31 of the summer season following FERC approval of the RFMP.

4.2.2 Misery Cove Boat Launch

As described above, the Misery Cove Boat Launch consists of a single lane concrete boat ramp, a turn around, and a parking lot for 9 - 10 vehicles with trailers. Motorized boat launching is the primary recreational activity at the access area. Currently the site has no picnic or toilet facilities. The Licensees propose to add a portable toilet and 2-3 picnic tables to this site, to enhance its availability for day use. The proposed improvements to this site will be made by August 31 of the summer season following FERC approval of the RFMP.

4.2.3 Primitive Campsites

As described in Section 5, there are currently four primitive campsites at Brassua Reservoir. Three of the existing sites are traditional Maine Forest Service fire permit sites that have been in use for many years. The fourth is a site recently constructed by the Northern Forest Canoe Trail (NFCT) on an island in Brassua Reservoir near Poplar Hill. Because the site is privately developed, and located outside of the Project boundary, the site will be maintained voluntarily by the NFCT. Primitive campsite 1 is located on the top of the reservoir embankment outside of the Project boundary and on private land. Use and or maintenance of this site is under the authority of the landowner. Although no formal survey has been done, the other two older primitive campsites (sites 2 and 3) appear to be located partially within the FERC Project boundary (below elevation 1,076'). However, due to their long history of use and their informal, primitive nature, there are no established bounds for these existing campsites. More importantly, in keeping with the remote nature of the Project reservoir, and the history of public use of the reservoir shoreline for informal camping, fishing, hunting and other forms of outdoor recreation, it is unnecessary to delineate the exact boundaries of the existing campsites to determine what portion of the existing campsites lie within the Project boundary, or to redraw the Project boundary to incorporate all of the area that could be described as being part of the existing campsites.

In lieu of modifying the existing traditional campsites, or modifying the FERC Project boundary for the Brassua Project, the Licensees propose to ensure that there are at least 4 primitive campsites

along the shores of Brassua reservoir through the term of the new license. If at any time during the license term, one or more of the existing campsites becomes unusable for any reason, the Licensees will locate and develop a new primitive campsite at an alternative location(s) within the Project boundary. If no good alternative location can be found within the Project boundary, the Licensees will secure the necessary rights to develop a primitive campsite on adjacent lands and will modify the Project boundary to incorporate the whole of the new campsite within the Project. Any new or relocated primitive campsites will be developed to include a tent area, a fire ring and a picnic table. The location and design of the new primitive campsites will be determined by the Licensees, in consultation with MDACF, MDIFW or other appropriate state and federal agencies, at the time. After consultation with the agencies, plans to close any existing primitive campsites on Project lands and to develop a new alternative campsite on Project lands will be filed with FERC.

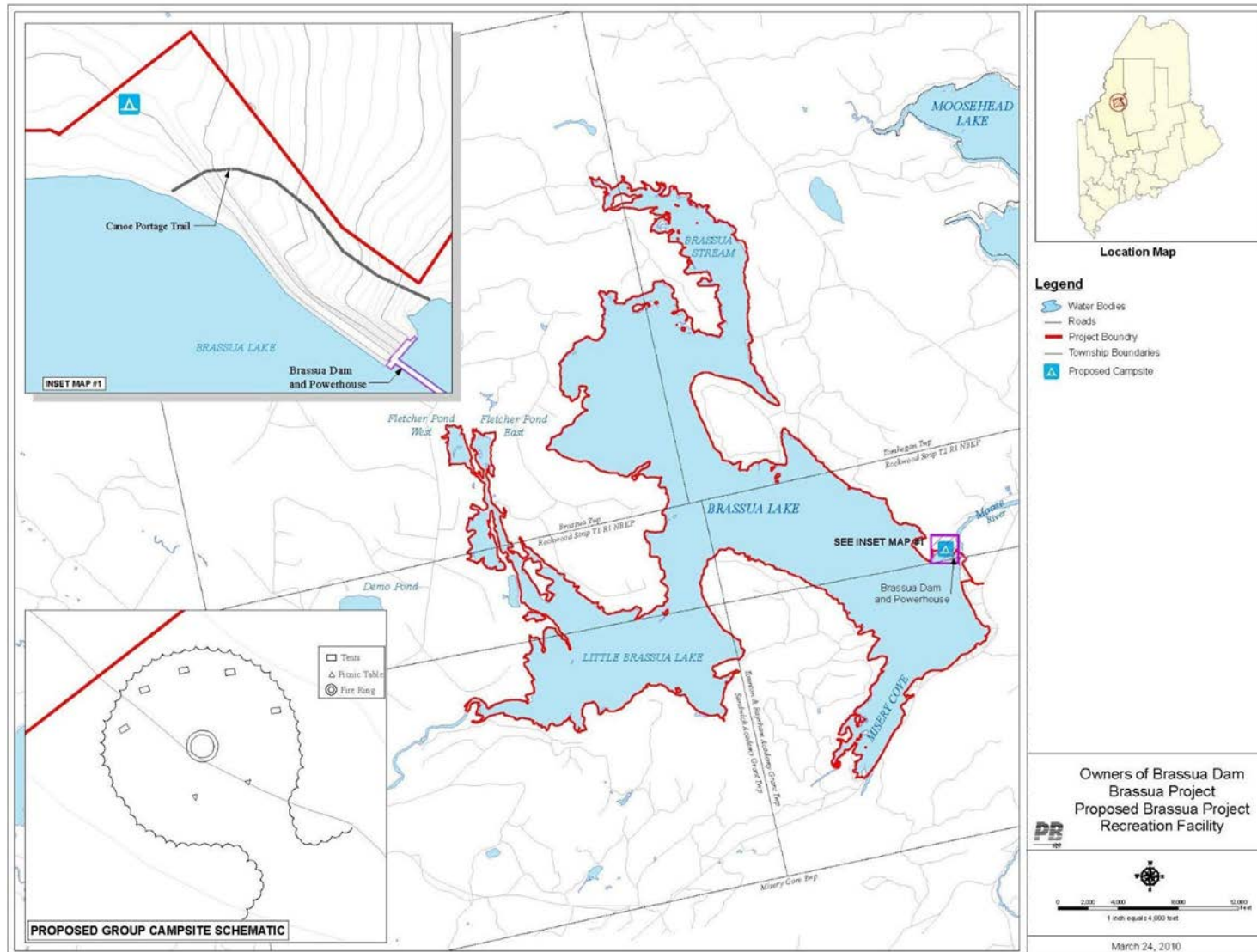
4.2.4 Group Campsite

In addition to maintaining the 4 primitive campsites on the reservoir, the Licensees propose to develop a water access group campsite in the vicinity of the existing canoe portage trail. The group campsite will be developed on lands that are currently owned by the Licensees. The group campsite will include multiple tent sites (3-5), a fire ring, two picnic tables and a privy. The site will be marked with appropriate signage. The proposed location and arrangement of the group campsite is shown in [Figure 4.2.4-1](#). The exact location and design of the group campsite will be developed in consultation with the agencies prior to development. The Exhibit G maps have been modified to include the location of the campsite within the proposed Project boundary. The group campsite will be developed by August 31 of the second summer season following FERC approval of the RFMP.

4.2.5 Canoe Portage Trail Improvements

Although Brassua Reservoir and the downstream Moose River are traversed by part of the Northern Canoe Trail, the existing canoe portage trail at Brassua Dam receives very light use. This may in part be due to the fact that the NFCT has only recently been developed. The existing portage trail is reported to currently be at about 15 percent of capacity on non-holiday weekends. Because of this light use, the existing trail is more than sufficient to meet existing demand, and the natural and relatively undeveloped nature of the trail is in keeping with the northern forest canoe experience. However, to improve trail usage, and consistent with general guidelines for canoe portage trails, the Licensees propose to install a canoe rest along the portage trail. As the existing portage trail at Brassua is approximately 800 ft in length, the Licensees anticipate that only one canoe rest will be required along the portage trail. As is traditional in the region, the proposed canoe rest will be simple and constructed of wood. Prior to installing the canoe rest, the Licensees will consult with appropriate agencies and other interested stakeholders on the location of the canoe rest. If it is determined that, due to site specific conditions, more than one rest is needed, a second wooden rest will also be installed. The canoe rest(s) will be installed by August 31 of the summer season following FERC approval this RFMP. Once the canoe rests are installed, the Licensees will inspect and maintain them as part of the annual inspection and maintenance plan.

Figure 4.2.4-1: Brassua Project proposed group campsite



5.0 OTHER PUBLIC ACCESS

5.1 Primitive Campsites

In addition to the Project public recreation areas described above, there are three primitive campsites on Brassua Reservoir that include one on the northern shore near the inlet of Brassua Stream and two at the inlet of Moose River into Brassua Reservoir (see [Figure 5.1-1](#) and [5.1-2](#)). The primitive campsites are shown in Figures [5.1-3](#) through [5.1-6](#) as campsites 1, 2, and 3. These sites are not formal or maintained campgrounds but public use of these sites for camping is generally allowed by the landowners. Primitive campsite 1 is located on private lands outside of the Project boundary and is the responsibility of the landowner (see [Figure 5.1-1](#)). Primitive campsites 2 and 3 (see [Figure 5.1-2](#)) are located partially or wholly within the Project boundary (the Project boundary generally follows elevation 1,076' (USGS) around the reservoir, and the Licensees own the land surrounding the reservoir between the normal full pond elevation of 1,074' and Project boundary at elevation 1,076'). The Maine Forest Service issues fire permits for these three sites (fire permits are required for some remote campsites in unorganized towns (Maine Forest Service, 2008)). Generally, these primitive campsites are used for camping and presumably related activities such as bank fishing and hunting.

Additionally, the Northern Forest Canoe Trail constructed, in accordance with a permit issued in June 2007 from the Maine Land Use Regulation Commission (LURC) (now known as LUPC) to Moosehead Wildlands (the developer of Poplar Hill and much of the eastern shore of Brassua Reservoir under a concept plan approved by LURC in 2004) and the Northern Forest Canoe Trail (acting as the agent), a remote campsite on an island in Brassua Reservoir near Poplar Hill (campsite 4 on [Figure 5.1-1](#)).

The campsite includes signage, a picnic table, privy, and a sign-in box. This campsite is located on private lands outside of the Project boundary and is the responsibility of the landowner and the NFCT.

5.2 Snowmobile Interconnected Trail System (ITS)

Winter access to the Project is provided through the snowmobile Interconnected Trail System (ITS) that runs along Route 15 which is adjacent to a portion of the Project boundary near Misery Cove, however, no portion of the ITS lies within the Project boundary. ITS 88 runs in the vicinity of the southwest shore of the reservoir and continues along the Moose River above Brassua Reservoir to connect with ITS 89 north of Jackman, Maine (MSA, 2008). ITS 88 connects with two other major trails (ITS 85 and ITS 86) in Greenville, Maine. The Moosehead Lake Region Snowmobile Trail Map includes a club trail along the north shore of the Moose River from Moosehead Lake located downstream of the Project's tailrace (Moosehead Lake Region Chamber of Commerce, 2008).

Figure 5.1-1: Map of primitive campsites on Brassua Reservoir

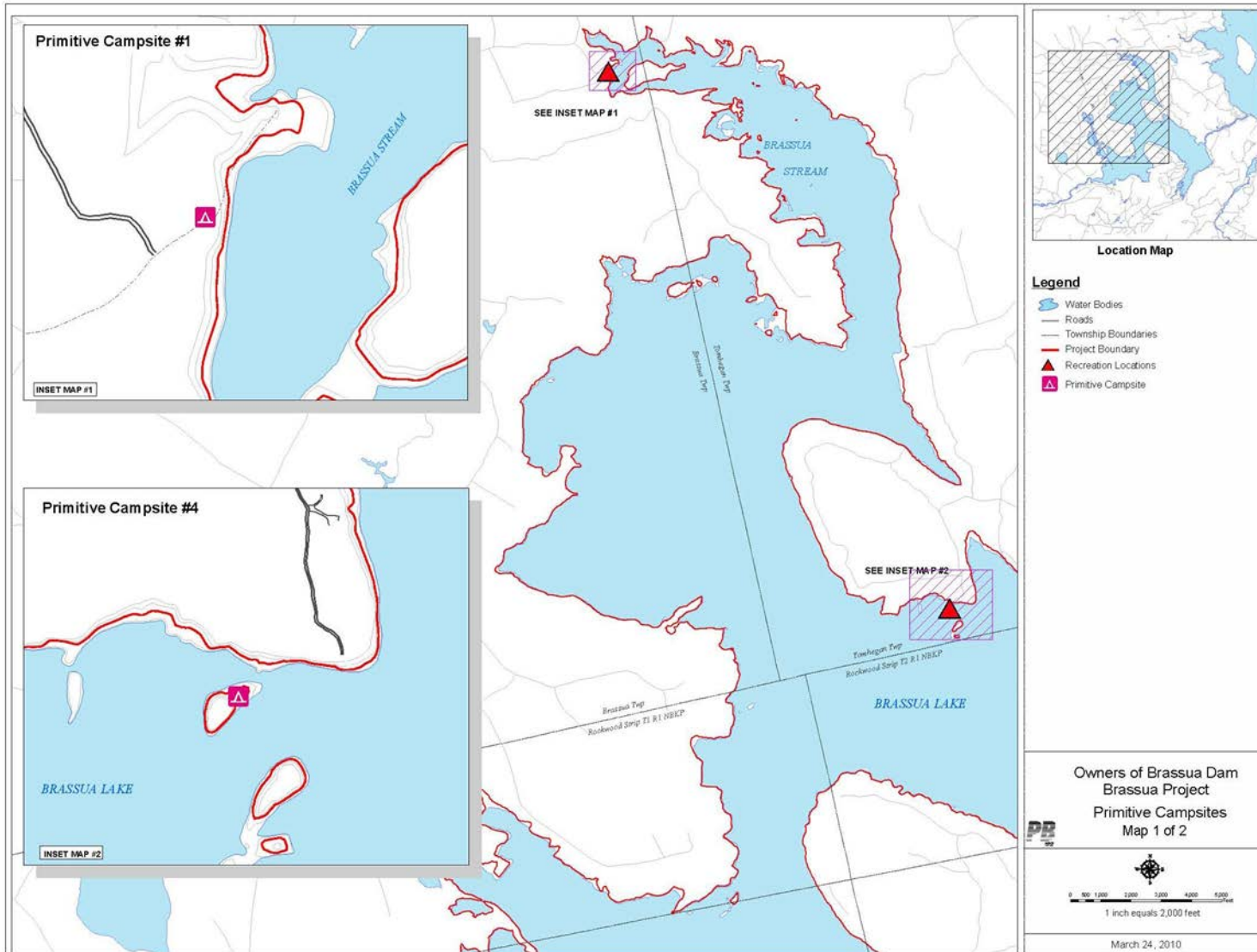


Figure 5.1-2: Map of primitive campsites on Brassua Reservoir

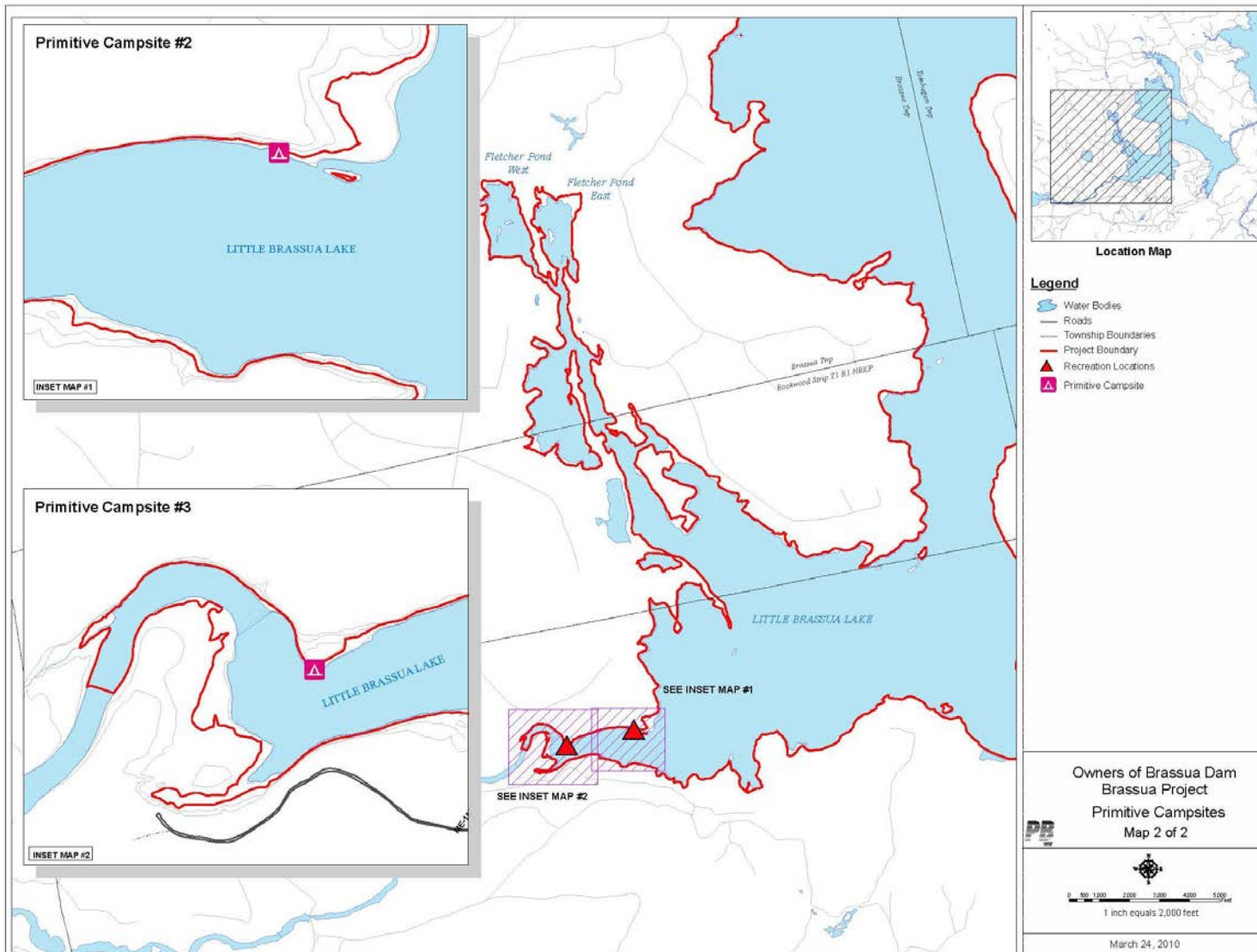


Figure 5.1-3: Primitive campsite No. 1 on northern shore of Brassua Reservoir - first fire pit



Figure 5.1-4: Primitive campsite No.1 on northern shore of Brassua Reservoir - second fire pit



Figure 5.1-5: Primitive campsite No.2 at inlet of Moose River into Brassua Reservoir



Figure 5.1-6: Primitive campsite No.3 near inlet of Moose River into Brassua Reservoir



6.0 MANAGEMENT MEASURES

6.1 Annual Site Inspection and Facilities Maintenance Program

The Licensees will manage and maintain the existing boat launch, dam and tailwater access, and canoe portage trail, as well as the proposed group campsite and two existing primitive campsites located in the Project boundary (Sites 2 and 3). All the sites will be maintained to provide safe and appropriate recreation access to the Project and to ensure that the sites and facilities remain usable over the term of the new license. Typical routine maintenance activities will include periodic mowing, litter clean-up, removal of fallen trees blocking the portage trail or river access trails, ensuring that the portage trail or river access trails are not overgrown, ensuring that safety signage is in-place and readable, and conducting other improvements on an observed, as-needed basis. The Licensees will also continue to maintain one portable toilet at the Brassua Dam access parking area (see [Table 4.1.1-1](#)) and a new portable toilet proposed for the Misery Cove Boat Launch site.

Annual site inspections and facilities maintenance activities will occur at each of the Project public recreation areas using, as a guide, the site inspection and facilities maintenance checklists provided in [Appendix B](#).

Specific annual site inspection and facility maintenance issues pertaining to each Project recreation area are identified below and include, but are not limited to, those identified in the Recreation Resources Inventory Initial Study Report (LVA, 2009a):

Brassua Dam and River Access Area- Annual Site Inspection and Facility Maintenance:

1. Inspect for and remove all litter, woody debris, and other obstructions found in the parking area and on the river access trails along the south and north shorelines.
2. Inspect that all safety signs and parking signs are securely in place and readable.
3. Inspect that all safety signs posted on the downstream ends of the dam warning about rapidly rising water can be easily read from the portage trail put-in or along the north shore of the tailrace.
4. Inspect that all safety signs posted on the downstream ends of the dam warning about rapidly rising water can be easily read from the entire large open bank fishing area on the south shore of the tailrace.
5. Inspect that the toilet is being maintained properly.
6. Inspect the access trail to the south shore of the tailwater and identify any required maintenance needs.
7. Identify facilities in need of maintenance and develop a schedule for the work to be conducted.

Brassua Dam Canoe Portage Trail- Annual Site Inspection and Facility Maintenance:

1. Inspect for and remove all litter, woody debris (driftwood/driki), and other obstructions that may accumulate at the portage take-out, along the portage trail, and at the put-in.
2. Inspect the canoe portage trail and trim the vegetation from the trail to a width of between 4-8 ft, and a height of 8 ft.
3. Inspect the canoe rest along the portage trail and ensure that the one canoe rest is in good working order.
4. Inspect that the canoe portage sign at the take-out is securely in place and readable.
5. Inspect that all directional signs along the portage trail are visible and remove any tree branches or other vegetation obscuring any signs.
6. Inspect that the safety signs posted on the downstream ends of the dam warning about rapidly rising water can be easily read from the portage trail put-in.
7. Identify any maintenance requirements and develop a schedule for the work to be conducted.

Misery Cove Boat Launch- Annual Site Inspection and Facility Maintenance:

1. Inspect for and remove all litter, woody debris (driftwood/driki/downed trees by beaver), and other obstructions that may accumulate at the boat launch or may be found on the access road, in the parking area, and on the turn-around for the launching ramp.
2. Inspect that all safety, parking, and other informational signs are securely in place and readable.
3. Inspect that the proposed toilet is being maintained properly.
4. Inspect the proposed picnic tables and ensure that the tables are in good condition.
5. Inspect, and maintain suitably for launching, the end of the ramp that is exposed by drawdown (see Figures [4.1.3-3](#) and [4.1.3-4](#) illustrating the exposed gravel covering the launch ramp when the reservoir is 6.4 feet below full pond).
6. Although the area is clearly marked with a “Day use only no overnight camping sign” and a Maine Forest Service sign prohibiting fires, inspect for and document evidence of campfires in this access area.
7. Identify any maintenance requirements and develop a schedule for the work to be conducted.
8. Monitor the gravel bar at the Misery Cove Boat Launch and conduct periodic excavation as needed to ensure that boating access is maintained at elevations of 1,067.9 feet msl or higher.

Campsites (Group and Primitive Campsites):

1. Inspect for and remove all litter and other debris or obstructions that may accumulate around the campsites.
2. Inspect the campsites for vegetation encroachment and trim vegetation, as needed, from the campsite area.
3. Inspect that picnic tables and fire rings are in safe, usable condition.
4. Inspect that all informational signs are securely in place and readable.
5. Identify any maintenance requirements and develop a schedule for the work to be conducted.

6.2 Public Safety

The Licensees filed a revised Public Safety Plan for the Project with FERC in January 2002. The Public Safety Plan outlines the safety precautions taken at the Project dam and around the Project reservoir. Such precautions include, but are not limited to, warning signs and a boater restraint system float above the dam. In accordance with the Public Safety Plan and Annual Site Inspection and Facilities Maintenance Program, described in Section 6.1, the Licensees will inspect the safety signs and other safety devices annually at a minimum and more frequently during normal work, especially during the boating and fishing seasons. FERC also regularly inspects these devices at the Project to ensure that they are maintained and issues an Environmental Inspection Report on their condition and any maintenance requirements. The Public Safety Plan is revised as needed based on these inspections. There is also a siren at the dam to warn wading anglers in the event there is a high-water release from the Project. The Brassua Project is operated and monitored remotely by the National System Control Center (NSCC) 24 hours/day, 365 days/year. FERC has determined that the warning measures are adequate (FERC, 2003).

The identification and location of the public safety signs at each Project public recreation area are provided in the respective tables and figures as noted below:

- Brassua Dam and River Access Area in [Table 4.1.1-1](#) and [Figure 4.1.1-7](#),
- Brassua Dam North Shore River Access Area in [Table 4.1.2-1](#) and [Figure 4.1.1-7](#),
- Brassua Dam Canoe Portage Trail in [Table 4.1.2-1](#) and [Figure 4.1.1-7](#), and
- Misery Cove Boat Launch in [Table 4.1.3-1](#) and [Figure 4.1.3-5](#).

6.3 Recreation Use Monitoring

In order to monitor recreation use at the Project public access sites described within this RFMP, the Licensees will conduct a Recreation Use Survey every six years. The survey data collected will consist of spot counts at each of the Project recreation sites to determine site utilization and parking area capacity, identification of the different types of recreation that are being conducted and an overall assessment of site conditions. Data will be collected on eight weekdays and five weekends, including one holiday weekend (Memorial Day, Independence Day, or Labor Day) between May

31 and October 1, and between the hours of 8 a.m. and 5 p.m. The Licensees will file with the Commission the results of the recreation use survey, including any comments received from interested parties about the survey, and any conclusions regarding the need for additional access areas or expansion of existing Project recreation sites, by April 1 of each year following the recreation use survey.

Neither the Brassua Dam and River Access Area nor the Misery Cove Boat Launch is fully accessible to the disabled. Changes would be needed to make these access areas fully accessible in accordance with the ADA. At this time, however, there is no perceived demand for fully accessible facilities at the Project's lightly used recreation areas (LVA, 2009a). The six-year recreation monitoring report will examine changes in recreational use over the past monitoring period that may require modification of facilities to consider ADA access needs.

6.4 Determining the Need for Additional Measures or Expansion of Existing Sites

Based on the results of the Recreation Use Monitoring, consultation will begin regarding the need for an additional access area or expansion of existing sites when an existing site reaches capacity. The Licensees will consult with MDIFW, MDACF, and LUPC regarding the need for additional facilities.

The 2009 Form 80 Report on Recreational Resources indicates that the Brassua Project supported 51,000 recreation days during 2008. Approximately 90 percent of this use was attributable to day use activities such as angling and boating; nearly 10 percent of total use was attributable to camping (FPL Energy, 2009). None of the public recreation sites were reported to be at capacity, though the dam access area was reported to be at approximately 70 percent of capacity on non-holiday weekends. The Misery Cove Boat Launch was reported to be at approximately 25 percent capacity, on average, on non-holiday weekends, while the canoe portage was reported to be at about 15 percent of capacity, on average. Existing recreation facilities are adequate to meet current recreational use and demand (LVA, 2009a).

6.5 Public Information on Project Recreation

The Licensees will continue to maintain a toll-free phone system and Web based flow information system (currently Safewaters.com) updated daily at 6 p.m. (or as changes occur in real-time) from April to October to provide the current elevation levels of Brassua Lake and river flow from dam and river flow for the following day.

As discussed in [Section 1.0](#), the Licensees will comply with the requirements of 18 CFR § Part 8.1, including by publication of notice in a local newspaper once each week for four weeks, and with the requirements of 18 CFR § Part 8.2, including by maintaining existing Part 8 signage at the Project and by making the required information available for inspection at local offices.

7.0 COST

The Licensees estimate the periodic cost of the sixth year Recreation Use Monitoring study and report to be approximately \$22,000².

The Licensees estimate the annual cost of inspecting and maintaining the existing and proposed recreation sites and facilities to be approximately \$7,200, annually, excluding significant replacements and improvements.

The Licensees estimate the costs associated with planning and installing the proposed new sites and facilities as follows:

- Development of a new group campsite, including 3-5 tent sites, 2 picnic tables, fire ring and privy, \$11,000.
- Development/relocation of a primitive campsite with tent site, picnic table and fire-ring, \$5,000, per site (excluding any land rights).
- Installation of wooden canoe rests along the existing canoe portage trail, \$150 per rest.
- Improvements to the south shore tailwater access trail, \$5,000.
- Addition of picnic tables and portable toilet to the Misery Cove Boat Launch site, \$500.

8.0 SCHEDULE AND REPORTING

The Licensees will conduct inspections of the all the recreational sites and facilities described herein annually.

The group campsite will be developed by August 31 of the second summer season following FERC approval of the facility to allow sufficient time for design, consultation, and permitting.

The canoe rest(s) will be installed along the canoe portage trail by August 31 of the summer season following FERC approval of this RFMP.

As discussed in [Section 6.3](#), the Licensees will conduct a Recreation Use Survey every six years. The survey data collected will consist of spot counts at each of the sites to determine site utilization and parking area capacity, identification of the different types of recreation that are being conducted, an overall assessment of site conditions and an assessment of the need for any ADA access improvements.

9.0 MODIFICATIONS TO PLAN

Any proposed modification to this RFMP will be submitted to MDACF, LUPC, and MDIFW for review and comment prior to submittal to FERC. Any modification to this RFMP will be submitted to FERC for approval after the agencies have been provided the opportunity to review the modification.

² All cost estimates in this section are presented in 2010 dollars.

As plans are developed for constructing any significant structures at the sites identified for future recreational use, then these plans, along with drawings of facilities, documentation of consultation, cost estimates and schedule will be provided to FERC for approval prior to construction. The Maine Historic Preservation Commission will be included in the consultation process regarding the construction of new facilities involving ground disturbance.

10.0 REFERENCES

Federal Energy Regulatory Commission. 2003. Environmental Inspection Report. January 8, 2003.

FPL Energy. 2009. Licensed Hydropower Development Recreation Report (FERC Form 80). 2009.

Long View Associates, Inc. (LVA). 2009a. Brassua Hydroelectric Project (FERC No. 2615) Recreational Resources Inventory Initial Study Report, prepared for the Owners of Brassua Dam. February 2009.

Maine Forest Service. 2008. Maine Forest Service Programs and Services Website. [Online] URL: <http://www.maine.gov/doc/mfs/fpd/pages/programs.htm>. Accessed October 30, 2008.

Maine Snowmobile Association (MSA). 2008. 2008-2009 Maine Snowmobile Interconnected Trail System Map. [Online] URL: <http://www.mesnow.com/pdfs/2008-09ITSMMap144.pdf>. Accessed October 30, 2008.

Moosehead Lake Region Chamber of Commerce. 2008. Moosehead Lake Region Snowmobile Trail Map 2008. [Online] URL: <http://www.mooseheadlake.org/snowmobiling.shtml>. Accessed November 4, 2008.

The Owners of Brassua Dam (FPL Energy Maine Hydro LLC, Madison Paper Industries, and Merimil Limited Partnership). 2002. Environmental Procedures Manual - Public Safety Plan FERC No. 2615. Effective April 8, 1999, revised January 1, 2002.

APPENDIX A: DOCUMENTATION OF AGENCY CONSULTATION

Melanie Rheume

From: Murphy, Kyle <Kyle.Murphy@brookfieldrenewable.com>
Sent: Wednesday, July 29, 2020 2:18 PM
To: Perry, John
Cc: Melanie Rheume; Seyfried, Jason
Subject: FW: Brassua Project - FERC Project No. 2615-ME Recreation Facilities Management Plan
Attachments: 20200728 Brassua RFMP_Draft for Agency Consultation.pdf

Good afternoon John, please find the attached Brassua RFMP for your agency review. In developing the agency distribution list I missed your name and only had G&S send to the region, my apologies. Hope all is well and give a holler with any questions. Kyle.

Kyle Murphy
Compliance Specialist

Brookfield Renewable
150 Main Street, Lewiston, Maine, 04240
Office (207) 755-5626 Mobile (207) 458-5861
kyle.murphy@brookfieldrenewable.com
www.brookfieldrenewable.com

From: Melanie Rheume <mrheume@gomezandsullivan.com>
Sent: Wednesday, July 29, 2020 11:41 AM
To: Tim.Obrey@maine.gov; Douglas.Kane@maine.gov; Jim.Vogel@maine.gov; tim.post@maine.gov; Amanda.Beaal@maine.gov; Antonio Bentivoglio <antonio_bentivoglio@fws.gov>; Anna_Harris@fws.gov
Cc: Murphy, Kyle <Kyle.Murphy@brookfieldrenewable.com>; Seyfried, Jason <Jason.Seyfried@brookfieldrenewable.com>
Subject: Brassua Project - FERC Project No. 2615-ME Recreation Facilities Management Plan

Dear Consulting Agency,

On March 31, 2010, Brookfield White Pine Hydro, LLC (BWPH), Merimil Limited Partnership, and Eagle Creek Kennebec Hydro, LLC (collectively, Licensees) filed, pursuant to sections 4(e) and 15 of the Federal Power Act (FPA), an application for a new license to continue the operation and maintenance of the Brassua Hydroelectric Project No. 2615 (Brassua Project). The license application included in Appendix E3-5 a Recreation Facilities Management Plan (RFMP) as a protection, mitigation and enhancement measure for the Project's recreation resources. Development of the RFMP was a comprehensive process and included an onsite inventory and condition assessment, angler surveys, and agency consultation.

On April 15, 2020, the Federal Energy Regulatory Commission (FERC or Commission) issued an Order Issuing New License for the Project. Article 407 of the license requires that the Licensees file with the Commission, for approval, a final RFMP that includes the measures described in the RFMP filed with the license application, as well as several additional measures. In accordance with license Article 407, the RFMP has been updated to include these measures and to remove references to the FERC Form 80 reporting requirement. In addition, two proposed changes to the required measures were included: 1) the Licensees are proposing that recreation monitoring be conducted every six years to align with the monitoring schedule of nearby projects, beginning in 2021; and 2) as BWPH does not currently have website capabilities for the Brassua Project, the Licensees are instead proposing to meet the requirements of 18 CFR § Part 8.1 by providing the required information via publication in a local newspaper as well as by maintaining signage at the Project.

Per license Article 407, the Licensees are required to consult with resource agencies in developing the final RFMP. The Licensees are required to allow a minimum of 30 days for the resource agencies to comment and to make recommendations before filing the RFMP with the Commission. If the Licensees do not adopt a recommendation, the filing will include the reasons, based on Project-specific information. The Licensees will include with the final RFMP: (1) documentation of consultation; (2) copies of comments and recommendations on the completed plan; and (3) specific descriptions of how comments received are accommodated by the plan.

On behalf of the Licensees, Brookfield Renewable hereby submits for your review the draft RFMP (attached) and respectfully requests that you submit any comments or recommendations by August 28, 2020. To facilitate your review, all substantive changes from the RFMP as filed with the 2010 license application are shown in redline format.

If there are any questions regarding the enclosure, please contact Kyle Murphy at kyle.murphy@brookfieldrenewable.com.

Sincerely,

Melanie Rheaume
Gomez and Sullivan Engineers, D.P.C.
P.O. Box 2179
Henniker, NH 03242
O: 603-428-4960



GSE CONFIDENTIALITY NOTICE: *This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the intended recipient, please do not read or review the content and/or metadata and do not disseminate, distribute or copy this communication. Anyone who receives this message in error should notify the sender (mrheaume@gomezandsullivan.com) immediately by return e-mail and delete it from his or her computer.*

**DRAFT RECREATION FACILITIES MANAGEMENT PLAN
BRASSUA HYDROELECTRIC PROJECT
(FERC No. 2615)**



Submitted by:

**Brookfield White Pine Hydro, LLC
Merimil Limited Partnership
Eagle Creek Kennebec Hydro, LLC**

Prepared by:



July 2020

Brookfield

TABLE OF CONTENTS

1.0	Introduction and Background	1
2.0	Consultation	3
3.0	Project Lands and Waters	4
4.0	Project-Related Recreation Sites and Facilities	4
4.1	Existing Recreation Sites and Facilities.....	4
4.1.1	Brassua Dam and River Access Area	7
4.1.2	Brassua Dam Canoe Portage.....	14
4.1.3	Misery Cove Boat Launch	16
4.2	Proposed Project-Related Recreation Sites and Facilities	21
4.2.1	Brassua Dam and River Access Area Improvements	21
4.2.2	Misery Cove Boat Launch	21
4.2.3	Primitive Campsites	21
4.2.4	Group Campsite	22
4.2.5	Canoe Portage Trail Improvements	22
5.0	Other Public Access.....	24
5.1	Primitive Campsites	24
5.2	Snowmobile Interconnected Trail System (ITS)	24
6.0	Management Measures	29
6.1	Annual Site Inspection and Facilities Maintenance Program	29
6.2	Public Safety	31
6.3	Recreation Use Monitoring.....	31
6.4	Determining the Need for Additional Measures or Expansion of Existing Sites	32
6.5	Public Information on Project Recreation.....	32

7.0	Cost	33
8.0	Schedule and Reporting	33
9.0	Modifications to Plan	33
10.0	References	34

LIST OF APPENDICES

Appendix A: Annual Site Inspection and Facilities Maintenance Checklists fo the Brassua Project Recreation Areas

Appendix B: Agency Comments on the Draft Recreation Facilities Management Plan

LIST OF TABLES

Table 4.1.1-1:	Brassua Dam and River Access Area Facilities	8
Table 4.1.2-1:	Brassua Dam Canoe Portage Facilities	14
Table 4.1.3-1:	Misery Cove Boat Launch Facilities	17

LIST OF FIGURES

Figure 4.1-1:	Brassua Project Recreation Areas	6
Figure 4.1.1-1:	Parking area for Brassua Dam and River Access Area and Brassua Dam Canoe Portage Trail	9
Figure 4.1.1-2:	Sign and trailhead for Brassua Dam and River Access Area located along the south shore of the tailrace downstream of the dam	10
Figure 4.1.1-3:	Trail for Brassua Dam River Access Area located along the south shore of the tailrace downstream of the dam	10
Figure 4.1.1-4:	Brassua Dam and River Access Area located along the south shore of the tailrace downstream of the dam	11
Figure 4.1.1-5:	Brassua Dam River Access Area trail located along the south shore of the tailrace downstream of the dam	11

Figure 4.1.1-6: Brassua Dam and River Access Area Parking and South Shore River Access Area12

Figure 4.1.1-7: Brassua Dam North Shore River Access Area and Brassua Dam Canoe Portage Trail.....13

Figure 4.1.2-1: Brassua Dam Canoe Portage Take-out15

Figure 4.1.2-2: Brassua Dam Portage Put-in15

Figure 4.1.2-3: Brassua Dam Canoe Portage Trail.....16

Figure 4.1.3-1: Misery Cove Boat Launch Parking Area18

Figure 4.1.3-2: Misery Cove Boat Launch (June 25-26, 2008)18

Figure 4.1.3-3: Misery Cove Boat Launch (Reservoir at approx. 6.4 feet below full pool on 10/14/08)19

Figure 4.1.3-4: Misery Cove Boat Launch (reservoir at approx. 6.4 ft below full pool on 10/15/08)19

Figure 4.1.3-5: Misery Cove Boat Launch20

Figure 4.2.4-1: Brassua Project proposed group campsite23

Figure 5.1-1: Map of primitive campsites on Brassua Reservoir25

Figure 5.1-2: Map of primitive campsites on Brassua Reservoir26

Figure 5.1-3: Primitive campsite No. 1 on northern shore of Brassua Reservoir - first fire pit27

Figure 5.1-4: Primitive campsite No.1 on northern shore of Brassua Reservoir - second fire pit.27

Figure 5.1-5: Primitive campsite No.2 at inlet of Moose River into Brassua Reservoir28

Figure 5.1-6: Primitive campsite No.3 near inlet of Moose River into Brassua Reservoir28

1.0 INTRODUCTION AND BACKGROUND

The Brassua Hydroelectric Project (Project) is licensed by the Federal Regulatory Energy Commission (“FERC” or “Commission”) as Project No. 2615. On March 31, 2010, Brookfield White Pine Hydro, LLC (BWPH), Merimil Limited Partnership, and Eagle Creek Kennebec Hydro, LLC ~~The current license expires March 31, 2012 and an Application for New License (License Application) must be filed with FERC on or before March 31, 2010. Currently, the Project is licensed to the Owners of Brassua Dam (FPL Energy Maine Hydro LLC [FPL Energy], Madison Paper Industries [MPI], and Merimil Limited Partnership [Merimil], collectively referred to as the “Owners of Brassua Dam” or “Licensees” or “Licensee”) filed, pursuant to sections 4(e) and 15 of the Federal Power Act (FPA), an application for a new license to continue the operation and maintenance of the Brassua Hydroelectric Project No. 2615 (Brassua Project or Project).~~ and the Brassua Hydroelectric Limited Partnership (Brassua LP).

To help describe the public recreation facilities available at the Project, their condition, and any operational, maintenance, or safety issues at each recreation area, the Licensees conducted an inventory of all recreation facilities during relicensing. Subsequently, the Licensees proposed in the Preliminary Licensing Proposal (PLP) filed with FERC on November 20, 2009 to develop a Recreation Facilities Management Plan as a protection, mitigation and enhancement (PM&E) measure for the Project’s recreation resources that would incorporate an annual recreation site inspection and maintenance program.

This Recreation Facilities Management Plan (RFMP) ~~has was been~~ prepared to describe the available public recreation facilities that provide direct access to the Project lands and waters and to identify measures for enhancing public access to Project lands and waters that, collectively, will maintain the existing recreational opportunities provided at the Brassua Project over the term of the new license. The RFMP was filed as Appendix E3-5 of Exhibit E of the March 31, 2010 license application.

On April 15, 2020, the Commission issued an Order Issuing New License for the Project. Article 407 of the license requires the Licensees to file with the Commission for approval the final RFMP that was filed as Appendix E3-5 of Exhibit E of the March 31, 2010 license application, with the following additional measures:

- (a) monitor and conduct periodic excavation of the gravel bar at the Misery Cove Boat Launch to ensure that boating access is maintained at elevations of 1,067.0 feet msl or higher;
- (b) conduct the proposed recreation use survey every five years instead of every six years;
- (c) during the recreation use survey, conduct spot counts at each Project recreation facility to determine site utilization and capacity on eight weekdays and five weekends, including one holiday weekend (Memorial Day, Independence Day, or Labor Day) between May 31 and October 1, and between the hours of 8 a.m. and 5 p.m.;

- (d) continue to maintain a toll-free phone system that is updated daily at 6 p.m. from April to October to provide the anticipated elevation levels of Brassua Lake and river flow from dam for the following day;
- (e) provide a public internet site that: (1) describes recreational access at the Project; (2) describes the amenities available at each Project recreation facility; (3) includes a map of the Project recreation facilities; and (4) displays the telephone number for the toll-free phone system; and
- (f) file with the Commission the results of the recreation use survey, including any comments received from interested parties about the survey, and any conclusions regarding the need for additional access areas or expansion of existing Project recreation sites, by April 1 of each year following the recreation use survey.

In accordance with license article 407, the RFMP was updated to include the above measures and to remove references to the FERC Form 80 reporting requirement. No substantial modifications have been made to Project recreation facilities since the plan was filed on March 31, 2010.-In addition, the following proposed changes to the above measures were included:

- (a) Recreation Monitoring: Recreation monitoring was originally proposed in the Draft RFMP, filed with the March 2010 license application, to be conducted concurrent with the FERC Form 80 process every six years. As discussed in the April 15, 2020 FERC Order Issuing License, “However, the Commission has eliminated the Form 80 reporting requirements for hydropower projects and no longer requires the Form 80 report as a recreation use monitoring tool. Based on the potential for future residential development in the immediate vicinity of the Project that could increase the demand for recreation access over the term of the license, Article 407 requires the licensees to conduct the recreation use survey every five years instead of every six years. A five-year cycle will help ensure that the recreation use survey adequately captures changes in recreation use and demand during the term of the license.” The land development plans referenced in FERC’s Environmental Analysis on which the potential demand increase assumption was based included two concept plans approved by the Land Use Planning Commission (LUPC): Moosehead Wildlands Concept Plan and Moosehead Lake Region Concept Plan. Moosehead Wildlands Concept Plan, the smaller of the two developments, has largely been implemented. Ownership of the lands included in Moosehead Lake Region Concept Plan, the larger development, has changed, and the new owners have petitioned LUPC to terminate the concept plan and rezone the land included in development areas under the plan as Protection and Management subdistricts.

In addition, while not required to file a FERC Form 80, BWPH is responsible for monitoring recreational use at other hydroelectric projects in the vicinity on a six-year cycle. Per an order issued on April 17, 2020, BWPH will monitor recreation use at the Moosehead Storage Project (FERC No. 2671) in 2021 and will file a recreation report by April 1, 2022. The Licensees respectfully request that recreation monitoring at the Project be aligned with this schedule, occurring on a six-year cycle. As the majority of the smaller residential development project planned for the Project area has been completed and the

larger rescinded, recreation monitoring on a six-year cycle will adequately capture foreseeable changes in recreation use and demand over the term of the new license. Aligning the monitoring cycle with that of the Moosehead Storage Project will allow for a more efficient use of resources. Additionally, conducting recreation use monitoring at the Project in 2021 would provide updated information on any changes in recreation use and demand that have occurred since the 2010 license application.

- (b) Recreation Information: Article 407 also requires that BWPH provide a public internet site that: “(1) describes recreational access at the Project; (2) describes the amenities available at each Project recreation facility; (3) includes a map of the Project recreation facilities; and (4) displays the telephone number for the toll-free phone system.” This requirement is presumably a result of the change in Part 8 regulations wherein the option to provide the required recreational information via a website was added to 18 CFR § Part 8.1 in 2018. As BWPH does not currently have website capabilities for the Brassua Project, BWPH will instead revert to the requirements of 18 CFR § Part 8.1 such that the required information will be communicated to the public via “the publication of notice in a local newspaper once each week for 4 weeks”. Part 8 signage at the site will also be maintained, providing additional information onsite.

Article 407 requires the licensees to maintain a toll-free phone number to provide flow information. In addition to maintaining the toll-free phone number, BWPH has, since 2010, developed a Web based flow information system (currently Safewaters.com) to provide flow information at its projects, including Brassua. BWPH will continue to maintain Safewaters.com and update the website concurrently with the toll-free number (by 6 p.m. daily or as changes occur in real time) to provide the current elevation levels of Brassua Lake and river flow from dam, as well as predictive next day river flow.

2.0 CONSULTATION

Based upon the surveys with outfitters and guides, surveys of anglers in the tailwater/Moose River, and the inventory and condition assessment (provided in Brassua Recreational Resources Inventory Initial Study Report [LVA, 2009a]), minimal changes were suggested for the existing recreational facilities. These suggested changes included the periodic removal of driki and litter from portage take-out area (see Section 6.1 Annual Site Inspection and Facilities Maintenance Program), possible addition of a toilet at the Misery Cove Boat Launch, possible additional primitive campsites in the future if needed, addition of picnic tables to primitive campsites, and possible improvement to the ramp at the Misery Cove Boat Launch. Existing recreation facilities ~~are~~ were found to be generally in good condition, and, overall, ~~are~~ were adequate to meet current recreational use and demand.

During scoping and study plan development for relicensing, stakeholders did not identify the need for additional recreational studies at the Project. The Brassua Recreational Resources Inventory Initial Study Report and PLP were provided to FERC and participating agencies, tribes, non-governmental organizations (NGOs), local governments, and the public for comment. Comments received generally supported the Licensees’ proposal to develop ~~this—the RFMP~~ Recreation Facilities Management Plan as proposed in the PLP. The draft RFMP was provided to the U.S.

Fish and Wildlife Service (USFWS), National Park Service (NPS), Maine Department of Inland Fisheries and Wildlife (MDIFW), Maine Department of Conservation (MDOC) (now referred to as the Maine Department of Agriculture, Conservation and Forestry (MDACF)), and Appalachian Mountain Club (AMC) in March 2010 for review. Comments on the draft plan were received from MDOC (letter dated March 17, 2010) and AMC (letter dated March 17, 2010) and were included in the draft filed with the March 31, 2010 license application~~are attached in Appendix A.~~

Per license article 407, the Licensees are required to consult with the MDIFW, the MDACF Bureau of Parks and Lands, and the USFWS (collectively, resource agencies) in developing the final RFMP. The Licensees are required to allow a minimum of 30 days for the resource agencies to comment and to make recommendations before filing the RFMP with the Commission. If the Licensees do not adopt a recommendation, the filing will include the reasons, based on Project-specific information. The Licensees will include with the final RFMP as Appendix B: (1) documentation of consultation with the resource agencies; (2) copies of comments and recommendations on the completed plan; and (3) specific descriptions of how comments received are accommodated by the plan.

3.0 PROJECT LANDS AND WATERS

The normal full pool elevation of Brassua Reservoir is 1,074' USGS. The FERC Project boundary at the Brassua Project generally follows elevation 1,076' around the reservoir, and the Licensees own the land surrounding the reservoir between elevation 1,074 feet and elevation 1,076'. The Project boundary also encompasses the Project works and extends along the Moose River approximately 700 feet downstream of the dam.

Although the Licensees allow public use of the Brassua Project lands and waters for recreation, developed access is limited because the Project is largely surrounded by timber company lands with few public access roads. Logging roads provide informal access to the Project area. The area surrounding the Project is largely undeveloped and heavily forested. The Project recreation areas provide opportunities for bank fishing and motorized and nonmotorized boating. There are no commercial recreation facilities providing direct access to the Project (LVA, 2009a).

4.0 PROJECT-RELATED RECREATION SITES AND FACILITIES

4.1 Existing Recreation Sites and Facilities

This section of the RFMP describes the existing public recreation access facilities maintained by the Licensees at the Brassua Project.

The Project recreation areas consist of three recreational facilities owned and managed by the Licensees: bank fishing and angling river access at the dam, a canoe portage trail, and a boat launch located along Route 15. These recreation areas are shown on [Figure 4.1-1](#).

The Brassua Dam and river access area, located at Brassua Dam on the gravel entrance road off of Route 15, provides a parking area, a portable toilet, and bank fishing accessible to pedestrian traffic for the south and north shores of the Moose River below Brassua Dam. Bank fishing and fishing

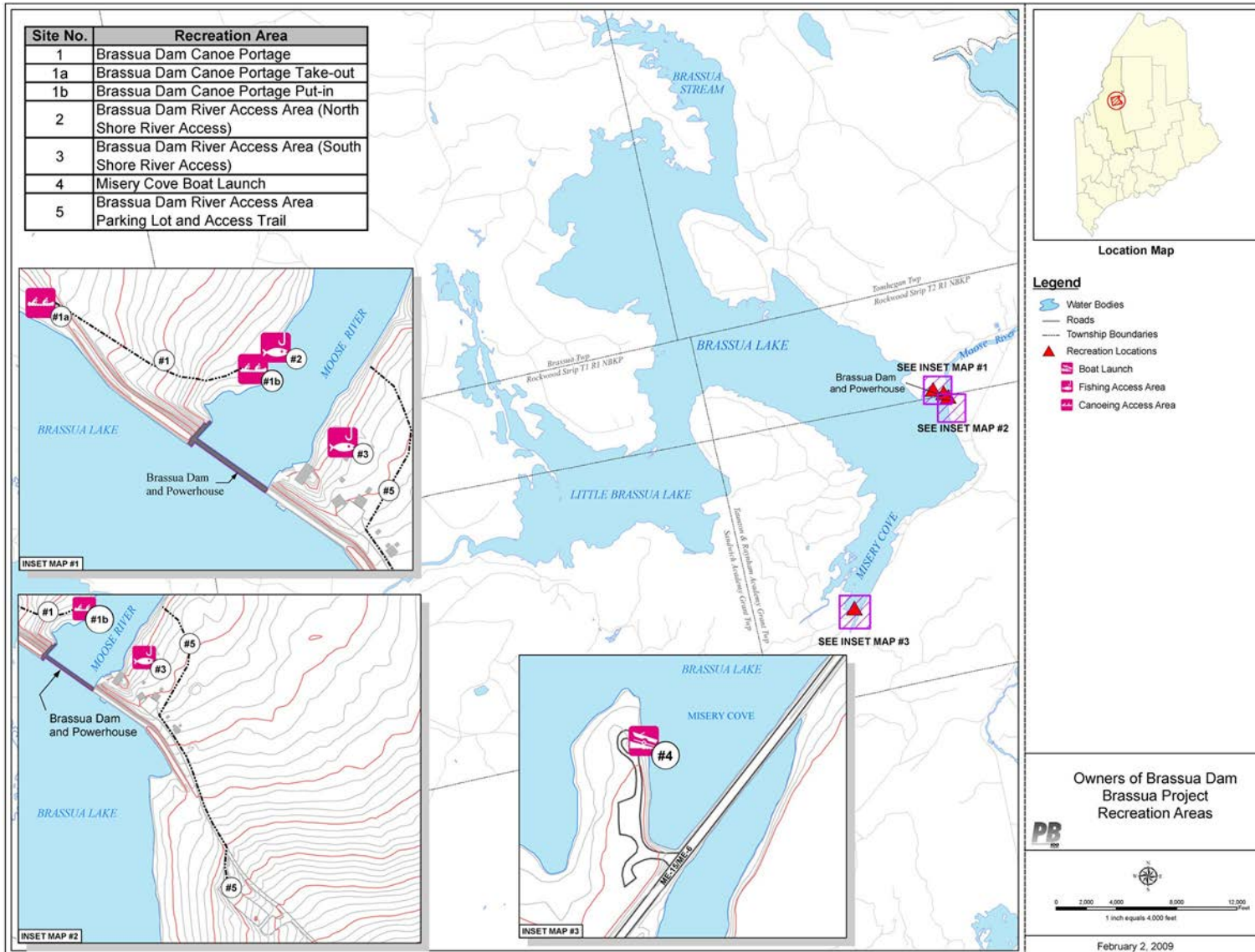
by wading are the primary recreational activities but sightseers also use this site. The canoe portage trail can also be reached by pedestrian traffic from the access area (LVA, 2009a).

The canoe portage trail, located on the north side of Brassua Dam, allows access to the Moose River. The entire length of the trail is about 800 feet. Usage by paddlers is the primary recreational activity, in addition to bank fishing, along the north shore river access. This canoe portage trail is included as part of the Northern Forest Canoe Trail (NFCT), a 740-mile marked paddling trail in the northeastern United States and Canada extending from Old Forge, New York to Fort Kent, Maine (LVA, 2009a). The Project canoe portage trail around Brassua Dam is marked with a NFCT sign, a yellow diamond with blue lettering that marks portage trails, campsites, and access areas on some portions of the trail.

The Misery Cove Boat Launch, located on a gravel entrance road off of Route 15 west of Brassua Dam, provides a single lane concrete boat ramp, a turn-around, and a parking lot for about 9 to 10 vehicles with trailers. Motorized boat launching is the primary recreational activity at the access area. The boat launch is useable when the reservoir is within approximately five feet of full pool level (el. 1,074') (LVA, 2009a).

A detailed description of each of these three public access recreation areas and the facilities available at each follows.

Figure 4.1-1: Brassua Project Recreation Areas



4.1.1 Brassua Dam and River Access Area

Site Name: Brassua Dam and River Access Area

Location: The Brassua Dam and River Access Area is located at Brassua Dam on a gravel entrance road off of Route 15. The area is located within the Project boundary.

Description of Facilities and Primary Recreational Activities¹: There is a small parking area and a portable toilet that serves the access area. The parking area and toilet can also be utilized by users of the canoe portage trail. The parking area and portable toilet are located just before a locked gate for authorized vehicles only. The access area for the south shore of the Moose River downstream of Brassua Dam is accessible via a walk of approximately one-third mile along the road and a trail. The access area includes a large, grassy, open area for bank fishing and a path that continues along the south shore of the river. The access area for the north shore of the Moose River downstream of Brassua Dam is accessible via a walk of a little over one-third mile along the road, across the dam, and along the portage trail. A path continues along the river. Bank fishing and wading are the primary recreational activities but sightseers also use this site.

Site Regulations: Daytime use only, no overnight camping

Site Inventory: The recreation facilities available at the Brassua Dam River Access Area are summarized in [Table 4.1.1-1](#).

¹ Primary recreational activities generally correspond to the types of facilities available.

Table 4.1.1-1: Brassua Dam and River Access Area Facilities

Facility	Description	Approximate Dimensions
Fishing		
Large open grassy area	Bank fishing along south shoreline	86' x 30'
Unimproved access along the south shoreline	Bank fishing	N/A
Unimproved access along the north shoreline	Bank fishing	N/A
Pedestrian Access		
Trail	Trail to the south shoreline bank fishing area	413'
Trail/steps	Trail/steps to the north shoreline bank fishing area	197'
Boardwalk	Boardwalk over wet area of footpath along south shoreline	59'
Access road beyond gate	Gravel access road turns to paved road	646' of gravel road and 462' of paved road
Vehicular Access		
Parking	Gravel parking area	48' x 70'
Access road from Rt. 15	Gravel access road	0.1 mile long
Utility/Sanitary		
Toilet	One portable toilet at parking lot	NA
Signs¹		
	1. Small sign on Route 15 for Brassua Project with parking and fishing symbols	2' x 2'
	2. Welcome to the Project sign ²	6' x 6' (2 sections)
	3. Reserved parking sign for disabled	12" x 12"
	4. Public Parking Daytime Use Only No Overnight Camping	32" x 8"
	5. Authorized vehicles only (on gate)	8" x 12"

	6. Welcome to access area sign with directional information for north shore access and south shore access	4' x 3' and 4' x 1'
	7. Notice that tenders of dam reside at the area and requesting that users respect their privacy	8" x 12"
	8. South Shore River Access directional sign	32" x 8"
	9. Fishermen: Please use this path to and from river	32" x 18"
	10. Temporary sign with instructions for anglers catching tagged fish	11" x 14"
	11. River path directional sign	18" x 8"

Notes:

¹The sign numbers correspond to those presented in [Figure 4.1.1-6](#)

²The “Welcome” sign is the Part 8 sign as required by FERC.

Disabled Access Assessment: There is one designated parking space for the disabled. The access area is not fully accessible to the fully disabled. To make this access area fully accessible in accordance with the Americans with Disabilities Act (ADA), certain changes would be needed, however, there is no apparent demand for fully accessible facilities at the Brassua Project’s lightly used recreation areas.

Figure 4.1.1-1: Parking area for Brassua Dam and River Access Area and Brassua Dam Canoe Portage Trail



Figure 4.1.1-2: Sign and trailhead for Brassua Dam and River Access Area located along the south shore of the tailrace downstream of the dam



Figure 4.1.1-3: Trail for Brassua Dam River Access Area located along the south shore of the tailrace downstream of the dam



Figure 4.1.1-4: Brassua Dam and River Access Area located along the south shore of the tailrace downstream of the dam



Figure 4.1.1-5: Brassua Dam River Access Area trail located along the south shore of the tailrace downstream of the dam



Figure 4.1.1-6: Brassua Dam and River Access Area Parking and South Shore River Access Area

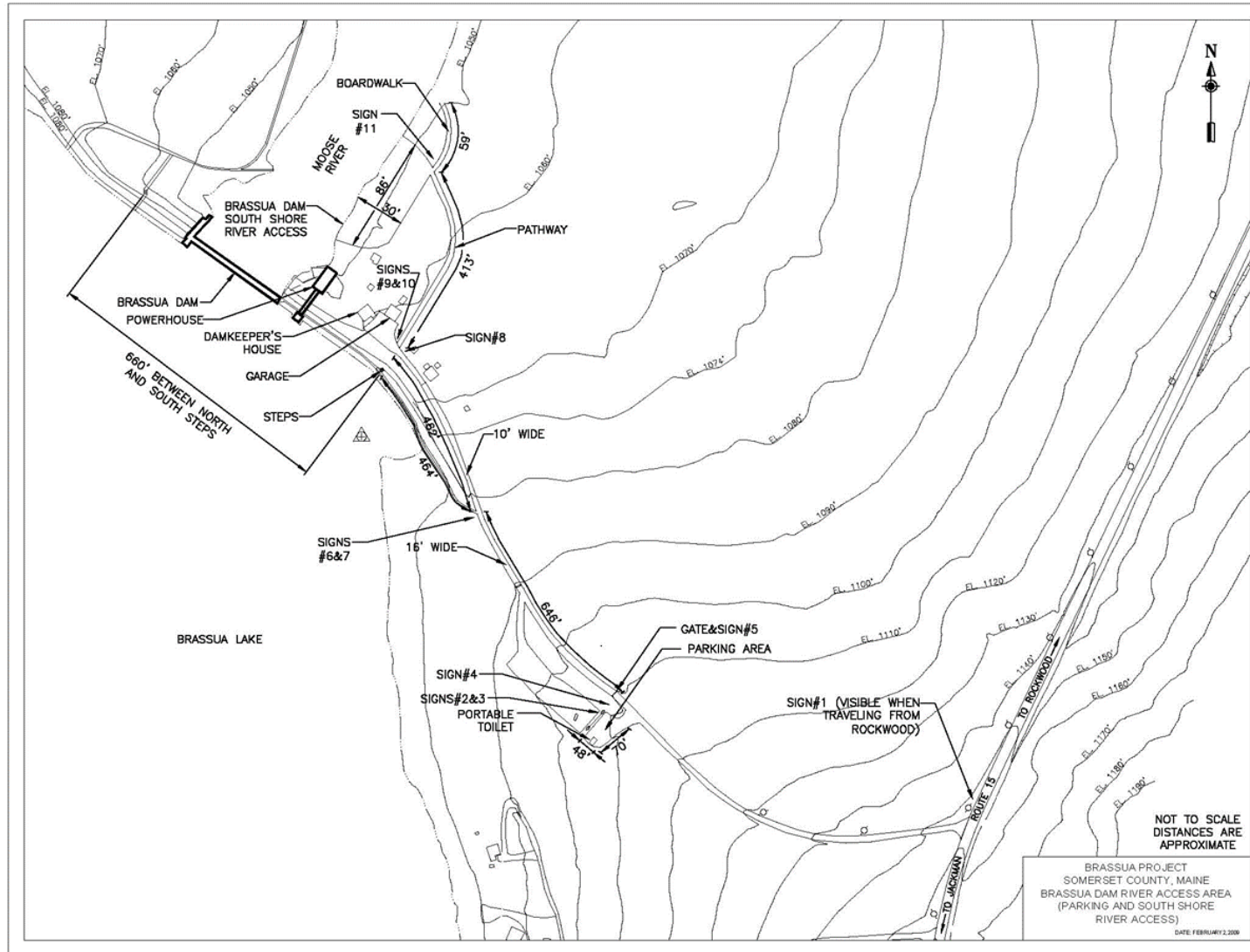
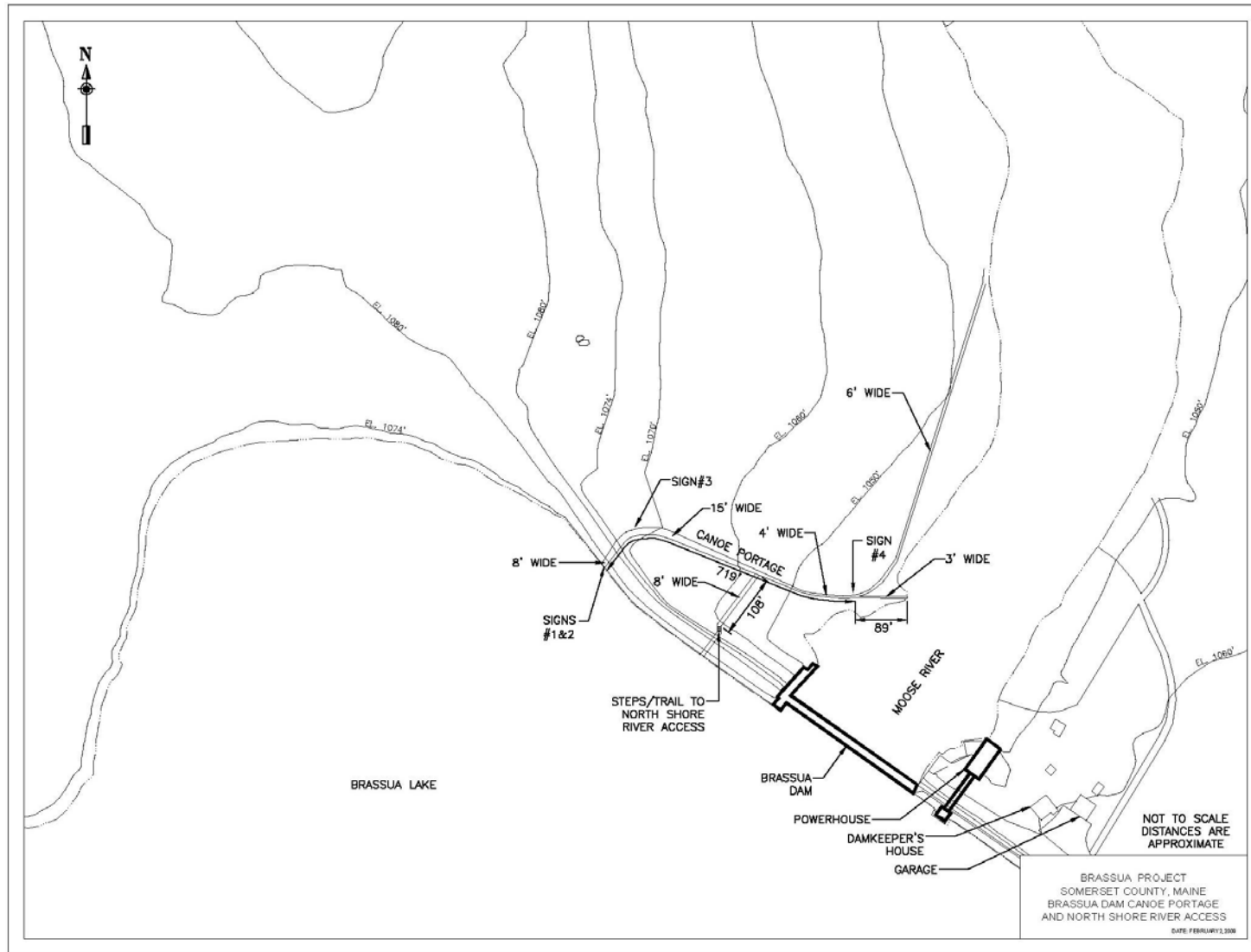


Figure 4.1.1-7: Brassua Dam North Shore River Access Area and Brassua Dam Canoe Portage Trail



4.1.2 Brassua Dam Canoe Portage

Site Name: Brassua Dam Canoe Portage

Location: The Brassua Dam Canoe Portage is located on the north side of the dam. The portage trail is located within the Project boundary.

Description of Facilities and Primary Recreational Activities: There is a small parking area and a portable toilet that serves the Brassua Dam River Access Area. The parking area and toilet can also be utilized by users of the canoe portage trail. From the take-out, the trail is generally wide and level as it crosses the earthen embankment. Once the north shore access trail connects to the portage trail, the trail becomes narrower (approximately four feet wide). The portage trail splits off from the trail that continues to follow the shoreline and the footing becomes more uneven and narrow. The entire length of the trail is about 800 feet. This area is included as part of the Northern Forest Canoe Trail. Usage by paddlers is the primary recreational activity, in addition to bank fishing, along the north shore river access.

Site Regulations: None posted

Site Inventory: The recreation facilities available at the Brassua Dam Canoe Portage are summarized in [Table 4.1.2-1](#). The trail for the Brassua Dam North Shore River Access connects to the canoe portage trail and the parking area for the river access area can be utilized by canoe portage users, a description of those facilities is included above in Brassua Dam and River Access Area.

Table 4.1.2-1: Brassua Dam Canoe Portage Facilities

Facility	Description	Approximate Dimensions
Pedestrian Access		
Trail	Portage trail	800' (from take-out to put-in)
Signs¹		
	1. Canoe portage sign at take-out	32" x 8"
	2. Small gold and navy Northern Forest Canoe Trail sign below portage sign	6" x 6"
	3. Canoe portage directional sign	8" x 12"
	4. Canoe portage directional sign	8" x 12"

Notes:

¹The sign numbers correspond to those presented in [Figure 4.1.1-7](#).

Disabled Access Assessment: The access area does not require full accessibility for the disabled.

Figure 4.1.2-1: Brassua Dam Canoe Portage Take-out



Figure 4.1.2-2: Brassua Dam Portage Put-in



Figure 4.1.2-3: Brassua Dam Canoe Portage Trail



A drawing of the canoe portage is included in [Figure 4.1.1-7](#).

4.1.3 Misery Cove Boat Launch

Site Name: Misery Cove Boat Launch

Location: The Misery Cove Boat Launch is located on a gravel entrance road off of Route 15 west of Brassua Dam.

Description of Facilities and Primary Recreational Activities: The Misery Cove Boat Launch consists of a single lane concrete boat ramp, a turn around, and a parking lot for about 9 - 10 vehicles with trailers. Motorized boat launching is the primary recreational activity at the access area. The public boat launch is available for use when the reservoir is within approximately five feet of full pool level (1,074 feet mean sea level [msl]). Figures [4.1.3-3](#) and [4.1.3-4](#) illustrate the exposed launch ramp when the reservoir is 6.4 feet below full pond.

Site Regulations: Daytime use only, no overnight camping

Site Inventory: The recreation facilities available at the Misery Cove Boat Launch Access Area are summarized in [Table 4.1.3-1](#).

Table 4.1.3-1: Misery Cove Boat Launch Facilities

Facility	Description	Approximate Dimensions
Boating and Fishing		
Boat ramp	Single lane concrete ramp	9' x 44'
Unimproved access along shoreline	Bank fishing	N/A
Vehicular Access		
Turn around	Gravel turn around area for launching boats	
Parking	Gravel parking area	103' x 46'
Access road from Rt. 15	Gravel access road	
Signs¹		
	1. Welcome to access area sign	18" x 24"
	2. No trash disposal carry in/carry out	32" x 8"
	3. Yellow Maine Forest Service Sign: Kindle No fires in this area sign	8" x 12"
	4. Day Use Only No Overnight Camping	32" x 8"
	5. Public Parking Day Use Only No Overnight Camping	8" x 12"
	6. Boat ramp only	8" x 12"
	7. No parking (2 signs)	12" x 12"

Notes:

¹The sign numbers correspond to those presented in [Figure 4.1.3-5](#).

Disabled Access Assessment: There are no designated parking spaces for the disabled. The access area is not fully accessible to the fully disabled. To make this access area fully accessible in accordance with the ADA, certain changes would be needed, however, there is no apparent demand for fully accessible facilities at the Project's lightly used recreation areas.

Figure 4.1.3-1: Misery Cove Boat Launch Parking Area



Figure 4.1.3-2: Misery Cove Boat Launch (June 25-26, 2008)



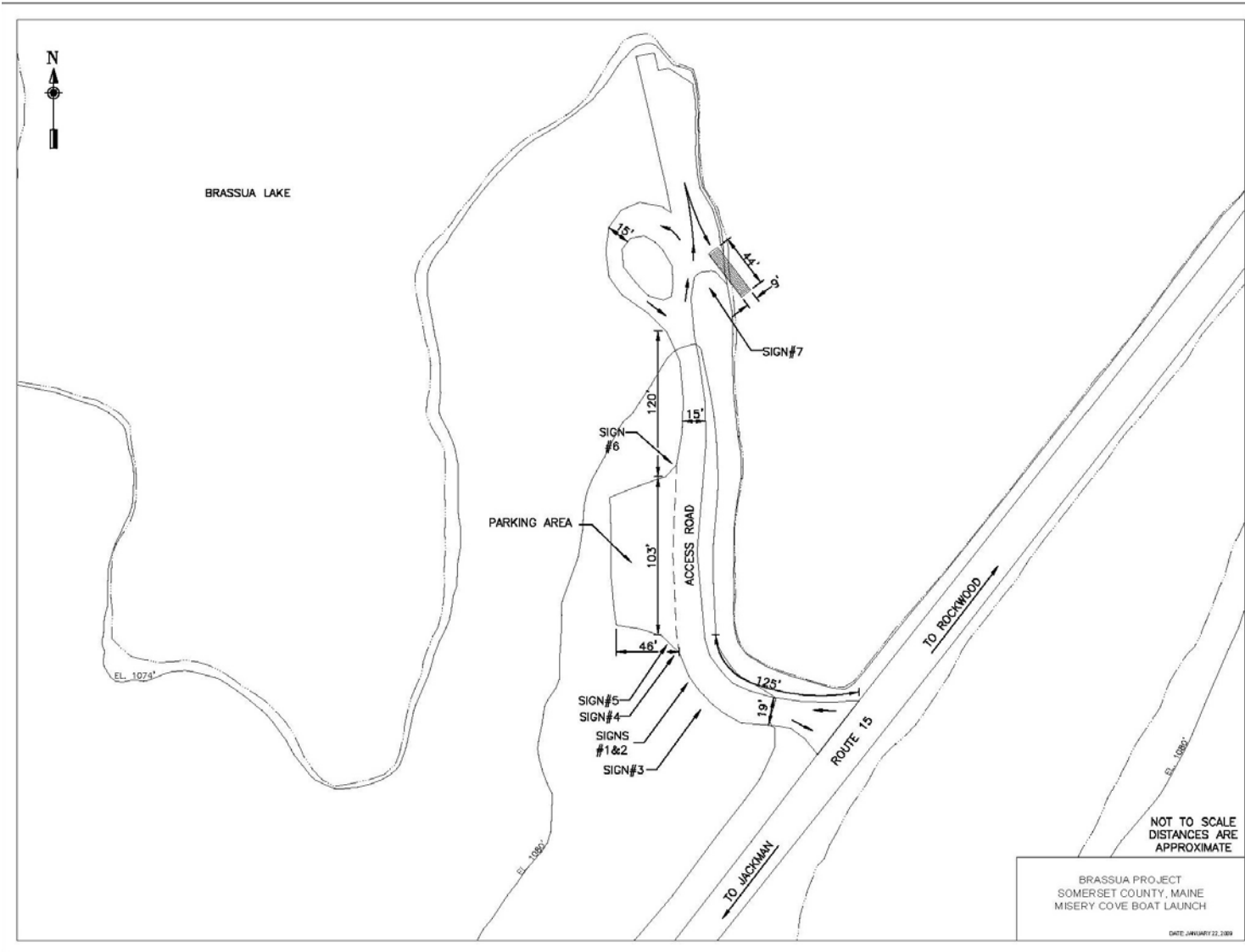
Figure 4.1.3-3: Misery Cove Boat Launch (Reservoir at approx. 6.4 feet below full pool on 10/14/08)



Figure 4.1.3-4: Misery Cove Boat Launch (reservoir at approx. 6.4 ft below full pool on 10/15/08)



Figure 4.1.3-5: Misery Cove Boat Launch



4.2 Proposed Project-Related Recreation Sites and Facilities

4.2.1 Brassua Dam and River Access Area Improvements

As described above, the Brassua Dam and River Access Area includes a parking area, a portable toilet, and trail access to the south shore of the Moose River downstream of Brassua Dam for fishing. Access to the south shore tailwater area is a walk of approximately one-third mile along the road and a trail. The access area itself includes a large, grassy, open area for bank fishing and a path that continues along the south shore of the river. The existing trail to the south shore of the Moose River is not currently ADA accessible, and in keeping with the remote nature of the recreation experience provided at Brassua, the Licensees do not plan to make the major changes to this access that would be necessary to make the access trail and bank fishing area fully ADA accessible. However, to increase accessibility, the Licensees will make improvements to the access trail to the south shore of the Moose River. Improvements will include grading and leveling of the trail to improve access. The access trail improvements will be made by August 31 of the summer season following FERC approval of the RFMP.

4.2.2 Misery Cove Boat Launch

As described above, the Misery Cove Boat Launch consists of a single lane concrete boat ramp, a turn around, and a parking lot for 9 - 10 vehicles with trailers. Motorized boat launching is the primary recreational activity at the access area. Currently the site has no picnic or toilet facilities. The Licensees propose to add a portable toilet and 2-3 picnic tables to this site, to enhance its availability for day use. The proposed improvements to this site will be made by August 31 of the summer season following FERC approval of the RFMP.

4.2.3 Primitive Campsites

As described in Section 5, there are currently four primitive campsites at Brassua Reservoir. Three of the existing sites are traditional Maine Forest Service fire permit sites that have been in use for many years. The fourth is a site recently constructed by the Northern Forest Canoe Trail (NFCT) on an island in Brassua Reservoir near Poplar Hill. Because the site is privately developed, and located outside of the Project boundary, the site will be maintained voluntarily by the NFCT. Primitive campsite 1 is located on the top of the reservoir embankment outside of the Project boundary and on private land. Use and or maintenance of this site is under the authority of the landowner. Although no formal survey has been done, the other two older primitive campsites (sites 2 and 3) appear to be located partially within the FERC Project boundary (below elevation 1,076'). However, due to their long history of use and their informal, primitive nature, there are no established bounds for these existing campsites. More importantly, in keeping with the remote nature of the Project reservoir, and the history of public use of the reservoir shoreline for informal camping, fishing, hunting and other forms of outdoor recreation, it is unnecessary to delineate the exact boundaries of the existing campsites to determine what portion of the existing campsites lie within the Project boundary, or to redraw the Project boundary to incorporate all of the area that could be described as being part of the existing campsites.

In lieu of modifying the existing traditional campsites, or modifying the FERC Project boundary for the Brassua Project, the Licensees propose to ensure that there are at least 4 primitive campsites

along the shores of Brassua reservoir through the term of the new license. If at any time during the license term, one or more of the existing campsites becomes unusable for any reason, the Licensees will locate and develop a new primitive campsite at an alternative location(s) within the Project boundary. If no good alternative location can be found within the Project boundary, the Licensees will secure the necessary rights to develop a primitive campsite on adjacent lands and will modify the Project boundary to incorporate the whole of the new campsite within the Project. Any new or relocated primitive campsites will be developed to include a tent area, a fire ring and a picnic table. The location and design of the new primitive campsites will be determined by the Licensees, in consultation with ~~MDACF~~~~MDOC~~, MDIFW or other appropriate state and federal agencies, at the time. After consultation with the agencies, plans to close any existing primitive campsites on Project lands and to develop a new alternative campsite on Project lands will be filed with FERC.

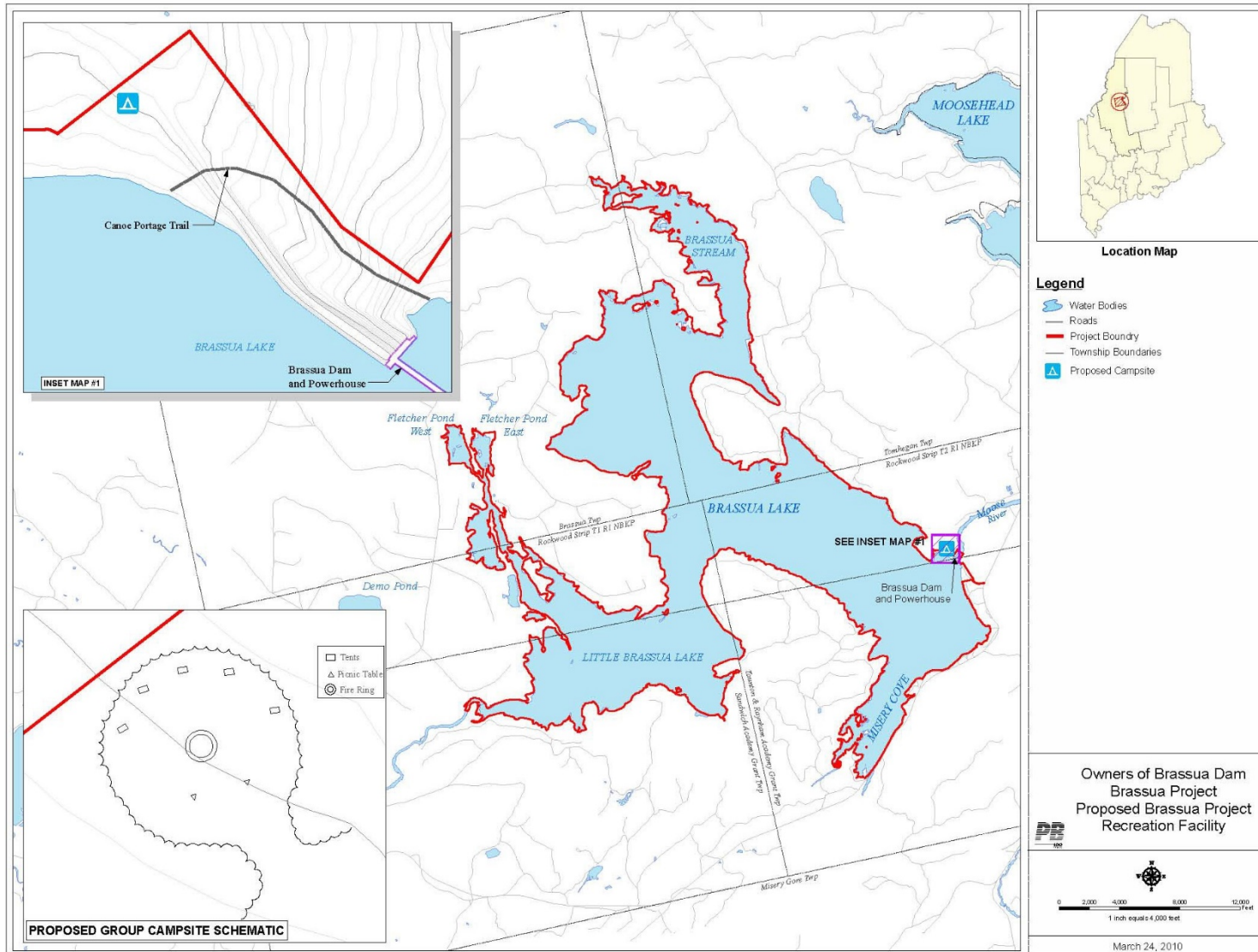
4.2.4 Group Campsite

In addition to maintaining the 4 primitive campsites on the reservoir, the Licensees propose to develop a water access group campsite in the vicinity of the existing canoe portage trail. The group campsite will be developed on lands that are currently owned by the Licensees. The group campsite will include multiple tent sites (3-5), a fire ring, two picnic tables and a privy. The site will be marked with appropriate signage. The proposed location and arrangement of the group campsite is shown in [Figure 4.2.4-1](#). The exact location and design of the group campsite will be developed in consultation with the agencies prior to development. The Exhibit G maps have been modified to include the location of the campsite within the proposed Project boundary. The group campsite will be developed by August 31 of the second summer season following FERC approval of the ~~facility~~~~RFMP~~.

4.2.5 Canoe Portage Trail Improvements

Although Brassua Reservoir and the downstream Moose River are traversed by part of the Northern Canoe Trail, the existing canoe portage trail at Brassua Dam receives very light use. This may in part be due to the fact that the NFCT has only recently been developed. The existing portage trail is reported to currently be at about 15 percent of capacity on non-holiday weekends. Because of this light use, the existing trail is more than sufficient to meet existing demand, and the natural and relatively undeveloped nature of the trail is in keeping with the northern forest canoe experience. However, to improve trail usage, and consistent with general guidelines for canoe portage trails, the Licensees propose to install a canoe rest along the portage trail. As the existing portage trail at Brassua is approximately 800 ft in length, the Licensees anticipate that only one canoe rest will be required along the portage trail. As is traditional in the region, the proposed canoe rest will be simple and constructed of wood. Prior to installing the canoe rest, the Licensees will consult with appropriate agencies and other interested stakeholders on the location of the canoe rest. If it is determined that, due to site specific conditions, more than one rest is needed, a second wooden rest will also be installed. The canoe rest(s) will be installed by August 31 of the summer season following FERC approval this RFMP. Once the canoe rests are installed, the Licensees will inspect and maintain them as part of the annual inspection and maintenance plan.

Figure 4.2.4-1: Brassua Project proposed group campsite



5.0 OTHER PUBLIC ACCESS

5.1 Primitive Campsites

In addition to the Project public recreation areas described above, there are three primitive campsites on Brassua Reservoir that include one on the northern shore near the inlet of Brassua Stream and two at the inlet of Moose River into Brassua Reservoir (see [Figure 5.1-1](#) and [5.1-2](#)). The primitive campsites are shown in Figures [5.1-3](#) through [5.1-6](#) as campsites 1, 2, and 3. These sites are not formal or maintained campgrounds but public use of these sites for camping is generally allowed by the landowners. Primitive campsite 1 is located on private lands outside of the Project boundary and is the responsibility of the landowner (see [Figure 5.1-1](#)). Primitive campsites 2 and 3 (see [Figure 5.1-2](#)) are located partially or wholly within the Project boundary (the Project boundary generally follows elevation 1,076' (USGS) around the reservoir, and the Licensees own the land surrounding the reservoir between the normal full pond elevation of 1,074' and Project boundary at elevation 1,076'). The Maine Forest Service issues fire permits for these three sites (fire permits are required for some remote campsites in unorganized towns (Maine Forest Service, 2008)). Generally, these primitive campsites are used for camping and presumably related activities such as bank fishing and hunting.

Additionally, the Northern Forest Canoe Trail constructed, in accordance with a permit issued in June 2007 from the Maine Land Use Regulation Commission (LURC) ([now known as LUPC](#)) to Moosehead Wildlands (the developer of Poplar Hill and much of the eastern shore of Brassua Reservoir under a concept plan approved by LURC in 2004) and the Northern Forest Canoe Trail (acting as the agent), a remote campsite on an island in Brassua Reservoir near Poplar Hill (campsite 4 on [Figure 5.1-1](#)).

The campsite includes signage, a picnic table, privy, and a sign-in box. This campsite is located on private lands outside of the Project boundary and is the responsibility of the landowner and the NFCT.

5.2 Snowmobile Interconnected Trail System (ITS)

Winter access to the Project is provided through the snowmobile Interconnected Trail System (ITS) that runs along Route 15 which is adjacent to a portion of the Project boundary near Misery Cove, however, no portion of the ITS lies within the Project boundary. ITS 88 runs in the vicinity of the southwest shore of the reservoir and continues along the Moose River above Brassua Reservoir to connect with ITS 89 north of Jackman, Maine (MSA, 2008). ITS 88 connects with two other major trails (ITS 85 and ITS 86) in Greenville, Maine. The Moosehead Lake Region Snowmobile Trail Map includes a club trail along the north shore of the Moose River from Moosehead Lake located downstream of the Project's tailrace (Moosehead Lake Region Chamber of Commerce, 2008).

Figure 5.1-1: Map of primitive campsites on Brassua Reservoir

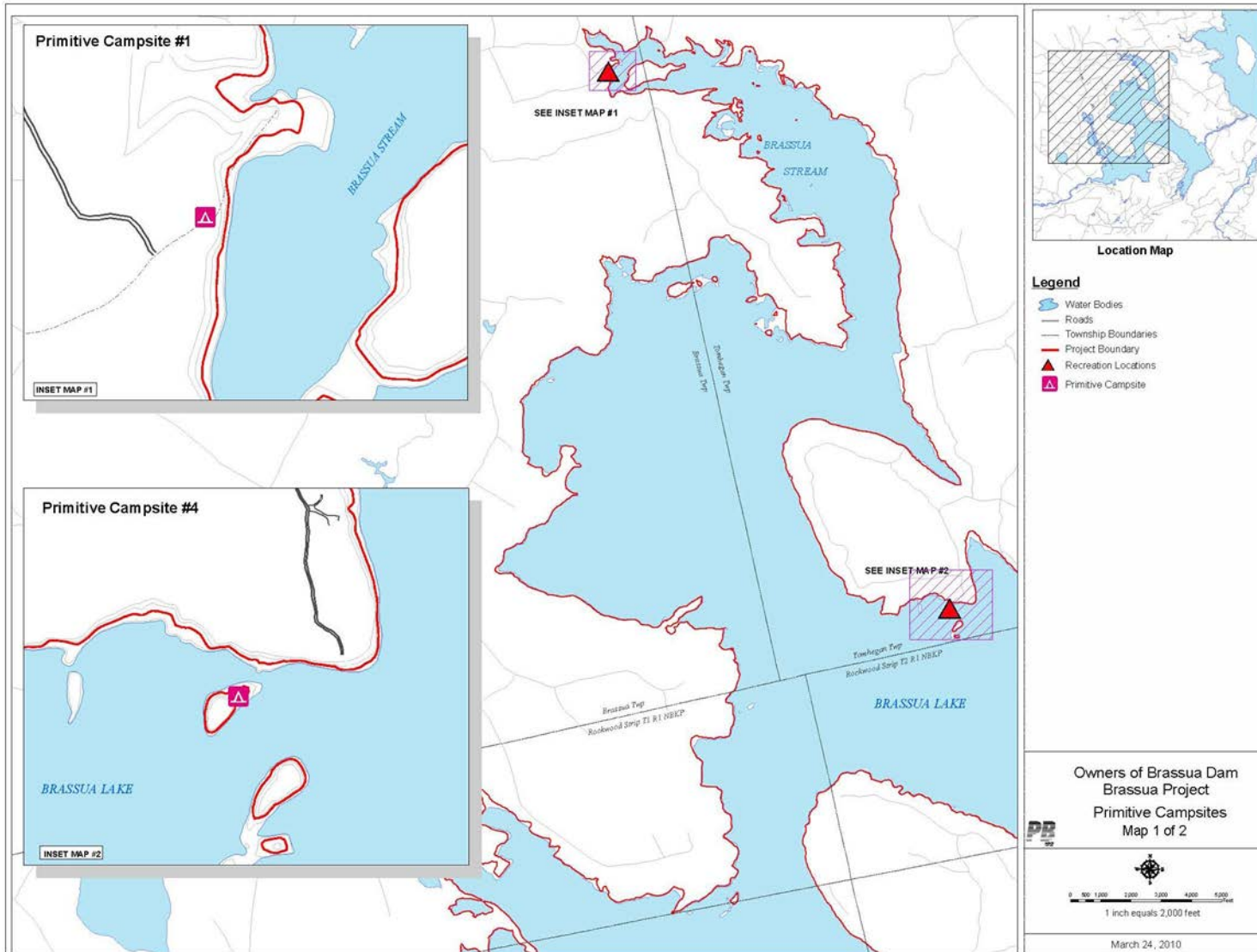


Figure 5.1-2: Map of primitive campsites on Brassua Reservoir

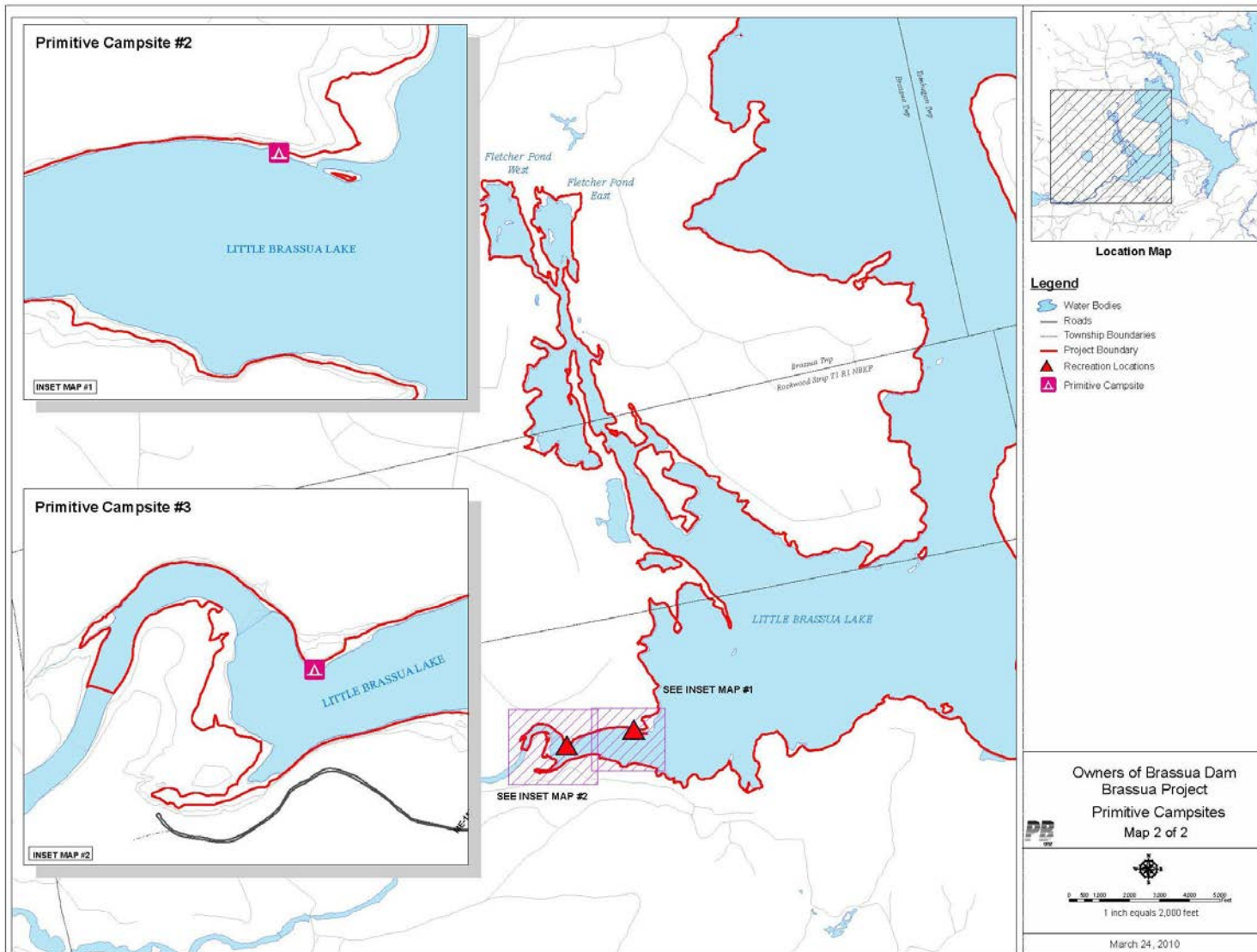


Figure 5.1-3: Primitive campsite No. 1 on northern shore of Brassua Reservoir - first fire pit



Figure 5.1-4: Primitive campsite No.1 on northern shore of Brassua Reservoir - second fire pit



Figure 5.1-5: Primitive campsite No.2 at inlet of Moose River into Brassua Reservoir



Figure 5.1-6: Primitive campsite No.3 near inlet of Moose River into Brassua Reservoir



6.0 MANAGEMENT MEASURES

6.1 Annual Site Inspection and Facilities Maintenance Program

The Licensees will manage and maintain the existing boat launch, dam and tailwater access, and canoe portage trail, as well as the proposed group campsite and two existing primitive campsites located in the Project boundary (Sites 2 and 3). All the sites will be maintained to provide safe and appropriate recreation access to the Project and to ensure that the sites and facilities remain usable over the term of the new license. Typical routine maintenance activities will include periodic mowing, litter clean-up, removal of fallen trees blocking the portage trail or river access trails, ensuring that the portage trail or river access trails are not overgrown, ensuring that safety signage is in-place and readable, and conducting other improvements on an observed, as-needed basis. The Licensees will also continue to maintain one portable toilet at the Brassua Dam access parking area (see [Table 4.1.1-1](#)) and a new portable toilet proposed for the Misery Cove Boat Launch site.

Annual site inspections and facilities maintenance activities will occur at each of the Project public recreation areas using, as a guide, the site inspection and facilities maintenance checklists provided in Appendix A.

Specific annual site inspection and facility maintenance issues pertaining to each Project recreation area are identified below and include, but are not limited to, those identified in the Recreation Resources Inventory Initial Study Report (LVA, 2009a):

Brassua Dam and River Access Area- Annual Site Inspection and Facility Maintenance:

1. Inspect for and remove all litter, woody debris, and other obstructions found in the parking area and on the river access trails along the south and north shorelines.
2. Inspect that all safety signs and parking signs are securely in place and readable.
3. Inspect that all safety signs posted on the downstream ends of the dam warning about rapidly rising water can be easily read from the portage trail put-in or along the north shore of the tailrace.
4. Inspect that all safety signs posted on the downstream ends of the dam warning about rapidly rising water can be easily read from the entire large open bank fishing area on the south shore of the tailrace.
5. Inspect that the toilet is being maintained properly.
6. Inspect the access trail to the south shore of the tailwater and identify any required maintenance needs.
7. Identify facilities in need of maintenance and develop a schedule for the work to be conducted.

Brassua Dam Canoe Portage Trail- Annual Site Inspection and Facility Maintenance:

1. Inspect for and remove all litter, woody debris (driftwood/driki), and other obstructions that may accumulate at the portage take-out, along the portage trail, and at the put-in.
2. Inspect the canoe portage trail and trim the vegetation from the trail to a width of between 4-8 ft, and a height of 8 ft.
3. Inspect the canoe rest along the portage trail and ensure that the one canoe rest is in good working order.
4. Inspect that the canoe portage sign at the take-out is securely in place and readable.
5. Inspect that all directional signs along the portage trail are visible and remove any tree branches or other vegetation obscuring any signs.
6. Inspect that the safety signs posted on the downstream ends of the dam warning about rapidly rising water can be easily read from the portage trail put-in.
7. Identify any maintenance requirements and develop a schedule for the work to be conducted.

Misery Cove Boat Launch- Annual Site Inspection and Facility Maintenance:

1. Inspect for and remove all litter, woody debris (driftwood/driki/downed trees by beaver), and other obstructions that may accumulate at the boat launch or may be found on the access road, in the parking area, and on the turn-around for the launching ramp.
2. Inspect that all safety, parking, and other informational signs are securely in place and readable.
3. Inspect that the proposed toilet is being maintained properly.
4. Inspect the proposed picnic tables and ensure that the tables are in good condition.
5. Inspect, and maintain suitably for launching, the end of the ramp that is exposed by drawdown (see Figures [4.1.3-3](#) and [4.1.3-4](#) illustrating the exposed gravel covering the launch ramp when the reservoir is 6.4 feet below full pond).
6. Although the area is clearly marked with a “Day use only no overnight camping sign” and a Maine Forest Service sign prohibiting fires, inspect for and document evidence of campfires in this access area.
7. Identify any maintenance requirements and develop a schedule for the work to be conducted.

7.8. Monitor the gravel bar at the Misery Cove Boat Launch and conduct periodic excavation as needed to ensure that boating access is maintained at elevations of 1,067.9 feet msl or higher.

Campsites (Group and Primitive Campsites):

1. Inspect for and remove all litter and other debris or obstructions that may accumulate around the campsites.
2. Inspect the campsites for vegetation encroachment and trim vegetation, as needed, from the campsite area.
3. Inspect that picnic tables and fire rings are in safe, usable condition.
4. Inspect that all informational signs are securely in place and readable.
5. Identify any maintenance requirements and develop a schedule for the work to be conducted.

6.2 Public Safety

The Licensees filed a revised Public Safety Plan for the Project with FERC in January 2002. The Public Safety Plan outlines the safety precautions taken at the Project dam and around the Project reservoir. Such precautions include, but are not limited to, warning signs and a boater restraint system float above the dam. In accordance with the Public Safety Plan and Annual Site Inspection and Facilities Maintenance Program, described in Section 6.1, the Licensees will inspect the safety signs and other safety devices annually at a minimum and more frequently during normal work, especially during the boating and fishing seasons. FERC also regularly inspects these devices at the Project to ensure that they are maintained and issues an Environmental Inspection Report on their condition and any maintenance requirements. The Public Safety Plan is revised as needed based on these inspections. There is also a siren at the dam to warn wading anglers in the event there is a high-water release from the Project. The Brassua Project is operated and monitored remotely by the National System Control Center (NSCC) 24 hours/day, 365 days/year~~re are no unmanned gate operations since an operator lives on-site~~. FERC has determined that the warning measures are adequate (FERC, 2003).

The identification and location of the public safety signs at each Project public recreation area are provided in the respective tables and figures as noted below:

- Brassua Dam and River Access Area in [Table 4.1.1-1](#) and [Figure 4.1.1-7](#),
- Brassua Dam North Shore River Access Area in [Table 4.1.2-1](#) and [Figure 4.1.1-7](#),
- Brassua Dam Canoe Portage Trail in [Table 4.1.2-1](#) and [Figure 4.1.1-7](#), and
- Misery Cove Boat Launch in [Table 4.1.3-1](#) and [Figure 4.1.3-5](#).

6.3 Recreation Use Monitoring

In order to monitor recreation use at the Project public access sites described within this RFMP, the Licensees will conduct a Recreation Use Survey every six years ~~in conjunction with its filing of the FERC Form 80 report~~. The survey data collected will consist of spot counts at each of the Project recreation sites to determine site utilization and parking area capacity, identification of the different types of recreation that are being conducted and an overall assessment of site conditions.

As in the past, data will be collected during the period April through November on eight weekdays and five weekends, including one holiday weekend (Memorial Day, Independence Day, or Labor Day) between May 31 and October 1, and between the hours of 8 a.m. and 5 p.m. The Licensees will file with the Commission the results of the recreation use survey, including any comments received from interested parties about the survey, and any conclusions regarding the need for additional access areas or expansion of existing Project recreation sites, by April 1 of each year following the recreation use survey.

Neither the Brassua Dam and River Access Area nor the Misery Cove Boat Launch is fully accessible to the disabled. Changes would be needed to make these access areas fully accessible in accordance with the ADA. At this time, however, there is no perceived demand for fully accessible facilities at the Project's lightly used recreation areas (LVA, 2009a). The six-year recreation monitoring report will examine changes in recreational use over the past monitoring period that may require modification of facilities to consider ADA access needs.

6.4 Determining the Need for Additional Measures or Expansion of Existing Sites

Based on the results of the Recreation Use Monitoring, consultation will begin regarding the need for an additional access area or expansion of existing sites when an existing site reaches capacity; as reported under the FERC Form 80 procedures. The Licensees will consult with MDIFW, Maine Bureau of Parks and Lands (MBPL) MDACF, and LURC-LUPC regarding the need for additional facilities.

The 2009 Form 80 Report on Recreational Resources indicates that the Brassua Project supported 51,000 recreation days during 2008. Approximately 90 percent of this use was attributable to day use activities such as angling and boating; nearly 10 percent of total use was attributable to camping (FPL Energy, 2009). None of the public recreation sites were reported to be at capacity, though the dam access area was reported to be at approximately 70 percent of capacity on non-holiday weekends. The Misery Cove Boat Launch was reported to be at approximately 25 percent capacity, on average, on non-holiday weekends, while the canoe portage was reported to be at about 15 percent of capacity, on average. Existing recreation facilities are adequate to meet current recreational use and demand (LVA, 2009a).

6.5 Public Information on Project Recreation

The Licensees will continue to maintain a toll-free phone system and Web based flow information system (currently Safewaters.com) updated daily at 6 p.m. (or as changes occur in real-time) from April to October to provide the current elevation levels of Brassua Lake and river flow from dam and river flow for the following day.

As discussed in Section 1.0, the Licensees will comply with the requirements of 18 CFR § Part 8.1, including by publication of notice in a local newspaper once each week for four weeks, and with the requirements of 18 CFR § Part 8.2, including by maintaining existing Part 8 signage at the Project and by making the required information available for inspection at local offices.

7.0 COST

The Licensees estimate the periodic cost of the sixth year Recreation Use Monitoring study and report to be approximately \$22,000². ~~The cost of preparing the Form 80 is approximately \$8,000.~~

The Licensees estimate the annual cost of inspecting and maintaining the existing and proposed recreation sites and facilities to be approximately \$7,200, annually ~~(2010 dollars)~~, excluding significant replacements and improvements.

The Licensees estimate the costs associated with planning and installing the proposed new sites and facilities as follows:

- Development of a new group campsite, including 3-5 tent sites, 2 picnic tables, fire ring and privy, \$11,000.
- Development/relocation of a primitive campsite with tent site, picnic table and fire-ring, \$5,000, per site (excluding any land rights).
- Installation of wooden canoe rests along the existing canoe portage trail, \$150 per rest.
- Improvements to the south shore tailwater access trail, \$5,000.
- Addition of picnic tables and portable toilet to the Misery Cove Boat Launch site, \$500.

8.0 SCHEDULE AND REPORTING

The Licensees will conduct inspections of the all the recreational sites and facilities described herein annually.

The group campsite will be developed by August 31 of the second summer season following FERC approval of the facility to allow sufficient time for design, consultation, and permitting.

The canoe rest(s) will be installed along the canoe portage trail by August 31 of the summer season following FERC approval of this RFMP.

~~As discussed in Section 6.3, the Licensees will conduct a Recreation Use Survey every six years in conjunction with its filing of the FERC Form 80 report. The survey data collected will consist of spot counts at each of the sites to determine site utilization and parking area capacity, identification of the different types of recreation that are being conducted, an overall assessment of site conditions and an assessment of the need for any ADA access improvements. As in the past, data will be collected during the period April through November.~~

9.0 MODIFICATIONS TO PLAN

Any proposed modification to this RFMP will be submitted to MDACFMDOC, LURELUPC, and MDIFW for review and comment prior to submittal to FERC. Any modification to this RFMP will be submitted to FERC for approval after the agencies have been provided the opportunity to review the modification.

² All cost estimates in this section are presented in 2010 dollars.

As plans are developed for constructing any significant structures at the sites identified for future recreational use, then these plans, along with drawings of facilities, documentation of consultation, cost estimates and schedule will be provided to FERC for approval prior to construction. The Maine Historic Preservation Commission will be included in the consultation process regarding the construction of new facilities involving ground disturbance.

10.0 REFERENCES

Federal Energy Regulatory Commission. 2003. Environmental Inspection Report. January 8, 2003.

FPL Energy. 2009. Licensed Hydropower Development Recreation Report (FERC Form 80). 2009.

Long View Associates, Inc. (LVA). 2009a. Brassua Hydroelectric Project (FERC No. 2615) Recreational Resources Inventory Initial Study Report, prepared for the Owners of Brassua Dam. February 2009.

Maine Forest Service. 2008. Maine Forest Service Programs and Services Website. [Online] URL: <http://www.maine.gov/doc/mfs/fpd/pages/programs.htm>. Accessed October 30, 2008.

Maine Snowmobile Association (MSA). 2008. 2008-2009 Maine Snowmobile Interconnected Trail System Map. [Online] URL: <http://www.mesnow.com/pdfs/2008-09ITSMMap144.pdf>. Accessed October 30, 2008.

Moosehead Lake Region Chamber of Commerce. 2008. Moosehead Lake Region Snowmobile Trail Map 2008. [Online] URL: <http://www.mooseheadlake.org/snowmobiling.shtml>. Accessed November 4, 2008.

The Owners of Brassua Dam (FPL Energy Maine Hydro LLC, Madison Paper Industries, and Merimil Limited Partnership). 2002. Environmental Procedures Manual - Public Safety Plan FERC No. 2615. Effective April 8, 1999, revised January 1, 2002.

**APPENDIX A: ANNUAL SITE INSPECTION AND FACILITIES MAINTENANCE
CHECKLISTS FO THE BRASSUA PROJECT RECREATION AREAS**

DRAFT

Brassua Dam and River Access Area - Annual Site Inspection and Facilities Maintenance Checklist

Facility	Description	Condition	Maintenance Required
Fishing			
Large open grassy area	Bank fishing along south shoreline		
Unimproved access along the south shoreline	Bank fishing		
Unimproved access along the north shoreline	Bank fishing		
Pedestrian Access			
Trail	Trail to the south shoreline bank fishing area		
Trail/steps	Trail/steps to the north shoreline bank fishing area		
Boardwalk	Boardwalk over wet area of footpath along south shoreline		
Access road beyond gate	Gravel access road turns to paved road		
Vehicular Access			
Parking	Gravel parking area		
Access road from Rt. 15	Gravel access road		
Utility/Sanitary			
Toilet	One portable toilet at parking lot		
Signs¹			
	1. Small sign on Route 15 for Brassua Project with parking and fishing symbols		
	2. Welcome to the Project sign ²		
	3. Reserved parking sign for disabled		
	4. Public Parking Daytime Use Only No Overnight Camping		
	5. Authorized vehicles only (on gate)		
	6. Welcome to access area sign with directional information for north shore access and south shore access		
	7. Notice that tenders of dam reside at the area and requesting that users respect their privacy		
	8. South Shore River Access directional sign		
	9. Fishermen: Please use this path to and from river		
	10. Temporary sign with instructions for anglers catching tagged fish		
	11. River path directional sign		

Notes:

¹The sign numbers correspond to those presented in [Figure 4.1.1-7](#)

²The “Welcome” sign is the Part 8 sign as required by FERC.

Brassua Dam Canoe Portage - Annual Site Inspection and Facilities Maintenance Checklist

Facility	Description	Condition	Maintenance Required
Pedestrian Access			
Trail	Portage trail		
Canoe Rest			
Canoe Rest	Canoe Rest		
Signs¹			
	1. Canoe portage sign at take-out		
	2. Small gold and navy Northern Forest Canoe Trail sign below portage sign		
	3. Canoe portage directional sign		
	4. Canoe portage directional sign		

Notes:

¹The sign numbers correspond to those presented in [Figure 4.1.1-7](#).

DRAFT

Misery Cove Boat Launch – Annual site Inspection and Facilities Maintenance Checklist

Facility	Description	Condition	Maintenance Required
Boating and Fishing			
Boat ramp	Single lane concrete ramp		
Unimproved access along shoreline	Bank fishing		
<u>Gravel Bar</u>	<u>Boating access to be maintained at el. 1067 ft msl or higher</u>		
Vehicular Access			
Turn around	Gravel turn around area for launching boats		
Parking	Gravel parking area		
Access road from Rt. 15	Gravel access road		
Signs¹			
	1. Welcome to access area sign		
	2. No trash disposal carry in/carry out		
	3. Yellow Maine Forest Service Sign: Kindle No fires in this area sign		
	4. Day Use Only No Overnight Camping		
	5. Public Parking Day Use Only No Overnight Camping		
	6. Boat ramp only		
	7. No parking (2 signs)		

Notes:

¹The sign numbers correspond to those presented in [Figure 4.1.3-5](#).

Campsites (Group and Primitive Campsites) – Annual site Inspection and Facilities Maintenance Checklist

Facility	Description	Condition	Maintenance Required
Group Campsite			
Group campsite	Group campsite located near portage trail		
Group campsite signs	Informational signs		
Group campsite picnic tables and fire ring	Group campsite picnic tables and fire ring		
Primitive Campsite 2			
Primitive Campsite 2	Campsite located at Moose River mouth (most downstream)		
Primitive Campsite 3			
Primitive Campsite 3	Campsite located at Moose River mouth (most upstream)		

DRAFT

**APPENDIX B: AGENCY COMMENTS ON THE DRAFT RECREATION FACILITIES
MANAGEMENT PLAN**

DRAFT

**APPENDIX B: ANNUAL SITE INSPECTION AND FACILITIES MAINTENANCE
CHECKLISTS FO THE BRASSUA PROJECT RECREATION AREAS**

Brassua Dam and River Access Area - Annual Site Inspection and Facilities Maintenance Checklist

Facility	Description	Condition	Maintenance Required
Fishing			
Large open grassy area	Bank fishing along south shoreline		
Unimproved access along the south shoreline	Bank fishing		
Unimproved access along the north shoreline	Bank fishing		
Pedestrian Access			
Trail	Trail to the south shoreline bank fishing area		
Trail/steps	Trail/steps to the north shoreline bank fishing area		
Boardwalk	Boardwalk over wet area of footpath along south shoreline		
Access road beyond gate	Gravel access road turns to paved road		
Vehicular Access			
Parking	Gravel parking area		
Access road from Rt. 15	Gravel access road		
Utility/Sanitary			
Toilet	One portable toilet at parking lot		
Signs¹			
	1. Small sign on Route 15 for Brassua Project with parking and fishing symbols		
	2. Welcome to the Project sign ²		
	3. Reserved parking sign for disabled		
	4. Public Parking Daytime Use Only No Overnight Camping		
	5. Authorized vehicles only (on gate)		
	6. Welcome to access area sign with directional information for north shore access and south shore access		
	7. Notice that tenders of dam reside at the area and requesting that users respect their privacy		
	8. South Shore River Access directional sign		
	9. Fishermen: Please use this path to and from river		
	10. Temporary sign with instructions for anglers catching tagged fish		
	11. River path directional sign		

Notes:

¹The sign numbers correspond to those presented in [Figure 4.1.1-7](#)

²The “Welcome” sign is the Part 8 sign as required by FERC.

Brassua Dam Canoe Portage - Annual Site Inspection and Facilities Maintenance Checklist

Facility	Description	Condition	Maintenance Required
Pedestrian Access			
Trail	Portage trail		
Canoe Rest			
Canoe Rest	Canoe Rest		
Signs¹			
	1. Canoe portage sign at take-out		
	2. Small gold and navy Northern Forest Canoe Trail sign below portage sign		
	3. Canoe portage directional sign		
	4. Canoe portage directional sign		

Notes:

¹The sign numbers correspond to those presented in [Figure 4.1.1-7](#).

Misery Cove Boat Launch – Annual site Inspection and Facilities Maintenance Checklist

Facility	Description	Condition	Maintenance Required
Boating and Fishing			
Boat ramp	Single lane concrete ramp		
Unimproved access along shoreline	Bank fishing		
Gravel Bar	Boating access to be maintained at el. 1067 ft msl or higher		
Vehicular Access			
Turn around	Gravel turn around area for launching boats		
Parking	Gravel parking area		
Access road from Rt. 15	Gravel access road		
Signs¹			
	1. Welcome to access area sign		
	2. No trash disposal carry in/carry out		
	3. Yellow Maine Forest Service Sign: Kindle No fires in this area sign		
	4. Day Use Only No Overnight Camping		
	5. Public Parking Day Use Only No Overnight Camping		
	6. Boat ramp only		
	7. No parking (2 signs)		

Notes:

¹The sign numbers correspond to those presented in [Figure 4.1.3-5](#).

Campsites (Group and Primitive Campsites) – Annual site Inspection and Facilities Maintenance Checklist

Facility	Description	Condition	Maintenance Required
Group Campsite			
Group campsite	Group campsite located near portage trail		
Group campsite signs	Informational signs		
Group campsite picnic tables and fire ring	Group campsite picnic tables and fire ring		
Primitive Campsite 2			
Primitive Campsite 2	Campsite located at Moose River mouth (most downstream)		
Primitive Campsite 3			
Primitive Campsite 3	Campsite located at Moose River mouth (most upstream)		

171 FERC ¶ 62,044
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Brookfield White Pine Hydro, LLC
Merimil Limited Partnership
Eagle Creek Kennebec Hydro, LLC

Project No. No. 2615-037

ORDER ISSUING NEW LICENSE

(Issued April 15, 2020)

INTRODUCTION

1. On March 31, 2010, Brookfield White Pine Hydro, LLC, Merimil Limited Partnership, and Eagle Creek Kennebec Hydro, LLC (collectively, licensees) filed,¹ pursuant to sections 4(e) and 15 of the Federal Power Act (FPA),² an application for a new license to continue the operation and maintenance of the Brassua Hydroelectric Project No. 2615 (Brassua Project). The 4.18-megawatt (MW) project is located on the Moose River in Somerset County, Maine.³ The project does not occupy federal land.

2. As discussed below, this order issues a new license for the project.

BACKGROUND

3. The Federal Power Commission, predecessor to the Federal Energy Regulatory Commission (FERC or Commission), issued the original license for the Brassua Project on September 16, 1977,⁴ with an effective date of April 1, 1962, and an expiration date of

¹ Brassua Hydroelectric Limited Partnership is a co-licensee of the existing license along with Brookfield White Pine Hydro, LLC, Merimil Limited Partnership, and Eagle Creek Kennebec Hydro, LLC. However, Brassua Hydroelectric Limited Partnership is not a co-applicant in the application for a new license.

² 16 U.S.C. §§ 797(e) and 808 (2018).

³ The Moose River is a navigable waterway of the United States. *See Central Maine Power Company*, 59 F.P.C. 2010, 2012 (1977). Therefore, section 23(b)(1) of the FPA, 16 U.S.C. § 817(1) (2018), requires the project to be licensed.

⁴ *See Central Maine Power Company*, 59 F.P.C. 2010 (1977).

December 31, 1993. The license was amended on July 28, 1987, to include a generating unit at the project and extend the license expiration date to April 1, 2012.⁵ Since the license expired on April 1, 2012, the project has operated under an annual license⁶ pending the disposition of the new license application.⁷

4. On May 6, 2010, the Commission issued a public notice that was published in the *Federal Register* accepting the application for filing, indicating the application was ready for environmental analysis, and setting July 5, 2010, as the deadline for filing motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions.⁸ The Maine State Planning Office (Maine SPO) filed a notice of intervention on behalf of itself, the state of Maine, the Maine Department of Environmental Protection (Maine DEP), the Maine Department of Inland Fisheries and Wildlife (Maine DIFW), the Maine Department of Marine Resources (Maine DMR), and the Maine Department of Conservation (Maine DOC).⁹ The Appalachian Mountain Club

⁵ *Central Maine Power Company*, 40 FERC ¶ 62,085 (1987). On February 5, 1991, the license was amended to reflect the installation of a 4.18-MW generating unit at the project instead of the 3.4-MW generating unit that was approved in the July 28, 1987 amendment order. *See Central Maine Power Company*, 54 FERC ¶ 62,086 (1991).

⁶ Section 15(a)(1) of the FPA, 16 U.S.C. § 808(a)(1) (2018), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA.

⁷ Following the filing of the license application on March 31, 2010, the license was amended on September 12, 2013, to reflect a name change of one of the licensees, FPL Energy Maine Hydro, LLC, to Brookfield White Pine Hydro, LLC. *See FPL Energy Maine Hydro, LLC and Brookfield White Pine, LLC*, 144 FERC ¶ 62,237 (2013). In addition, on July 26, 2017, the Commission approved a partial transfer of the license for the project from Madison Paper Industries to Eagle Creek Kennebec Hydro, LLC as a co-licensee to Brookfield White Pine Hydro, LLC, Merimil Limited Partnership, and Brassua Hydroelectric Limit Partnership, and approved the substitution of Eagle Creek Kennebec Hydro, LLC for Madison Paper Industries in the application for a new license. *See Madison Paper Industries*, 160 FERC ¶ 62,079 (2017).

⁸ 75 Fed. Reg. 27,330-27,332 (May 14, 2010).

⁹ Under Rule 214(a) of the Commission's Rules of Practice and Procedure, the Maine SPO, the state of Maine, Maine DEP, Maine DIFW, Maine DMR, and Maine DOC became parties to the proceeding upon timely filing of the notice of intervention.

(Mountain Club) and Plum Creek Maine Timberlands, LLC and Plum Creek Land Company (collectively, Plum Creek) filed timely motions to intervene.¹⁰ The intervenors do not oppose the issuance of a license for the project.

5. The U.S. Department of the Interior (Interior) filed comments, recommendations, and a reservation of authority to prescribe fishways. The Maine DOC and the Mountain Club filed comments and recommendations. The licensees, Plum Creek Maine Timberlands, LLC, and the Maine DIFW filed reply comments.

6. Commission staff issued a draft Environmental Assessment (EA) on March 25, 2011, analyzing the effects of the proposed project and alternatives to it, and setting a deadline for comments of May 9, 2011. The Maine DOC, the Maine DIFW, the U.S. Fish and Wildlife Service (FWS), the Maine DMR, and the licensees, filed comments on the draft EA. On September 14, 2011, Commission staff issued a final EA. No comments were filed on the final EA.

7. The interventions, comments, and recommendations have been fully considered in determining whether, and under what conditions, to issue this license.

PROJECT DESCRIPTION

A. Project Area

8. The Brassua Project is located on the Moose River in central Maine. The Moose River is approximately 76 miles long and has a total drainage area of approximately 716 square miles. The project is located approximately 3 miles upstream from the inlet to Moosehead Lake, which provides water to the Kennebec River. From Moosehead Lake, the Kennebec River flows south for approximately 145 river miles before joining the Androscoggin River and several smaller rivers to form Merrymeeting Bay. Water from Merrymeeting Bay passes into the Atlantic Ocean through the lower Kennebec River.

9. Except for the Brassua Project dam, there are no other dams on the Moose River. However, Moosehead Lake is the reservoir for the FERC-licensed Moosehead Lake Project No. 2671. Land in the project vicinity is predominantly wooded and agricultural, with some nearby commercial and residential development.

18 C.F.R. § 385.214(a)(2) (2019).

¹⁰ Timely, unopposed motions to intervene are granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2019).

B. Project Facilities

10. The Brassua Project includes a 1,789-foot-long dam that consists of: (1) a 410-foot-long south embankment section with a concrete core wall and topped with a 3.5-foot-high wave barrier; (2) a 342-foot-long concrete-faced earth embankment section topped with a 3.5-foot-high wave barrier; (3) a 284-foot-long Ambursen-type slab and buttress spillway section with five vertical slide gates, a log sluice steel slide gate, ten wooden stop log slots, four deep gates, and a crest elevation of 1,074 feet mean sea level (msl) at the top of the vertical slide gates; (4) a 19-foot-long section that consists of an inactive concrete fishway; and (5) a 734-foot-long north embankment section with a concrete core wall and topped with a 3.5-foot-high wave barrier. The reservoir impounded by the dam (Brassua Lake) has a surface area of approximately 9,400 acres and a gross storage capacity of 207,000 acre-feet at the spillway crest elevation of 1,074 feet msl.

11. From Brassua Lake, water enters a concrete intake structure equipped with a trash-rack with 3-inch clear bar spacings. Water flows through a 108-foot-long penstock to a 4.18-MW Kaplan turbine-generator unit located in a 60-foot-long, 33-foot-wide concrete powerhouse near the toe of the dam on the downstream side of the south embankment. From the powerhouse, water flows into a 40-foot-wide, 60-foot-long tailrace before emptying into the mainstem of the Moose River. Flows are also passed from the impoundment to the downstream reach of the Moose River through four 6-foot-diameter outlet pipes located at the base of the spillway section of the dam.

12. The project includes a 2,000-foot-long, 34.5-kilovolt transmission line that supplies power from the generator to the regional electric grid. The project also includes three recreational facilities: a bank fishing and angling access area immediately downstream of the dam, a canoe portage, and a boat launch.

C. Project Boundary

13. The current project boundary encloses 1,250 acres, including land and water that extends for about 7.75 river miles upstream from the dam, and about 650 feet downstream of the dam. The project boundary encloses the dam, the impoundment up to a contour elevation of 1,076 feet msl, the powerhouse, tailrace, transmission line, the canoe portage, boat launch, and a portion of the bank fishing and angling access area.¹¹ The licensees own or have rights to all land within the project boundary.

14. The licensees do not propose any changes to the existing project boundary.

¹¹ The project boundary currently excludes a portion of the angler access trail on the south bank of the lower Moose River below the dam.

D. Current Project Operation

15. The Brassua Project operates as a water storage facility and as a seasonal peaking generation facility during periods of peak energy demand. The project generates electricity using flows between the 240-cfs minimum hydraulic capacity of the turbine and the 1,600-cfs maximum hydraulic capacity of the turbine. When river flow is less than 240 cfs or greater than 1,600 cfs, water is released from the reservoir through a combination of the five vertical slide gates, the log sluice steel slide gate, or the four deep gates on the spillway section of the dam into the Moose River. The project's average annual generation is approximately 18,180 megawatt-hours (MWh).

16. The full pond elevation of the project is 1,074 feet msl. Under normal operating conditions, the 1977 license requires a minimum lake level of 1,070.6 feet msl by October 15, and a lake level of 1,073.0 feet msl by November 5 during normal project operation (*i.e.*, not a "very dry or wet year").¹² After November 5, the lake is typically drawn down throughout the winter months to increase its storage capacity for the spring freshet (typically in April to May).¹³ From 1990 through 2008, the maximum drawdown occurred, on average, during the last week of March at an elevation of approximately 1,053.5 feet msl (*i.e.*, 20.5 feet below full pond). The higher inflows that accompany the spring freshet are then used to fill the reservoir to support generation and minimum flow releases (described below) during the summer season.

17. The 1977 license limits peaking operation to certain times of the year to protect and enhance landlocked salmon populations downstream of the project. Specifically, the project can operate in peaking mode from November 6 until the spring freshet, and from July 1 through August 31 of each year. During these periods, flow releases fluctuate in response to the demand for energy. During other times of the year, the 1977 license requires the following flow release requirements: (1) from the spring freshet through June 30, a "constant" outflow must be set and maintained from the project on a daily basis; (2) from September 16 through October 15, flows of 800 cubic feet per second (cfs) to 1,200 cfs must be released, plus any additional inflows that exceed 673 cfs must be released in order to attract salmonids to the lower Moose River downstream of the project; and (3) from October 16 through November 5 of each year, release salmonid spawning flows of 425 cfs, plus release any additional inflows that exceed 988 cfs. The minimum flows and fish spawning/attraction flows are released to the downstream reach

¹² See *Central Maine Power Company*, 67 FERC ¶ 62,064, at ordering para. (B) (1994). Article 405 of the 1977 license does not include a specific date for when the spring freshet occurs.

¹³ A spring freshet is generally characterized by high inflows during the spring season due to heavy rains and snowmelt.

through the turbine or the deep gates at the dam.

18. Article 406 of the 1977 license requires the following minimum flow releases from the project to the downstream reach: (1) from May 1 to September 30, 358 cfs, except when inflow to the project is less than 358 cfs, then 250 cfs, or inflow, whichever is greater; and (2) from October 1 to April 30 of each year, 425 cfs, except when inflow to the project is less than 425 cfs, then 250 cfs, or inflow, whichever is greater.

E. Proposed Operational and Environmental Measures

19. To protect aquatic, terrestrial, and recreation resources at the project, the licensees propose to maintain Brassua Lake at the following elevations during normal operation: (1) within two feet of the normal full pond elevation of 1,074.0 feet msl from the end of the spring refill through June 15 (*i.e.*, at or above elevation 1,072.0 feet msl); (2) within three feet of the normal full pond elevation of 1,074.0 feet msl from June 16 through July 31 (*i.e.*, at or above elevation 1,071.0 feet msl); (3) within five feet of the normal full pond elevation of 1,074.0 feet msl from August 1 through September 15, (*i.e.*, at or above elevation 1,069.0 feet msl); (4) within seven feet of the normal full pond elevation of 1,074.0 feet msl from September 16 through October 15 (*i.e.*, at or above elevation 1,067.0 feet msl); and (5) after October 16, draw down Brassua Lake by as much as 24 feet below the normal full pond elevation of 1,074.0 feet msl (*i.e.*, to a minimum elevation of 1,050.0 feet msl) over the course of the winter until the spring refill begins (typically in April).¹⁴

20. To protect aquatic resources downstream of the project, the licensees propose to release minimum flows and targeted fish spawning flows according to the schedule shown in Table 1.

¹⁴ The licensees propose a minimum elevation of 1,045.0 feet msl if “Snowpack Conditions” exist. The licensees define “Snowpack Conditions” as “the water content in the snowpack is observed [to be] significantly greater than normal during early-mid March and the Maine Emergency Management Agency, in consultation with the licensees or [the Kennebec Water Power] River Engineer, determines that further drawdown is advisable to mitigate the likelihood of downstream flooding on the Moose River or Kennebec River.

Table 1: Proposed Schedule for Releasing Minimum Flows and Targeted Fish Spawning Flows (March 31, 2010 License Application, at Exhibit A).

Date	Minimum flows
May 1 through September 15	358 cfs, except when inflow to the project is less than 358 cfs, then 250 cfs or inflow, whichever is greater.
September 16 through October 15	<p>Between 800 and 1,200 cfs to attract salmonids to the lower Moose River, except:</p> <p>(a) when daily inflow to the project is less than 425 cfs, then 250 cfs, or inflow, whichever is greater; and</p> <p>(b) when inflow to the project is greater than 1,200 cfs and Brassua Lake is at or above an elevation of 1,073.0 feet msl, then pass flows greater than 1,200 cfs until the pond elevation is reduced to below 1,073.0 feet msl.</p>
October 16 through November 5	<p>425 cfs target to enhance fish spawning in the lower Moose River, except:</p> <p>(a) when daily inflow to the project is less than 425 cfs, 250 cfs, or inflow, whichever is greater; and</p> <p>(b) when Brassua Lake is above an elevation of 1,073.0 feet msl, then the project “may pass flows necessary to manage the inflow”.</p>
November 6 through April 30	425 cfs, except when inflow to the project is less than 425 cfs, then 250 cfs, or inflow, whichever is greater.

21. To protect landlocked salmon downstream of the project, the licensees propose to not operate the project in peaking mode during the salmon spawning period (*i.e.*, September 1 through November 5) or during the salmon incubation and rearing periods (*i.e.*, from the end of the spring refill (typically in May) through June 30), but to instead operate the project in accordance with the minimum flow releases and elevation limits described above.

22. To document that the project is in compliance with the license’s operational requirements, the licensees propose to implement a March 2010 Minimum Flow and Reservoir Elevation Monitoring Plan filed with the license application that includes provisions for monitoring flows and reservoir elevations, reporting monitoring data to the Commission on an annual basis, and responding to agency requests for monitoring data.

23. To improve access to tributaries for fish spawning, the licensees propose to implement a March 2010 Tributary Access Plan filed with the license application, which

includes provisions for: (1) annual inspections to clear woody debris and other obstructions near the mouths of two tributaries to Brassua Lake (Brassua Stream and Misery Stream); and (2) a 3-year study to: (a) determine if adult salmonids have access to Misery Stream under a variety of inflows and lake elevations, and (b) make recommendations, if appropriate, for improving salmonid spawning access to Misery Stream.¹⁵

24. To enhance loon nesting success, the licensees propose to implement a March 2010 Loon Management Plan filed with the license application, which includes provisions for the annual deployment, maintenance, and monitoring of artificial nesting rafts for loons in Brassua Lake.

25. To advance the understanding of mercury contamination in the region, the licensees propose to implement a Mercury Monitoring Plan to sample mercury levels by collecting blood and feather samples from loons and bald eagles every five years for analysis of mercury concentrations.

26. To protect and enhance recreation opportunities at the project, the licensees propose to implement a March 2010 Recreation Facilities Management Plan filed with the license application, which includes provisions for: (1) operation and maintenance of project recreation facilities; (2) developing a new group campsite near the existing canoe portage trail; (3) improving the existing canoe portage trail by installing a wooden canoe rest on the trail; (4) grading and leveling the angler access trail at the south shore river access area below the dam to improve accessibility to the river; (5) installing up to three picnic tables and a portable toilet at the Misery Cove Boat Launch site; (6) developing a new primitive campsite(s) within the project boundary if any of the four existing, non-project primitive campsites on the shoreline of Brassua Lake become unusable for any reason during the term of a new license; and (7) conducting annual site inspections and maintenance at the project recreation facilities, and conducting a recreation use survey every six years in conjunction with the FERC Form 80 requirements.

27. To protect terrestrial and aquatic habitat on the shoreline of Brassua Lake, the licensees propose to implement a March 2010 Shoreline Management Plan filed with the license application that includes procedures and rules for undertaking non-project development activities in the project boundary, including the review and approval, if appropriate, of any proposals by other entities to develop the shoreline within the project boundary.

¹⁵ On March 30, 2017, the licensees filed a report on the accessibility of Misery Stream. The licensees conducted the study and prepared the report in consultation with the Maine DEP, the Maine DIFW, and the FWS.

28. To protect cultural resources, the licensees propose to implement a July 2010 Historic Properties Management Plan (HPMP) filed with the license application.

SUMMARY OF LICENSE REQUIREMENTS

29. This license, which authorizes 4.18 MW of renewable energy generation capacity, requires most of the proposed measures discussed above, with the exception of the Mercury Monitoring Plan. The license also requires certain staff-recommended modifications and additional measures described below. Combined, these measures will protect and enhance water quality, fisheries resources, wildlife resources, threatened and endangered species, recreation resources, and cultural resources at the project.

30. To verify compliance with the license's operational requirements, the license requires the licensees to develop an operation compliance monitoring plan that includes the provisions of the licensee's March 2010 Minimum Flow and Reservoir Elevation Monitoring Plan, and additional provisions related to compliance with the project's operational requirements during abnormal operating conditions.

31. To document emergency incidents and deviations from the operational requirements of the license that could affect environmental resources, and evaluate the extent of any environmental effects associated with an incident or deviation, the license requires reporting procedures based on the duration of the event, and any observed or reported environmental effects.

32. To protect the federally threatened northern long-eared bat, the license requires the licensees to avoid cutting trees equal to or greater than 3 inches in diameter within the project boundary from June 1 through July 31, unless a tree poses an immediate threat to human life or property.

33. To improve recreation opportunities at the project, the license requires modifications to the proposed Recreation Facilities Management Plan to include provisions for: (1) monitoring and periodic excavation of the gravel bar at the Misery Cove boat launch to ensure that boat access is maintained; (2) conducting the recreation use survey every five years instead of every six years as proposed by the licensees; (3) conducting spot counts on eight weekdays and five weekends at each project recreation site to determine site utilization and capacity during the recreation use survey; (4) maintaining a toll-free phone system that is updated daily to provide the anticipated reservoir levels and river flow information at the project during the recreation season (April through October); (5) providing a public internet site describing recreational access and amenities at the project, and displaying the toll-free telephone number that provides elevation and flow information; and (6) filing with the Commission the results of the recreation use survey (to be conducted every five years). In addition, the license requires the plan to be updated to reflect any recreation facility improvements that have

been made since the plan was filed on March 31, 2010, and to remove references to the FERC Form 80 reporting requirement.

34. To protect sensitive shoreline habitat, the license requires the licensees to revise the proposed Shoreline Management Plan to include procedures for: (1) identifying sensitive resources and habitats (*e.g.*, wetlands, smelt and brook trout spawning areas, habitat in the immediate vicinity of bald eagle nests, and loon-nesting territories); and (2) reviewing and approving any proposed shoreline development in sensitive environmental areas at the project.

35. To ensure the project boundary encloses all lands and waters necessary for operation and maintenance of the project, the license requires the licensees to revise the project boundary to include the angler access trail on the south bank of the lower Moose River below the dam.

WATER QUALITY CERTIFICATION

36. Under section 401(a)(1) of the Clean Water Act (CWA),¹⁶ the Commission may not issue a license authorizing the construction or operation of a hydroelectric project unless the state water quality certifying agency either has issued water quality certification (certification) for the project or has waived certification by failing to act on a request for certification within a reasonable period of time, not to exceed one year. Section 401(d) of the CWA provides that the certification shall become a condition of any federal license that authorizes construction or operation of the project.¹⁷ As discussed below, Maine has waived certification.

BACKGROUND

37. On March 26, 2010, the licensees requested certification from the Maine DEP, and the Maine DEP received the application the same day, making March 26, 2011, the deadline for the state to act on the request.¹⁸ The application was withdrawn and refiled simultaneously on: March 25, 2011, February 13, 2012; February 12, 2013; January 27, 2014; December 23, 2014; December 16, 2015; and October 20, 2016,¹⁹ without any

¹⁶ 33 U.S.C. § 1341(a)(1) (2018).

¹⁷ *Id.* § 1341(d).

¹⁸ *See* March 31, 2010 License Application at Appendix E4-1.

¹⁹ *See, e.g.*, Licensees February 13, 2012 Letter (filed Mar. 30, 2012) (Licensees are “hereby simultaneously withdrawing the application filed on March 24, 2011, and re-

change to their application; rather, each new application incorporated by reference the prior application.²⁰ In each of these instances, the Maine DEP issued a letter acknowledging the applicant's withdrawal and resubmittal and indicating that the purpose of the withdrawal and re-filing of the application was to establish a new one-year period for certification of the project.²¹

38. In a letter filed on October 4, 2017, the Maine DEP informed the Commission that the licensees once again simultaneously withdrew and refiled the certification application on October 2, 2017.²² The October 2, 2017 letter from the licensees, which was attached to the Maine DEP's filing, referenced an agreement between the licensees and the Maine DEP for the licensees to withdraw and refile the pending application. Specifically, the licensees' October 2, 2017 letter stated that they were withdrawing and re-filing the pending application for the purposes of facilitating further analysis and discussion of

filing for Water Quality Certification ...”).

²⁰ Although Maine DEP indicated that the licensees planned to conduct additional information gathering, the applications were not changed. They merely incorporated the prior application and any supplements that were previously filed. *See, e.g.*, Licensees October 19, 2016 Letter (filed by Maine DEP on Oct. 27, 2016) (“The applications for Water Quality Certification as previously filed with attachments, and all subsequent filings are incorporated by reference into the re-filed application.”).

²¹ *See, e.g.*, Maine DEP March 25, 2011 Acknowledgment Letter (“The purpose of the withdrawal and re-filing of the application has been to establish a new one-year period on the Owners' request for certification for the project.”); Maine DEP February 12, 2013 Acknowledgment Letter (filed by Licensees on Feb. 22, 2013) (“The purpose of the withdrawal and re-filing is to establish a new one-year period on the Owners' request for certification of the project.”); Maine DEP January 7, 2014 Acknowledgment Letter (filed Jan. 13, 2014) (“As a result we request that the Owners wish to voluntarily withdraw and re-file their pending application, for the purpose of establishing a new one-year period for collection of sufficient data and to complete certification review.”); Maine DEP November 17, 2015 Acknowledgment Letter (filed Dec. 8, 2015) (referencing an attached November 16, 2015 Licensees' letter withdrawing and re-filing an application “for the purpose of establishing additional time for the certification to be completed”); Maine DEP October 24, 2016 Acknowledgment Letter (filed Oct. 27, 2016) (referencing an attached Licensees' October 20, 2016 request to withdraw and re-file, in part, “for the purpose of establishing additional time for the certification processing to be completed....”).

²² Maine DEP October 3, 2017 Acknowledgment Letter (filed Oct. 4, 2017).

existing studies, and for establishing additional time for the certification processing to be completed. However, as in previous years, the refiled application did not change from the prior year and consisted of a reference to prior applications and previously filed supplemental information. Similar exchanges occurred with the 2018 and 2019 withdrawal and resubmission and in both years, like the prior years, the refiled application did not change from the prior year and consisted of a reference to prior applications and supplements.

WAIVER DETERMINATION

39. As stated above, section 401(a)(1) of the CWA limits the time for a state certifying agency, here the Maine DEP, to act on a request for certification to one year after receipt of such request. If a state “fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements of [section 401(a)(1)] shall be waived with respect to such Federal application.”²³

40. On January 25, 2019, the United States Court of Appeals for the District of Columbia (D.C.) Circuit issued an opinion in *Hoopa Valley Tribe v. FERC (Hoopa Valley)*,²⁴ ruling that, where a state and an applicant agree to repeatedly withdraw and refile the same water quality certification request, the state had waived certification. In *Hoopa Valley*, the court answered in the affirmative the question of “whether a state waives its Section 401 authority when, pursuant to an agreement between the state and applicant, an applicant repeatedly withdraws-and-resubmits its request for water quality certification over a period of time greater than one year.”²⁵ The court concluded that where a licensee each year²⁶ sent a “letter indicating withdrawal of its water quality certification request and resubmission of the very same,”²⁷ “[s]uch an arrangement does not exploit a statutory loophole; it serves to circumvent [the Commission’s]

²³ 33 U.S.C. § 1341(a)(1) (2018).

²⁴ 913 F.3d 1099 (D.C. Cir.) (rejecting a coordinated withdrawal-and-resubmission scheme between the applicant and the state certifying agency), *cert. denied*, 140 S. Ct. 650 (2019).

²⁵ 913 F.3d at 1103.

²⁶ The withdrawal/resubmission letter was sent before the 365th day since the prior resubmission of its certification application.

²⁷ *Hoopa Valley*, 913 F.3d at 1103.

congressionally granted authority over the licensing, conditioning, and developing of a hydropower project.”²⁸ In fact, “[b]y shelving water quality certifications, the states usurp FERC’s control over whether and when a federal license will issue. Thus, if allowed, the withdrawal-and-resubmission scheme could be used to indefinitely delay federal licensing proceedings and undermine FERC’s jurisdiction to regulate such matters.”²⁹ Thereafter, in *Placer County Water Agency*,³⁰ the Commission held that a formal agreement between a licensee and a state certifying agency was not necessary to support a finding of waiver; rather, the exchanges between the entities could amount to an ongoing agreement.³¹

41. Here, the record shows that the Maine DEP and the licensees agreed to a withdrawal and refiling process (and, indeed, there is evidence that the state agency, in part, directed that activity), such that the Maine DEP has delayed the licensing of the Brassua Project. The record shows an extensive cooperative relationship between the licensees and the Maine DEP by which the withdrawing and refiling of the certification application would take place on a yearly basis. The letters explicitly state that the purpose of the withdrawal and refiling of the application was to establish a new one-year period for certification review. And, at least twice, Maine DEP requested that the licensees withdraw and refile their application.³² The licensees’ letters also refer to an agreement between the licensees and the Maine DEP to withdraw and refile the application.³³ This ten-year pattern amounts to an ongoing agreement with the licensees that let the Maine DEP usurp the Commission’s control over whether and when a new

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Placer County Water Agency*, 167 FERC ¶ 61,056 (Placer County Declaratory Order), *reh’g denied*, 169 FERC ¶ 61,046 (2019) (Placer County Rehearing).

³¹ Placer County Declaratory Order, 167 FERC ¶ 61,056 at P 16; *see also Pacific Gas and Electric Company*, 170 FERC ¶ 61,232, at P 27 (2020) and *Southern California Edison*, 170 FERC ¶ 61,135, at P 23 (2020).

³² Maine DEP February 12, 2013 Acknowledgment Letter (filed by Licensees on Feb. 22, 2013); Maine DEP January 7, 2014 Acknowledgment Letter (filed Jan. 13, 2014).

³³ Licensees December 19, 2014 Letter (filed Jan. 29, 2015); Licensees November 16, 2015 Letter (filed by Maine DEP on Dec. 8, 2015); Licensees October 19, 2016 Letter (filed by Maine DEP on Oct. 27, 2016).

license would be issued for the Brassua Project. Even absent this evidence, prior to and upon receipt of each withdrawal, the Maine DEP had the option of denying certification within the one year it was afforded under the CWA. Therefore, by accepting each of the licensee's withdrawal/resubmission letters, the Maine DEP consented to the scheme of resetting the one-year deadline.³⁴

42. Moreover, the information gathered by the licensees and submitted to the Maine DEP since 2010 does not serve to delay the one-year clock or render the certification application to be a "new" application. The Commission has explained that, under the CWA, the certification waiver period begins on the date the certifying agency receives the certification request, rather than on the date the agency accepts the request.³⁵ The Commission amended its regulations more than 30 years ago to incorporate this statutory requirement.³⁶ In Order No. 464, by tying commencement of the certification waiver period to the date of receipt rather than the date on which the state certifying agency accepts the request, the Commission deliberately extracted itself from deciding whether a certification application is complete under state rules. Determining whether such an application is complete would require the Commission to interpret state rules in order to resolve a litany of questions arising from the information request (e.g., whether the information request was appropriate under state law; whether the applicant provided the requested information; whether the provided information was significant enough to be treated as a "new" application; and, if provided during the course of the year, whether the information resulted in an extension of the one-year deadline). Under the Commission's regulations, the Commission need not make such findings – the clock starts on the date the certifying agency receives the certification request. As Order No. 464 notes, "[t]he Commission believes that a one-year waiver period, calculated from the date of receipt of a certification request, should in all but the most unusual cases provide certifying agencies with sufficient time to complete the certification proceeding."³⁷ Moreover, an

³⁴ See *Southern California Edison*, 170 FERC ¶ 61,135 at P 25.

³⁵ *Waiver of the Water Quality Certification Requirements of Section 401(a)(1) of the Clean Water Act*, Order No. 464, FERC Stats. & Regs. ¶ 30,730 (1987) (cross-referenced at 38 FERC ¶ 61,146) (Order No. 464).

³⁶ *Id.* (amending 18 C.F.R. § 4.38 to provide that a certifying agency is deemed to have waived the certification requirements of section 401(a)(1) of the CWA if the certifying agency has not denied or granted certification by one year after the date the certifying agency received the request for certification). See 18 C.F.R. § 4.38(e)(2) (1988). This same requirement now appears in 18 C.F.R. § 4.34(b)(5)(iii) (2019).

³⁷ FERC Stats. & Regs. ¶ 30,730 at 30,545.

applicant's submittal of additional information at a certifying agency's request generally would not rise to the level of a material change to a project's plan of development, such that an application to amend a pending license application, and a new certification request, would be warranted.³⁸ Accordingly, we find that the Maine DEP has waived certification.

COASTAL ZONE MANAGEMENT ACT

43. Under section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA),³⁹ the Commission cannot issue a license for a project within or affecting a state's coastal zone unless the state's CZMA agency concurs with the license applicant's certification of consistency with the state's CZMA program, or the agency's concurrence is conclusively presumed by its failure to act within six months of its receipt of the applicant's certification.

44. By letter dated February 24, 2010, the Maine SPO notified the licensees that the project is not located within the state-designated coastal zone and that a coastal zone consistency review is not required.⁴⁰

SECTION 18 FISHWAY PRESCRIPTION

45. Section 18 of the FPA⁴¹ provides that the Commission shall require the construction, maintenance, and operation by a licensee of such fishways as may be prescribed by the Secretary of the Interior or the Secretary of Commerce, as appropriate.

46. By letter filed July 2, 2010, the Secretary of the Interior requested that the Commission reserve authority to prescribe fishways. Consistent with Commission policy, Article 404 reserves the Commission's authority to require fishways that may be prescribed by Interior for the Brassua Project.

³⁸ See *Erie Boulevard Hydropower, L.P.*, 131 FERC ¶ 61,036, at PP 15-17 (2010) (explaining that a material change to a project's plan of development would involve significant changes to the project's physical features), *aff'd*, *Green Island Power Authority v. FERC*, 497 F. App'x 127 (2d Cir. 2012); *see also* 18 C.F.R. § 4.35(f)(1) (2019).

³⁹ 16 U.S.C. § 1456(c)(3)(A) (2018).

⁴⁰ March 31, 2010 Final License Application, Exhibit E, Appendix E1-1.

⁴¹ 16 U.S.C. § 811 (2018).

THREATENED AND ENDANGERED SPECIES

47. Section 7(a)(2) of the Endangered Species Act of 1973 (ESA)⁴² requires federal agencies to ensure their actions are not likely to jeopardize the continued existence of federally listed threatened and endangered species or result in the destruction or adverse modification of their designated critical habitat.

48. Based on the FWS's Information for Planning and Consultation (IPaC) website,⁴³ two species have the potential to occur in the project area: the federally threatened Canada lynx (*Lynx canadensis*) and northern long-eared bat (*Myotis septentrionalis*). Critical habitat has been designated for the Canada lynx, but not for the northern long-eared bat.

A. Canada Lynx

49. In the final EA,⁴⁴ Commission staff concluded that relicensing the project would have no effect on the Canada lynx because lynx and its prey prefer upland habitats, and make little, if any, use of aquatic or shoreline habitat in the project area.

50. The final EA did not include an assessment of the project's effects on designated critical habitat for the Canada lynx, including whether the preferred action would result in the destruction or adverse modification of critical habitat. Commission staff issued a letter to FWS on February 21, 2020, addressing the project's effects on critical habitat for the Canada lynx. In its letter, staff explained that the FWS's critical habitat designation for Canada lynx coincides with the project boundary,⁴⁵ and that land around Brassua Lake includes a boreal forest landscape that is characteristic of lynx critical habitat. However, Commission staff concluded that relicensing the project is not likely to adversely affect designated Canada lynx critical habitat at the project because any project-related disturbance to lynx habitat would not change the characteristics of the habitat or the ability of lynx to move through the area within their larger home ranges.

⁴² 16 U.S.C. § 1536(a) (2018).

⁴³ See Interior's official list of threatened and endangered species, accessed by staff using the IPaC database (<https://ecos.fws.gov/ipac/>) on March 24, 2020, and placed in the record for Docket No. P-2615-037 on March 24, 2020.

⁴⁴ Final EA at 49.

⁴⁵ 79 Fed. Reg. 54,782-54,846 (September 12, 2014).

On March 25, 2020, FWS concurred with Commission staff's conclusions. Therefore, no further action is required for the Canada lynx or its critical habitat.

B. Northern Long-Eared Bat

51. Following the issuance of the final EA on September 14, 2011, the northern long-eared bat was listed as a federally threatened species under the ESA on May 4, 2015.⁴⁶ The FWS finalized an ESA section 4(d) rule for the northern long-eared bat in January 2016.⁴⁷ The ESA section 4(d) rule focuses on minimizing the effects of disturbances on known northern long-eared bat hibernacula and the effects of tree removal on roosting northern long-eared bats, including maternity colonies, located within the zone associated with the spread of white-nose syndrome. In the programmatic biological opinion for the section 4(d) rule (Programmatic BO),⁴⁸ the FWS found that incidental take of the northern long-eared bat is not prohibited unless the action: (1) affects a northern long-eared bat hibernaculum or could alter the entrance or the environment of a hibernaculum; (2) includes the removal of a known, occupied maternity roost tree or any trees within 150 feet of a known, occupied maternity roost tree during the pup season (June 1 – July 31); or (3) includes the removal of any trees within 0.25 mile of a northern long-eared bat hibernaculum at any time of year.

52. The project is located within the white-nose syndrome buffer zone for the northern long-eared bat.⁴⁹ No hibernacula are known to occur at or near the project. Although there is no documentation of northern long-eared bat at the project, the project includes mature forest that could provide suitable habitat for northern long-eared bat summer roosting and foraging activities. Any northern long-eared bats that are present at the project could be affected by improvements to project recreation facilities (*e.g.*, the development of a new group campsite and trail improvements), and by project

⁴⁶ 80 Fed. Reg. 17,974-18,033 (April 2, 2015).

⁴⁷ 81 Fed. Reg. 9,190-19,222 (January 14, 2016). Section 4(d) of the ESA directs FWS to issue regulations deemed “necessary and advisable to provide for the conservation of threatened species.” *See* 16 U.S.C. § 1533(d) (2018).

⁴⁸ FWS, 2016. *Programmatic biological opinion on final 4(d) rule for the northern long-eared bat and activities excepted from take prohibitions*. U.S. Fish and Wildlife Service, Midwest Regional Office.

⁴⁹ The white-nose syndrome buffer zone encompasses counties within 150 miles of a U.S. county or Canadian district in which white-nose syndrome or the fungus that causes white-nose syndrome is known to have infected bat hibernacula.

maintenance activities that require tree removal (*e.g.*, vegetation maintenance in the transmission line right-of-way).

53. Avoiding the removal of trees at the project from June 1 to July 31 would ensure that prohibited take of northern long-eared bats under the Programmatic BO does not occur during the term of the new license. Therefore, to avoid prohibited take of northern long-eared bat, Article 406 requires that the licensees avoid cutting trees equal to or greater than 3 inches in diameter at breast height within the project boundary from June 1 through July 31, unless a tree poses an immediate threat to human life or property.⁵⁰

54. On September 26, 2019, FWS issued a letter concluding that any take that may occur as a result of the project relicensing is not prohibited under the ESA Section 4(d) rule.⁵¹ Based on the FWS's letter, our responsibilities under section 7(a)(2) with respect to the northern long-eared bat are fulfilled through FWS's 2016 Programmatic BO.

NATIONAL HISTORIC PRESERVATION ACT

55. Under section 106 of the National Historic Preservation Act (NHPA)⁵² and its implementing regulations,⁵³ federal agencies must take into account the effect of any proposed undertaking on properties listed or eligible for listing in the National Register of Historic Places (National Register), defined as historic properties, and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking. This generally requires the Commission to consult with the State Historic Preservation Officer (SHPO) to determine whether and how a proposed action may affect historic properties, and to seek ways to avoid or minimize any adverse effects.

56. To satisfy these responsibilities, the Commission executed a Programmatic Agreement (PA) with the Maine SHPO on October 17, 2011, and invited the licensees to concur with the stipulations of the PA. The licensees concurred. The PA requires the licensees to implement the July 2010 HPMP for the term of the new license. Execution

⁵⁰ Removal of hazardous trees for the protection of human life and property is not prohibited under the section 4(d) rule.

⁵¹ See Commission staff's September 27, 2019 memorandum on Interior's list of threatened and endangered species for the project.

⁵² 54 U.S.C. § 306108 (Pub. L. No. 113-287, 128 Stat. 3188 (2014)).

⁵³ 36 C.F.R. pt. 800 (2019).

of the PA demonstrates the Commission's compliance with section 106 of the NHPA. Article 409 requires the licensees to implement the PA and HPMP.

RECOMMENDATIONS OF FEDERAL AND STATE FISH AND WILDLIFE AGENCIES PURSUANT TO SECTION 10(j) OF THE FPA

57. Section 10(j)(1) of the FPA⁵⁴ requires the Commission, when issuing a license, to include conditions based on recommendations submitted by federal and state fish and wildlife agencies under the Fish and Wildlife Coordination Act,⁵⁵ to “adequately and equitably protect, mitigate damages to, and enhance fish and wildlife (including related spawning grounds and habitat)” affected by the project.

58. On July 2, 2010, the FWS timely filed thirteen fish and wildlife recommendations under section 10(j), including: (1) implement a rule curve for Brassua Lake that follows a natural hydrograph, and does not exceed a 6-foot drawdown from an upper elevation of 1,074.0 feet msl to a lower elevation of 1,068.0 feet msl, to protect aquatic habitat in the littoral zone; (2) achieve the full drawdown of Brassua Lake by February 1 of each year, and maintain the reservoir elevation at that level or above until April 1 to protect burbot spawning habitat; (3)(a) maintain a minimum reservoir elevation of 1,070.5 feet msl from October 1 to November 15 to provide upstream passage for brook trout and landlocked salmon to tributary spawning habitat; (3)(b) conduct annual inspections of the six major tributaries to Brassua Lake to determine their condition; (3)(c) clear the tributaries of woody debris or other materials that may obstruct physical access; (3)(d) report on the results of the survey and measures taken to enhance access; (4)(a) limit reservoir fluctuations from May 15 to July 15 to not exceed an increase of 6 inches or a decrease of 1 foot to prevent the abandonment of common loon nests; (4)(b) conduct weekly monitoring of common loon to determine territorial pairs, nesting attempts, chicks hatched, and chicks fledged; (5) limit the full drawdown of Brassua Lake to 1,060.0 feet msl (14 feet below full pond) to prevent an annual pulse of methyl mercury from the former wetlands that were submerged during the original development of the project; (6) provide web-based, real time monitoring of the reservoir elevations for compliance purposes; (7) implement an alternative flow regime downstream of the dam for the protection and enhancement of brook trout and landlocked salmon habitat; (8) implement flow ramping rates downstream of the dam for protection of critical life stages of landlocked salmon, including: (a) limiting night time and day time ramping rates to 2 inches per hour from November 1 through May 14; and (b) limiting night time ramping rates to 2 inches per hour from May 15 through October 31; (9) investigate and develop a flow plan, if warranted, for the lower Kennebec River to ensure effective passage of anadromous fish; (10) monitor project effects on wetlands and submerged aquatic

⁵⁴ 16 U.S.C. § 803(j)(1) (2018).

⁵⁵ 16 U.S.C. §§ 661, *et seq.* (2018).

vegetation for a period of 15 years; (11) develop and implement plans for the protection and enhancement of bald eagle at the project; (12) develop and implement a plan for the enhancement of wetlands and fish and wildlife habitat by constructing a water control structure and fish passage at the structure in the Fletcher Ponds area; and (13) develop a shoreline management plan that includes provisions for identifying and acquiring sensitive lands, waters, or areas that are hydrologically connected to the operation of the project, for the protection of fish and wildlife resources.

59. Five of the FWS's recommendations are outside the scope of section 10(j) because they are not specific measures to protect, mitigate, or enhance fish and wildlife resources (FWS recommendations 5, 6, 9, 10, and 12).⁵⁶ These five recommendations are evaluated under section 10(a) of the FPA in the next section. The other eight recommendations are within the scope of 10(j); however, as detailed below, seven of the eight recommendations are inconsistent with the purposes and requirements of Part I of the FPA (FWS recommendations 1, 2, 3, 4, 8, 11, and 13). In addition, part of FWS recommendation 7 is inconsistent with the purposes and requirements of section 10(a) of the FPA, and is therefore evaluated in the next section. The license includes the following part of the FWS's recommendation 7: from November 6 through April 30, release a minimum flow of 425 cfs, except when inflow to the project is less than 425 cfs, then release a minimum flow of 250 cfs, or inflow, whichever is greater (Article 401).

60. If the Commission believes that any section 10(j) recommendation may be inconsistent with the purposes and requirements of Part I of the FPA or other applicable law, section 10(j)(2) requires the Commission and the agencies to attempt to resolve any such inconsistency, giving due weight to the recommendations, expertise, and statutory responsibilities of such agencies.⁵⁷ If the Commission still does not adopt a recommendation, it must explain how the recommendation is inconsistent with Part I of the FPA or other applicable law and how the conditions imposed by the Commission adequately and equitably protect, mitigate damages to, and enhance fish and wildlife resources. Below, we discuss the recommendations that are within the scope of section 10(j) but are not included in the license.

61. In the draft EA, Commission staff made an initial determination that seven recommendations and part of an eighth recommendation may be inconsistent with the comprehensive planning standard of section 10(a)(1) and the public interest standard of

⁵⁶ See section 5.4 of the final EA (*Fish and Wildlife Agency Recommendations*).

⁵⁷ 16 U.S.C. § 803(j)(2) (2018).

section 4(e) of the FPA.⁵⁸ By letter issued March 31, 2011, Commission staff advised the FWS of its preliminary determination and attempted to resolve the inconsistencies. By letter filed May 9, 2011, the FWS stated that it agreed with Commission staff's recommendations and analyses regarding protection of common loon nests (FWS recommendation 4) and the flow regime downstream of the project dam to protect and enhance fisheries (FWS recommendation 7). Therefore, the section 10(j) inconsistencies for FWS recommendations 4 and 7 have been resolved.⁵⁹

62. On July 7, 2011, Commission staff held a teleconference with the FWS to attempt to resolve the remaining inconsistencies involving FWS's section 10(j) recommendations 1, 2, 3, 8, 11, and 13.⁶⁰ These issues remain unresolved.

Reservoir Drawdowns

63. FWS recommends (FWS recommendation 1) that the licensees operate the reservoir using a rule curve that follows a natural hydrograph with a maximum drawdown of 6 feet to 1,068.0 feet msl (FWS recommendation 1), in order to maintain aquatic habitat within the littoral zone. In the final EA,⁶¹ Commission staff determined that the existing 24-foot winter drawdown at the project has little to no effect on the benthic macroinvertebrate communities in the littoral zone of Brassua Lake. As to the fishery, the brook trout population in Brassua Lake is wild and self-sustaining, and landlocked salmon and brook trout populations have met or exceeded average state-wide catch rates (fish per angler) for 18 of the 21 years of record from 1987 through 2007.⁶² The average sizes of harvested landlocked salmon and brook trout are similar to the state-wide average harvest size for all Maine lakes. Based on the health of the aquatic community under current conditions, Commission staff found little to no benefit

⁵⁸ Draft EA at 113-117.

⁵⁹ The loon management plan and minimum flow releases that were recommended by Commission staff in the EA are evaluated in the next section of this order, and are required by Articles 405 and 401, respectively).

⁶⁰ At the meeting, staff explained each inconsistency, invited comments from the FWS, Interior, the Maine DIFW, and the licensees, and requested further evidence for staff to consider to attempt to resolve the inconsistencies. *See* Summary of Section 10(j) Meeting (issued July 12, 2011).

⁶¹ Final EA at 25-31, and 107-108.

⁶² Final EA at 24.

associated with FWS's recommendation to limit the winter drawdown to 6 feet. Because the FWS's recommendation would not significantly benefit aquatic resources, the recommendation is not justified in light of its \$51,280 levelized annual cost.⁶³ As discussed in the next section, the reservoir elevation limits required by Article 401 and the Tributary Access Plan required by Article 403 will adequately protect aquatic habitat and fisheries resources in Brassua Lake at relatively little cost compared with FWS's recommendation.

64. FWS recommends that Brassua Lake be drawn down to 1,060 feet msl by no later than February 1 of each year, and then maintained at that level or above until April 1 of each year to protect burbot spawning habitat (FWS recommendation 2). In the EA,⁶⁴ Commission staff noted that on average, the full drawdown of Brassua Lake has historically occurred in the last week of March or as late as early April. The burbot population in Brassua Lake has been self-sustaining under these existing conditions. Additionally, by letter filed August 19, 2010, Maine DIFW submitted information that indicates that burbot spawn at depths greater than 30 feet. There is nothing in the record to indicate that the current drawdown regime, which is essentially the same as the proposed regime, has had adverse effects on the burbot population. For these reasons, the benefits of drawing down the reservoir by February 1 of each year would be small and not justified in light of the \$132,990 levelized annual cost. The elevation limits required by Article 401 will adequately protect burbot during their spawning season at relatively little cost compared with FWS's recommendation.

65. To provide unobstructed access to tributary spawning habitat for brook trout and landlocked salmon, FWS recommends that the licensees maintain a reservoir elevation of 1,070.5 feet msl from October 1 to November 15, conduct annual inspections of the six major tributaries of the reservoir, clear obstructions from the tributaries, and report on inspections and findings (FWS recommendation 3). The licensees' proposed limits on Brassua Lake elevations would maintain the reservoir elevation at or above 1,067.0 feet msl until October 15, after which time the licensees would be permitted to begin the winter drawdown. As discussed above, landlocked salmon and brook trout populations have met or exceeded average state-wide catch rates for 18 of the 21 years of record from 1987 through 2007, and the average sizes of harvested landlocked salmon and brook trout

⁶³ As mentioned below under *Project Economics*, following the issuance of the final EA on September 14, 2011, staff updated the economic analysis, including the levelized annual costs of all protection and mitigation measures to account for the conversion from 2011 dollars to 2019 dollars and updated alternative power cost.

⁶⁴ Final EA at 31 and 108.

are similar to the state-wide average harvest size for all Maine lakes.⁶⁵ The brook trout population in Brassua Lake is wild and self-sustaining, and the landlocked salmon population of Brassua Lake is supported primarily through stocking by the Maine DIFW, although some natural reproduction has been documented. There is no indication that the Maine DIFW intends to discontinue its stocking efforts for landlocked salmon during the term of the license, or that the health of the brook trout population is at risk. Although the drawdown limit of 1,070.5 feet msl recommended by the FWS is in the range of historic and proposed operation, it would reduce the licensees' operational flexibility and ability to meet the attraction and spawning flows downstream of the project in some years, which Maine DIFW has stated is the fisheries management priority.⁶⁶ Based on the tributary spawning access survey that was conducted by the licensees in 2008, and the historical reservoir elevations from September 15 through October 15, staff determined in the EA that the proposed drawdown limit of 1,067.0 feet would provide salmonid spawning access to tributaries that is as good or better than under existing conditions. At elevation 1,067.0 feet, there would be spawning access to the Moose River and Brassua Stream, and at least marginal access to Misery Stream.⁶⁷ Also, as discussed below under Section 10(a), the licensees completed a survey of Misery Stream (in consultation with the Maine DIFW and the FWS) under a range of flow conditions and reservoir elevations and determined in a March 30, 2017 filing that the stream is accessible to spawning brook trout at an elevation of 1,067 feet.

66. The component of the FWS recommendation 3 that specifies annual tributary inspections, obstruction removal, and reporting has an estimated annual cost of \$70,800. In the EA,⁶⁸ Commission staff determined that the measure is unnecessary because the licensees propose to implement a Tributary Access Plan that includes: (1) inspecting and clearing obstructions annually from the mouths of Misery Stream and Brassua Stream (the two streams identified in the pre-filing tributary access study as marginal in their accessibility to spawning salmonids at certain drawdown levels and streamflow conditions); and (2) three years of surveys in Misery Stream for staging salmonids prior to spawning season and salmonid redds after spawning season. The licensees' proposed Tributary Access Plan requires fewer annual inspections than FWS's recommendation, and can substantively meet the objective of the FWS's recommendation at a much lower cost of \$14,456 per year.

⁶⁵ Final EA at 24.

⁶⁶ August 19, 2010 letter filed by Maine DIFW.

⁶⁷ Final EA at 30.

⁶⁸ Final EA at 29-30, and 108-109.

67. For the reasons discussed above, the reservoir elevation limits required by Article 401 and the Tributary Access Plan required by Article 403 will adequately protect spawning salmonids in Brassua Lake.

Downstream Flow Releases

68. FWS recommends that the licensees implement seasonal ramping rates for the purpose of protecting salmonid fry and parr from stranding and potential mortality downstream of the project (FWS recommendation 8). There is nothing in the record to suggest that stranding-related mortality of salmonid fry and parr is occurring at the project, or that such mortality is adversely affecting salmonid populations in the lower Moose River downstream of the project.⁶⁹ Data from the wild salmon production study suggest that parr are abundant in the downstream reach. Currently, the licensees are allowed to operate with daily peaking from November 6 until the spring freshet, and also from July 1 until August 31. Implementing the FWS's recommended year-round ramping rates would virtually eliminate peaking as a mode of operation. Based on the abundance of wild salmon parr in the downstream reach and a lack of evidence that the project is adversely affecting salmon populations in the downstream reach, there is no justification for implementing the FWS's recommended seasonal ramping rates, which would cost \$23,590 annually. Therefore, this license does not require ramping rates. As discussed below, Article 401 includes operational limits (flow releases and reservoir elevations) that will ensure the continued protection of the downstream salmon population.

Fish and Wildlife Management

69. The FWS recommends that the licensees develop and implement plans for the protection and enhancement of bald eagle within one year of license issuance (FWS recommendation 11). No project effects on bald eagles have been identified.⁷⁰ The licensees currently participate in a cooperative effort with the State of Maine to monitor bald eagle nests at Brassua Lake, and in 2009, the licensees observed one nesting pair of bald eagles that successfully hatched two young. Because the measure would not have any clear benefits and does not appear to be related to any specific project effects, there is no justification for requiring the development and implementation of plans for the protection and enhancement of bald eagles, which would cost approximately \$5,970 annually. Accordingly, this license does not require plans for the protection and enhancement of bald eagle.

⁶⁹ Final EA at 37 and 111.

⁷⁰ Final EA at 45-46, and 113-114.

70. To protect bald eagle nesting areas, Article 408 of the license requires the licensees to include a provision in the Shoreline Management Plan for identifying bald eagle nesting areas and evaluate any proposed shoreline development in the immediate vicinity of a bald eagle nesting area in consultation with resource agencies.

Protection of Shoreline Resources

71. FWS recommends that the licensees develop and implement a Shoreline Management Plan that identifies site-specific opportunities for the protection of fish and wildlife resources through the acquisition of property interests on sensitive land contiguous with project land, water, or areas that are hydrologically connected to the operation of the project (FWS Recommendation 13).

72. Although FWS references potential future development in the vicinity of the project as justification for this measure, FWS has not identified how the project is adversely affecting sensitive land outside of the current project boundary, or how the procurement of additional property interests in the vicinity of the project would reduce project effects. In addition, approximately 364,241 acres of land surrounding Brassua and Moosehead lakes has been placed in a permanent conservation easement, including land that is located adjacent to approximately 34 miles of the western shoreline of Brassua Lake.⁷¹ The licensees' proposed Shoreline Management Plan also describes designated areas that support sensitive habitats (*e.g.*, wetlands, shorebird habitat, deer wintering areas, loon nesting areas, salmonid spawning streams, furbearer habitat) as "Resource Zones."⁷² The Shoreline Management Plan states that if significant impacts to a resource in a Resource Zone cannot be avoided, offset, or mitigated, then the non-hydropower related development activity proposed for that Resource Zone would generally not be allowed. As discussed in the next section, Article 408 requires the licensees to revise the Shoreline Management Plan in consultation with the FWS and the Maine DIFW to include additional information regarding the identification of sensitive environmental areas, and the procedures for reviewing and approving shoreline development in these areas.

73. Although the FWS has not defined the extent of the property interest acquisition envisioned by its recommendation, the amount of land required to satisfy the FWS's recommendation would likely be large and excessively expensive, and would pose an undue burden on both the licensees and the landowners. Therefore, we conclude that the public benefits associated with the acquisition of additional private property, as discussed above, do not justify the cost.

⁷¹ Final EA at 67-69.

⁷² See March 31, 2010 license application at Appendix E3-6 at 52-53.

74. For the above reasons, in accordance with FPA section 10(j)(2)(A), FWS's recommendations 1, 2, 3, 8, 11, and 13 are inconsistent with the comprehensive planning standard of section 4(e) and 10(a)(1) of the FPA. In accordance with section 10(j)(2)(B) of the FPA, the measures required by this license will adequately and equitably protect, mitigate damages to, and enhance fish and wildlife resources affected by the Brassua Project.

SECTION 10(a)(1) OF THE FPA

75. Section 10(a)(1) of the FPA⁷³ requires that any project for which the Commission issues a license be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce; for the improvement and utilization of waterpower development; for the adequate protection, mitigation, and enhancement of fish and wildlife; and for other beneficial public uses, including irrigation, flood control, water supply, recreation, and other purposes.

A. FWS Recommendations

76. FWS submitted five recommendations that are not specific measures to protect, mitigate damages to, or enhance fish and wildlife. Consequently, the measures are considered under the broad public interest standard of section 10(a)(1) of the FPA.

1. Project Operation

77. FWS recommends limiting the full annual drawdown of Brassua Lake to 1,060.0 feet msl (14 feet below full pond compared to the current 24 feet) to prevent an annual pulse of methyl mercury from wetlands that were submerged during construction of the project. FWS states that the measure is necessary to "lessen the continuing impact of mercury contamination in fish and aquatic organisms."

78. The EA assessed this issue and notes that studies of mercury contamination from reservoir sediments into organisms and the food chain have been inconclusive in demonstrating that drawdowns are causative factors in mercury mobilization.⁷⁴ The EA concluded that FWS's recommendation would not likely provide any significant benefits associated with mercury contamination in fish and wildlife, and would reduce the licensees' operational flexibility and ability to meet downstream flow priorities in some years. Accordingly, the measure is not required by the license.

2. Operation Compliance Monitoring Plan

⁷³ 16 U.S.C. § 803(a)(1) (2018).

⁷⁴ Final EA at 109-110.

79. The licensees' March 2010 Minimum Flow and Reservoir Elevation Monitoring Plan filed with the license application, includes provisions for: (1) continuous monitoring of flows based on the electrical output of the generator; (2) releasing the minimum flow through the deep gates that will automatically open to pre-determined gate settings in the event the generator is offline; and (3) continuous monitoring of reservoir elevations using an existing pond level sensor. The licensees propose to file annual reports with the Commission on the flow and reservoir monitoring data, and to submit data to resource agencies within 30 days of a data request from the agencies. FWS recommends web-based, real-time monitoring of the reservoir elevation.

80. The proposed monitoring plan would help the licensees document compliance with the operational provisions of the license, and provide a mechanism for reporting deviations. The monitoring plan would also help the Commission verify that the project is operating in compliance with the license, thereby facilitating administration of the license and assisting with the protection of resources that are sensitive to deviations from normal operating conditions.

81. In the EA, Commission staff determined that the licensees' current and proposed methods of monitoring are adequate for compliance monitoring purposes and the web-based, real-time monitoring recommended by FWS would not be worth the cost. Accordingly, staff did not recommend web-based, real-time monitoring,⁷⁵ and this license does not require it.

82. In the EA,⁷⁶ Commission staff determined that the licensees' proposal lacked clarification regarding the circumstances under which deviations from the operating requirements of the license (*i.e.*, seasonal reservoir levels and minimum flow releases) could occur. For example, Commission staff explained that the licensees did not clearly describe their proposal for deviating from the operating requirements of the license during certain abnormal conditions, such as "snowpack conditions." Commission staff recommended that the licensees incorporate the provisions of the proposed Minimum Flow and Reservoir Elevation Monitoring Plan into an operation compliance monitoring plan. Article 402 requires the licensees to develop an operation compliance monitoring plan that incorporates the provisions of the Minimum Flow and Reservoir Elevation Monitoring Plan, and the following additional provisions: (1) standard operating procedures to be implemented outside of normal operating conditions; and (2) definitions

⁷⁵ Final EA at 101-102.

⁷⁶ Final EA at 37-38, and 102.

of all hydrologic conditions and emergency electrical system conditions under which deviations from the operational requirements of the license would be allowed.

3. Flows in the Lower Kennebec River

83. FWS recommends that the licensees investigate and develop a flow plan, “if warranted,” for the lower Kennebec River to ensure the safe, timely, and effective passage of anadromous fish. FWS states that the Brassua Project is part of a water storage system for the Kennebec River that also includes Moosehead Lake and Flag Staff Lake, and that the project could contribute flow during low flow conditions in the lower Kennebec River that may impede the migration of anadromous fish.

84. Under the licensees’ proposal, there would be little or no change in flows in the lower Kennebec River and no change in passage conditions for anadromous fish. In the EA,⁷⁷ Commission staff did not recommend the measure because there is no evidence in the record to suggest that anadromous fish passage in the lower Kennebec River is inhibited by the existing flow regime or operation of the Brassua Project. Accordingly, this measure is not included in this license.

4. Fletcher Ponds Water Control Structure

85. FWS recommends that the licensees develop and implement a plan, in consultation with the FWS and the Maine DIFW, to construct a water control structure⁷⁸ with fish passage in the Fletcher Ponds area.⁷⁹ FWS states that such a structure would: (1) increase the extent of the wetlands in the Fletcher Ponds area from 125.8 acres to 278.1 acres by stabilizing water levels upstream of the control structure; (2) improve fish

⁷⁷ Final EA at 38-39.

⁷⁸ The recommended structure would consist of a 140-foot-long weir with an elevation of 1,072 feet msl (two feet below the full pond elevation of 1,074 feet msl), that includes a fish passageway from Brassua Lake to the tributaries that provide water to the Fletcher Ponds area. *See* FWS’s July 25, 2011 additional information filing.

⁷⁹ The Fletcher Ponds are located on the margin of the main body of the Fletcher Stream section of the reservoir. Though these ponds are hydraulically connected to the reservoir via subsurface flow, and the ponds are located in the project boundary, a berm of sandy soil separates them from the main reservoir and helps to maintain water levels within these areas, even when the main reservoir is significantly drawn down.

passage during the fall season when the impoundment is drawn down; and (3) improve habitat for wildlife for several wildlife species.

86. In the EA, Commission staff determined that FWS did not provide enough information in its recommendation to evaluate the costs and benefits of the Fletcher Ponds water control structure and fish passage facility.⁸⁰ Commission staff concluded that the water depth upstream of the water control structure would likely be similar to the existing/proposed conditions for a substantial portion of the wetland plant growing season.⁸¹ Therefore, any increase in wetland acreage and wildlife habitat would be substantially less than FWS has predicted.⁸² Further, Commission staff determined that, although the FWS measure could benefit furbearers and birds in the Fletcher Ponds area during the fall and winter, the proposed reservoir elevation limits, Loon Management Plan, and Shoreline Management Plan would provide sufficient benefits to these species throughout the project area relative to the existing conditions.⁸³ Because the potential benefits of this measure to fish are unknown and they would be small or minor for wetlands and wildlife, staff did not recommend including it in any license issued for the project. Therefore, because the benefits of FWS's recommendation for fish and wildlife are minimal, the cost of the measure is substantial, and because other measures included in this license (*i.e.*, the reservoir elevation limits required by Article 401, the Loon Management Plan required by Article 405, and the Shoreline Management Plan required by Article 408) would benefit wildlife species at the project relative to existing

⁸⁰ Final EA at 39. In the EA, staff explained that, if passage is designed for fall-spawning salmonids and improves tributary spawning access to Black and Fletcher Streams, then increased spawning success and juvenile salmonid production from those two streams may occur. However, staff explained that there would be less fish passage benefit for fish that spawn in the late spring and early summer, when Brassua Lake would be at or above the FWS-recommended weir elevation.

⁸¹ The historical average water level for Brassua Lake from 1990 through 2008 was approximately at or above 1,072 feet msl from mid-May through the end of July. See Figure E3-4 of the March 31, 2010 license application. Also, the Licensees propose, and Article 401 requires, the reservoir to be maintained at or above an elevation of 1,072 feet msl from the end of the spring refill (in May) through June 15, at or above an elevation of 1,071 feet msl from June 16 through July 31, and at or above an elevation of 1,069 feet msl from August 1 through September 15.

⁸² Final EA at 48.

⁸³ Final EA at 112.

conditions, this license does not require the FWS's recommendation to install a water control structure with fish passage at the Fletcher Ponds area.

5. Wetland Monitoring

87. FWS recommends that the licensees implement a program to monitor wetlands and submerged aquatic vegetation for a period of 15 years to determine how wetlands may be impacted by the project and to determine what enhancement/mitigation measures are needed to address these effects.

88. In the EA,⁸⁴ Commission staff determined that the licensees' proposed reservoir elevation limits would not significantly change water levels compared to current conditions, and that the licensees' proposed elevation limits would have little or no effect on wetlands. Commission staff concluded that because the proposed elevation limits would not substantively effect wetlands, the benefits of the monitoring program would not be worth the cost. FWS's recommendation does not provide any specific detail about how the monitoring program would benefit wetlands, nor does the recommendation include any specific enhancement measures that would benefit wetlands. Therefore, the benefits of the monitoring program are unclear, and the license does not require it.

B. Tributary Access for Fish Spawning

89. To improve access to tributaries for fish spawning during the fall, the licensees propose to implement the March 2010 Tributary Access Plan filed with the license application, which includes provisions for conducting: (1) annual inspections to clear woody debris and other obstructions near the mouths of two tributaries to Brassua Lake (Brassua Stream and Misery Stream); and (2) a 3-year study to: (a) determine if adult salmonids have access to Misery Stream under a variety of inflows and lake elevations, and (b) make recommendations, if appropriate, for improving salmonid spawning access to Misery Stream. On March 30, 2017, the licensees filed a report that achieved the objectives of (2)(a) and 2(b).⁸⁵ The report demonstrates that Misery Stream is accessible to spawning brook trout at a range of stream flows and reservoir elevations, including an elevation of 1,067 feet msl.

⁸⁴ Final EA at 113.

⁸⁵ On March 30, 2017, the licensees filed a report on the accessibility of Misery Stream. The study was conducted, and the report prepared in consultation with the Maine DEP, the Maine DIFW, and the FWS.

90. In the EA,⁸⁶ Commission staff recommended the Tributary Access Plan, concluding that access to Misery and Brassua streams could be improved by the inspections and any associated debris removal. Because the licensees' March 30, 2017 filing accomplished the objectives of determining the accessibility of Misery Stream, that component of the Tributary Access Plan is no longer necessary. Therefore, to ensure the ongoing accessibility of Misery Stream and Brassua Stream throughout the license term, Article 403 requires the licensees to implement the Tributary Access Plan with the exception of the Misery Stream Salmonid Access Study.

C. Mercury Monitoring

91. To advance the understanding of mercury contamination in the region, the licensees propose a Mercury Monitoring Plan that includes collecting blood and feather samples from loons and bald eagles at the project every five years for analysis of mercury concentrations. The licensees explain that mercury concentrations in birds located at Brassua Lake and other lakes in the Moose River Basin appear to have somewhat elevated mercury concentrations over those that have been found in some other areas in Maine.

92. In the EA,⁸⁷ Commission staff determined that the Brassua Project is not the cause of increased mercury levels in the local environment and wildlife. Therefore, this license does not require the licensees to implement the Mercury Monitoring Plan.

D. Loon Management

93. Loon nesting success can be affected by reservoir level fluctuations, and loons at the project have experienced nesting failures.⁸⁸ The licensees propose to implement a Loon Management Plan to enhance loon nesting success. The proposed Loon Management Plan includes provisions for the annual deployment, monitoring, and maintenance of artificial nesting rafts, as well as the monitoring of nesting success. The annual number of rafts deployed would be based on the monitoring results of nesting attempts from the previous season.

94. In the EA,⁸⁹ Commission staff determined that nest failures due to water level fluctuations can be avoided with the deployment of artificial nesting rafts, which

⁸⁶ Final EA at 29-30.

⁸⁷ Final EA at 46-47, and 112-113.

⁸⁸ See March 31, 2010 license application at E4-100 to E4-101.

⁸⁹ Final EA at 44-45.

provide more suitable nesting locations for the loons than can be found along the shoreline. Commission staff concluded that the proposed Loon Management Plan addresses the two major causes of loon nest failure on Brassua Lake (*i.e.*, water level fluctuation and nest predation), with the implementation of nesting rafts and the installation of predator guards on the rafts. Commission staff also concluded that the flexibility of the plan to implement and relocate loon nesting rafts as necessary based on weekly monitoring results would likely increase loon nest success. Therefore, Article 405 requires that the licensees implement the Loon Management Plan.

E. Recreation Facilities Management

95. The project's recreation facilities currently include: (1) the Brassua Dam and River Access Area, which includes a parking area, portable toilet, access trails to the Moose River below Brassua Dam, and riverbank fishing downstream of Brassua dam; (2) an 800-foot-long canoe portage trail located on the north side of Brassua dam; and (3) and the Misery Cove Boat Launch, which provides a single lane, concrete boat ramp and a parking lot for up to 10 vehicles with trailers. There are also four non-project, primitive campsites around Brassua Lake, two of which are on non-project land, and two of which are partially located on project lands.

96. The licensees propose to implement a Recreation Facilities Management Plan that includes the following provisions: (1) operate and maintain the existing project recreation facilities; (2) improve the canoe portage trail by installing a wooden canoe rest on the trail; (3) install up to three picnic tables and a portable toilet at the Misery Cove Boat Launch; (4) ensure that a total of at least four primitive campsites are available for public use along the Brassua Lake shoreline throughout the term of the new license;⁹⁰ (5) develop a new group campsite near the existing canoe portage trail to increase camping opportunities in the vicinity of the trail; (6) improve accessibility to the Brassua Dam and River Access Area by grading and leveling the access trail to the south shore of the Moose River below the dam; and (7) conduct annual site inspections and maintenance at the project recreation facilities, and conduct a recreation use survey every six years. In addition, the licensees propose to maintain the reservoir at or above 1,069 feet msl until September 15th to ensure boat access to Misery Cove Boat Launch is maintained throughout the summer recreation season for motorized and non-motorized boats; and

⁹⁰ The licensees propose to replace the four non-project, primitive campsites if any of the sites become unusable, or closed to the public. If required, the licensees propose to acquire any additional land rights and expand the project boundary to accommodate new campsite locations.

maintain the reservoir at or above 1,067 feet msl between September 16th and October 15th to ensure boat access for non-motorized vessels.

97. In the EA, Commission staff recommended the implementation of the proposed Recreation Facilities Management Plan, along with additional staff-recommended measures, to protect and enhance recreation opportunities at the project.⁹¹ Article 407 requires the licensees to revise the plan to include additional staff-recommended measures discussed below.

98. The Misery Cove Boat Launch is the only formal boat launch at the project and is located in a cove with relatively shallow water. In the EA⁹², Commission staff determined that the licensees' proposed reservoir elevations would ensure motorized and non-motorized boat access at the Misery Cove Boat Launch through the summer recreation season, and non-motorized boating access from September 16th to October 15th. However, the licensees have needed to periodically excavate Misery Cove in the past to remove a gravel bar that develops in the cove over time and prevents boat access to Brassua Lake. In the EA, Commission staff recommended that the licensees periodically monitor and excavate the gravel bar, as necessary, to ensure boat access is maintained at the site.⁹³ Article 407 requires the Recreation Facilities Management Plan to include procedures for monitoring and conducting periodic excavation of the gravel bar at the Misery Cove Boat Launch to ensure that boating access is maintained at elevations of 1,067.0 feet msl or higher.

99. In the EA,⁹⁴ to provide a means for the public to obtain information about recreation at the project, Commission staff recommended that the licensees create a public website that describes recreation opportunities at the project.⁹⁵ Staff also recommended that the licensees continue to maintain their toll-free "FLOW phone system" that provides anticipated pond levels and river flow information at the project for local recreationists and visitors during the recreation season (April through October).

⁹¹ Final EA at 56-62, and 101.

⁹² Final EA at 58 and 101.

⁹³ Final EA at 103.

⁹⁴ Final EA at 61.

⁹⁵ Final EA at 105. *See also* 18 C.F.R. § 8.1 (2019).

Commission staff recommended that the public website clearly display the telephone number for the toll-free “FLOW phone system.” Article 407 requires the licensees to: (1) maintain a toll-free phone system that is updated daily to provide anticipated pond levels and river flow information at the project for the following day; and (2) maintain a public website that: (a) describes recreational access at the project; (b) describes the amenities available at each project recreation facility; (c) includes a map of the project recreation facilities; and (d) displays the telephone number for the toll-free phone system.

100. In the EA, Commission staff recommended revising the Recreation Facilities Management Plan to establish detailed plans for monitoring recreation use/demand, and modifying recreational facilities in response to changes in demand.⁹⁶ Commission staff recommended that the plan include procedures for the licensees to consult with interested parties on the development of the monitoring plans and provide interested parties with an opportunity to comment on the analysis and conclusions of the licensees’ monitoring efforts. Commission staff stated that these measures would ensure that the needs of recreational users are appropriately considered throughout the term of any license. On a related issue, Commission staff recommended that the licensees revise the plan to clarify how overuse or misuse at the group campsite would be monitored and managed.⁹⁷

101. While the Recreation Facilities Management Plan already includes provisions for monitoring and managing the project recreation facilities during the license term, it lacks specificity on the monitoring timing and frequency. Section 6.3 of the plan (*Recreation Use Monitoring*) states that the licensees will conduct a recreation use survey every six years, including: (1) spot counts at each of the sites to determine site utilization and parking area capacity; (2) identification of different types of recreation that are being conducted; and (3) an overall assessment of site conditions. Section 6.3 does not provide details on the frequency and timing of the spot counts. A specific schedule for conducting spot counts would help ensure that the spot counts adequately capture the utilization and capacity of recreation facilities at the project. Conducting spot counts on eight weekdays and five weekends, including one holiday weekend (Memorial Day, Independence Day, or Labor Day) between May 31 and October 1, and between the hours of 8 a.m. and 5 p.m., would allow the licensees to capture an accurate representation of all types of recreation use at the project over the course of the recreation season. Article 407 requires that the Recreation Facilities Management Plan be revised to include this schedule for conducting spot counts at the project recreation facilities.

⁹⁶ Final EA at 104-105.

⁹⁷ Final EA at 104.

102. Section 6.3 of the Recreation Facilities Management Plan (*Recreation Use Monitoring*) states that the licensees will conduct the recreation use survey every six years in conjunction with the filing of the FERC Form 80 report. However, the Commission has eliminated the Form 80 reporting requirements for hydropower projects and no longer requires the Form 80 report as a recreation use monitoring tool.⁹⁸ Based on the potential for future residential development in the immediate vicinity of the project that could increase the demand for recreation access over the term of the license, Article 407 requires the licensees to conduct the recreation use survey every five years instead of every six years.⁹⁹ A five-year cycle will help ensure that the recreation use survey adequately captures changes in recreation use and demand during the term of the license.

103. Finally, Article 407 requires the following additional measures to update the plan since it was filed on March 31, 2010: (1) remove references to the FERC Form 80 reporting requirement; (2) include a provision for filing with the Commission the results of the recreation use survey, including any comments received from interested parties about the survey, and any conclusions regarding the need for additional access areas or the need to modify existing project recreation sites; and (3) update the plan to reflect any improvements or modifications that have been made to project recreation facilities since the plan was filed.

F. Shoreline Management

104. The licensees propose to implement a Shoreline Management Plan that includes procedures (*e.g.*, a list of allowable and prohibited uses, permitting programs and guidelines, shoreline classification maps, a monitoring and enforcement program, and provisions for periodic review of the plan in consultation with the resource agencies) for undertaking non-project development activities in the project boundary. Non-project activities would include improvements such as docks, jetties, boathouses, and steps that property owners (who own up to the 1,076-foot contour elevation that serves as the project boundary) install within the project boundary to access the water. As part of the proposed Shoreline Management Plan, the licensees propose to identify and designate shoreline areas with sensitive habitat or cultural resources. The licensees propose to subject any proposed development within these “resource zones” to more scrutiny, including consultation with resource agencies.

⁹⁸ *Elimination of Form 80 and Revision of Regulations on Recreational Opportunities and Development at Licensed Hydropower Projects*, Order No. 852, 165 FERC ¶ 61,256 (2018).

⁹⁹ See Final EA at 67 and 104-105.

105. In the EA, Commission staff recommended the proposed Shoreline Management Plan to protect terrestrial and aquatic habitat on project lands along the shoreline of Brassua Lake.¹⁰⁰ However, Commission staff determined the licensees' plan lacks detail regarding how sensitive shoreline areas will be protected. Revising the SMP to include procedures for reviewing proposed shoreline development near known bald eagle and loon nesting sites would allow the altering of resource protection areas based upon habitat changes.¹⁰¹ Commission staff recommended revising the Shoreline Management Plan to include procedures for: (1) identifying new loon and bald eagle nesting sites and (2) reviewing proposed shoreline development activities near bald eagle and loon nesting sites, in consultation with resource agencies.¹⁰² Article 408 requires the filing, for Commission approval, of the proposed Shoreline Management Plan with additional procedures for identifying sensitive areas and reviewing and approving development proposals that are located near sensitive areas.

G. Project Boundary

106. Project boundaries are to enclose “only those lands necessary for operation and maintenance of the project and for other project purposes, such as recreation, shoreline control, or protection of environmental resources.”¹⁰³

107. The current project boundary encloses the dam, impoundment, powerhouse, tailrace, transmission line, and some project recreational facilities. However, as discussed in the final EA,¹⁰⁴ the proposed Exhibit G project boundary map excludes the angler access trail on the south bank of the lower Moose River below the dam. Article 203 requires the licensees to file a revised project boundary map that bring into the project boundary all licensed project facilities, including the angler access trail on the south bank of the lower Moose River below the dam.

ADMINISTRATIVE PROVISIONS

A. Annual Charges

¹⁰⁰ Final EA at 70-76, and 101.

¹⁰¹ Final EA at 107.

¹⁰² Final EA at 43-46, and 107.

¹⁰³ See 18 C.F.R. § 4.41(h)(2) (2019).

¹⁰⁴ Final EA at 106.

108. The Commission collects annual charges from licensees for administration of the FPA. Article 201 provides for the collection of funds for administration of the FPA.

B. Exhibit F and G Drawings

109. The Commission requires licensees to file sets of approved project drawings in electronic file format. Article 202 requires the filing of the Exhibit F drawings.

110. In addition to the project boundary discussion above, the Exhibit G drawings filed with the license application do not conform to sections 4.39 and 4.41 of the Commission's regulations because they do not provide the project boundary data in a geo-referenced electronic format, such as ArcView shape files, GeoMedia files, MapInfo files, or any similar format. Article 203 requires the licensees to file revised Exhibit G drawings that include all licensed project facilities, and to file the revised project boundary in a geo-referenced electronic format in conformance with sections 4.39 and 4.41 of the Commission's regulations.

C. Amortization Reserve

111. The Commission requires that for new major licenses, non-municipal licensees must set up and maintain an amortization reserve account upon license issuance. Article 204 requires the establishment of the account.

D. Headwater Benefits

112. Some projects directly benefit from headwater improvements that were constructed by other licensees, the United States, or permittees. Article 205 requires the licensees to reimburse such entities for these benefits if they were not previously assessed and reimbursed.

E. Modification of Project Facilities

113. Article 301 requires the licensees to coordinate with the Commission's Division of Dam Safety and Inspections – New York Regional Office about any proposed modifications resulting from environmental requirements that would affect project works, dam safety, or project operation.

F. Operational Deviations

114. To provide for administrative efficiency and allow the licensees the flexibility to quickly address project-related situations requiring short-term deviations, Article 401 allows planned, short-term deviations from the reservoir elevation limits and minimum flow release requirements of the license after mutual agreement among the licensees, the FWS, the Maine DIFW, and the Maine DEP. The article specifies reporting procedures the licensees must follow regarding such planned deviations. Article 401 also includes

reporting requirements that the licensees must follow in the event of unplanned deviations from operational requirements, based on the duration of the event, and any observed or reported effects of the deviations. Under the article, unplanned deviations from the reservoir elevation limits or the minimum flow release requirements that do not exceed three hours in duration (from the time the deviation starts until the time compliance is resumed) and for which there are no observed or reported environmental effects, do not need to be reported to the Commission individually, but can instead be included in an annual report that describes these minor incidents. Unplanned deviations from the reservoir elevation limits or the minimum flow release requirements that exceed three hours in duration must be reported to the Commission individually.

G. Use and Occupancy of Project Lands and Waters

115. Requiring a licensee to obtain prior Commission approval for every use or occupancy of project land would be unduly burdensome. Therefore, Article 410 allows the licensees to grant permission, without prior Commission approval, for the use and occupancy of project lands for such minor activities as landscape planting. Such uses must be consistent with the purposes of protecting and enhancing the scenic, recreational, and environmental values of the project.

STATE AND FEDERAL COMPREHENSIVE PLANS

116. Section 10(a)(2)(A) of the FPA,¹⁰⁵ requires the Commission to consider the extent to which a project is consistent with federal or state comprehensive plans for improving, developing, or conserving a waterway or waterways affected by the project.¹⁰⁶ Under section 10(a)(2)(A), federal and state agencies filed 38 comprehensive plans that address various resources in Maine. Of these, the Commission staff identified and reviewed eight comprehensive plans relevant to this project.¹⁰⁷ No conflicts were found.

APPLICANT'S PLANS AND CAPABILITIES

117. In accordance with sections 10(a)(2)(C) and 15(a) of the FPA,¹⁰⁸ Commission staff evaluated the licensees' record for the following areas: (A) conservation efforts; (B) compliance history and ability to comply with the new license; (C) safe management, operation, and maintenance of the project; (D) ability to provide efficient and reliable

¹⁰⁵ 16 U.S.C. § 803(a)(2)(A) (2018).

¹⁰⁶ Comprehensive plans for this purpose are defined at 18 C.F.R. § 2.19 (2019).

¹⁰⁷ The list of applicable plans can be found in section 5.5 of the final EA for the project.

¹⁰⁸ 16 U.S.C. §§ 803(a)(2)(C) and 808(a) (2018).

electric service; (E) need for power; (F) transmission services; (G) cost effectiveness of plans; and (H) actions affecting the public. This order adopts Commission staff's findings in each of the following areas.

A. Conservation Efforts

118. Section 10(a)(2)(C) of the FPA requires the Commission to consider the electricity consumption improvement program of the applicant, including its plans, performance, and capabilities for encouraging or assisting its customers to conserve electricity cost-effectively, taking into account the published policies, restrictions, and requirements of state regulatory authorities. The licensees sell the project's energy to the wholesale market administered by the Independent System Operator of New England (ISO New England).

119. Given the limits of their ability to influence users of the electricity generated by the project, the licensees comply with section 10(a)(2)(C) of the FPA.

B. Compliance History and Ability to Comply with the New License

120. Based on a review of the licensees' compliance with the terms and conditions of the existing license, Commission staff finds that the licensees' overall record of making timely filings and complying with their license is satisfactory. Therefore, Commission staff believes that the licensees can satisfy the conditions of a new license.

C. Safe Management, Operation, and Maintenance of the Project

121. Commission staff has reviewed the licensees' record of management, operation, and maintenance of the Brassua Project pursuant to the requirements of 18 C.F.R. Part 12 and the Commission's Engineering Guidelines and periodic Independent Consultant's Safety Inspection Reports. Commission staff concludes that the dam and other project works are safe, and that there is no reason to believe that the licensees cannot continue to safely manage, operate, and maintain these facilities under a new license.

D. Ability to Provide Efficient and Reliable Electric Service

122. Commission Staff has reviewed the licensees' plans and their ability to operate and maintain the project in a manner most likely to provide efficient and reliable electric service. Commission Staff's review indicates that the licensees regularly inspect the project turbine-generator units to ensure they continue to perform in an optimal manner, schedules maintenance to minimize effects on energy production, and since the project has been in operation, has undertaken several initiatives to ensure the project is able to operate reliably into the future. Commission staff concludes that the licensees are

capable of operating the project to provide efficient and reliable electric service in the future.

E. Need for Power

123. The Brassua project has an installed capacity of 4.18 MW and an average annual energy production of about 18,180 MWh from 1990 through 2009. The project provides power to the wholesale power market.

124. To assess the need for power, Commission staff looked at the needs in the operating region in which the project is located. The Brassua Project is located within the Northeast Power Coordinating Council's New England region (NPCC-New England) of the North American Electric Reliability Corporation (NERC). NERC annually forecasts electrical supply and demand nationally and regionally for a 10-year period. According to NERC's 2019 Long-Term Reliability Assessment, the summer internal demand for this region is projected to decrease by 0.2 percent from 2019 to 2029. The anticipated reserve margin is forecasted to range from 32.24 percent in 2020 to 27.12 percent in 2029. The NPCC-New England assessment area is forecasted to meet NPCC-New England's reference reserve margin of 18.5 percent in 2020, 18.0 percent in 2021, and 17.8 percent in 2022 through 2029.

125. Although demand is projected to decrease in the region, the project's power will continue to help meet the regional need for power.

F. Transmission Services

126. The project provides power to the region through the open market administered by ISO New England. Project power is transmitted to the regional grid through a 2,000-foot-long, 34.5-kilovolt transmission line. The licensees are proposing no changes that would affect their own or other transmission services in the region. The project and project transmission lines are important elements in providing power and voltage control to the region.

G. Cost Effectiveness of Plans

127. The licensees do not propose to add new project facilities, but do propose changes to project operation that include minor refinements to the existing project operation, including minor changes to the seasonal reservoir elevation limits and minimum flow releases. The licensees are also proposing a number of measures to enhance environmental resources affected by the project. Based on the licensees' record under the existing license, these plans are likely to be carried out in a cost-effective manner.

H. Actions Affecting the Public

128. The licensees provided opportunities for public involvement in the development of their application for a new license for the Brassua Project. In addition, during the previous license period, the licensees operated the project in a manner that supported recreation activities, including boating and fishing in the Moose River upstream and downstream of the project. The licensees also use the project to help meet regional power needs.

PROJECT ECONOMICS

129. In determining whether to issue a new license for an existing hydroelectric project, the Commission considers a number of public interest factors, including the economic benefits of project power. Under the Commission's approach to evaluating the economics of hydropower projects, as articulated in *Mead Corporation*,¹⁰⁹ the Commission uses current costs to compare the costs of the project and likely alternative power with no forecasts concerning potential future inflation, escalation, or deflation beyond the license issuance date. The basic purpose of the Commission's economic analysis is to provide a general estimate of the potential power benefits and the costs of a project, and of reasonable alternatives to project power. The estimate helps to support an informed decision concerning what is in the public interest with respect to a proposed license.

130. In applying this analysis to the Brassua Project, Commission staff considered three options: the no-action alternative, the licensees' proposal, and the project as licensed herein.¹¹⁰

131. Under the no-action alternative, the project would continue to operate as it does now. The project has an installed capacity of 4.18 MW, and generates an average of 18,180 MWh of electricity annually. The average annual project cost is about \$1,958,713, or \$107.74/MWh. When an estimate of average generation is multiplied by the alternative power cost of \$80.31/MWh,¹¹¹ the total value of the project's power is

¹⁰⁹ 72 FERC ¶ 61,027 (1995).

¹¹⁰ Details of Commission staff's economic analysis for the project as licensed herein, and for the other two alternatives, are included in section 4 of the final EA. Following the issuance of the final EA on September 14, 2011, staff updated the economic analysis to account for the conversion from 2011 dollars to 2019 dollars and updated alternative power cost.

¹¹¹ The energy portion of the power cost (\$35.47/MWh of the \$80.31 per MWh) is based on the average energy value for the period of September 2018 to August 2019, as obtained from the ISO New England at <http://www.iso-ne.com>. The capacity portion of

\$1,459,959, in 2019 dollars. To determine whether the proposed project is currently economically beneficial, the project's cost is subtracted from the value of the project's power. Therefore, the project costs \$498,677, or \$27.43MWh, more to produce power than the likely alternative cost of power.

132. As proposed by the licensees, the levelized annual cost of operating the project is \$2,123,424, or \$116.80/MWh. The proposed project would generate an average of 18,180 MWh of energy annually. When the estimate of average generation is multiplied by the alternative power cost of \$80.31/MWh, the total value of the project's power is \$1,459,959, in 2019 dollars. Therefore, in the first year of operation, the project would cost \$663,388, or \$36.49/MWh, more than the likely alternative cost of power.

133. As licensed herein, the levelized annual cost of operating the project is \$2,101,790, or \$115.61/MWh. The proposed project would generate an average of 18,180 MWh of energy annually. When the estimate of average generation is multiplied by the alternative power cost of \$80.31/MWh, the total value of the project's power is \$1,459,959, in 2019 dollars. Therefore, in the first year of operation, the project would cost \$641,754, or \$35.30/MWh, more than the likely alternative cost of power.

134. In considering public interest factors, the Commission takes into account that hydroelectric projects offer unique operational benefits to the electric utility system (ancillary service benefits). These benefits include the ability to help maintain the stability of a power system, such as by quickly adjusting power output to respond to rapid changes in system load; and to respond rapidly to a major utility system or regional blackout by providing a source of power to help restart fossil-fuel based generating stations and put them back on line.

135. Although our analysis shows that the project as licensed herein would cost more to operate than our estimated cost of alternative power, it is the applicants who must decide whether to accept the license and any financial risk that it entails.

136. Although Commission staff does not explicitly account for the effects inflation may have on the future cost of electricity, the fact that hydropower generation is relatively insensitive to inflation compared to fossil-fueled generators is an important economic consideration for power producers and the consumers they serve. This is one reason project economics is only one of the many public interest factors the Commission considers in determining whether or not, and under what conditions, to issue a license.

the power value is based on the annual cost of the hydro-equivalent natural gas-fired combined-cycle capacity, which staff estimated to be about \$195/kilowatt-year.

COMPREHENSIVE DEVELOPMENT

137. Sections 4(e) and 10(a)(1) of the FPA¹¹² require the Commission to give equal consideration to the power development purposes and to the purposes of energy conservation; the protection, mitigation of damage to, and enhancement of fish and wildlife; the protection of recreational opportunities; and the preservation of other aspects of environmental quality. Any license issued must be such as in the Commission's judgment will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for all beneficial public uses. The decision to license this project, and the terms and conditions included herein, reflect such consideration.

138. The EA for the project contains background information, analysis of effects, and support for related license articles. Based on the record of this proceeding, including the EA and the comments thereon, licensing the Brassua Project as described in this order would not constitute a major federal action significantly affecting the quality of the human environment. The project will be safe if operated and maintained in accordance with the requirements of this license.

139. Based on Commission staff's independent review and evaluation of the Brassua Project, recommendations from the resource agencies and other stakeholders, and the no-action alternative, as documented in the EA, the project as licensed herein, is selected and found to be best adapted to a comprehensive plan for improving or developing the Moose River.

140. This alternative was selected because: (1) issuance of a new license will serve to maintain a beneficial and dependable source of electric energy; (2) the required environmental measures will protect and enhance fish and wildlife resources, threatened and endangered species, recreational resources, and historic properties; and (3) the 4.18 MW of electric capacity comes from a renewable resource that does not contribute to atmospheric pollution.

LICENSE TERM

141. Section 15(e) of the FPA¹¹³ provides that any new license issued shall be for a term that the Commission determines to be in the public interest, but not less than 30 years or more than 50 years.

¹¹² 16 U.S.C. §§ 797(e) and 803(a)(1) (2018).

¹¹³ 16 U.S.C. § 808(e) (2018).

142. On October 19, 2017, the Commission established a 40-year default license term policy for original and new licenses, effective as of October 26, 2017.¹¹⁴ The Policy Statement provides for exceptions to the 40-year default license term under certain circumstances: (1) establishing a shorter or longer license term if necessary to coordinate license terms for projects located on the same river basin; (2) deferring to a shorter or longer license term explicitly agreed to in a generally-supported comprehensive settlement agreement; and (3) establishing a longer license term upon a showing by the license applicant that substantial voluntary measures were either previously implemented during the prior license term, or substantial new measures are expected to be implemented under the new license.

143. Because none of the above exceptions apply in this case, a 40-year license for the Brassua Project is appropriate.

The Director Orders:

(A) This license is issued to Brookfield White Pine Hydro LLC, Merimil Limited Partnership, and Eagle Creek Kennebec Hydro, LLC (licensees), for a period of 40 years, effective the first day of the month in which this order is issued, to operate and maintain the Brassua Hydroelectric Project. This license is subject to the terms and conditions of the Federal Power Act (FPA), which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the FPA.

(B) The project consists of:

(1) All lands, to the extent of the licensees' interests in these lands, described in the project description and the project boundary discussion of this order.

(2) Project works consisting of: (a) a 1,789-foot-long dam that includes: (i) a 410-foot-long earthen embankment section with a concrete core wall and topped with a 3.5-foot-high wave barrier; (ii) a 342-foot-long concrete-faced earth embankment topped with a 3.5-foot-high wave barrier; (iii) a 284-foot-long Ambursen-type slab and buttress spillway section with five vertical slide gates, a log sluice steel slide gate, ten wooden stoplog slots, four deep gates with a bottom elevation of 1,034.0 feet mean sea level (msl) connected to four 6-foot-diameter outlet pipes that are located at the base of the spillway, and a crest elevation of 1,074 feet msl at the top of the vertical slide gates; (iv) a 19-foot-long inactive concrete fishway section; and (v) a 734-foot-long north embankment section with a concrete core wall and topped with a 3.5-foot-high wave barrier; and (b) a

¹¹⁴ *Policy Statement on Establishing License Terms for Hydroelectric Projects*, 160 FERC 161 ¶ 61,078 (2017) (Policy Statement); 82 Fed. Reg. 49,501 (2017).

7.75-mile-long, 9,400-acre reservoir with a gross and usable storage volume of 207,000 acre-feet at a normal maximum elevation of 1,074 feet msl.

The powerhouse and its associated facilities include: (a) a reinforced-concrete intake structure equipped with a trashrack with 3-inch clear-bar spacing; (b) two headgates; (b) a 108-foot-long, 13-foot-high by 12-foot-wide underground steel penstock that transitions to a 12-foot-diameter steel penstock; (c) a 60-foot-long, 33-foot-wide reinforced-concrete powerhouse with a 4.18-megawatt horizontal Kaplan turbine-generator unit; and (d) a 40-foot-wide, 60-foot-long tailrace.

Other project facilities include: (a) a 2,000-foot-long, 34.5-kV transmission line that connects the turbine-generator unit to the regional grid; and (b) appurtenant facilities.

The project works generally described above are more specifically shown and described by those portions of Exhibits A and F shown below:

Exhibit A: Pages A-1 through A-21 of the Exhibit A filed on March 31, 2010.

Exhibit F: The following drawings filed on March 31, 2010:

Exhibit F Drawing	FERC Drawing No. P-2615-	Drawing Title	Filename Drawing Title¹¹⁵
F-1	1001	Plan and Elevation of Project Structures	Plan of Structures
F-2	1002	Sections of Dam	Sections of Dam
F-3	1003	Sections of Dam	Sections of Dam
F-4	1004	Sections of Powerhouse and Intake	Sections of Project

(3) All of the structures, fixtures, equipment or facilities used to operate or maintain the project, all portable property that may be employed in connection with the project, and all riparian or other rights that are necessary or appropriate in the operation or maintenance of the project.

¹¹⁵ These exact drawing titles must be used in the filename when filing the electronic file format drawings required in license Article 202. Commission staff shortened the drawing titles due to filename character limits. There is no need to modify the titles as they appear on the drawings.

(C) The Exhibits A and F described above are approved and made part of the license. The Exhibit G drawings filed on March 31, 2010, do not conform to Commission regulations and are not approved.

(D) This license is subject to the articles set forth in Form L-3, (October 1975), entitled “Terms and Conditions of License for Constructed Major Project Affecting Navigable Waters of the United States” (*see* 54 F.P.C. 1792, *et seq.*), as reproduced at the end of this order, and the following additional articles:

Article 201. *Administrative Annual Charges.* The licensees must pay the United States annual charges, effective the first day of the month in which the license is issued, and as determined in accordance with provisions of the Commission’s regulations in effect from time to time, for the purposes of reimbursing the United States for the cost of administration of Part I of the Federal Power Act. The authorized installed capacity for that purpose is 4.18 megawatts.

Article 202. *Exhibit F Drawings.* Within 45 days of the effective date of this license, as directed below, the licensees must file two sets of the approved exhibit drawings in electronic file format on compact disks with the Secretary of the Commission, ATTN: OEP/DHAC.

(1) Digital images of the approved exhibit drawings must be prepared in electronic format. Prior to preparing each digital image, the FERC Project-Drawing Number (*i.e.*, P-2615-1001 through P-2615-1004) must be shown in the margin below the title block of the approved drawing. Exhibit F drawings must be segregated from other project exhibits, and identified as **Critical Energy Infrastructure Information (CEII) material under 18 C.F.R. § 388.113**. Each drawing must be a separate electronic file, and the file name must include: FERC Project-Drawing Number, FERC Exhibit, Filename Drawing Title, date of the license, and a file extension in the following format [P-2615-1001, F-1, Plan of Structures, MM-DD-YYYY.TIF].

All digital images of the exhibit drawings must meet the following format specification:

IMAGERY – black and white raster file
 FILE TYPE – Tagged Image File Format (TIFF), CCITT Group 4
 (also known as T.6 coding scheme)
 RESOLUTION – 300 dots per inch (dpi) desired, (200 dpi minimum)
 DRAWING SIZE FORMAT – 22” X 34” (minimum), 24” X 36” (maximum)
 FILE SIZE – less than 1 megabyte desired.

Article 203. *Exhibit G Drawings.* Within 120 days of the effective date of the license, the licensees must file, for Commission approval, revised Exhibit G drawings

that bring into the project boundary all licensed project facilities, including the angler access trail on the south bank of the lower Moose River below the dam. The Exhibit G drawings must comply with sections 4.39 and 4.41(h) of the Commission's regulations, including by providing the revised Exhibit G in a geo-referenced electronic format such as ArcView shape files, GeoMedia files, MapInfo files, or any similar format.

Article 204. Amortization Reserve. Pursuant to section 10(d) of the Federal Power Act, a specified reasonable rate of return upon the net investment in the project must be used for determining surplus earnings of the project for the establishment and maintenance of amortization reserves. The licensees must set aside in a project amortization reserve account at the end of each fiscal year one half of the project surplus earnings, if any, in excess of the specified rate of return per annum on the net investment. To the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year, the licensees must deduct the amount of that deficiency from the amount of any surplus earnings subsequently accumulated, until absorbed. The licensees must set aside one-half of the remaining surplus earnings, if any, cumulatively computed, in the project amortization reserve account. The licensees must maintain the amounts established in the project amortization reserve account until further order of the Commission.

The specified reasonable rate of return used in computing amortization reserves must be calculated annually based on current capital ratios developed from an average of 13 monthly balances of amounts properly included in the licensees' long-term debt and proprietary capital accounts as listed in the Commission's Uniform System of Accounts. The cost rate for such ratios must be the weighted average cost of long-term debt and preferred stock for the year, and the cost of common equity must be the interest rate on 10-year government bonds (reported as the Treasury Department's 10-year constant maturity series) computed on the monthly average for the year in question plus four percentage points (400 basis points).

Article 205. Headwater Benefits. If the licensees' project was directly benefited by the construction work of another licensee, a permittee, or the United States on a storage reservoir or other headwater improvement during the term of the prior license (including extensions of that term by annual licenses), and if those headwater benefits were not previously assessed and reimbursed to the owner of the headwater improvement, the licensees must reimburse the owner of the headwater improvement for those benefits, at such time as they are assessed, in the same manner as for benefits received during the term of this new license. The benefits will be assessed in accordance with Part 11, Subpart B, of the Commission's regulations.

Article 301. Project Modification Resulting from Environmental Requirements. If environmental requirements under this license require modification that may affect the project works or operations, the licensees must consult with the Commission's Division

Dam Safety and Inspections – New York Regional Engineer. Consultation must allow sufficient review time for the Commission to ensure that the proposed work does not adversely affect the project works, dam safety, or project operation.

Article 401. Project Operation. The licensees must operate the project according to the following requirements:

Minimum Flow Releases

To protect aquatic resources downstream of the project, the licensees must release through the turbines or the deep gates at the dam, the following seasonal minimum flows from the project:

(a) from May 1 through September 15 of each year, the licensees must release a minimum flow of 358 cubic feet per second (cfs); however, when daily inflow is less than 358 cfs, the licensees must release a minimum of 250 cfs or inflow, whichever is greater;

(b) from September 16 through October 15, when daily inflows are between 425 cfs and 1,200 cfs, the licensees must release a flow between 800 and 1,200 cfs; when daily inflow is less than 425 cfs, the licensees must release a minimum flow of 250 cfs or inflow, whichever is greater; and when daily inflow is greater than 1,200 cfs and the reservoir elevation is at or above 1,073.0 feet mean sea level (msl), there is no minimum flow release requirement (i.e., the licensees may pass flows greater than 1,200 cfs to manage the elevation of the reservoir);

(c) from October 16 through November 5, when daily inflow is greater than or equal to 425 cfs, the licensees must release a flow of 425 cfs; when daily inflow is less than 425 cfs, the licensees must release a minimum flow of 250 cfs or inflow, whichever is greater; and when the reservoir elevation is above 1,073.0 feet msl, there is no minimum flow release requirement (i.e., the licensees may pass flows necessary to manage the inflow and the reservoir surface elevation); and

(d) from November 6 through April 30, the licensees must release a minimum flow of 425 cfs; however, when daily inflow is less than 425 cfs, the licensees must release a minimum flow of 250 cfs or inflow, whichever is greater.

Reservoir Elevation Limits

To protect aquatic, terrestrial, and recreational resources at the project, the licensees must maintain the following seasonal reservoir elevation limits:

(a) from the end of the spring refill in May through June 15, the licensees must maintain the reservoir elevation at or above 1,072.0 feet msl;

(b) from June 16 through July 31, the licensees must maintain the reservoir elevation at or above 1,071.0 feet msl;

(c) from August 1 through September 15, the licensees must maintain the reservoir elevation at or above 1,069.0 feet msl;

(d) from September 16 through October 15, the licensees must maintain the reservoir elevation at or above 1,067.0 feet msl; and

(e) after October 16 and until the end of the spring refill in May, the reservoir elevation must be maintained at no lower than 1,050.0 feet msl; with the exception that in years with “snowpack conditions” (as defined in the Operation Compliance Monitoring Plan required by Article 402), the reservoir elevation must be maintained at an elevation no lower than 1,045.0 feet msl.

Planned Deviations

Minimum flow release requirements and reservoir elevation requirements may be temporarily modified for short periods, of up to 3 weeks, after mutual agreement among the licensees and the U.S. Fish and Wildlife Service, the Maine Department of Inland Fisheries and Wildlife, and the Maine Department of Environmental Protection (collectively, resource agencies). After concurrence from the resource agencies, the licensees must file a report with the Secretary of the Commission as soon as possible, but no later than 14 calendar days after the onset of the planned deviation. The report must include: (1) the reasons for the deviation and how project operations were modified, (2) the duration and magnitude of the deviation, (3) any observed or reported environmental effects, and (4) documentation of consultation with the resource agencies. For planned deviations exceeding 3 weeks, the licensees must file an application for a temporary amendment of the operational requirements of this license, and receive Commission approval prior to implementation.

Unplanned Deviations Lasting More Than 3 Hours or Resulting in Environmental Effects

If the licensees deviate from the operational requirements, the licensees must report each incident to the Secretary of the Commission. For any unplanned deviation from the operational requirements that lasts longer than 3 hours or results in visible environmental effects such as a fish kill, the licensees must file a report no later than 14 calendar days after each such incident. The report must include: (1) the cause of the deviation; (2) the duration and magnitude of the deviation; (3) any pertinent operational and/or monitoring data; (4) a timeline of the incident and the licensee’s response; (5) any comments or correspondence received from the resource agencies, or confirmation that

no comments were received from the resource agencies; (6) documentation of any observed or reported environmental effects; and (7) a description of measures implemented to prevent similar deviations in the future.

Unplanned Deviations Lasting 3 Hours or Less with No Environmental Effects

For unplanned deviations from minimum flow release requirements and reservoir elevation requirements lasting 3 hours or less that do not result in environmental effects, the licensees must file an annual report by January 31 describing each incident up to 1 month prior to the reporting date, including: (1) the cause of the deviation; (2) the duration and magnitude of the deviation; (3) any pertinent operational and/or monitoring data; (4) a timeline of the incident and the licensee's response to each deviation; (5) any comments or correspondence received from the resource agencies, or confirmation that no comments were received from the resource agencies; and (6) a description of measures implemented to prevent similar deviations in the future.

Article 402. Operation Compliance Monitoring Plan. Within 6 months of the effective date of the license, the licensees must file with the Commission, for approval, an Operation Compliance Monitoring Plan that describes how the licensees will document compliance with the operational requirements of this license. The plan must include the provisions of the Minimum Flow and Reservoir Elevation Monitoring Plan that was filed as Appendix E3-1 of Exhibit E of the March 31, 2010 license application, and the following additional provisions:

(1) a detailed description of how the licensees will document compliance with the operational requirements of the license (as required by Article 401), including:
(a) descriptions of the monitoring frequency for documenting reservoir elevations and minimum flow releases; and (b) a log for documenting reservoir elevations and minimum flow releases;

(b) a description of the mechanisms and structures (*i.e.*, type and exact locations of all flow and reservoir elevation monitoring equipment and gages) to be used for maintaining compliance with operational requirements, procedures for maintaining and calibrating monitoring equipment, and the methods and frequency for reporting monitoring data to the Commission, and the U.S. Fish and Wildlife Service, the Maine Department of Inland Fisheries and Wildlife, and the Maine Department of Environmental Protection (collectively, resource agencies);

(c) standard operating procedures to be implemented outside of normal operating conditions, including during: (a) scheduled facility shutdowns and maintenance, and impoundment drawdowns and impoundment refilling associated with scheduled facility shutdowns and maintenance; and (b) emergency conditions such as unscheduled facility

shutdowns and maintenance;

(d) definitions of all hydrologic conditions and emergency electrical system conditions under which deviations from the operational requirements listed in Article 401 would be allowed, including but not limited to “snowpack conditions;” a description of the criteria used to determine if such conditions exist; and a proposed date by which such determinations will be made each year and filed with the Commission; and

(e) a schedule for installing any monitoring equipment needed to document compliance with the operational requirements of the license.

The licensees must prepare the plan after consultation with the resource agencies. The licensees must include with the plan documentation of consultation with the resource agencies; copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies; and specific descriptions of how the agencies’ comments are accommodated by the plan. The licensees must allow a minimum of 30 days for the resource agencies to comment and to make recommendations before filing the plan with the Commission. If the licensees do not adopt a recommendation, the filing must include the licensees’ reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan must not begin until the plan is approved by the Commission. Upon Commission approval, the licensees must implement the plan, including any changes required by the Commission.

Article 403. *Tributary Access Plan.* The licensees must implement the Tributary Access Plan that was filed as Appendix E3-2 of Exhibit E of the March 31, 2010 license application with the exception of section 5 (Misery Stream Salmonid Access Study).

Article 404. *Reservation of Authority to Prescribe Fishways.* Authority is reserved to the Commission to require the licensees to construct, operate, and maintain, or to provide for the construction, operation, and maintenance of such fishways as may be prescribed by the Secretary of the Interior or Secretary of Commerce pursuant to section 18 of the Federal Power Act.

Article 405. *Loon Management Plan.* The licensees must implement the Loon Management Plan that was filed as Appendix E3-3 of Exhibit E of the March 31, 2010 license application, to enhance loon nesting success in Brassua Lake.

Article 406. *Northern Long-Eared Bat Protection Measures.* The licensees must avoid cutting trees equal to or greater than 3 inches in diameter at breast height on project lands from June 1 through July 31, unless a tree poses an immediate threat to human life

or property.

Article 407. Recreation Facilities Management Plan. Within six months of the effective date of this license, the licensees must file with the Commission, for approval, a final Recreation Facilities Management Plan that includes the measures described in the Recreation Facilities Management Plan that was filed as Appendix E3-5 of Exhibit E of the March 31, 2010 license application, and the following additional measures:

(a) monitor and conduct periodic excavation of the gravel bar at the Misery Cove Boat Launch to ensure that boating access is maintained at elevations of 1,067.0 feet msl or higher;

(b) conduct the proposed recreation use survey every five years instead of every six years;

(c) during the recreation use survey, conduct spot counts at each project recreation facility to determine site utilization and capacity on eight weekdays and five weekends, including one holiday weekend (Memorial Day, Independence Day, or Labor Day) between May 31 and October 1, and between the hours of 8 a.m. and 5 p.m.;

(d) continue to maintain a toll-free phone system that is updated daily at 6 p.m. from April to October to provide the anticipated elevation levels of Brassua Lake and river flow from dam for the following day;

(e) provide a public internet site that: (1) describes recreational access at the project; (2) describes the amenities available at each project recreation facility; (3) includes a map of the project recreation facilities; and (4) displays the telephone number for the toll-free phone system; and

(f) file with the Commission the results of the recreation use survey, including any comments received from interested parties about the survey, and any conclusions regarding the need for additional access areas or expansion of existing project recreation sites, by April 1 of each year following the recreation use survey.

The Recreation Facilities Management Plan must also be updated to reflect any improvements or modifications that have been made to project recreation facilities since the plan was filed on March 31, 2010. In addition, references to the FERC Form 80 reporting requirement must be removed from the Recreation Facilities Management Plan.

The licensees must prepare the plan after consultation with the Maine Department of Inland Fisheries and Wildlife, the Maine Bureau of Parks and Lands, the Maine Department of Conservation, and the U.S. Fish and Wildlife Service (collectively, resource agencies). The licensees must include with the plan: (1) documentation of

consultation with the resource agencies; (2) copies of comments and recommendations on the completed plan after it has prepared and provided to the resource agencies; and (3) specific descriptions of how their comments are accommodated by the plan. The licensees must allow a minimum of 30 days for the resource agencies to comment and to make recommendations before filing the plan with the Commission. If the licensees do not adopt a recommendation, the filing must include the licensees' reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan must not begin until the plan is approved by the Commission. Upon Commission approval, the licensees must implement the plan, including any changes required by the Commission.

Article 408. Shoreline Management Plan. Within six months of the effective date of this license, the licensees must file with the Commission, for approval, a final Shoreline Management Plan that includes provisions of the Shoreline Management Plan that was filed as Appendix E3-6 of Exhibit E of the March 31, 2010 license application, and the following additional provisions:

(a) procedures for identifying sensitive environmental areas (*e.g.*, wetlands, smelt and brook trout spawning areas), and for reviewing and approving shoreline development in these areas, in consultation with the U.S. Fish and Wildlife Service and the Maine Department of Inland Fisheries and Wildlife (collectively, resource agencies); and

(b) procedures for identifying new sites of loon and bald eagle nests and for reviewing and approving any proposed shoreline development that would be near known bald eagle and loon nesting sites, in consultation with resource agencies.

The plan must be prepared in consultation with resource agencies. The licensees must include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has prepared and provided to the resource agencies, and specific descriptions of how their comments are accommodated by the plan. The licensees must allow a minimum of 30 days for the resource agencies to comment before filing the plan with the Commission. If the licensees do not adopt a recommendation, the filing must include the licensees' reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan must not begin until the plan is approved by the Commission. Upon Commission approval, the licensees must implement the provisions of the plan, including any changes required by the Commission.

Article 409. Programmatic Agreement and Historic Properties Management

Plan. The licensees must implement the “Programmatic Agreement Between the Federal Energy Regulatory Commission and the Maine State Historic Preservation Officer for Managing Historic Properties that May be Affected by Issuing a License for the Brassua Hydroelectric Project in Somerset County, Maine (FERC No. 2615),” executed on October 17, 2011, and including but not limited to the Historic Properties Management Plan (HPMP) for the project. In the event that the Programmatic Agreement is terminated, the licensees must continue to implement the provisions of the approved HPMP. The Commission reserves the authority to require changes to the HPMP at any time during the term of the license.

Article 410. Use and Occupancy. (a) In accordance with the provisions of this article, the licensees must have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain types of use and occupancy, without prior Commission approval. The licensees may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the licensees must also have continuing responsibility to supervise and control the use and occupancies for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed, under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the licensees for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the licensees must take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, canceling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The type of use and occupancy of project lands and waters for which the licensees may grant permission without prior Commission approval are: (1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 water craft at a time and where said facility is intended to serve single-family type dwellings; (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline; and (4) food plots and other wildlife enhancement. To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the licensees must require multiple use and occupancy of facilities for access to project lands or waters. The licensees must also ensure, to the satisfaction of the Commission's authorized representative, that the use and occupancies for which it grants permission are maintained in good repair and comply with applicable state and local health and safety requirements. Before granting permission for construction of bulkheads or retaining walls, the licensees must: (1) inspect the site of the proposed construction, (2) consider whether the planting of vegetation or the use of riprap would be adequate to control

erosion at the site, and (3) determine that the proposed construction is needed and would not change the basic contour of the impoundment shoreline. To implement this paragraph (b), the licensees may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the licensees' costs of administering the permit program. The Commission reserves the right to require the licensees to file a description of their standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.

(c) The licensees may convey easements or rights-of-way across, or leases of project lands for: (1) replacement, expansion, realignment, or maintenance of bridges or roads where all necessary state and federal approvals have been obtained; (2) storm drains and water mains; (3) sewers that do not discharge into project waters; (4) minor access roads; (5) telephone, gas, and electric utility distribution lines; (6) non-project overhead electric transmission lines that do not require erection of support structures within the project boundary; (7) submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69-kV or less); and (8) water intake or pumping facilities that do not extract more than one million gallons per day from a project impoundment. No later than January 31 of each year, the licensees must file with the Commission a report briefly describing for each conveyance made under this paragraph (c) during the prior calendar year, the type of interest conveyed, the location of the lands subject to the conveyance, and the nature of the use for which the interest was conveyed. No report filing is required if no conveyances were made under paragraph (c) during the previous calendar year.

(d) The licensees may convey fee title to, easements or rights-of-way across, or leases of project lands for: (1) construction of new bridges or roads for which all necessary state and federal approvals have been obtained; (2) sewer or effluent lines that discharge into project waters, for which all necessary federal and state water quality certification or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary federal and state approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 water craft at a time and are located at least one-half mile (measured over project waters) from any other private or public marina; (6) recreational development consistent with an approved report on recreational resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is five acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from project waters at normal surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year. At least 60 days before conveying any interest in project lands under this paragraph (d), the licensees must file a

letter with the Commission, stating their intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G map may be used), the nature of the proposed use, the identity of any federal or state agency official consulted, and any federal or state approvals required for the proposed use. Unless the Commission's authorized representative, within 45 days from the filing date, requires the licensees to file an application for prior approval, the licensees may convey the intended interest at the end of that period.

(e) The following additional conditions apply to any intended conveyance under paragraph (c) or (d) of this article:

(1) Before conveying the interest, the licensees must consult with federal and state fish and wildlife or recreation agencies, as appropriate, and the State Historic Preservation Officer.

(2) Before conveying the interest, the licensees must determine that the proposed use of the lands to be conveyed is not inconsistent with any approved report on recreational resources of an Exhibit E; or, if the project does not have an approved report on recreational resources, that the lands to be conveyed do not have recreational value.

(3) The instrument of conveyance must include the following covenants running with the land: (i) the use of the lands conveyed must not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; (ii) the grantee must take all reasonable precautions to ensure that the construction, operation, and maintenance of structures or facilities on the conveyed lands will occur in a manner that will protect the scenic, recreational, and environmental values of the project; and (iii) the grantee must not unduly restrict public access to project lands or waters.

(4) The Commission reserves the right to require the licensees to take reasonable remedial action to correct any violation of the terms and conditions of this article, for the protection and enhancement of the project's scenic, recreational, and other environmental values.

(f) The conveyance of an interest in project lands under this article does not in itself change the project boundaries. The project boundaries may be changed to exclude land conveyed under this article only upon approval of revised Exhibit G drawings (project boundary maps) reflecting exclusion of that land. Lands conveyed under this article will be excluded from the project only upon a determination that the lands are not necessary for project purposes, such as operation and maintenance, flowage, recreation, public access, protection of environmental resources, and shoreline control, including shoreline aesthetic values. Absent extraordinary circumstances, proposals to exclude lands conveyed under this article from the project must be consolidated for consideration when revised Exhibit G drawings would be filed for approval for other purposes.

(g) The authority granted to the licensees under this article must not apply to any part of the public lands and reservations of the United States included within the project boundary.

(F) The licensees must serve copies of any Commission filing required by this order on any entity specified in this order to be consulted on matters related to that filing. Proof of service on these entities must accompany the filing with the Commission.

(G) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 8251 (2018), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2019). The filing of a request for rehearing does not operate as a stay of the effective date of this license or of any other date specified in this order. The licensees' failure to file a request for rehearing must constitute acceptance of this order.

for
Terry L. Turpin
Director
Office of Energy Projects

Form L-3
(October, 1975)

FEDERAL ENERGY REGULATORY COMMISSION

**TERMS AND CONDITIONS OF LICENSE FOR CONSTRUCTED
MAJOR PROJECT AFFECTING NAVIGABLE
WATERS OF THE UNITED STATES**

Article 1. The entire project, as described in this order of the Commission, shall be subject to all of the provisions, terms, and conditions of the license.

Article 2. No substantial change shall be made in the maps, plans, specifications, and statements described and designated as exhibits and approved by the Commission in its order as a part of the license until such change shall have been approved by the Commission: Provided, however, That if the Licensee or the Commission deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval a revised, or additional exhibit or exhibits covering the proposed changes which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or in part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.

Article 3. The project area and project works shall be in substantial conformity with the approved exhibits referred to in Article 2 herein or as changed in accordance with the provisions of said article. Except when emergency shall require for the protection of navigation, life, health, or property, there shall not be made without prior approval of the Commission any substantial alteration or addition not in conformity with the approved plans to any dam or other project works under the license or any substantial use of project lands and waters not authorized herein; and any emergency alteration, addition, or use so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in project works, or in uses of project lands and waters, or divergence from such approved exhibits may be made if such changes will not result in a decrease in efficiency, in a material increase in cost, in an adverse environmental impact, or in impairment of the general scheme of development; but any of such minor changes made without the prior approval of the Commission, which in its judgment have produced or will produce any of such results, shall be subject to such alteration as the Commission may direct.

Article 4. The project, including its operation and maintenance and any work incidental to additions or alterations authorized by the Commission, whether or not conducted upon lands of the United States, shall be subject to the inspection and

supervision of the Regional Engineer, Federal Energy Regulatory Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him such information as he may require concerning the operation and maintenance of the project, and any such alterations thereto, and shall notify him of the date upon which work with respect to any alteration will begin, as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall submit to said representative a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of any such alterations to the project. Construction of said alterations or any feature thereof shall not be initiated until the program of inspection for the alterations or any feature thereof has been approved by said representative. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may prescribe from time to time for the protection of life, health, or property.

Article 5. The Licensee, within five years from the date of issuance of the license, shall acquire title in fee or the right to use in perpetuity all lands, other than lands of the United States, necessary or appropriate for the construction maintenance, and operation of the project. The Licensee or its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water rights, and rights or occupancy and use; and none of such properties shall be voluntarily sold, leased, transferred, abandoned, or otherwise disposed of without the prior written approval of the Commission, except that the Licensee may lease or otherwise dispose of interests in project lands or property without specific written approval of the Commission pursuant to the then current regulations of the Commission. The provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear; and mortgage or trust deeds or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article.

Article 6. In the event the project is taken over by the United States upon the termination of the license as provided in Section 14 of the Federal Power Act, or is transferred to a new licensee or to a non-power licensee under the provisions of Section

15 of said Act, the Licensee, its successors and assigns shall be responsible for, and shall make good any defect of title to, or of right of occupancy and use in, any of such project property that is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and shall pay and discharge, or shall assume responsibility for payment and discharge of, all liens or encumbrances upon the project or project property created by the Licensee or created or incurred after the issuance of the license: Provided, That the provisions of this article are not intended to require the Licensee, for the purpose of transferring the project to the United States or to a new licensee, to acquire any different title to, or right of occupancy and use in, any of such project property than was necessary to acquire for its own purposes as the Licensee.

Article 7. The actual legitimate original cost of the project, and of any addition thereto or betterment thereof, shall be determined by the Commission in accordance with the Federal Power Act and the Commission's Rules and Regulations thereunder.

Article 8. The Licensee shall install and thereafter maintain gages and stream-gaging stations for the purpose of determining the stage and flow of the stream or streams on which the project is located, the amount of water held in and withdrawn from storage, and the effective head on the turbines; shall provide for the required reading of such gages and for the adequate rating of such stations; and shall install and maintain standard meters adequate for the determination of the amount of electric energy generated by the project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission or its authorized representative. The Commission reserves the right, after notice and opportunity for hearing, to require such alterations in the number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, as are necessary to secure adequate determinations. The installation of gages, the rating of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of the project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision, or cooperation for such periods as may be mutually agreed upon. The Licensee shall keep accurate and sufficient records of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

Article 9. The Licensee shall, after notice and opportunity for hearing, install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so.

Article 10. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other

projects or power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 11. Whenever the Licensee is directly benefited by the construction work of another licensee, a permittee, or the United States on a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance, and depreciation thereof as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United States, the Licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the cost of making the determinations pursuant to the then current regulations of the Commission under the Federal Power Act.

Article 12. The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of the Army, as may be necessary for the purposes of navigation on the navigable waterway affected; and the operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Secretary of the Army may prescribe in the interest of navigation, and as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes, and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Secretary of the Army may prescribe in the interest of navigation, or as the Commission may prescribe for the other purposes hereinbefore mentioned.

Article 13. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall permit such reasonable use of its reservoir or other project properties, including works, lands and water rights, or parts thereof, as may be ordered by the Commission, after notice and opportunity for hearing, in the interests of comprehensive development of the waterway or waterways involved and the conservation and utilization of the water resources of the region for water supply or for the purposes of steam-electric, irrigation, industrial, municipal or similar uses. The Licensee shall receive reasonable compensation for use of its reservoir or other project properties or parts thereof for such purposes, to include at least full reimbursement for any damages or expenses which the joint use causes the Licensee to incur. Any such compensation shall be fixed by the Commission either by approval of an agreement between the Licensee and the party or parties benefiting or after notice

and opportunity for hearing. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot concurrently be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

Article 14. In the construction or maintenance of the project works, the Licensee shall place and maintain suitable structures and devices to reduce to a reasonable degree the liability of contact between its transmission lines and telegraph, telephone and other signal wires or power transmission lines constructed prior to its transmission lines and not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling or obstructing traffic or endangering life. None of the provisions of this article are intended to relieve the Licensee from any responsibility or requirement which may be imposed by any other lawful authority for avoiding or eliminating inductive interference.

Article 15. The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance, and operation of such reasonable facilities, and comply with such reasonable modifications of the project structures and operation, as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing.

Article 16. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of the Licensees' lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be reasonably prescribed by the Commission in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 17. The Licensee shall construct, maintain, and operate, or shall arrange for the construction, maintenance, and operation of such reasonable recreational facilities, including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities, and utilities, giving consideration

to the needs of the physically handicapped, and shall comply with such reasonable modifications of the project, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal or State agencies, after notice and opportunity for hearing.

Article 18. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and for outdoor recreational purposes, including fishing and hunting: Provided, That the Licensee may reserve from public access such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property.

Article 19. In the construction, maintenance, or operation of the project, the Licensee shall be responsible for, and shall take reasonable measures to prevent, soil erosion on lands adjacent to streams or other waters, stream sedimentation, and any form of water or air pollution. The Commission, upon request or upon its own motion, may order the Licensee to take such measures as the Commission finds to be necessary for these purposes, after notice and opportunity for hearing.

Article 20. The Licensee shall clear and keep clear to an adequate width lands along open conduits and shall dispose of all temporary structures, unused timber, brush, refuse, or other material unnecessary for the purposes of the project which results from the clearing of lands or from the maintenance or alteration of the project works. In addition, all trees along the periphery of project reservoirs which may die during operations of the project shall be removed. All clearing of the lands and disposal of the unnecessary material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission and in accordance with appropriate Federal, State, and local statutes and regulations.

Article 21. Material may be dredged or excavated from, or placed as fill in, project lands and/or waters only in the prosecution of work specifically authorized under the license; in the maintenance of the project; or after obtaining Commission approval, as appropriate. Any such material shall be removed and/or deposited in such manner as to reasonably preserve the environmental values of the project and so as not to interfere with traffic on land or water. Dredging and filling in a navigable water of the United States shall also be done to the satisfaction of the District Engineer, Department of the Army, in charge of the locality.

Article 22. Whenever the United States shall desire to construct, complete, or improve navigation facilities in connection with the project, the Licensee shall convey to

the United States, free of cost, such of its lands and rights-of-way and such rights of passage through its dams or other structures, and shall permit such control of its pools, as may be required to complete and maintain such navigation facilities.

Article 23. The operation of any navigation facilities which may be constructed as a part of, or in connection with, any dam or diversion structure constituting a part of the project works shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including control of the level of the pool caused by such dam or diversion structure, as may be made from time to time by the Secretary of the Army.

Article 24. The Licensee shall furnish power free of cost to the United States for the operation and maintenance of navigation facilities in the vicinity of the project at the voltage and frequency required by such facilities and at a point adjacent thereto, whether said facilities are constructed by the Licensee or by the United States.

Article 25. The Licensee shall construct, maintain, and operate at its own expense such lights and other signals for the protection of navigation as may be directed by the Secretary of the Department in which the Coast Guard is operating.

Article 26. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address of the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license. The Commission, after notice and opportunity for hearing, may require the Licensee to remove any or all structures, equipment and power lines within the project boundary and to take any such other action necessary to restore the project waters, lands, and facilities remaining within the project boundary to a condition satisfactory to the United States agency having jurisdiction over its lands or the Commission's authorized representative, as appropriate, or to provide for the continued operation and maintenance of nonpower facilities and fulfill such other obligations under the license as the Commission may prescribe. In addition, the Commission in its discretion, after notice and opportunity for hearing, may also agree to the surrender of the license when the Commission, for the reasons recited herein, deems it to be the intent of the Licensee to surrender the license.

Article 27. The right of the Licensee and of its successors and assigns to use or occupy waters over which the United States has jurisdiction, or lands of the United States under the license, for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless the Licensee has obtained a new license pursuant to the then existing laws and regulations, or an annual license under the terms and conditions of this license.

Project No. 2615-037

- 65 -

Article 28. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.

Document Content(s)

P-2615-037_License Order Final.DOCX.....1-65