

**UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF THE INTERIOR
AND
FEDERAL ENERGY REGULATORY COMMISSION**

Green Lake Water Power Company)	
)	
Green Lake Hydroelectric Project)	Project No. 7189
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**SETTLEMENT AGREEMENT
FOR
MODIFIED PRESCRIPTION FOR FISHWAYS**

INTRODUCTION

This Settlement Agreement for Modified Prescription for Fishways (“Agreement”) is made and entered into by Green Lake Water Power Company (“GLWP”), licensee of the Green Lake Hydroelectric Project, FERC Project No. 7189 (“Project”), and the United States Department of the Interior (“Department”) Fish and Wildlife Service (“USFWS” or “Service”) (each a “Party” and collectively, the “Parties”). This Agreement relates to the ongoing relicensing proceeding for the Project before the Federal Energy Regulatory Commission (“FERC”), and specifically to the terms of the Department’s modified prescription for fishways (“Modified Prescription”) to be included in the new license for the Project (“New License”) pursuant to Section 18 of the Federal Power Act (“FPA”), 16 U.S.C. § 811, with respect to American eel. USFWS did not prescribe fishways for other migratory species in its Preliminary Prescription for Fishways and, in accordance with this Agreement, will not prescribe fishways for migratory species other than American eel in its Modified Prescription to be included in the new license for the Project.

This Agreement follows GLWP’s filing on June 20, 2023, with the Department of a Request for Trial-Type Hearing on Disputed Issues of Material Fact and Alternatives to Preliminary Mandatory Fishway Prescriptions pursuant to Sections 18 and 33(b) of the FPA and 43 C.F.R. §§ 45.21 and 45.71. The Parties subsequently agreed to stay the trial-type hearing process pursuant to 43 C.F.R. § 45.24 to allow for settlement discussions. The Agreement resolves all issues related to upstream and downstream passage of American eel at the Project under the New License.

1.0 GENERAL TERMS

1.1 Term of the Agreement

This Agreement shall become effective as of the date of the last signatory hereto (the “Effective Date”) and remain in effect, in accordance with its terms, throughout the term of the New License, including any annual licenses thereafter.

1.2 Purpose and Goals

The purpose of this Agreement is to resolve among the Parties their disagreement over the appropriate terms of a prescription for American eel to be included in the New License pursuant to Section 18 of the FPA.

1.3 Support for Terms of Agreement

The Parties agree to support issuance of a New License by FERC that is consistent with the terms of this Agreement. For those issues addressed herein, namely the upstream and downstream passage of American eel, the Parties agree that the terms included in Section 2.0 herein will constitute the full and complete requirements of the Department’s Modified Prescription for the Project. Without limiting the Department’s Reservation of Authority under Section 18 of the FPA, the Parties further agree not to propose or otherwise communicate, in the relicensing proceeding, any comments, certification, recommendations,

or license conditions regarding American eel passage that are inconsistent with, or additive to, the terms of this Agreement to FERC or any other federal or state resource agency with jurisdiction over fish passage, water quality, or other environmental aspects of the Project.

1.4 Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

1.5 Agency Appropriations

Nothing in this Agreement shall be construed as: (i) obligating any Federal agency to expend in any fiscal year any sum in excess of appropriations made by Congress, or administratively allocated for the purpose of this Agreement for the fiscal year; or (ii) involving the USFWS in any contract or obligation for the future expenditure of money in excess of such appropriations or allocations.

1.6 No Precedent

This Agreement is made with the express understanding that it constitutes a negotiated resolution of issues specific to the Project. The Parties entered into the negotiations and discussions leading to this Agreement with the explicit understanding that such negotiations and discussions are privileged and confidential, shall not prejudice the position of any Party, and are not to be otherwise used in any manner in connection with these or any other licensing proceedings. Accordingly, nothing in this Agreement will be construed as a legal precedent that may be cited by the Parties to FERC or any court or administrative hearing process with regard to any other licensing proceeding. This Section 1.6 shall survive any termination of this Agreement. Any Party withdrawing from this Agreement pursuant to Section 1.10 will continue to be bound by this Section 1.6.

1.7 Withdrawal of Trial-Type Hearing Request and Alternative Prescription

Within three (3) days of the Effective Date of this Agreement or no later than December 20, 2023, GLWP shall withdraw its Request for Trial-Type Hearing on Disputed Issues of Material Fact and Alternatives to Preliminary Mandatory Fishway Prescriptions, which GLWP filed with the Department on June 20, 2023.

1.8 Notifications to FERC of Agreement and Withdrawal of Hearing Request

The Parties agree that on or before January 31, 2024, the Department shall file notice and a copy of this Agreement in the FERC docket for Project relicensing and indicate the Service's intention to file a Modified Prescription for American eel at the Project that is fully consistent with the terms of this Agreement. GLWP will notify FERC of the withdrawal of its Trial-Type Hearing on Disputed Issues of Material Fact and Alternatives to Preliminary Mandatory Fishway Prescriptions when it withdraws the filing pursuant to Section 1.7.

1.9 Filing of Modified Prescription

The Department shall file a Modified Prescription for American eel at the Project that is fully consistent with the terms of this Agreement within 60 days after the deadline for filing comments on FERC's draft environmental document as required by 18 C.F.R. § 5.25(c) and consistent with 43 C.F.R. § 45.73(a).

1.10 Withdrawal Rights

No Party may withdraw from this Agreement without the prior written consent of the other Party, which consent may be withheld in another Party's sole discretion; provided, however, GLWP may unilaterally withdraw from this Agreement if: (i) the Department issues a Modified Prescription that deviates in any material fashion from this Agreement; (ii) a state agency issues a water quality certification that contains fish passage conditions for American eel that are materially additive to, or materially inconsistent with, the terms of this Agreement, and the water quality certification issued by said state agency is not thereafter satisfactorily modified after administrative and judicial appeals are pursued by the Licensee; (iii) FERC issues a New License that contains conditions for American eel which are materially additive to, or materially inconsistent with, the terms of this Agreement as reflected in Section 2, and the New License is not thereafter satisfactorily modified as a result of the filing of a request for rehearing as provided in Section 1.11; or (iv) GLWP determines in its sole discretion not to accept the new License issued for the project.

A Party withdrawing from this Agreement shall provide twenty days' prior written notice, which notice shall include a written explanation of the reasons for withdrawing from this Agreement. In the event that a Party withdraws from this Agreement pursuant to this Section 1.10, this Agreement shall thereafter be null and void, and any Party may take the position that this Agreement is not available to support FERC's public interest determination.

1.11 Rehearing and Judicial Review

The Parties agree not to file a request with FERC for rehearing of the New License concerning the Modified Prescription unless: (i) the New License contains conditions which are materially inconsistent with the terms of this Agreement; or (ii) the New License contains fish passage conditions for American eel that are materially additive to the terms of the Agreement. In the event a Party decides to file a request for rehearing in accordance with the terms of this provision, it will provide the other Party written notice of its intention to file a request for rehearing at the earliest practicable time. Any Party, following the issuance of a FERC order on rehearing, may elect to file a petition for judicial review with respect to the matters covered by this provision, and the other Party will not oppose such petition.

1.12 Modification of Time Limits

The Parties may, by mutual written agreement, modify any time limit in this Agreement, if there is substantial reason for the modification. The Parties acknowledge that any modifications to time limits under the New License must be approved by FERC.

1.13 Counterparts

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

1.14 Merger and Modification

This Agreement constitutes the sole Agreement of the Parties hereto and correctly states the rights, duties, and obligations of each Party as of the Effective Date. Any prior agreement, promises, negotiations, or representations between the Parties relating specifically to the ongoing licensing proceeding for the Project not expressly stated in this Agreement are not binding. The Parties may, by mutual agreement, modify this Agreement, if there is substantial reason for the modification, but all subsequent modifications to this Agreement shall be in writing and signed by the Parties. The Parties acknowledge that modifications to this Agreement may require approval by FERC.

1.15 Reservation of Authority

In addition to the protection measures in this Agreement, the Department will reserve the Secretary's authority under Section 18 of the FPA to prescribe the construction, operation, and maintenance of fishways at the Project, as appropriate, including measures to determine, ensure, or improve the effectiveness of such fishways. Acceptance of the Condition 1 Modified Prescription Language limiting GLWP's action with respect to future additions or modifications to the Modified Prescription to comment is not intended to and shall not be interpreted as a GLWP waiver of any opportunity for hearing that is or may be available pursuant to applicable law at the time of any such future revisions or modifications.

2.0 MODIFIED PRESCRIPTION FOR FISHWAYS

The Department agrees to file a Modified Prescription as set forth in Section 1.9 above reflecting the following terms:

CONDITION 1: REVISION OF SECTION 18 FISHWAY PRESCRIPTION

The Secretary of the Department reserves the right, after notice and opportunity for comment, to require changes in the Project and its operation through revision of this Section 18 Fishway Prescription to protect and enhance fish passage at the Project. The Secretary also reserves the right to modify these conditions, if necessary, to respond to any significant changes that warrant a revision of this Prescription.

CONDITION 2: OPERATING PERIODS

Regarding the timing of seasonal eelway operations, eelways shall be maintained and operated throughout the fish passage season for American eel. The migratory season for eel has been studied for the major rivers of the Northeast (ASMFC, 2018, p. 9; Shepard, 2015; Eyler, Walsh,

Smith, & Rockey, 2016). The season depends on geographic location, water temperature, river flow, and other habitat cues. Based on data from watersheds in these documents, approved eel passage protective measures shall be operational during the migration windows identified in Table 1. These dates may change after consultation between USFWS and Licensee based on new information, including siting or effectiveness studies, improved access at the lower dams, evaluation of new literature or collected data, and documented agency consultation.

Table 1. Summary of periods for which eel passage will be provided.

Species	Upstream Passage Season	Downstream Passage Season
American eel	June 1 - October 31	August 1 - October 31

CONDITION 3: AGENCY ACCESS AND INSPECTION

The Licensee shall provide USFWS personnel and other USFWS-designated representatives timely access to the eel passage facilities at the Project and to information on eel passage operations, and Project operations that may affect eel passage, upon written request from the USFWS. Such information shall be provided within 10 calendar days of the request, or upon a reasonable mutually agreed upon schedule.

CONDITION 4: MAINTENANCE AND REPAIR OF FISHWAY

The Licensee shall operate and maintain the eelway in accordance with the Fishway Operation and Maintenance Plan (see Condition 5) to ensure the eelway will operate effectively during the migratory periods.

CONDITION 5: FISHWAY OPERATION AND MAINTENANCE PLAN

Within 2 years following the effective date of the license, the Licensee shall develop a Fishway Operation and Maintenance Plan (FOMP), in consultation with the USFWS and the Maine Departments of Marine Resources and Inland Fisheries and Wildlife, and approved by the USFWS, to document regular maintenance activities and emergency procedures. The Licensee shall keep the FOMP updated on an annual basis to reflect any changes in eelway operation and maintenance planned for the year. The FOMP shall include general schedules and procedures for:

- Eelway operation and maintenance, including the method and calculations for provision of any required flows;
- Inspection and monitoring of the eelway facilities, including regular observation of facilities and periodic trashrack inspections; and,
- Emergency and exception procedures.

If the USFWS requests a modification of the FOMP, after consultation between USFWS and the Licensee, the Licensee shall amend the FOMP within 30 days and send a copy of the revised FOMP to the USFWS, the Maine Department of Marine Resources, the Maine Department of Inland Fisheries and Wildlife, and the Commission.

If the Licensee desires modification of the FOMP, after consultation between USFWS and the Licensee, such modifications shall require the approval of the USFWS, in consultation with the Maine Departments of Marine Resources and Inland Fisheries and Wildlife, prior to implementation and prior to submitting the revised FOMP to the Commission for its approval.

Licensee shall contact the Hatchery Manager for all requests for approval contained in the prescription. Current contact information for USFWS and Licensee will be maintained in the FOMP.

CONDITION 6: FISHWAY OPERATION AND MAINTENANCE REPORT

The Licensee shall prepare a Fishway Operation and Maintenance Report (FOMR) and submit it to the USFWS and the Maine Departments of Marine Resources and Inland Fisheries and Wildlife by January 31 each year following the completion of eelway construction. The FOMR will cover the prior calendar year. The FOMR shall be in letter report format and will include a summary of the current state of the eelways (structures, flows, etc.), a yearly eelway operation and maintenance report (deviations, issues, timing of installation, etc.), and summary data on the flows (e.g., high and low flow events, periods of turbine operation, etc.) at the Project throughout upstream and downstream eelway operation periods.

Downstream Eel Passage

CONDITION 7: DESIGN PLANS

The Licensee shall develop and submit the draft and near-final design plans to the USFWS for review and approval and submit said plans to the Maine Departments of Marine Resources and Inland Fisheries and Wildlife for their comment, in accordance with Table 2 (Implementation Schedule). The Licensee may submit draft designs for USFWS review and approval at multiple stages if Licensee desires additional review.

The design of the eel passage structures shall strive to meet the minimum recommendations as outlined in USFWS 2019 as they apply to the site. Any deviation from the Service's current eel passage requirement must be approved during the design phase in consultation with the Service, including a fish passage engineer. Review of any design stage will be provided within 30 days, or some alternative schedule agreed to by the Licensee and the Service. Upon approval of a design by the Service that strives to meet the recommendations in USFWS 2019, a fish passage effectiveness study will not be required pursuant to Conditions 13 and 14 as they relate to downstream passage.

The Licensee shall submit final design plans, approved by the USFWS, to the Commission for its approval prior to the commencement of eelway construction activities. Once the eelway is installed, final as-built drawings that accurately reflect the eelway as constructed and the modified parts of the Project as a whole shall be filed with the USFWS and the Commission in an electronic form and per Commission specifications for such drawings.

CONDITION 8: DOWNSTREAM FISH EXCLUSION

Prior to the third downstream eel passage season following the effective date of the license (as in Table 2), the Licensee shall install trash racks per the USFWS-approved eel passage design to avoid eel entrainment in the penstock OR, subject to USFWS approval, the Licensee may have the option to test some other configuration and modify it as needed, as outlined in Condition 13 and Condition 14.

CONDITION 9: TRASHRACK INSPECTION

The Licensee shall regularly inspect the trash racks as specified in the FOMP.

CONDITION 10: DOWNSTREAM ROUTE OF PASSAGE

The Licensee will install a downstream eel passage bypass per the USFWS-approved eel passage design.

If the downstream conveyance flow is provided via a siphon, it can also be utilized to provide flow for upstream eel passage in Condition 12. Alternatively, if it is impractical to have the downstream passage in place and operational for the complete upstream passage season, a small, separate siphon could be used to implement the upstream passage flow.

For the downstream passage bypass to be effective and practical, it must be designed and implemented such that it can be cleaned of debris without removing and repositioning the trash racks. It must also be practical to remove eel passage structures when necessary to avoid damage from ice and extremely high flow situations.

Upstream Eel Passage

CONDITION 11: AMERICAN EEL SITING STUDY

Beginning the second eel passage season following establishment of American eel passage at the Ellsworth and Graham Lake dam sites, the Licensee shall conduct a 2-year upstream eel siting study, in order to determine proper siting of permanent upstream eel passage facilities. Based on results of that study, the Licensee shall, in consultation with the USFWS, determine optimal locations for installing such facilities.

The study shall be developed and performed in consultation with the USFWS. The Licensee shall provide USFWS with a draft eel siting study plan for review and approval at least 4 months prior to the start of the study in accordance with the scheduling provisions in the implementation schedule provided herein. If the USFWS requests a modification of the draft eel siting study plan within 30 days, the Licensee shall amend the plan within 30 days of the request and send a copy of the revised plan to the USFWS and the Commission for review and approval. Any modifications to the plan by the Licensee will require approval by the USFWS prior to implementation. If changes to the study require a substantial increase of study effort by the Licensee, Licensee may request an extension of the deadline in Table 2, which will not be

unreasonably withheld. The Licensee shall include yearly interim study reports to the USFWS via the FOMR (Condition 6) following the conclusion of each study year. The results of the study shall be provided to the USFWS and the Maine Departments of Marine Resources and Inland Fisheries and Wildlife in the annual FOMR.

CONDITION 12: UPSTREAM AMERICAN EEL PASSAGE

Unless indicated otherwise, via the Upstream American Eel Siting Study, the Licensee will install an eel ramp located at the outfall of the downstream eel passage bypass discharge in Reeds Brook just below the concrete skirt downstream of the waste gates. The upstream ramp will terminate in a bucket that will be inspected daily by the Project operator. On any days the bucket contains eels, it will be emptied into Green Lake. This design assumes that leakage flow from holes in the cladding at the dam is addressed as well as leakage from the penstock near the powerhouse that is significant in comparison to the flow in Reeds Brook, to eliminate significant false attraction flows.

Upstream and Downstream Eel Passage Testing

CONDITION 13: FISH PASSAGE EFFECTIVENESS STUDY

Upon approval of a design by the Service that strives to meet the recommendations in USFWS 2019, Condition 13 will not apply to downstream passage. If Licensee decides not to implement a Service approved downstream passage measure, per Condition 7 above, Licensee shall conduct effectiveness testing of the alternative configuration for downstream eel passage design if required as a condition of USFWS approval of the design.

Effectiveness testing of both upstream and downstream American eel passage is critical to evaluating the passage success, diagnosing problems, determining when eel passage modifications are needed, and what modifications are most likely to be effective. It is essential to ensuring the effectiveness of eelways over the term of the license, particularly in cases where the changing size of eel populations may also change eel passage efficiency or limit effectiveness.

The Licensee shall develop a 2-year Fishway Effectiveness Monitoring Plan (FEMP) in consultation with the USFWS and Maine Departments of Marine Resources and Inland Fisheries and Wildlife and requiring approval by the USFWS. The Licensee shall provide the USFWS with a draft FEMP for review and approval 4 months prior to the implementation dates for installing upstream eel passage measures in accordance with the scheduling provisions in Table 2 (Implementation Schedule). The FEMP will contain plans for ensuring (1) the effectiveness of the upstream eel and downstream eel passage measures required pursuant to Condition 8; and (2) that the minimum bypass flow of 1 cubic feet per second provides safe, timely, and effective downstream passage to migrating eels (i.e., does not strand eels). If the USFWS requests a modification of the FEMP, the Licensee shall amend the FEMP within 30 days of the request and send a copy of the revised FEMP to the USFWS. Any modifications to the FEMP by the Licensee will require approval by the USFWS prior to implementation. The

Licensee shall include yearly interim study reports to the USFWS via the FOMR (Condition 6) following the conclusion of each study year.

The Licensee shall begin implementing the FEMP at the start of the first eel passage season after each eelway becomes operational and shall conduct quantitative eel passage effectiveness testing and evaluation for a minimum of 2 years. The results of the study shall be provided to the USFWS and the Maine Departments of Marine Resources and Inland Fisheries and Wildlife in the annual FOMR (Condition 6) and shall include methods, data analysis, results, an assessment of any factors or potential problems hindering passage effectiveness, and provide recommended modifications to achieve safe, timely, and effective passage. The Licensee shall also provide electronic copies of all data collected from studies to the USFWS.

CONDITION 14: MODIFICATIONS

Per Condition 7 above, upon approval of a design by the Service that strives to meet the recommendations in USFWS 2019, Condition 14 will not apply to downstream passage.

However, per Condition 8, if the Licensee decides to implement some other configuration, the Licensee shall modify the downstream passage facilities to improve effectiveness if deemed necessary by the USFWS in response to a fish passage effectiveness study per Condition 13. Such modifications may include, but are not limited to, the attraction and conveyance flow velocities and volumes, the structures directing conveyance flows, the position of the trashracks and any necessary repairs, and plunge pool design.

CONDITION 15: EXCEPTIONS

The Licensee may curtail or suspend eel passage and exclusion measures upon mutual agreement between the Licensee and USFWS. In the event of any operating emergency beyond the control of the Licensee, the Licensee may curtail or suspend eel exclusion and/or passage measures for the time period necessary to rectify such an emergency. The Licensee shall notify the USFWS, and the Maine Departments of Marine Resources and Inland Fisheries and Wildlife as soon as practical with as much detail as possible, or as much detail as is known by the Licensee, no later than 5 business days after any such operating emergency.

CONDITION 16: APPROVAL OF EXTENSIONS

The Licensee shall obtain written approval from the USFWS for any extensions of time to comply with the provisions included in the USFWS's Prescription. Such approval will not be unreasonably withheld. Review of an extension request will be provided within 30 days, or some alternative schedule agreed to by the Licensee and the Service. Such requests should be submitted no later than 90 days prior to the applicable deadline.

CONDITION 17: MITIGATION MEASURES

In the event of a request for extension of time pursuant to Condition 16, the Licensee shall implement interim eel passage mitigation measures that are supported by substantial evidence during the period of extension as may be required by USFWS. These measures may include, but are not limited to, curtailment or cessation of generation, additional monitoring or studies, or interim eel passage measures, as necessary. Any extensions of time or exceptions not approved by the USFWS, or lapsed out without required interim measures for mitigation, should be considered license violations by the Commission, in accordance with Section 31 of the FPA, for compliance, enforcement, and assessment of civil penalties.

IMPLEMENTATION SCHEDULE

The Licensee shall design and install the eelway structures and implement any other measures in compliance with the schedule in Table 2, below. Requests to deviate from the implementation schedule and deadlines outlined below should be provided to USFWS for review and approval. Review of an extension request will be provided within 30 days, or some alternative schedule agreed to by the Licensee and the Service. Such requests should be submitted no later than 90 days prior to the applicable deadline.

Table 2. Implementation schedule of eel passage structures and measures.

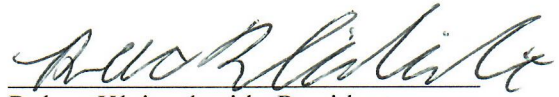
<u>Structure/Measure</u>	<u>Action</u>	<u>Implementation Deadline</u>
Trash Racks	Design	At least 6 months prior to Installation
	Installation	Prior to the third downstream eel passage season following the effective date of the license
Downstream Eel Passage Facilities	Design	Draft and near-final design plans should be submitted to USFWS for approval
	Installation and operation	Prior to the third downstream eel passage season following the effective date of the license
American Eel Siting Study	Submit plan to USFWS for review and approval	At least 6 months prior to the start of the study and no earlier than the installation and approval of the downstream passage by USFWS, whichever is later.

	Implementation of study	Beginning the second eel passage season following establishment of eel passage at the Ellsworth and Graham Lake dam sites and no earlier than the installation and approval of the downstream passage by USFWS, whichever is later.
Upstream Eel Passage Facilities	Design	Draft and near-final design plans should be submitted to USFWS for approval

	Installation and operation	Within 2 years following the completion of the American eel siting study
Fishway Effectiveness Monitoring Study (only if Condition 13 is triggered)	Submit plan to USFWS for review and approval	At least 6 months prior to installing upstream eel passage measures
	Implementation of study	Beginning the first eel passage season after an eelway is operational following the effective date of the license
Fishway Operation and Maintenance Plan	File with the Commission	Within 2 years following the effective date of the license
Fishway Operation and Maintenance Report	File with the Commission	By January 31 each year following the operation of one or both eelways

ACKNOWLEDGED AND AGREED TO BY

Green Lake Water Power Company

A handwritten signature in cursive script, appearing to read "Robert Kleinschmidt", written over a horizontal line.

Robert Kleinschmidt, President

December 11, 2023

ACKNOWLEDGED AND AGREED TO BY

United States Fish and Wildlife Service

BY:

NAME: Amanda Cross

TITLE: Project Leader, Maine Field Office

December 12, 2023