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Admitted in: MA, ME, NH

November 15, 2016

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

Re: S.D. Warren Company, Saccarappa Project No. P-2897

Dear Secretary Bose:

On behalf of Licensee S.D. Warren Company ("Warren"), please find enclosed the Settlement Agreement (the "Settlement Agreement") for the Saccarappa Project License Surrender, by and between Warren, the U.S. Department of the Interior and U.S. Fish and Wildlife Service, Maine Department of Marine Resources, Conservation Law Foundation, Friends of the Presumpscot River, and the City of Westbrook, Maine.

Pursuant to Section 4 of the Settlement Agreement, Warren hereby requests that by no later than January 31, 2017 the Commission, upon receipt of the revised WQC referred to in Section 4 and the revised fishway prescription referred to in Section 4, extend until May 2019 the deadline for operational upstream passage for anadromous fish at the Saccarappa Project, to allow the Parties time to undertake the obligations set forth in Section 2.

Please let me know if you have any questions about this request or about the enclosed Settlement Agreement. Thank you for your assistance.

Sincerely,



Matthew D. Manahan

Enclosure

cc: Service List
Kathy Howatt, MDEP
Jay Clement, U.S. Army Corps of Engineers
M. Joseph Fayyad, FERC
Jennifer Ambler, FERC
Scott D. Anderson, Esq. (City of Westbrook)
Sean Mahoney, Esq. (CLF)
Ronald Kreisman, Esq. (FOPR)
Mark Randlett, Esq. (MDMR)
Andrew Tittler, Esq. (DOI)

SETTLEMENT AGREEMENT

FOR THE SACCARAPPA PROJECT

(FERC No. 2897)

LICENSE SURRENDER

NOVEMBER 15, 2016

By and Between:

**S.D. Warren Company
U.S. Department of the Interior and U.S. Fish and Wildlife Service
Maine Department of Marine Resources
Conservation Law Foundation
Friends of the Presumpscot River
City of Westbrook, Maine**

**SETTLEMENT AGREEMENT
FOR THE SACCARAPPA PROJECT (FERC No. 2897)
LICENSE SURRENDER**

1.0 INTRODUCTION AND GENERAL PROVISIONS

This agreement, including exhibits A-E hereto (the “Settlement Agreement”), dated as of November 15, 2016, regarding the surrender (the “Surrender”) of the Federal Energy Regulatory Commission (“FERC” or “Commission”) license for the Saccarappa Project (FERC No. 2897) (the “Project”), is made and entered into by and among the following entities who shall, except as otherwise noted, each be referred to as a Party and collectively as “Parties.”

- S.D. Warren Company (“Warren” or “Licensee”);
- U.S. Department of the Interior (“USDOl”) and U.S. Fish and Wildlife Service (“USFWS”);
- Maine Department of Marine Resources (“MDMR”);
- Conservation Law Foundation (“CLF”);
- Friends of the Presumpscot River (“FOPR”); and
- City of Westbrook, Maine (“City”).

1.1 Purpose and Goals

1.1.1 The purpose of this Settlement Agreement is to specify the obligations of the Licensee under the Federal Power Act, the Clean Water Act, and the Maine Waterway Development and Conservation Act (“MWDCa”), and other laws, to meet the fish passage and other objectives and responsibilities of all Parties, and to bind the Parties to and implement the agreements set forth herein that have been reached as the result of comprehensive discussions among the Parties with regard to the Project for which Warren filed a license surrender application with FERC on December 2, 2015 (the “Pending Surrender Application”) and a WQC and MWDCa application with MDEP on December 2, 2015 and October 5, 2016 (the “Pending MDEP Application”).

1.1.2 The goal of this Settlement Agreement is to provide safe, timely, and effective fish passage at the Saccarappa site after cessation of Project operations.

1.1.3 The Parties, having given careful and equal consideration to power and non-power values, provide in this Settlement Agreement the terms and conditions for the resolution of fisheries, wetlands, wildlife, water quality, recreational, cultural and archaeological, aesthetic, access, land use, operation, and generation issues raised and analyzed by the Parties as they are applicable to the issuance of a FERC license surrender order for the Project and amendment of the FERC licenses for Mallison Falls (P-2932), Little Falls (P-2941), Gambo (P-2931), and Dundee (P-2942).

1.2 Definitions

The Parties agree that the following definitions shall have the meanings so noted throughout this Settlement Agreement:

1.2.1 Except as provided herein, “Consistent Surrender Order” means an order or orders accepting surrender of the Saccarappa Project license that is issued by either FERC staff on behalf of the Commission pursuant to its delegated authority or by the Commission itself: (1) that approves or includes all requests or provisions of Sections 2.1.1, 2.1.2, 2.1.4.3, 2.1.8.1, 2.2.3, and 3.2.1 of this Settlement Agreement, (2) that does not include provisions that are materially inconsistent with this Settlement Agreement, and (3) for which all administrative and judicial appeal periods have expired or any such appeals have been resolved in a manner consistent with this Settlement Agreement.

1.2.2 “Consistent MDEP Order” means a water quality certification (“WQC”) issued by the Maine Department of Environmental Protection (“MDEP”) pursuant to Section 401 of the Clean Water Act with respect to the Surrender, and an accompanying order pursuant to the MWDCA, that (1) is consistent with this Settlement Agreement, (2) does not include provisions that are materially inconsistent with this

Settlement Agreement, and (3) for which all administrative and judicial appeals periods have expired or any such appeals have been resolved in a manner consistent with this Settlement Agreement.

1.3 Effective Date

This Settlement Agreement shall become effective when it has been executed by the Parties, except that no obligations set forth in Sections 2.1.1, 2.1.2, 2.1.5, 2.1.6, 2.1.7, 2.1.8, or 2.1.9 shall become effective until: (1) the MDEP has issued a Consistent MDEP Order, as defined above, and (2) the Commission has issued a Consistent Surrender Order, as defined above.

1.4 Commission Record

1.4.1 The agreements in this Settlement Agreement are a comprehensive and integrated set of measures intended to address non-power and power values relating to the surrender of the FERC license for the Project, based on the substantial amount of evidence contained in the record before the Commission, drawn from a number of sources, and the subsequent negotiations and analyses conducted by the Parties.

1.4.2 The Parties agree that the formal administrative record before the Commission, including this Settlement Agreement and filings made pursuant thereto, supports the finding that this Settlement Agreement is fair and reasonable and in the public interest.

1.5 Enforcement of Settlement

The Parties acknowledge that all the terms of this Settlement Agreement may be enforced in a court of competent jurisdiction through remedies available under applicable state or federal law, which the Parties agree may include specific performance. However,

the United States and the State of Maine do not waive any claim of sovereign immunity or agree to any form of suit not provided for by otherwise applicable federal or state law.

1.6 Exhibits; Successors and Assigns; Amendments; Entire Agreement

Exhibits A-E hereto are hereby incorporated into this Settlement Agreement as if fully stated herein. This Settlement Agreement shall be binding on the Parties and on their successors and assigns. If Warren decides to sell or otherwise transfer any property that is subject to this Settlement Agreement, then prior to such sale or transfer Warren shall inform any prospective buyer or transferee of the existence and obligations of this Settlement Agreement. This Settlement Agreement may be amended only by a writing duly executed by each of the Parties. This Settlement Agreement constitutes the Parties' entire understanding with respect to the subject matter hereof and supersedes any and all prior oral or written agreements, understandings, or expressions with respect thereto.

1.7 Agency Appropriations and Costs

1.7.1 Nothing in this Settlement Agreement shall be construed as obligating any federal or state government agency to expend in any fiscal year any sum in excess of appropriations made by Congress or the Maine Legislature and administratively allocated for the purpose of this Settlement Agreement for the fiscal year, or to involve the State of Maine, USDOJ, or USFWS in any contract or other obligation for the future expenditure of money in excess of such appropriations or allocations, except for those expenditures of money required for actions specified in this Settlement Agreement utilizing funds provided by Warren pursuant to the terms of this Settlement Agreement.

1.7.2 The Parties agree that no Party will request reimbursement, either through FERC or directly from another Party, for that Party's costs or for any other charges incurred in participating in the settlement negotiations leading to this Settlement Agreement.

1.8 Parties to Support Regulatory Approvals

All Parties shall support this Settlement Agreement and refrain from making any public comments or governmental filings that undercut this Settlement Agreement or actions taken pursuant to it. The Parties agree to actively support this Settlement Agreement before the Commission and MDEP for the purpose of obtaining a Consistent MDEP Order and a Consistent Surrender Order, including supporting this Settlement Agreement through participation in any administrative or judicial appeal or rehearing request relating to the WQC / MWDCA order or the surrender order, as further set forth in Section 1.13 below, except that participation by MDMR in any future legal action will be at the discretion of the Maine Attorney General's Office. This support shall include reasonable efforts to assist in regulatory approvals that may be needed to implement provisions of this Settlement Agreement. With respect to the issuance by MDEP of a WQC / MWDCA order, the Parties agree to file written comments with MDEP supporting the issuance of a Consistent MDEP Order, if requested to do so by the Licensee.

1.9 Establishes No Precedents

The Parties understand and agree that this Settlement Agreement establishes no admissions or precedents with regard to any issue addressed herein or with regard to any Party's participation in other licensing, surrender, or WQC / MWDCA proceedings, or the applicability of any laws or regulations to the subject facilities, except as specified in Section 2.3 of this Settlement Agreement.

1.10 Requirement for Consistent Surrender Order and Consistent MDEP Order

1.10.1 Except as provided herein, in the event Commission action does not result in a Consistent Surrender Order, then unless all Parties agree to amend this Settlement Agreement, this Settlement Agreement shall become null and void. In that

event, the Parties shall take the position that this Settlement Agreement cannot be used as support for any Commission action.

1.10.2 Except as provided herein, in the event MDEP action does not result in a Consistent MDEP Order, then unless all Parties agree to amend this Settlement Agreement, this Settlement Agreement shall become null and void. In that event, the Parties shall take the position that this Settlement Agreement cannot be used as support for any MDEP or Commission action.

1.10.3 In the event the Settlement Agreement becomes null and void, then this Settlement Agreement shall have no validity or effect and all Parties shall be relieved of any obligation to comply with this Settlement Agreement.

1.11 Compliance with Applicable Laws

Nothing in this Settlement Agreement is intended to or shall be construed to affect or limit the authority of any Party to fulfill its statutory or regulatory responsibilities under applicable law. By entering into this Settlement Agreement, however, the Parties with such responsibilities represent that they believe their responsibilities relative to the issues addressed herein have been, are, or can be met, for the purposes and goals stated in Section 1.1, consistent with the terms of this Settlement Agreement.

1.12 Property Rights

Other than as required to implement the terms of this Settlement Agreement, the Parties request that the Licensee not be required to acquire any additional property rights (including easements) to comply with the terms of the order accepting surrender or the WQC / MWDCa order.

1.13 Appeals

1.13.1 The Parties agree that none of them will file a challenge to a WQC / MWDCA order or a request for rehearing of a FERC order issued in response to any filing made pursuant to this Settlement Agreement unless the MDEP WQC / MWDCA order or FERC order contains provisions that are materially inconsistent with this Settlement Agreement. The Parties agree that if no rehearing request or other administrative or judicial challenge to the FERC surrender order or the MDEP WQC / MWDCA order is filed within the applicable filing deadlines, the WQC / MWDCA order shall be deemed to be a Consistent MDEP Order and the surrender order shall be deemed to be a Consistent Surrender Order. Furthermore, if at the conclusion of any appeals of the WQC / MWDCA order or the FERC surrender order any Party reasonably determines that the WQC / MWDCA order or surrender order is materially inconsistent with the terms of this Settlement Agreement, then such Party must so notify in writing all other Parties to this Settlement Agreement within 30 days after the surrender order becomes final and unappealable. If no such notice is provided, then the WQC / MWDCA order shall be deemed to be a Consistent MDEP Order and the surrender order shall be deemed to be a Consistent Surrender Order.

1.13.2 In the event that the Commission does not issue a surrender order that is consistent with this Settlement Agreement, then all Parties agree that, to the extent they have the power to do so, they will, either jointly or separately, file a request for rehearing of the surrender order, or otherwise participate in a request to the Commission that it issue a surrender order in accordance with this Settlement Agreement. Thereafter, in the event that on rehearing the Commission still does not issue a surrender order consistent with this Settlement Agreement, then any Party may file a petition for judicial review of the Commission's underlying order and order on rehearing or take such other legal action as may then be available. In the event of a rehearing request or a petition for judicial review, the other Parties agree that they will, to the extent they have the power to do so, participate, or seek authorization to participate, for the purpose of advocating that the Commission issue a Consistent Surrender Order.

1.13.3 In the event that the MDEP does not issue a WQC / MWDCA order that is consistent with this Settlement Agreement, then all Parties agree that, to the extent they have the power to do so, they will, either jointly or separately, appeal to the Board of Environmental Protection (“BEP”), or participate in, or seek authorization to participate in, such an appeal, requesting that the WQC / MWDCA order be amended to be consistent with this Settlement Agreement. In the event that such BEP appeal does not result in a WQC/ MWDCA order that is consistent with the provisions of this Settlement Agreement, any Party may file a petition for judicial review of the WQC / MWDCA order or take such other legal action as may then be available. In the event of a BEP appeal or a petition for judicial review, the other Parties agree that they will, to the extent they have the power to do so, participate, or seek authorization to participate, for the purpose of advocating that MDEP issue a WQC / MWDCA order that is a Consistent MDEP Order.

1.14 Dispute Resolution

The Parties shall work cooperatively to achieve the goals of this Settlement Agreement in a timely manner. The Parties agree to work in good faith to resolve any disputes that may arise over the implementation of this Settlement Agreement. Any Party recognizing such a dispute shall notify the other Parties in writing and convene a dispute resolution consultation meeting among all of the Parties.

2.0 OBLIGATIONS OF THE PARTIES

2.1 Fish Passage at Saccarappa Site

2.1.1 Saccarappa Lower Falls

At the lower falls of the Saccarappa site, Warren shall take the following actions, each element of which will be depicted in design plans that are 90% complete and agreed upon by Warren, MDMR, and USFWS pursuant to section 2.1.3 of this Settlement Agreement:

- Discontinue power generation at the Saccarappa site.

- Construct a double Denil fish passage facility (hereinafter “Denil”) as proposed in the Pending Surrender Application modified as necessary through the design process set forth in section 2.1.3 of this Settlement Agreement so as to take account of changes agreed to by the Parties since the filing of the Pending Surrender Application, including removal of the powerhouse and the possible need for relocation of the exit of the Denil due to the adoption in this Settlement Agreement of a two-channel upper falls fish passage design versus the one-channel upper falls fish passage design proposed in the Pending Surrender Application.
- Construct a fish counting facility at the exit of the Denil, with completion of the construction of said fish counting facility to occur at the same time as completion of construction of all other elements of the fish passage facilities addressed in this Settlement Agreement.
- Make changes and repairs to the tailrace guard wall, or portions of the tailrace guard wall, as required to support the structure and effective operation and maintenance of the Denil, and the related fish counting facility. Warren will repair or remove the guard wall as needed to facilitate construction of the Denil; the portions of the guard wall to remain in place will be determined as part of the Denil and power house removal design work.
- Remove the spillway adjacent to the powerhouse (“Western Spillway”), the power house currently situated at the lower falls, and other structures, including ancillary water control structures.

2.1.2 Saccarappa Upper Falls

At the upper falls of the Saccarappa site Warren will remove the spillway located at the top of the upper falls (“Eastern Spillway”) and will construct the two-channel upper falls fish passage depicted in design plans that are 90% complete and agreed upon by Warren, MDMR, and USFWS pursuant to section 2.1.3 of this Settlement Agreement, with said design based upon the “Two Channel Alternative” conceptual drawings prepared by Princeton Hydro LLC and dated July 10, 2015, attached hereto as Exhibit E, but excluding the portions relating to the rock ramp design depicted therein to provide

passage over the lower falls, for which the Denil design pursuant to section 2.1.1 of this Settlement Agreement has been substituted (hereinafter, the “Two Channel Passage”).

2.1.3 Design Process

All Parties, excepting the City, will participate in the design process in the manner set forth in this section. The City supports all terms of this design process.

2.1.3.1 Selection of Engineering Consultants

For those activities described in section 2.1.1 of this Settlement Agreement, Warren will engage an engineering consultant of its choice to prepare final design plans. For those activities described in section 2.1.2 of this Settlement Agreement, Warren will engage in a competitive bid process to select the engineering consultant to prepare final design plans, as follows.

- The Parties have agreed on the seven engineering consultants that will receive the design request for proposals (“RFP”) bid package.
- Warren has prepared the RFP bid package in consultation with the other Parties and it is attached hereto as Exhibit A.
- Warren will send the design RFP to the agreed upon list of bidders no later than November 8, 2016. Warren will conduct an on-site bidders’ conference on or about November 17, 2016, which conference may be attended in person by one technical (non-lawyer) representative from each of the other Parties, which representative will not comment or ask questions unless requested to do so by Warren; all questions will be answered orally at the bidders’ conference or in writing, after consultation with the Parties within 10 days after the bidders’ conference.
- Responses to the RFP will be due by December 21, 2016. Prior to that date, non-written communications by any Party will not be permitted without agreement of all the Parties; all communications with potential bidders will be in writing with Warren only, and Warren shall send copies of such communications to the other Parties.
- Warren shall consult with the other Parties to select the Two Channel Passage design engineering consultant. Warren will have final authority to select the Two Channel Passage design engineering consultant, but only from the pool of consultants

responding to the design RFP. If at least 65% of the bids received represent that additional data gathering (modeling, bathymetry, or gauging) is required (hereinafter “Additional Data Gathering”), only those bids that contain Additional Data Gathering for one or more issues may be selected absent a mutually agreed upon decision otherwise by the Parties. If more than 35% of the bids received represent that Additional Data Gathering is not required, Warren may select any bidder.

- Warren will conduct interviews before making a final selection after consulting with the Parties to determine those bidders that the Parties would like to interview and with no fewer than the top two qualifying bidders being interviewed, unless it is determined by all Parties that interviews are not needed for making a selection, or in the event that there is only one bidder, in which case an interview shall occur with that bidder. The interviews may be attended in person by two technical (non-lawyer) representatives from each of USFWS, MDMR, and, jointly, CLF / FOPR. These representatives will not comment or ask questions unless requested to do so by Warren, but Warren will provide a mechanism for USFWS, MDMR, CLF, and FOPR to obtain answers to their questions. MDMR, USFWS, CLF, and FOPR will be afforded the opportunity to review and comment to Warren on the bids and Warren’s initial ranking thereof, and discuss their comments with Warren as a group prior to Warren making a final selection.
- The total cost of the Two Channel Passage design work, including any modeling and on-site construction observation, shall be capped at \$500,000. If there are no acceptable bids within this cost cap, the Settlement Agreement will become null and void, unless the Parties otherwise agree. The Parties will work together in good faith to seek ways to avoid this Settlement Agreement from becoming null and void.
- A Two Channel Passage design bid selected by Warren that does not require Additional Data Gathering shall be referred to in this Settlement Agreement as “Two Channel Passage Design A.” A Two Channel Passage design bid selected by Warren that does require Additional Data Gathering shall be referred to in this Settlement Agreement as “Two Channel Passage Design B.”
- If by March 1, 2017 Warren has not entered into a contract for the final design of either Two Channel Passage Design A or Two Channel Passage Design B, then this

Settlement Agreement will become null and void, unless the Parties otherwise agree, and Warren will file a New Surrender Application within 60 days.

2.1.3.2 Review and Approval of Design Plans

MDMR and USFWS engineering staff will each be provided 14 days for design review and comments for design plans developed pursuant to section 2.1.3.1 of this Settlement Agreement. Said provision for review and comment shall be afforded by Warren to MDMR and USFWS when the design plans for each are 60% complete and, by no later than the deadline set forth in the RFP attached hereto at Exhibit A, 90% complete. CLF and FOPR shall simultaneously be provided with copies of said design plans. If Warren, MDMR, and USFWS cannot agree on the 90% design plans for either the lower falls or the upper falls, this Settlement Agreement will become null and void, unless the Parties, excepting the City, otherwise agree.

2.1.4 Construction Process

2.1.4.1 Selection of Construction Contractor

So long as the Settlement Agreement has not previously become null and void pursuant to the terms of this Settlement Agreement, Warren will engage in a competitive bid process to select the construction contractor to undertake all activities described in sections 2.1.1 and 2.1.2 of this Settlement Agreement, as set forth in this section, paragraphs (1) – (7) below. All parties to this Settlement Agreement, excepting the City, will participate in the construction process in the manner set forth in this section. The City supports all terms of this construction process.

- (1) Warren will prepare the RFP bid package in consultation with the other Parties.
- (2) The Parties have agreed on the six construction contractors that will receive the construction RFP bid package.
- (3) If the Two Channel Passage Design A has been selected by Warren, said RFP bid package shall be sent to the six selected construction contractors no later than on or about September 15, 2017. If the Two Channel Passage Design B has been selected

by Warren, said RFP bid package shall be sent to the six selected construction contractors no later than on or about October 15, 2017.

(4) Warren shall consult with the other Parties to select the construction contractor. Warren will have final authority to select the construction contractor, but only from the pool of contractors responding to the construction RFP.

(5) The total cost of the construction work, including (without limitation) bonding costs and contingency, shall be capped at \$4.6 million, unless the total cost of the design work is less than \$400,000, in which case the total cost of the construction work shall be capped at \$4.7 million. If there are one or more commercially and technologically acceptable bids within this cost cap, Warren shall enter into a contract with the selected bidder that, in Warren's discretion, is commercially reasonable, to undertake all activities described in sections 2.1.1 and 2.1.2 of this Settlement Agreement. If there are no commercially and technologically acceptable bids within this cost cap, this Settlement Agreement shall become null and void, unless the Parties otherwise agree. The Parties shall work together in good faith to seek ways to avoid this Settlement Agreement becoming null and void.

(6) If the Two Channel Passage Design A has been selected and by December 1, 2017 Warren has not entered into a construction contract pursuant to this Settlement Agreement, then this Settlement Agreement shall become null and void, unless the Parties otherwise agree. If by December 1, 2017, however, Warren has entered into a construction contract pursuant to this Settlement Agreement (contingent on FERC approval of the New Surrender Application filed pursuant to Section 3.2 below):

(a) Warren will file a New Surrender Application by December 1, 2017 that will request that FERC issue a Consistent Surrender Order.

(b) USFWS will submit a revised fishway prescription for the Saccarappa Project to extend until May 2020 the deadline for operational upstream passage for anadromous fish at the Saccarappa Project, and USFWS shall revise its Section 18 fishway prescriptions for the Presumpscot River projects as follows.

- Amending the third sentence of the second paragraph of Section 10.1(E) to provide as follows:

“In order to allow for proper consultation with resource agencies and approval by the Commission of all design plans, permanent fish passage must be operational at the Saccarappa Dam within 7 years of the completion of fishway installation at Cumberland Mills Dam.”

- Amending the anadromous fish upstream passage section of Table 3 that applies to the Saccarappa Project as follows:

“Upstream passage completed 7 years after passage is available at Cumberland Mills Dam, or at such later time as may be designated by the Service by written notice to the Commission.”

(7) If the Two Channel Passage Design B has been selected by Warren and by January 1, 2018, Warren has not entered into a construction contract pursuant to this Settlement Agreement, then this Settlement Agreement shall become null and void, unless the Parties otherwise agree. If by January 1, 2018, however, Warren has entered into a construction contract pursuant to this Settlement Agreement (contingent on FERC approval of the New Surrender Application filed pursuant to Section 3.2 below):

(a) Warren will file a New Surrender Application by January 1, 2018 that will request that FERC issue a Consistent Surrender Order.

(b) USFWS will submit a revised fishway prescription for the Saccarappa Project to extend until May 2021 the deadline for operational upstream passage for anadromous fish at the Saccarappa Project, and USFWS shall revise its Section 18 fishway prescriptions for the Presumpscot River projects as follows.

- Amending the third sentence of the second paragraph of Section 10.1(E) to provide as follows:

“In order to allow for proper consultation with resource agencies and approval by the Commission of all design plans, permanent fish passage must be operational at the Saccarappa Dam within 8 years of the completion of fishway installation at Cumberland Mills Dam.”

- Amending the anadromous fish upstream passage section of Table 3 that applies to the Saccarappa Project as follows:

“Upstream passage completed 8 years after passage is available at Cumberland Mills Dam, or at such later time as may be designated by the Service by written notice to the Commission.”

2.1.4.2 Review of Construction Activities

The engineering consultant retained by Warren pursuant to Section 2.1.3 of this Settlement Agreement, MDMR, and USFWS may conduct on-site observation of construction, which may include observing a range of flows if feasible and reasonably cost-neutral. Communications regarding construction activities and on-site visits between MDMR, USFWS, Warren, the engineering consultant, and the construction firm are expressly permitted. MDMR and USFWS shall provide to Warren timely written site visit reports noting any requested construction modifications.

2.1.4.3 Consistency Determination by USFWS

License surrender shall be considered effective only after a USFWS fishway engineer reviews all completed construction activities, and provides to FERC, MDEP, and the Parties a statement that construction occurred according to the approved design drawings or, alternatively, according to construction changes approved by a USFWS fishway engineer.

2.1.5 Remediation Attributable to Impoundment Drawdown

Warren shall be responsible for the cost of any remediation attributable to impoundment drawdown (*e.g.*, repairing riprap and exposed culverts) that is required of Warren by FERC or MDEP, the cost of which is not subject to the construction cost cap stated in section 2.1.4 of this Settlement Agreement.

2.1.6 Effectiveness Testing

Warren shall contribute up to \$200,000 to an effectiveness study to be done by MDMR of the effectiveness of the Saccarappa site, both the areas under FERC jurisdiction and State jurisdiction, at passing target species. The effectiveness study will

be conducted in accordance with the Effective Testing and Adjustment Plan attached hereto as Exhibit B.

MDMR shall send to Warren for payment to MDMR annual invoices for the estimated cost of the effectiveness testing-related work for the following year, plus up to a 5% contingency. Warren shall submit payment to MDMR no later than 30 days after receipt of the invoices. The \$200,000 contribution to the study constitutes the limit of Warren's responsibilities under this Settlement Agreement for effectiveness testing at the Saccarappa site.

2.1.7 Post-Construction Adjustments

2.1.7.1 Denil

Upon issuance of the consistency determination contemplated by Section 2.1.4.3, Warren will have no responsibility for post-construction adjustments related to the Denil, with the exception of any such requirements as may be required pursuant to federal or state law, as applicable.

2.1.7.2 Two Channel Passage

After FERC has issued a final decommissioning order, and Warren has finally surrendered the Saccarappa Project FERC license, Warren will oversee and make those post-construction adjustments MDMR believes are necessary to achieve effective fish passage in the upper channels, in consultation with USFWS and Warren, up to a cap of \$300,000. This capped amount shall constitute final fulfillment of Warren's responsibilities for post-construction adjustments, except as may be required pursuant to 12 M.R.S. § 12760, as amended (the "Fishway Statute"). All decisions regarding post-construction adjustments shall rest with MDMR, which decisions shall be made pursuant to the Effective Testing and Adjustment Plan attached hereto as Exhibit B.

2.1.7.3 Deed Restriction

With respect to land or interests in land owned by Warren below the high water mark of the Presumpscot River, Warren agrees to a deed restriction prohibiting future

alterations of the upper channels without prior written approval from USFWS and MDMR, which deed restriction language shall be pursuant to the Maine Conservation Easement Law, 33 M.R.S. §§ 476-479-C, in a form not materially inconsistent with the form attached hereto as Exhibit C.

By execution of this Settlement Agreement, USFWS and MDMR agree to accept their responsibilities as set forth in Exhibit C hereto, subject only to formal approval by legal counsel for those agencies as to specific final language regarding procedures for enforcement. The internal review by USFWS and MDMR shall begin immediately upon execution of this Settlement Agreement, shall proceed and progress in good faith, and shall require approval by Warren, CLF, and FOPR to confirm that any proposed changes are not materially inconsistent with Exhibit C. Time being of the essence, both USFWS and MDMR must agree to the final language of the deed restriction by January 31, 2017 or this Settlement Agreement will become null and void, unless the Parties mutually agree to extend said deadline.

The final deed restriction, as approved by the Parties, excepting the City, shall be signed by Warren and delivered to USFWS and MDMR within 60 days after the Saccarappa license surrender becomes effective. USFWS shall coordinate with MDMR and Warren to ensure that the original, fully executed deed restriction is recorded in the Cumberland County Registry of Deeds within 30 days after receipt of original duly authorized and executed acceptance pages from both USFWS and MDMR. If Warren proposes to transfer title to the protected property prior to the date the Saccarappa license surrender becomes effective, Warren shall provide a copy of the FERC license transfer application to the Parties concurrently with its filing at FERC.

2.1.8 Operations and Maintenance

2.1.8.1 Denil

Warren shall be responsible for operating and maintaining the Denil and supporting structures (including the fish counting facility and any remaining portions of the lower falls tailrace guard wall), in accordance with the O&M Plan attached hereto as Exhibit D, as approved by FERC. The O&M Plan will not require fish counting to

commence until 2024, although MDMR shall be provided access to the fish counting facility for the purposes of effectiveness testing in accordance with the Effectiveness Testing and Adjustment Plan (Exhibit B). The parties recognize that the fish counting provisions of the O&M Plan may need to be amended prior to the start of fish counting in 2024.

In the New Surrender Application filed with FERC pursuant to section 2.1.4.1 (6) or (7) of this Settlement Agreement Warren will request that the Denil and its associated structures be included within the Mallison Falls FERC project boundary to provide regulatory oversight of operations and maintenance.

2.1.8.2 Two Channel Passage

Warren shall have no responsibility for operating or maintaining the Two Channel Passage, with the exception of any such requirements that may be imposed pursuant to a fishway proceeding under the Fishway Statute (a “Fishway Proceeding”) or other applicable state law.

2.1.9 Fish Stocking

MDMR shall delay its Presumpscot River fish stocking program until 2025, with the exception of annual tagging and release of no more than 250 fish from outside the Presumpscot River conducted as part of the effectiveness study referred to in Section 2.1.5 above, and no other Party will engage in or allow fish stocking until 2025. MDMR may conduct limited stocking of alewives in Highland Lake before 2025, consistent with MDMR’s recent levels of Highland Lake stocking.

2.2 Fish Passage at Upstream Projects

2.2.1 Mallison Falls (P-2932)

Upon the occurrence of 2,960 American shad or 18,020 blueback herring passing in any single season at the Saccarappa fish counting facility, Warren shall either (1) two years thereafter construct the fish passage as required by the Mallison Falls Project FERC

license, or (2) three years thereafter surrender its FERC license, having proposed in its surrender application to remove, at a minimum, all dam spillways at the project.

2.2.2 Little Falls (P-2941)

Warren will either (1) construct the fish passage as required by the Little Falls Project FERC license, or (2) three years after removal of the spillway at the Mallison Falls Project, surrender its FERC license, having proposed in its surrender application to remove, at a minimum, all dam spillways at the project.

2.2.3 Gambo (P-2931) and Dundee (P-2942)

Warren's New Surrender Application and New MDEP Application will request that the fish passage requirements in the Gambo and Dundee licenses not apply for the term of the license and any extensions thereof, and that fish passage at those projects will not be required by the license amendment orders issued pursuant to this Settlement Agreement. Given the surrender of the Saccarappa Project license and the work at the Saccarappa site contemplated by this Settlement Agreement, the Parties agree that the record before FERC, MDEP, USFWS, and MDMR supports a finding that, under present circumstances, fish passage at Gambo and Dundee is not required or appropriate, and that the removal of the Mallison Falls and Little Falls dams would not change that finding. MDMR shall make a recommendation to MDEP to issue a Consistent MDEP Order concluding that the New Surrender Application contemplated in Section 3.2 below does not violate water quality standards.

2.3 Further Fishway Proceedings

Unless Warren has failed to comply with its obligations contained in this Settlement Agreement:

- The Parties acknowledge that it is USFWS's general policy not to participate as a party in state administrative proceedings, and, therefore, USFWS agrees not to participate as a party in any future Fishway Proceeding.

- No Party will take a position in any Fishway Proceeding that is contrary to this Settlement Agreement.
- For as long as FERC has jurisdiction over the Denil, CLF and FOPR agree not to initiate or support a Fishway Proceeding relating to the Saccarappa site or to argue that the structures or man-made alterations at the site are a “dam or other artificial obstruction.”
- In any future fishway proceeding relating to the Saccarappa site, Warren agrees not to argue that location of the fishway within a FERC project boundary preempts the jurisdiction of the commissioners of MDMR or the Maine Department of Inland Fisheries and Wildlife (“DIFW”).

Except as provided herein, nothing in this Settlement Agreement constitutes, or may be used by any of the Parties, as an admission, determination, or finding by any of the Parties that any of the conditions set forth in the Fishway Statute exists or may exist.

2.4 USFWS Prescriptions

Concurrent with the New Surrender Application to be submitted pursuant to Section 3.2, USFWS agrees to submit to FERC preliminary modifications of its fishway prescriptions incorporating (1) the extensions of time to extend the deadline for operational upstream fish passage at the Saccarappa Project until May 1, 2020 or May 1, 2021, as provided in Section 2.1.4.1, (2) the 2024 counting initiation date at Saccarappa, discussed above in Section 2.1.7.1, (3) the extensions of time for fishway construction at the Mallison and Little Falls Projects contemplated in Sections 2.2.1 and 2.2.2, and (4) the inapplicability of the fishway obligations at the Gambo and Dundee Projects contemplated by Section 2.2.3. All Parties agree to support USFWS in any challenge to the preliminary modified fishway prescriptions, except that participation by MDMR in any legal action will be at the discretion of the Maine Attorney General’s Office.

2.5 City-Related Obligations

2.5.1 Obermeyer Recreational Feature at Bridge Street

The City has full responsibility for obtaining permits and funding for any planned recreational features at Bridge Street (the “Obermeyer”). Warren will provide any easements (or, if easements are not sufficient, other property interests), as needed, for permitting and construction of the Obermeyer, which property interests will be subject to the deed restriction required by Section 2.1.7.3. The City will be afforded an opportunity to collaborate with Warren’s construction contractor in an effort to reduce construction costs associated with coffer dams and other aspects of the construction of the Obermeyer. Such assistance may be offered by Warren in the exercise of its sole discretion, but Warren shall use commercially reasonable efforts to assist the City. All Parties agree to support timely permitting of the Obermeyer once (1) agreement is reached on the Obermeyer operating regime during spring fish migration, and (2) DEP has issued a Consistent MDEP Order and FERC has issued a Consistent Surrender Order. The City shall assume sole responsibility for compliance with any regulatory requirements associated with permitting of the Obermeyer, including for any required fish passage.

2.5.2 Land Transfer

With the exception of Saccarappa Project lands associated with or necessary or convenient for operation and maintenance of the Denil and other portions of Warren’s hydropower and electric transmission system, Warren shall transfer to the City all project lands associated with the Saccarappa Project that are necessary for extension of the City’s river walk, subject to and conditioned on negotiation of terms and conditions for such transfer mutually agreed to by Warren and the City. The closing on such transfers shall occur within ninety (90) days after the surrender of the Saccarappa Project FERC license becomes effective.

3.0 NEW MDEP AND SURRENDER APPLICATIONS

If FERC and MDEP take the actions requested below in Section 4, and if this Settlement Agreement has not previously become null and void pursuant to this

Settlement Agreement, by either December 1, 2017 or January 1, 2018, as determined by Section 2.1.4.1(6) and (7) of this Settlement Agreement, Warren will file, and the other Parties will support, the following applications with MDEP and FERC.

3.1 New MDEP Application

Warren will request (the “New MDEP Application”) that MDEP issue a Consistent MDEP Order, which will include extension of the deadline for operational upstream passage for anadromous fish at the Saccarappa Project to either May 2020 or May 2021, as determined by Section 2.1.4.1(6) and (7) of this Settlement Agreement. The New MDEP Application will request that MDEP conclude that the provisions of the New Surrender Application do not violate state water quality standards.

3.2 New Surrender Application

3.2.1 Requests by Warren

Warren will request (the “New Surrender Application”) that FERC issue a Consistent Surrender Order. The New Surrender Application will include, without limitation, the following proposals, plans, and requests for approval:

- Warren will propose to discontinue power generation at the Saccarappa Project and remove the Eastern Spillway and the Western Spillway, the powerhouse, and the ancillary structures in the forebay channels currently existing at the Saccarappa Project, and construct fish passage at the Saccarappa lower falls and upper falls pursuant to sections 2.1.1 and 2.1.2 of this Settlement Agreement.
- Warren will propose to take such actions and have such fish passage facilities fully operational by May 1, 2020 or May 1, 2021, as determined by Section 2.1.4.1(6) and (7) of this Settlement Agreement.

- Warren will request that FERC extend the deadline for operational upstream fish passage at the Saccarappa Project until May 1, 2020 or May 1, 2021, as determined by Section 2.1.4.1(6) and (7) of this Settlement Agreement.
- Warren will request that FERC include the Denil as part of the Mallison Falls project works, as set forth in section 2.1.8.1 of this Settlement Agreement.
- Warren will propose to operate and maintain the Denil and supporting structures, including the fish counting facility, as set forth in section 2.1.8.1 of this Settlement Agreement.
- Warren will request that FERC change the requirements for fish passage at the Dundee and Gambo projects as specified in section 2.2.3 of this Settlement Agreement.
- Warren will request that FERC condition issuance of a final surrender acceptance order upon receipt of a written statement authored by a USFWS fishway engineer, pursuant to section 2.1.4.3 of this Settlement Agreement, stating that Warren has constructed all fish passage facilities according to the approved design drawings or, alternatively, according to construction changes approved by a USFWS fishway engineer.

3.2.2 Action by FERC

The New Surrender Application will request that FERC issue a Consistent Surrender Order, which will approve, without limitation, the proposals, plans, and requests contained in Section 3.2.1. The New Surrender Application also will request that FERC extend for ten years, until 2053, the license expiration dates for the Mallison, Little Falls, Gambo, and Dundee projects.

4.0 SUBMISSIONS TO MDEP AND FERC

On or before November 15, 2016, Warren will request, and all other Parties will support the request, that by no later than December 31, 2016 MDEP amend the WQC issued for the Saccarappa Project to extend until May 2019 the deadline for operational upstream passage for anadromous fish at the Saccarappa Project, to allow the Parties time to undertake the obligations set forth above in Section 2.

On or before November 15, 2016, Warren will request, and all other Parties will support the request, that by no later than January 31, 2017, FERC, upon receipt of the revised WQC referred to in the preceding paragraph and the revised fishway prescription referred to in this Section 4 below, extend until May 2019 the deadline for operational upstream passage for anadromous fish at the Saccarappa Project, to allow the Parties time to undertake the obligations set forth above in Section 2.

On or before November 15, 2016, USFWS shall notify FERC that USFWS is extending until May 2019 the deadline for operational upstream passage for anadromous fish at the Saccarappa Project.

Within 14 days after FERC takes the actions requested in this section, Warren shall withdraw the Pending Surrender Application and Pending MDEP Application.

5.0 NOTICES, CONTACTS, PROVISION OF DOCUMENTS

Notices, contacts, consultations, and provision of documents required under this Settlement Agreement shall be made to the designated representative(s) of each party listed below. If a party chooses to change its designated representative(s), it shall notify all other parties in writing by email.

- For City of Westbrook

Westbrook City Council
c/o Council President
Westbrook City Hall
2 York Street
Westbrook, ME 04092
Telephone: 207-854-9105
jbryant@westbrook.me.us

Scott D. Anderson, Partner
Verrill Dana LLP
One Portland Square
Portland, ME 04112-0586
Telephone: 207-253-4540
sanderson@verrilldana.com

- For Conservation Law Foundation:

Sean Mahoney, Esq.
Executive Vice President
Conservation Law Foundation
53 Exchange Street
Portland, ME 04103
Telephone: 207-210-6439
Email: smahoney@clf.org

- For Friends of the Presumpscot River:

Ronald Kreisman, Esq.
77 Mackworth Street
Portland, ME 04103
Telephone: 207-699-4558 or 207-557-3571
Email: ron@kreisman.net

and

President
Friends of the Presumpscot River
PO Box 1474
Westbrook, Maine 04098

- For Maine Department of Marine Resources

Mark Randlett, Esq.
Office of the Maine Attorney General
Six State House Station
Augusta, ME 04333-0006
Telephone: 207-626-8588
mark.randlett@maine.gov

Oliver Cox
Maine Department of Marine Resources
Division of Sea Run Fisheries and Habitat
650 State Street
Bangor, ME 04401
Telephone: 207-941-4487
oliver.n.cox@maine.gov

- For S.D. Warren Company

Briana K. O'Regan, Esq.
Assistant General Counsel
Sappi North America
179 John Roberts Road
South Portland, ME 04106
Telephone: 207-854-7070
briana.oregan@sappi.com

Michael Standel
Managing Director
Sappi North America
Westbrook Operations
89 Cumberland Street
P.O. Box 5000
Westbrook, ME 04098-1597
Telephone: 207-856-4019
Michael.standel@sappi.com

Matthew D. Manahan, Esq.
Pierce Atwood LLP
Merrill's Wharf
254 Commercial Street
Portland, ME 04101
Telephone: 207-791-1189
mmanahan@pierceatwood.com

- For U.S. Fish and Wildlife Service

Andrew Tittler
U.S. Department of the Interior
Northeast Regional Solicitor's Office
One Gateway Center, Suite 612
Newton, MA 02458
Telephone: 617-527-3400
Andrew.tittler@sol.doi.gov

Steven Shepard, C.F.P.
U.S. Fish and Wildlife Service
P.O. Box A
306 Hatchery Road
East Orland, ME 04431
Telephone: 207-902-1572
steven_shepard@fws.gov

6.0 MULTIPLE COUNTERPARTS

This Settlement Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

Settlement Agreement dated as of November 15, 2016 relating to the Saccarappa Project license surrender (Federal Energy Regulatory Commission License No. 2897).

S.D. WARREN COMPANY

A handwritten signature in blue ink, appearing to read 'T. Collins', with a long horizontal flourish extending to the right.

By: Thomas A. Collins
Title: Vice President - specialties
Date: 11-11-2016

This signature must be ratified by the Sappi North America Board of Directors at its December 6, 2016 meeting.

Settlement Agreement dated as of November 15, 2016 relating to the Saccarappa
Project license surrender (Federal Energy Regulatory Commission License No. 2897).

U.S. Fish and Wildlife Service

A handwritten signature in blue ink, appearing to be 'Wendi Weber', written over a horizontal line.

By: /s/ Wendi Weber

Title: Regional Director

Date: NOV 10 2016

Settlement Agreement dated as of November 15, 2016 relating to the Saccarappa
Project license surrender (Federal Energy Regulatory Commission License No. 2897).

Maine Department of Marine Resources

A handwritten signature in black ink, appearing to read 'RCK', written over a horizontal line. The signature is stylized and cursive.

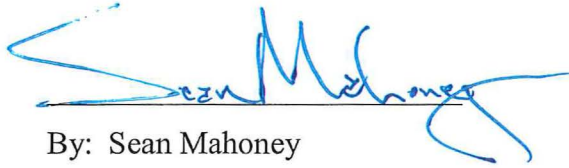
By: Patrick C. Keliher

Title: Commissioner

Date: November 14, 2016

Settlement Agreement dated as of November 15, 2016 relating to the Saccarappa
Project license surrender (Federal Energy Regulatory Commission License No. 2897).

Conservation Law Foundation

A handwritten signature in blue ink, appearing to read "Sean Mahoney", is written over a horizontal line. The signature is stylized and includes a long horizontal stroke extending to the left.


By: Sean Mahoney

Title: Executive Vice-President

Date: November 11, 2016


Settlement Agreement dated as of November 15, 2016 relating to the Saccarappa
Project license surrender (Federal Energy Regulatory Commission License No. 2897).

Friends of the Presumpscot River


By: MICHAEL SHAUGHNESSY
Title: PRESIDENT F.O.P.R.
Date: 11.11.2016

Settlement Agreement dated as of November 15, 2016 relating to the Saccarappa Project license surrender (Federal Energy Regulatory Commission License No. 2897).

City of Westbrook

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

By: COLLEEN HILTON

Title: MAYOR

Date: 11.11.2016

This signature must be ratified by the Westbrook City Council at its November 21, 2016 meeting.

Exhibit A to Settlement Agreement

Sappi North America

WESTBROOK, MAINE

Saccarappa Fish Passage Project

REQUEST for PROPOSAL

**BID REQUEST
No. WBHF-2017-038**

**Pre-Bid Meeting:
Bids Due:**

**Thursday, November 17, 2016 by 10:00 AM EST
Wednesday, December 21, 2016 by 10:00 AM EST**

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INVITATION TO BID

Notice is hereby given that S.D. Warren Company d/b/a Sappi North America (Sappi) will receive bids for the engineering design related to fish passage at the Sappi owned Saccarappa Hydro facility located in Westbrook, Maine, in accordance with the attached Invitation to Bid, Bid Form, Engineering Services Agreement (ESA), Informational Materials and Bid Documents.

Bids and/or proposals must be received by Mr. Barry Stemm, Engineering Manager, by 10:00 AM EST on December 21, 2016. Bidders must submit 6 hard copies and electronic copies as described below. Sappi will evaluate the bids/proposals and select an engineering firm based on several factors, including: quality of the technical response, scope of services, schedule, past experience on similar projects, and cost. Bidders should fill out and sign the attached Bid Form and attach relevant information to demonstrate previous experience working on similar projects. Electronic copies of the proposal must also be submitted to both of the Sappi engineering and commercial contacts listed below. These electronic copies will satisfy the due date requirements of the bid request but must be followed up by the hard copies within 2 business days as requested above.

Engineering firms interested in bidding on this project are required to attend a mandatory pre-bid meeting at the project site. The date and time of the pre-bid meeting will be 10:00 AM on Thursday, November 17, 2016.

All Technical Questions regarding this project should be directed to Sappi's Engineering/Technical representative, Mr. Barry Stemm (207-856-4584 or barry.stemm@sappi.com). No questions will be accepted and/or addressed within one week prior to the due date for proposals.

Commercial questions concerning the project should be directed to Mr. Greg Carlson (218-879-0694 or gregory.carlson@sappi.com).

SECTION I

INSTRUCTION TO BIDDERS

1 This Bid Request, along with the ESA, Technical Information and Specification shall become part of the contract documents.

2 **Background**

The Federal Energy Regulatory Commission (FERC) license for the Saccarappa Project (P-2897) requires construction of Denil fish ladders to facilitate upstream anadromous fish passage at the project. Sappi has determined that the high cost of constructing the prescribed fish passage in accordance with the license renders the project uneconomical. Therefore, on December 2, 2015 Sappi submitted an application to FERC to surrender the project license, remove the dam spillways, install a double Denil fishway within the filled tailrace structure, and make physical modifications in the upper western channel to facilitate more nature-like fish passage.

After Sappi filed the 2015 surrender application, it met with state and federal resource agencies, the City of Westbrook, Friends of the Presumpscot River (FOPR), and the Conservation Law Foundation (CLF) to continue discussions that had taken place over the preceding two years to determine whether the parties could agree on a more nature-like fish passage alternative for the upper falls. On November 8, 2016, Sappi finalized the terms of an agreement (the Settlement Agreement) with the United States Fish and Wildlife Service (USFWS), the Maine Department of Marine Resources (MDMR), the City of Westbrook, FOPR, and CLF to request FERC approval of an alternative license surrender proposal. The Settlement Agreement will be available on FERC's eLibrary or before November 15, 2016.

The Settlement Agreement requires Sappi to undertake a competitive bid process to identify an engineering consultant to prepare final design plans for more nature-like fish passage over the upper falls area based on the Princeton Hydro two channel passage design concept, attached hereto as Exhibit A, but excluding the portions relating to the rock ramp design depicted therein to provide passage over the lower falls (hereinafter, the "Two Channel Passage"); the Denil design pursuant to section 2.1.1 of the Settlement Agreement has been substituted for the excluded rock ramp.

The purpose of this RFP is to solicit proposals for preparation of final design plans for the Two Channel Passage as defined in section 2.1.2 of the Settlement Agreement (hereinafter "nature-like fish passage") upstream of the exit end of the proposed Denil fishway, in both the east and west channels at Saccarappa Falls. The engineering firm selected shall be vetted and determined to be qualified based on a number of criteria described in this RFP.

To assist you in preparing your proposal, attached hereto as Exhibit B is the electronic link information for the relevant technical data and materials.

Please include in your proposal consultation provisions with Sappi, MDMR, and USFWS engineering staff to provide opportunity for design review and comments when the design is at the 60% and 90% completion stage.

In your proposal, please address data issues (potential need for additional modeling, bathymetry, and stream gauging), stating whether you believe there are data gaps and, (1) if so, how you propose to fill those gaps, and (2) if not, explain why not. Please also include in your proposal a statement describing how you will consult with the Denil design engineering consultant with respect to the Denil exit location.

Your proposal must include at least three on-site construction observations in coordination with Sappi and the USFWS fishway engineer, as well as up to 15 hours that you will allocate to discuss with Sappi, the USFWS fishway engineer, and the firm doing the construction various situations and circumstances related to the design that may arise during the construction process.

Please submit any questions and other communications concerning this RFP in writing to Sappi. At least one representative from your company must attend an on-site Bidders' conference at 10:00 AM on November 17, 2016. In addition, after the bids have been submitted, Sappi will conduct interviews before making a final selection after consulting with the parties to the Settlement Agreement to determine those Bidders that the parties to the Settlement Agreement would like to interview. No fewer than the top two qualifying Bidders will be interviewed, unless it is determined by all parties that interviews are not needed for making a selection, or in the event that there is only one Bidder, in which case an interview will occur with that Bidder.

Bidders must not otherwise communicate about the subject of this RFP with any of the parties to the Settlement Agreement or their representatives.

3 Defined Terms

3.1 Terms used in this RFP to Bidders are defined in the ESA.

4 Copies of RFP Reference Documents

4.1 Complete sets of the reference documents shall be provided electronically with this request.

4.2 Neither Sappi, nor Sappi's Engineer (Acheron Engineering), assumes any responsibility for errors or misinterpretations resulting from the Bidder's use of incomplete sets of reference documents.

4.3 Copies of reference documents provided with this RFP and available on the above terms are provided only for the purpose of obtaining proposals on the work and do not confer a license or grant for any other use.

5 Engineering Services Agreement (ESA)

5.1 The selected engineering firm will be required to enter into an Engineering Services Agreement. Draft copy is attached as Exhibit C. Bidders must provide any comment, questions, or alternate language to the ESA with their proposal.

6 Examination of RFP Documents and Site

6.1 Before submitting a proposal, each Bidder must (a) examine all of the RFP documents thoroughly, (b) visit the site to obtain first-hand knowledge of existing conditions and familiarize themselves with local conditions that may in any manner affect cost, progress or performance of the work, (c) familiarize themselves with Federal, State and Local laws, ordinances, rules and regulations that may in any manner affect cost, progress or performance of the work, and (d) study and carefully correlate Bidder's observations with the RFP documents.

6.2 If access to a normally secured area is required, contact Barry L. Stemm (207) 856-4584 during normal working hours to make arrangements.

6.3 Sappi will provide each Bidder reasonable access to the site to conduct such investigations and tests as each Bidder deems necessary for submission of its Bid.

6.4 The submission of a Bid will constitute an incontrovertible representation by the Bidder that it has complied with every requirement of this Article (Examination of RFP documents and Site) and that the RFP documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the work.

7 Interpretations

7.1 All questions about the meaning or intent of the RFP documents shall be submitted to Sappi in writing. Replies will be issued by Addenda mailed or delivered to all Bidders. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

8 Contract Time

8.1 The number of days within which, or the date by which, the work is to be completed is set forth in the Bid Form and will be included in the ESA.

9 Project Schedule

9.1 Each Bidder must submit as part of their proposal a proposed detailed project schedule (Submit as Attachment 1). This schedule should be in the form of a Gantt chart (or similar) indicating the duration and predecessors for each major task in the project and shall conform to the schedule boundary set forth by Sappi below. It is the Bidder's

responsibility to evaluate the actual time required to complete the project and submit that duration with the bid request response.

9.2 Project Schedule:

- Project Start Date: TBD based on timing of bid evaluation. No later than March 1, 2017.
- Project Completion Date: TBD by Proposed Schedule but:
 - No later than September 1, 2017 if bidder's proposal proposes no additional modeling and/or gathering of field data (*i.e.*, collection of additional bathymetry or stream gauging information) beyond what has already been completed and is currently available to bidders; or
 - No later than October 1, 2017 if bidder's proposal proposes to perform additional modeling and/or gathering of field data (*i.e.*, collection of additional bathymetry or stream gauging information) beyond what has already been completed and is currently available to bidders.

10 Qualifications of Bidders, Project Personnel & Subcontractors

10.1 Each Bidder must submit as part of its proposal a list of all Key Project Personnel and Subcontractors along with other persons and organizations (including those who are to furnish the principal items of engineering and fish passage evaluations) proposed for all portions of the work (Submit as Attachment 2). Such lists shall be accompanied by an experience statement with pertinent information as to similar projects and other evidence of qualifications for each such contractor key person, subcontractor, and organization if requested by Sappi. If, after due investigation, Sappi has reasonable objection to any proposed subcontractor, other person or organization, Sappi may, before awarding the Contract request the apparent Successful Bidder to submit an acceptable substitute.

11 Submission of Bids

11.1 Bids shall be submitted at the time and place indicated in the Invitation to Bid. Electronic copies of the proposals must be submitted in addition to the hard copies requested here. The electronic copies will satisfy the due date requirements of the request but must be followed up with hard copies.

11.2 All bids are due by 10:00 AM EST on December 21, 2016.

11.3 The bids will be opened privately. Bidders should be aware that Sappi may share all or portions of the bid documents with parties to the Settlement Agreement described above. Sappi will endeavor to minimize the potential for public disclosure.

11.4 Sappi reserves the right to reject any and all bids. Sappi reserves the right to cancel portions of this work. Any discrepancies in summation or multiplication of the bid figures will be referred back to the Bidder for resolution.

12 Bid Form

12.1 The enclosed Bid Form must be submitted with the Bidder's proposal.

12.2 The Bid price of each item on the form must be stated in words and numerals; in case of a conflict, words will take precedence.

12.3 All names must be typed or printed below the signature.

12.4 The Bid shall contain an acknowledgment of receipt of all addenda (the numbers of which shall be filled in on the Bid Form.)

12.5 The address to which communications regarding the Bid are to be directed must be shown.

12.6 Partial bid pricing will not be accepted.

13 Proposal Validity

13.1 All Bids and pricing shall remain firm for sixty (60) days after the day of the Bid opening.

14 Award of Contract

14.1 Sappi reserves the right to reject any and all Bids, to waive any and all formalities, and to disregard all nonconforming, nonresponsive or conditional Bids.

14.2 In evaluating Bids, Sappi shall consider the qualifications of the Bidders, whether or not the Bids comply with the prescribed requirements, and alternates and unit prices if requested in the Bid forms. It is Sappi's intent to accept alternates (if any are accepted) in the order in which they are listed on the Bid Form but Sappi may accept them in any order or combination. Further, in evaluating Bids, Sappi will consider many factors, including but not limited to, the following:

14.2.1 a statement of qualifications

14.2.2 design approach

14.2.3 resumes/CVs of key project personnel

14.2.4 examples of similar nature-like fish passage projects

14.2.5 proven ability to design in-river structures

14.2.6 track record of meeting schedule on complex design projects

- 14.2.7 modeling ability, if applicable
- 14.2.8 project management efficiencies/innovations that lead to cost/scheduling savings, and overall cost
- 14.2.9 QA/QC plan
- 14.2.10 references

14.3 Sappi may consider the qualifications and experience of subcontractors and other persons and organizations (including those who are to furnish the principal items of materials or equipment) proposed for those portions of the work as to which the identity of subcontractors and other persons and organizations must be submitted. Operating costs, maintenance consideration, performance data and guarantees of materials and equipment may also be considered by Sappi.

14.4 Sappi may conduct such investigations as it deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of the Bidder's proposed subcontractors and other persons and organizations to do the work in accordance with the RFP documents to Sappi's satisfaction within the prescribed time.

15 Change of Scope Work

15.1 Any change in scope shall be performed in strict compliance with Sappi's "Contract Change Request" (CCR) policy and the terms outlined in the ESA. Failure to follow this procedure and to submit CCRs in a timely fashion, may subject the Bidder to forfeiture of all rights to claim payment for the extras associated with the CCR in question.

16 Regard for Private Property

16.1 Unless specific easements are obtained, the Bidder shall not enter any private property without the permission of the property owner. If said permission is granted, the Bidder shall perform the Work in a professional manner and leave the property in the state it was found. Bidder shall indemnify and hold Sappi harmless for any damage to private property.

17 Miscellaneous Items

17.1 The Bidder must satisfy all the Commercial and Safety requirements, set forth by Sappi, before its Bid can be submitted.

17.2 All work shall comply with the ESA signed between the Bidder and Sappi.

17.3 Include any and all costs that are required to accomplish the work.

18 Questions

1. Technical questions should be directed via e-mail to:

Barry L. Stemm
Engineering Department
(207) 856-4584
E-Mail: Barry.Stemm@Sappi.Com

2. Commercial questions should be directed via email to:

Greg Carlson
Procurement Department
(218) 879-0694
E-Mail: Gregory.Carlson@Sappi.Com

3. Questions that have a significant effect on the scope of work or the bid price will be forwarded to all Bidders and will become part of the contract documents.

SECTION II

BID FORM

Date: _____

Submit Six (6) Hard Copies and One (1) Electronic Copy To:

Sappi North America
Attn: Mr. Barry L. Stemm
89 Cumberland Street
Westbrook, Maine 04092
E-Mail: Barry.Stemm@Sappi.com

Submit One (1) Electronic Copy To:

Sappi North America
Attn: Mr. Gregory Carlson
2201 Avenue B
PO Box 511
Cloquet, MN 55720
E-Mail: Gregory.Carlson@sappi.com

Submit One (1) Electronic Copy To:

Acheron Engineering (Sappi's Engineer)
Attn: Mr. William Ball
147 Main Street
Newport, ME 04953
E-Mail: wball@acheronengineering.com

Project: Saccarappa Hydro Fish Passage - Engineering Design

1. The undersigned BIDDER proposes and agrees, if the bid is accepted, to enter an agreement with Sappi in the form of ESA included in the RFP documents to perform and furnish all work as specified or indicated in such ESA and the final scope of work.
2. BIDDER accepts all of the terms and conditions of the Invitation to Bid and Instruction to Bidders. This bid will remain subject to acceptance for sixty (60) days after the day of bid opening.

3. BIDDER has familiarized itself with the nature and extent of the RFP documents, work, site, locality and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work.
4. BIDDER has given Sappi written notice of all conflicts, errors or discrepancies that it has discovered in the RFP documents, and the written resolution thereof by Sappi or Sappi Engineer is acceptable to BIDDER.
5. The following separate documents are required to be included in the proposal:

(Attachment 1) Bidder's proposed schedule.

(Attachment 2) Name of key project personnel and principal subcontractors and their project responsibilities.

(Attachment 3) A schedule of engineering rates.

(Attachment 4) Reference/Experience List of Similar Projects

BIDDER

The undersigned hereby designates as the office to which notice to proceed and/or other correspondence should be mailed.

Name of Firm _____

by (signature) _____

by (typed) _____

Address _____

Telephone _____

E-Mail _____

BIDDER is individual () Partnership () Corporation ()

If BIDDER is a partnership, fill in the following names

of partners: _____

If BIDDER is a corporation, fill in the following:

Organized under the laws of the State of _____

PROJECT: _____

DATE: _____

BID FORM - PRICING

List the firm lump sum pricing inclusive of the following items:

- 1) Engineering Design and Drafting Services**
- 2) Modeling or Other Data Gathering by Type (if any)**
- 3) Travel & Expenses**
- 4) Meetings**

Please also provide the following:

Hourly Rates for Any Additional Services (Submitt as Attachment 3)

SECTION III

SCOPE of WORK

SACCARAPPA SURRENDER PROJECT (FERC No. 2897) FINAL DESIGN OF NATURE-LIKE FISH PASSAGE AT SACCARAPPA EASTERN AND WESTERN CHANNELS

1.0 Introduction

1.1 General Project Description: On December 2, 2015, S. D. Warren Company d/b/a Sappi North America (Sappi) filed with the Federal Energy Regulatory Commission (FERC) an application to surrender the operating license for the Saccarappa hydroelectric facility in Westbrook, Maine. The December 2015 Surrender Application is available for view and included in the Exhibit B (link to information of the relevant technical data and materials). Firms intending to respond to this RFP are encouraged to review the surrender application. It provides extensive information regarding the Saccarappa project. The 2015 Surrender Application includes a proposal by Sappi to install fish passage at the Saccarappa site following removal of the eastern and western spillways. The preliminary design drawings for fish passage at the site that was submitted with the Surrender Application are commonly referred to by Sappi as the Western Channel Design.

Subsequent to submission of the application, Sappi entered into discussions and negotiations with the resource agencies and NGOs, to try to reach agreement regarding a wide range of issues including the design of fish passage at Saccarappa. The Surrender Application includes a section that describes the collaborative process that Sappi used to evaluate alternative fish designs. During that process, Sappi considered alternatives to the Western Channel Design that included lowering the water level in the river upstream of the Saccarappa site and extensive modification to the western and eastern channel.

1.2 Purpose of RFP: As a result of on-going discussions with the resource agencies and NGO parties (Friends of the Presumpscot River and Conservation Law Foundation), Sappi has agreed to construct fish passage based on the double Denil fishway shown in the Western Channel design (for passage over the lower falls) and the nature like fish passage concept that is referred to by Sappi as the Two Channel Design to pass fish over the two channels of the upper falls. The Two Channel Design includes

substantive modifications in both the western and eastern channels. The Two Channel Design also contemplates lowering the water level in the river upstream below the levels contemplated in the Western Channel Design.

Sappi is seeking proposals from qualified engineering consulting firms to develop a final design for the western and eastern channels that will optimize the effectiveness of fish passage over the upper Saccarappa falls in the two channels while minimizing the work required in the two channels and minimizing impacts to upstream water levels. Sappi has retained others to prepare the design of a double Denil fishway to facilitate fish passage over the lower falls from the headpond of Cumberland Mills into the western channel. The design of the modifications to the western and eastern channels is intended to facilitate the passage of fish that exit the Denil fishway and fish that may ascend the lower Saccarappa falls. The only alternative under consideration is to modify the shape, slope and configuration of the western and eastern channels to enhance the probability of safe, timely and effective fish passage over the upper falls for the targeted species (Alewives, Blueback Herring, American Shad, American eel, and Atlantic Salmon).

The purpose of this RFP is to solicit proposals for preparation of final design plans for a nature like fish passage above the proposed Denil fishway exit point, upstream past the remaining upper falls in both the east and west channels at Saccarappa Falls. The engineering firm selected shall be vetted and determined to be qualified based on a number of criteria described in this RFP.

1.3 General Description of Proposals: Clarity is imperative.....Brevity is important. Design consultants are encouraged to make the proposal as clear and brief as possible while still responding to the specific requirements of the RFP. The firms that have been invited to submit a proposal have all been prescreened. Sappi only invited firms with known qualifications and experience to provide the services requested in this RFP. Non-specific, boiler plate type “fluff” information should NOT be included in the proposal.

The following sections of this RFP provide information that may be useful in the preparation of your proposal. Also included is a list of specific information that Sappi will consider during their evaluation of proposals.

2.0 Reference Materials Available: The following is a list of reference materials made available by Sappi to assist with preparation of your proposal. In addition, a pre-submission meeting will be held at Sappi’s facility in Westbrook on November 17, 2016. Representatives of firms intending to respond to the RFP should meet at the Gatehouse Conference Room located at the Sappi mill, 89 Cumberland Street, Westbrook, Maine.

Attendance at the meeting is mandatory for any firm to be considered. A site visit will follow the meeting.

All of the reference material listed below is available on a DropBox site. The list below refers to a specific folder with the same name and is referred to in this RFP as Exhibit B. The link to the DropBox site is:

<https://www.dropbox.com/s/ewwgyxotemjbbxt/2.0%20Reference%20Materials.zip?dl=0>

- 2.1 December 2015 Saccharappa Surrender Application
- 2.2 Site Plan with bathymetric and topographic data (CAD file)
- 2.3 Relevant reference materials and documents prepared by Princeton Hydro
- 2.4 Site Plan for double Denil fishway (CAD file)
- 2.5 Stage discharge curves for the central pool upstream of the lower falls and downstream of the upper falls (pdf)
- 2.6 USFWS Performance, Work and Fatigue Model for American shad. Use of this model requires the use of free software called SMath. (<http://en.smath.info/>)
- 2.7 Photos – Saccharappa Site

3.0 Proposal Requirements: The proposal **must** include the following:

3.1 Data Gaps: The proposal must include a statement detailing perceived or identified data gaps necessary for preparation of a final design and how such data gaps can or should be addressed. If there are no perceived or identified data gaps necessary for preparation of a final design, include a statement to that effect.

3.2 Modeling: If you believe additional modeling is necessary for preparation of a final design, provide a detailed description of the hydraulic modeling that will be developed and used to assist, guide or evaluate the engineering design of fish passage in the upper western and upper eastern channels. The proposal must include a description of how the selected engineering design firm will use hydraulic modeling to optimize the design and how the results will be used to evaluate passage efficiency and effectiveness.

3.3 Scope of Engineering Design Services: Provide a detailed list with descriptions of proposed engineering design service broken down by task. Services must include an evaluation of the design at flows of 300 cfs, 1,000 cfs, 1,500 cfs, and 2,150 cfs.

3.4 Final Work Product: Provide a description of the final engineering design work product to be provided to Sappi; this should include a detailed listing of anticipated final drawings or model results. Note: All drawings with site plans, final contours, profiles and cross sections are to be provided in AutoCAD 2010 format in model

space, as well as modeling files in native format (e.g., HEC-RAS, River 2D, etc.), if additional modeling is performed. Warren is expecting, at a minimum, to receive CAD drawings and a design report. The final drawing(s) proposed shall be suitable for firm construction bidding.

- **Schedule:** Provide a detailed schedule for the proposed scope of work in Gantt chart format. The chart should indicate the proposed schedule for the work, including: anticipated start date, finish date, timing of draft reviews, timing of deliverables and estimated hours for each task. The schedule should include a minimum of four formal meetings (kick-off, 60%, 90% & final design review). The kick-off meeting will review existing information, data gaps and planning. A second meeting (60%) will be held to review and evaluate preliminary design information and any preliminary model results that may be required. A 90% design review meeting will be required, and a last meeting to present the final results. The 90% design plans must be completed by no later than July 10, 2017 if bidder's proposal proposes no additional modeling and/or gathering of field data (*i.e.*, collection of additional bathymetry or stream gauging information) beyond what has already been completed and is currently available to bidders, *or alternatively* no later than August 7, 2017 if bidder's proposal proposes to perform additional modeling and/or gathering of field data (*i.e.*, collection of additional bathymetry or stream gauging information) beyond what has already been completed and is currently available to bidders.

3.5 Consultation with Denil Design Engineers: Include a statement indicating that, if selected, the design engineer will consult with the design engineers for the Denil fishway with respect to the Denil exit location.

3.6 Clarifications of Questions regarding the RFP: All clarifications and/or exceptions regarding the RFP must be submitted to Sappi as part of this proposal.

3.7 Personnel to be Assigned: The proposal should include a list of all personnel that the design consultant plans to have involved with the design work. The list should include name, office location, planned project assignment or responsibility, education and years of experience. If Sappi needs any additional information regarding personnel assignments, the design engineer may be asked to provide additional information.

3.8 Assumptions made in Preparation of the Proposal: If the firm responding to the RFP has made any assumptions during preparation of the proposal, please include and list and brief description of those assumptions.

3.9 Health and Safety: All personnel of the selected firm who enter onto Sappi property must comply with Sappi's health and safety procedures. Personnel who will be on Sappi property must provide a certificate indicating completion of a safety training video and wear the required safety equipment whenever they are on Sappi property. The proposal must include a statement indicating that all personnel employed by the selected firm who will be on Sappi property will be trained and have the required safety equipment. The list includes at a minimum: hard hat, safety glasses, hearing protection and steel toe shoes. Additional equipment may be required if personnel are working in, over or adjacent to the river.

4.0 Guidance by Sappi: The following is a list of issues that may have an effect on the work of the selected engineering design firm.

4.1 Bedrock Removal: Sappi has determined that blasting will not be allowed for demolition of concrete structures and bedrock. All bedrock will have to be removed by mechanical means without the use of explosives. This limitation could increase the unit cost of bedrock removal. Therefore, Sappi will value designs that minimize the amount of bedrock removal required to accomplish safe, timely and effective fish passage.

4.2 Placement of Fill Material in the River Channel: The placement of fill in the river channel will be considered by Sappi to achieve the goals of the design. However, the use of fill material should be minimized and will need to be designed to be stable under a wide range of river flow conditions.

4.3 Impact of the Design on Water Levels Upstream of Saccarappa: Sappi will value a design that ensures safe and effective fish passage at the site while minimizing the impact of the design's lowering of water levels upstream of the Saccarappa Falls.

4.4 Recreational Uses at the Saccarappa Site: The Presumpscot River in the general vicinity of the Saccarappa site is used by the public for a variety of recreational uses. Those uses include fishing, boating, swimming and general vista appreciation. Sappi will value a design that enhances recreational opportunities and uses of the Saccarappa site.

4.5 Fish Passage Design Criteria: The following is a list of design criteria for the design of fish passage in the western and eastern channels.

4.5.1 Design Flow Range: The design flow range for the fish passage at Saccarappa is 300 cfs to 2,150 cfs.

4.5.2 Target Fish Species (upstream and downstream passage): Alwives, Blueback herring, American shad, Atlantic salmon, and American eel.

SECTION IV

EXHIBIT LIST

Exhibit A: Princeton Hydro Two Channel Passage Design Concept

Exhibit B: Link to the Relevant Technical Data and Materials

Exhibit B to Settlement Agreement

EFFECTIVENESS TESTING AND ADJUSTMENT PLAN

I. INTRODUCTION

Pursuant to sections 2.1.6 and 2.1.7 of the Settlement Agreement, this Exhibit B sets forth the procedures that will govern, the actions that will be taken, and the parties obligated to take those actions regarding:

A. the testing that will be conducted, after the construction by S.D. Warren Company (“Warren”) of all fish passage facilities described in section 2.1 of the Settlement Agreement, in order to determine their effectiveness in passing target fish species into and through the constructed fish passage facilities (“post-construction effectiveness testing”), and

B. any alterations and/or adjustments that may be required to the two-channel upper falls fish passage constructed pursuant to section 2.1.2 of the Settlement Agreement (hereinafter “nature-like fishway”) following post-construction effectiveness testing.

II. EFFECTIVENESS TESTING

A. The non-Warren parties to the Settlement Agreement agree that it is important for the restoration of native anadromous fish species to the Presumpscot River that reliable post-construction effectiveness testing be conducted to determine whether alewife, blueback herring, American shad and, to the extent present at the time of testing, Atlantic salmon are (1) entering and passing through the Saccarappa Denil fishway (“Saccarappa Denil” or “Denil”) to be constructed at the Lower Falls pursuant to section 2.1.1 of the Settlement Agreement, (2) thereafter choosing the upriver eastern channel or the upriver western channel of the nature-like fishway to be constructed pursuant to section 2.1.2 of the Settlement Agreement, to continue their migration upstream, (3) thereafter are passing through one or both of these channels and proceeding upriver, and (4) whether these passages are accomplished in an effective manner.

For the purpose of evaluation, effective fish passage shall mean that no less than 80% of the blueback herring and 70% of the American shad that enter the Saccarappa Denil during the upstream migration season shall thereafter ultimately pass through the Denil and the upper channels at the Saccarappa site utilizing the nature-like fishway and successfully proceed upstream, all in a safe and timely manner and without evidence of significant numbers of any target species bypassing or avoiding the entrance to the Denil, engaging in circling or other delaying behavior in or near the entrance to the Denil or otherwise not entering the Denil, and/or being unable to surmount and pass through either the eastern and western upper channels of the nature-like fishway.

B. Warren's financial obligations regarding post-construction effectiveness testing are as provided in section 2.1.6 of the Settlement Agreement. Warren shall have no responsibility for or involvement in either the planning or conduct of any post-construction effectiveness testing, other than to provide access to its Cumberland Mills and Saccarappa fishway sites for the purpose of allowing MDMR to collect fish exiting the Cumberland Mills fishway and entering / exiting the Saccarappa Denil, and otherwise to make reasonable accommodations to facilitate the conduct of the post-construction effectiveness testing by MDMR, which shall not include modifications to the Cumberland Mills fishway that will interfere with the operation or effectiveness of the Cumberland Mills fishway or cause Warren to incur costs. Warren's obligation to provide access to its Cumberland Mills and Saccarappa fishways shall continue after Warren has met its financial obligation for post-construction effectiveness testing as provided in section 2.1.7 of the Settlement Agreement in order to facilitate additional testing beyond what is provided for in this Exhibit B, which MDMR may elect to conduct in its sole discretion. Such continuing obligation shall not entail any additional cost to Warren. All effectiveness testing may be conducted by employees of MDMR, or by third party contractors employed by and under the supervision and direction of the MDMR.

C. MDMR will conduct the effectiveness testing using the approaches and methodology set forth in section II of this Exhibit, unless changes to this methodology are determined necessary by MDMR and such changes provide an equivalent level of confidence in the reliability of the testing methods as those methods described in section II herein. The determination as to whether changes to the testing methodologies are needed and, if so, what those changes will be, will be within MDMR's discretion using its best professional judgment, after consultation with USFWS, CLF, and FOPR.

D. Effectiveness testing approaches and methodology.

MDMR shall use visual observation and radio telemetry to qualitatively and quantitatively evaluate upstream blueback herring and American shad passage into and through the double Denil fishway at the lower falls, at the eastern side of the lower falls, into and through the east and west channels of the nature-like fishway channels, and up to 200 yards upstream of the island located at the Saccarappa site. MDMR, in consultation with the consulting parties, shall use this effectiveness testing to determine the need for any post-construction adjustments of the nature-like fishway and, if required, to evaluate whether any post-construction adjustments that are made have resulted in effective fish passage.

Phase I:

MDMR will initiate the first phase of effectiveness testing contemporaneous with the beginning of in-service operations of all fish passage facilities for the first upstream migration season following completion of all facilities by Warren, scheduled for either May 2020 or May 2021, as determined by Section 2.1.4.1(6) and (7) of the Settlement Agreement (hereinafter "first-year study activities"). MDMR's first-year study activities will include visual observations and a radio telemetry study as described below. A

second year of radio telemetry study by MDMR will likely be needed, conducted in a manner identical to first and as described below, particularly if the fish passage facilities are modified.

Methods:

Visual observations: In its first-year study activities MDMR will make velocity measurements in the Denil fishway, and the eastern and western nature-like fishways, will observe flow paths in the eastern and western channels, and will make visual observations from land, utilizing underwater cameras and/or an overhead drone to determine if river herring and American shad are using these fishways and how they are moving. MDMR will use its best efforts to make these observations during different flow conditions and while fish are at the Saccarappa site. The USFWS will assist MDMR and supplement the observations, as needed.

Blueback Herring

Radio telemetry will be used by DMR in its first-year study activities to collect data on fish passage effectiveness. River herring will be captured in a trap placed in the last pool of the Cumberland Mills fishway. Blueback herring will be removed from the trap, anesthetized, measured, and a radio tag will be implanted gastrically. After recovery, fish will be released into the headpond just upstream of the capture location. MDMR intends to use coded radio tags (Model NTC-6-1 transmitters, Lotek Wireless, Newmarket, ON) that are 22.4 mm long, 9.1 mm diameter, weighing 2.8 g in air, with a calculated operational life of 104 days. When this study is conducted, smaller tags may be substituted, or comparable transmitter tags may be available from another manufacturer.

200 blueback herring will be radio tagged in first-year study activities. If MDMR has difficulty obtaining 200 blueback herring, alewife will be used as a surrogate for this study as needed. One hundred blueback herring will be tagged in each of two weeks near the peak of the run and released just upstream of the Cumberland Mills dam. MDMR will attempt to release tagged fish with schools of untagged fish, and attempt to release study fish as early in the day as possible.

The radio telemetry study will employ Lotek SRX-400 (upgraded), Lotek SRX 800-D3, and/or Orion receivers. All three models have comparable data logging features and are compatible with the coded transmitters to be used. MDMR anticipates configuring each of the four receivers for event logging.

One dedicated receiver and antenna will be used at each of four locations: the Denil entrance, Denil exit, upstream of exit of east channel nature-like fishway, and upstream of exit of west channel nature-like fishway. Any fish detected above the nature-like fishways but not detected in the Denil will be assumed to have surmounted the eastern portion of the lower falls.

MDMR will purchase test tags to test the array. Test tags will be placed at various depths within the desired range of each antenna in order to determine appropriate gain settings to ensure that tagged fish will be detected reliably at the maximum desired range at each of the four locations.

Tagging data collected will be tag number, fish species, fish length, fish weight, date and time of tagging, date and time of release, number of non-tagged fish released (if known), and comments. Telemetered fish contact event data will be tag ID, start time, end time, number of decoded contacts, and average signal strength. Environmental data collected will be date, time, discharge, water temperature and weather. Warren agrees to provide daily discharge data from the existing Cumberland Mills flow monitoring system.

The analysis of blueback herring telemetry results will address the following

1. The proportion of blueback herring entering the Saccarappa Denil compared to the number of fish tagged and released into the headpond just upstream of the capture location at Cumberland Mills.
2. Passage effectiveness for the Saccarappa Denil, calculated as the number fish detected at the exit divided by the number detected at the entrance.
3. Passage effectiveness for the nature-like fishway, calculated as the number of fish detected upstream of the nature-like fishway and known to have exited the Saccarappa Denil, divided by the number exiting the Denil.
4. Passage effectiveness for the site, calculated as the number of fish detected upstream of the nature-like fishway divided by the number entering the Saccarappa Denil (adjusted by the number of fish able to surmount the eastern lower falls, if any).
5. Transit times will be calculated and summarized for each facility.

American Shad

Fishway video will be collected at the counting facilities at the exit of the Cumberland Mills fishway and the exit of the Saccarappa Denil and reviewed to generate an estimate of the number of American shad that exited the fishways. The proportion of American shad that pass the Saccarappa Denil relative to what exited the Cumberland Mills fishway will be calculated, but this estimate will not, on its own, be determinative of the effectiveness of shad passage at the Saccarappa Denil. To the extent possible, MDMR will use existing equipment and software. If Warren is required to monitor the Cumberland Mills fishway exit, Warren will provide MDMR with the necessary American shad data or raw digital video such that MDMR can estimate the number of American shad exiting the fishway. If Warren is not otherwise required to monitor the Cumberland Mills fishway or operate the fish counting facility at the Saccarappa Denil during the periods that MDMR chooses to collect fishway video, Warren will provide MDMR with access to these facilities to install video equipment and conduct digital recordings. Nothing in this paragraph shall cause Warren to incur costs beyond those required under section 2.1.6 of the Settlement Agreement.

Reporting

No later than 120 days following the completion of all data collection MDMR will provide to each party to the Settlement Agreement a timely written analysis of the Phase I results of all effectiveness testing it conducts.

Phase 2:

MDMR may conduct a second phase of effectiveness testing during a subsequent upstream migration season for blueback herring and American shad which shall occur as promptly as possible consistent with achieving the most accurate and informative results if MDMR determines, in its sole discretion, that (1) the analysis of data collected in Phase 1 testing demonstrates that effective fish passage has not occurred for blueback herring and/or American shad, (2) the water flows (velocity and volume) that occurred during Phase 1 testing are not sufficiently representative of the conditions encountered by migrating fish, (3) the data set of tagged fish was too small or otherwise insufficient, (4) MDMR otherwise determines that the Phase 1 data are inconclusive, or that changes to the testing methodology are appropriate to provide more conclusive results regarding effective fish passage, and/or (5) post-construction adjustments have occurred pursuant to section III below, and a second phase of effectiveness testing is appropriate to determine whether those post-construction adjustments have resulted in effective fish passage. Phase 2 effectiveness testing shall be conducted in the same manner as provided in Phase 1 above unless changes to these methods are made by MDMR as provided for in section II.C above. MDMR shall consult with USFWS, CLF and FOPR prior to reaching any final decisions regarding the need for, timing, and extent of Phase 2 effectiveness testing.

Additional phases:

Funds permitting, MDMR may, in its discretion, conduct additional phases of effectiveness testing for the same reasons, and utilizing the same processes, as set forth in Phase 2 above.

Budget:

The anticipated budget for effectiveness testing is as follows:

		Year 1	Year 2	Total
	Unit cost	Itemized cost		
Equipment				
Upgrade of 4 MDMR Lotek receivers	\$600.00	\$2,400.00	\$0.00	\$2,400.00
or trade in for 4 new Lotek receivers	\$3,195.00	\$12,780.00	\$0.00	\$12,780.00
or purchase 4 new Orion receivers	\$2,200.00	\$8,800.00	\$0.00	\$8,800.00
200 Lotek radio tags	\$174.00	\$34,800.00	\$34,800.00	\$69,600.00
Test tags	\$174.00	\$348.00	\$348.00	\$696.00
4 Yagi antennas	\$150.00	\$600.00	\$0.00	\$600.00
Coaxial cable and connectors		\$300.00	\$200.00	\$500.00
Trap materials, tanks, tagging supplies, misc.		\$1,200.00	\$900.00	\$2,100.00
Total equipment		\$39,648.00	\$36,248.00	\$75,896.00
	Lotek upgrade			
	Lotek-new	\$50,028.00	\$36,248.00	\$86,276.00
	Orion-new	\$46,048.00	\$36,248.00	\$82,296.00
Transportation				
Season Lease Vehicle (2 months)	\$160.00	\$320.00	\$320.00	\$640.00
Central Fleet Mileage Rate	\$0.30	\$600.00	\$600.00	\$1,200.00
Total Transportation		\$920.00	\$920.00	\$1,840.00
Personnel Services				
<i>Salaries and Benefits</i>				
Project Manager Salary (Sci III -6 weeks)		\$14,500.00	\$15,225.00	\$15,986.25
Specialist Salary (6 weeks)		\$8,400.00	\$8,820.00	\$9,261.00
Conservation Aide 1 (4 weeks)		\$4,500.00	\$4,725.00	\$4,961.25
Conservation Aide 2 (4 weeks)		\$4,500.00	\$4,725.00	\$4,961.25
Total Personnel Services		\$31,900.00	\$33,495.00	\$65,395.00
Project Subtotal				
Project subtotal with receiver upgrade		\$72,468.00	\$70,663.00	\$143,131.00
Project subtotal with new Lotek receivers		\$82,848.00	\$70,663.00	\$153,511.00
Project subtotal with new Orion receivers		\$78,868.00	\$70,663.00	\$149,531.00
Indirect Cost (30%)				
Indirect on receiver upgrade		\$21,740.40	\$21,198.90	\$42,939.30
Indirect on new Lotek receivers		\$24,854.40	\$21,198.90	\$46,053.30
Indirect on new Orion receivers		\$23,660.40	\$21,198.90	\$44,859.30
Project Total				
Project total with receiver upgrade		\$94,208.40	\$91,861.90	\$186,070.30
Project total with new Lotek receivers		\$107,702.40	\$91,861.90	\$199,564.30
Project total with new Orion receivers		\$102,528.40	\$91,861.90	\$194,390.30

Note: Overhead such as per diem are not included. No costs are included for USFWS staff time.

III. POST-CONSTRUCTION ADJUSTMENTS TO NATURE-LIKE FISHWAY

A. In the event that effectiveness testing conducted pursuant to section II shows that effective fish passage is not occurring in either channel of the nature-like fishway, MDMR shall, in consultation with USFWS and any design experts retained by MDMR in its sole discretion, advise Warren regarding post-construction adjustments needed to achieve effective fish passage.

B. Pursuant to section 2.1.7.2 of the Settlement Agreement, Warren shall construct, in a reasonably timely manner, the adjustments requested by MDMR (post-construction adjustments), so long as the total cost to Warren for these post-construction adjustments, including reimbursement to MDMR for the cost of any design experts retained by MDMR for this purpose, does not exceed \$300,000. Said post-construction adjustments may occur in more than one phase, if MDMR believes that initial, less extensive adjustments may result in effective fish passage and so long as the total cost to Warren for all post-construction adjustments does not exceed \$300,000.

-- end --

Exhibit C to Settlement Agreement

CONSERVATION EASEMENT AGREEMENT S.D. WARREN COMPANY SACCARAPPA PROJECT

S.D. WARREN COMPANY, a Pennsylvania corporation, with a mailing address of 255 State Street, Boston, MA 02109 (hereinafter referred to as “Grantor,” which word shall, unless the context clearly indicates otherwise, include Grantor’s successors and assigns) grants to the **STATE OF MAINE**, acting by and through its **Department of Marine Resources**, duly authorized and acting under the Laws of the State of Maine, its successors and assigns, whose mailing address is 21 State House Station, Augusta, Maine, 04333 Maine 04086-0021 (hereinafter referred to as “MDMR” or “Holder,” which word shall, unless the context clearly indicates otherwise, include Holder’s successors and assigns), in perpetuity, this Conservation Easement in, over, and through land or interests in land of Grantor at Saccarappa below high water mark and on the bed of the Presumpscot River at the upper falls and upstream of the lower falls, so called, in the City of Westbrook, County of Cumberland and State of Maine, and being more particularly described in Exhibit A attached hereto and made a part hereof by reference (hereinafter referred to as the “Protected Property”); as follows:

This Conservation Easement on the Protected Property is granted exclusively for the following conservation purpose and conservation values: to provide a significant public benefit by protecting and preserving in perpetuity the safe, timely, and effective passage of diadromous fish over and through the Protected Property. Grantor and Holder intend and agree that this Conservation Easement will prohibit any use of the Protected Property that will impair or interfere with diadromous fish passage over and through the Protected Property.

And Grantor further grants to the **UNITED STATES FISH AND WILDLIFE SERVICE**, duly authorized and acting under the Laws of the United States of America, particularly 16 U.S.C. 661 et seq., its successors and assigns, whose mailing address is 300 Westgate Center Dr., Hadley, MA 01035 (hereinafter referred to as “USFWS” or “Third Party Enforcer”), the right but not the obligation to enter, inspect and enforce all terms of the conservation easement pursuant to 33 M.R.S. § 477(2).

NOW, THEREFORE, Grantor and Holder have established this Conservation Easement on, over, and across the Protected Property consisting of the foregoing purpose and the following terms, covenants, restrictions, and affirmative rights granted Holder, which shall run with and bind the Protected Property in perpetuity:

- 1. Land Use and Surface Alteration.** The Protected Property may be used only for conservation, low-impact outdoor recreation, natural resource management and other activities that do not impair or interfere with diadromous fish passage. No alteration of the bed of the Presumpscot River may be made that affects the direction, volume, or velocity of the flow of waters of the river, without the written approval of Holder, which approval may only be granted if the alteration will not impair or interfere with diadromous fish passage. The construction of structures, bridges or causeways, docks or piers that require support on the bed of the Presumpscot River are prohibited, without the written approval of Holder, which approval may only be granted if the alteration does not impair or interfere with diadromous

fish passage.

2. Existing Conditions.

- a. Baseline Documentation Report.** To establish the present condition of the Protected Property so as to be able to monitor properly future uses of the Protected Property and ensure compliance with the terms hereof, Holder and Grantor have prepared an inventory of the Protected Property's relevant features and conditions, consisting of the final construction design plans approved by the Federal Energy Regulatory Commission, as amended by any in-field changes approved by USFWS and made during construction (the "Baseline Documentation"), and have agreed that the same is an accurate representation, to the extent known, of the condition of the Protected Property as of the date of this grant. The Baseline Documentation may be amended with prior written agreement of Holder and Grantor. A copy of the Baseline Documentation shall be maintained at the offices of Grantor, Holder, and USFWS, which shall be provided a copy of any amendments thereto by Holder.
- b.** Grantor, for itself and its successors and assigns, reserves the right without giving notice to Holder to maintain and replace all existing structures and surface alterations with substantially similar structures and improvements in substantially the same locations, provided that any such replacement does not impair or interfere with diadromous fish passage. Grantor further reserves for itself and its successors and assigns the right without giving notice to Holder to construct, maintain and use a bridge over the western channel for access and utilities to the island in the Presumpscot River, provided that such bridge and utilities do not impair or interfere with diadromous fish passage.

3. Public Access. Grantor and Holder claim all of the rights and protections against liability for injury to the public to the fullest extent of the law under Title 14 M.R.S. §159-A as amended (Maine's Recreational Use Statute), and under any other applicable provision of law and equity.

4. Entry and Inspection by Holder. Holder shall have the right to enter the Protected Property for inspection and monitoring purposes and for enforcement, provided however, except when Holder has a reasonable belief a violation that could cause irreparable harm either exists or is imminent, entry by Holder's personnel shall be limited to times when Grantor personnel can accompany Holder's personnel. Grantor will make reasonable efforts to permit Holder personnel to conduct inspections of the Protected Property during normal business hours, within 48 hours of a request or as soon as possible thereafter. Grantor will provide the required site safety training for all Holder personnel who will have access to the Protected Property prior to entry of such personnel, and Holder personnel shall adhere to the safety requirements during its inspections.

5. Enforcement by Holder. Holder shall have the right to enforce this Conservation

Easement by proceedings at law and in equity, subject to the following:

5.A. Holder has the right to prevent and correct violations of the terms of this Conservation Easement. If Holder finds what it believes is a violation or threatened violation, Holder shall notify Grantor, and except when an ongoing or imminent violation could, in Holder's judgment, irreversibly impair or interfere with diadromous fish passage, Holder shall give Grantor written notice of the violation and adequate time for Grantor, at its sole option, to prepare and present a plan to correct it before filing any legal action.

5.B. Holder has the right to enforce this Conservation Easement by proceedings at law and in equity, including without limitation the right to require the restoration of the Protected Property to a condition in compliance herewith and receive damages for irremediable harm due to violation hereof. If a court of competent jurisdiction determines that a violation may exist, has occurred, or is threatened, Holder may obtain an injunction to stop it, temporarily or permanently. Wherever in this Conservation Easement Grantor is afforded or retains a right to provide a plan or otherwise express an intention to take an action (regardless of whether Holder has any right to approve Grantor's action, plan or statement of intention), nothing in this Conservation Easement shall be construed to impair Holder's right to seek injunctive or other relief as necessary to enforce the terms of this Conservation Easement against a violation or threatened violation hereof. The failure of Holder to discover a violation or to take immediate legal action shall not bar it from doing so at a later time.

5.C. Holder may not bring an enforcement action against Grantor for injury to or change in the Protected Property resulting from natural causes or environmental catastrophe beyond Grantor's control, such as fire, flood, storm, and earth movement, any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes, or the trespass or unauthorized acts of third persons, except that Grantor is responsible for the actions of employees, contractors, licensees, invitees or any other person acting for the benefit of, or with the permission of, Grantor. In the event of violations of this Conservation Easement caused by unauthorized acts of third persons, at Holder's option, Grantor agrees to assign its right of action to Holder, or to appoint Holder its attorney-in-fact for the purposes of pursuing enforcement action. Notwithstanding the foregoing, Grantor shall have no obligation to take any corrective action or to pay any expenses Holder incurs for enforcement, including expenses incurred in stopping and correcting the violation, court costs, reasonable attorney's fees, and any other payments ordered by such Court or decision maker, unless such violation was caused by Grantor or Grantor's employees, contractors, licensees, invitees, or any other person acting for the benefit of, or with the permission of, Grantor.

5.D. USFWS is granted the same rights of notification, entry, inspection, enforcement, and assignment rights as those granted to Holder, except that Holder is primarily responsible for

stewardship and enforcement of this Conservation Easement.

6. **Notice and Approval Requirements.** Grantor agrees to notify Holder prior to undertaking any activity or exercising any reserved right that may impair or interfere with diadromous fish passage when prior notice or approval is specifically required in this Conservation Easement. Grantor's notices must include sufficient information to enable Holder to determine whether Grantor's plans are consistent with the terms of this Conservation Easement.
7. **Method for Notice.** Any notices or requests for approval required by this Conservation Easement shall be in writing and shall be personally delivered or sent certified mail, return receipt requested, or by such commercial delivery service as provides proof of delivery including without limitation electronic communication (*e.g.*, email), to Grantor and Holder, at the following addresses, unless one has been notified by the other of a change of address or change of ownership:

To Grantor: At the address of the owner(s) of record as noted hereinabove or as otherwise provided by Grantor in writing.

To Holder: At the addresses of both Holder and USFWS as noted hereinabove or as otherwise provided by Holder or USFWS in writing.

In the event that notice mailed to Holder or to Grantor at the last address on file with Holder is returned as undeliverable, the sending party shall provide notice by regular mail to Grantor's last known address on file with the City of Westbrook, Maine; or in the case of Holder or USFWS, or in the case of a corporate owner, to the address on file with the Secretary of State, State of Maine, and the mailing of such notice shall be deemed compliance with the notice provisions of this Conservation Easement.
8. **Taxes and Liens.** Grantor shall pay and discharge when due all property taxes and assessments imposed upon the Protected Property and any uses thereof, and shall avoid the imposition of any financial liens that may impact Holder's rights hereunder.
9. **Maine Conservation Easement Act.** This Conservation Easement is established pursuant to the Maine Conservation Easement Act at 33 M.R.S. §§ 476 through 479-C, inclusive, as amended.
10. **Qualified Holder.** The Holder is qualified to hold conservation easements pursuant to 33 M.R.S. § 476(2)(A). This Conservation Easement is not assignable, except that the Holder may assign this Conservation Easement to another Maine state agency.
11. **Controlling Law and Interpretation.** The interpretation and performance of this

Conservation Easement shall be governed by the laws of the State of Maine. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of the grant to effect the conservation purpose of this Conservation Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the conservation purposes of this Conservation Easement shall govern.

12. **Compliance/Estoppel Certificates.** Upon written request by Grantor, Holder will provide Compliance/Estoppel Certificates to Grantor or third parties, indicating the extent to which, to Holder's knowledge after due inquiry, the Protected Property is in compliance with the terms of this Conservation Easement. The inspection of the Protected Property for this purpose will be made by Holder at Grantor's cost within a reasonable time after Grantor's written request.

13. **Discretionary Approvals.** Grantor and Holder recognize that certain activities by Grantor may warrant the prior discretionary approval of Holder, and that Holder has the right to issue such discretionary approvals without prior notice to any party other than USFWS. Notwithstanding the foregoing, except as provided by 33 M.R.S.A. §§ 476-479-C, as amended, Holder and Grantor have no right or power to approve any action or agree to any discretionary approval that would:

- (a) materially detract from the conservation values intended for protection; or
- (b) adversely affect the qualification of this Conservation Easement or the status of the Holder under applicable laws, including the Maine Conservation Easement Act at 33, M.R.S.A. § 476-479-C, and Sections 170(h), 501(c)(3), 2522, and 2031(c) of the Internal Revenue Code, successor provisions thereof and regulations issued pursuant thereto.

14. **Amendments.** Grantor and Holder recognize that rare and extraordinary circumstances could arise which warrant modification of certain of the provisions of this Conservation Easement. To this end, subject to more restrictive laws and regulations, if any, Grantor, Holder, and USFWS have the right to agree to amendments to this Conservation Easement provided that in the reasonable judgment of Holder, such amendment does not impair or interfere with diadromous fish passage intended to be protected by this Conservation Easement. Amendments will become effective upon recording at the Cumberland County Registry of Deeds. Nothing in this paragraph shall require Grantor or the Holder to agree to any amendment or to consult or negotiate regarding any amendment. Notwithstanding the foregoing, except as provided by 33 M.R.S.A. §§ 476 -479-C, as amended, Holder and Grantor have no right or power to agree to any amendment that would:

- (a) Materially detract from the conservation values intended for protection; or
- (b) Limit the term or result in termination of this Conservation Easement; or

(c) Adversely affect the qualification of this Conservation Easement or the status of the Holder under applicable laws, including the Maine Conservation Easement Act at 33 M.R.S.A. §§ 476-479-C, and Sections 170(h), 501(c)(3), 2522, and 2031(c) of the Internal Revenue Code, successor provisions thereof and regulations issued pursuant thereto.

15. **Termination.** This Conservation Easement may only be extinguished or terminated by judicial order in a court of competent jurisdiction, including a taking. It is the intention of the parties that an extinguishment or termination be approved by a court only if all of the conservation purposes of this Conservation Easement are impossible to accomplish, and if each of Grantor, Holder and USFWS agree.
16. **Economic Hardship.** In making this grant, Grantor has considered the possibility that uses prohibited by the terms of this Conservation Easement may become more economically valuable than permitted uses, and that neighboring properties may in the future be put entirely to such prohibited uses. In addition, the unprofitability of conducting or implementing any or all of the uses permitted under the terms of this Conservation Easement shall not impair the validity of this Conservation Easement or be considered grounds for its termination or extinguishment. It is the intent of both Grantor and Holder that any such economic changes shall not be deemed to be changed conditions or a change of circumstances justifying the judicial termination, extinguishment or amendment of this Conservation Easement.
17. **Non-waiver.** The failure or delay of the Holder or Third Party Enforcer, for any reason whatsoever, to do any action required or contemplated hereunder, or to discover a violation or initiate an action to enforce this Conservation Easement shall not constitute a waiver, laches, or estoppel of its rights to do so at a later time.
18. **Grantor's Rights and Obligations, Joint Obligation.** A person's or entity's obligation hereunder as Grantor, or successor owner of the Protected Property, shall be joint and several, and will cease, only if and when such person or entity ceases to have any ownership interest in the Protected Property (or relevant portion thereof), but only to the extent that the Protected Property (or relevant portion thereof) is then in compliance herewith, and provided such person or entity shall have fulfilled the requirements of Paragraph 19, below. Responsibility of owners for breaches of this Conservation Easement that occur prior to transfer of title will survive such transfer; provided that the new owner shall also be responsible for bringing the Protected Property into compliance.
19. **Subsequent Deeds and Transfers.** This Conservation Easement must be incorporated by reference in any deed or other legal instrument by which Grantor conveys any interest in the Protected Property, including, without limitation, a leasehold or mortgage interest. Except

in the case of conveyance of a mortgage interest, Grantor further agrees to give written notice to Holder within thirty (30) days of the transfer or conveyance of any interest in the Protected Property. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

20. **Severability, Entire Agreement, No Forfeiture.** If any provision of this Conservation Easement or the application of any provision to a particular person or circumstance is found to be invalid, the remainder of this Conservation Easement and the application of such provision to any other person or in any other circumstance shall remain valid. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement, all of which are merged herein. Nothing contained herein will result in a forfeiture of this Conservation Easement or reversion to Grantor of any rights extinguished or conveyed hereby.
21. **Standing to Enforce.** Only Holder, Grantor, or USFWS may bring an action to enforce this grant, except as provided in 33 M.R.S. § 478, and nothing herein should be construed to grant any other individual or entity standing to bring an action hereunder, unless otherwise provided by law; nor to grant any rights in the Protected Property by adverse possession or otherwise, provided that nothing in this Conservation Easement shall affect any public rights in or to the Protected Property acquired by common law, adverse possession, prescription, or other law, independently of this grant.

TO HAVE AND TO HOLD the said Conservation Easement unto the said Holder, its and their successors and assigns forever.

Signature Pages Follow

IN WITNESS WHEREOF, the said S.D. WARREN COMPANY, a corporation duly authorized and existing under the Laws of the Commonwealth of Pennsylvania has caused this instrument to be duly executed this ____ day of _____, 20__.

WITNESS:

S.D. WARREN COMPANY
A Pennsylvania corporation

By: _____
Printed Name: _____
Its: _____

COMMONWEALTH/STATE OF _____
COUNTY OF _____

Dated: _____

Personally appeared the above-named _____,
_____ of S.D. Warren Company, a Pennsylvania corporation, and
acknowledged the foregoing instrument to be his free act and deed in his said capacity and the
free act and deed of said corporation.

Before me,

Notary Public

Print name: _____
Commission Expires: _____

HOLDER ACCEPTANCE.

The above and foregoing Conservation Easement was authorized to be accepted by the Maine Department of Marine Resources, Holder as aforesaid, and the said Holder does hereby accept the foregoing Conservation Easement, by and through Patrick C. Keliher, its Commissioner, hereunto duly authorized, this ____ day of November, 2016.

IN WITNESS WHEREOF, the said the MAINE DEPARTMENT OF MARINE RESOURCES has caused this instrument to be executed by Patrick C. Keliher, its duly authorized Commissioner, this ____ day of November, 2016.

WITNESS:

MAINE DEPARTMENT OF
MARINE RESOURCES

By: _____

Printed Name: Patrick C. Keliher

Its: Commissioner

STATE OF MAINE
COUNTY OF KENNEBEC

Dated: _____

Personally appeared the above-named Patrick C. Keliher, Commissioner of the MAINE DEPARTMENT OF MARINE RESOURCES, as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said MAINE DEPARTMENT OF MARINE RESOURCES.

Before me,

Notary Public

Print name: _____

Commission Expires: _____

THIRD PARTY ENFORCER ACCEPTANCE.

The above and foregoing Conservation Easement was authorized to be accepted by the United States Fish and Wildlife Service, Third Party Enforcer as aforesaid, and the said Third Party Enforcer does hereby accept the foregoing Conservation Easement, by and through _____, its Director, hereunto duly authorized, this ____ day of _____, 20__ .

IN WITNESS WHEREOF, the said the UNITED STATES FISH AND WILDLIFE SERVICE has caused this instrument to be executed by _____, its duly authorized (Title) _____, this ____ day of _____, 20__.

WITNESS:

UNITED STATES FISH AND WILDLIFE SERVICE

By: _____

Printed Name: _____

Its:

COMMONWEALTH/STATE OF _____
COUNTY OF _____

Dated: _____

Personally appeared the above-named _____, (title) _____, of the UNITED STATES FISH AND WILDLIFE SERVICE, as aforesaid, and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity and the free act and deed of said UNITED STATES FISH AND WILDLIFE SERVICE.

Before me,

Notary Public

Print name: _____

Commission Expires: _____

EXHIBIT A
Legal Description of the Protected Property

(The parties hereto, and to the Settlement Agreement, understand that the following legal description correctly approximates the geographical area of the Protected Property and sets forth S.D. Warren Company's understanding of deed references and encumbrances as of November 1, 2016. Prior to execution of the Conservation Easement, this description shall be revised to legally describe the geographic area based on the final design and construction of the two-channel nature like fishway.)

Land or interests in land in the City of Westbrook, Cumberland County, State of Maine, bounded and described as follows:

To the extent of the ownership interests of Grantor, land or interests in land in or on the bed of the Presumpscot River bounded as follows:

On the North by a line approximately 300 feet northerly of the existing **[recently removed]** spillway of the Upper Falls, so called, in the east channel of the Presumpscot River running from the high water mark on the westerly bank of the River to the land and interests in land conveyed to Dana Warp Mills by deed dated July 11, 1900 and recorded in the Cumberland County Registry of Deeds in Book 694, Page 15;

On the East by said land and interests in land conveyed to Dana Warp Mills by deed dated July 11, 1900 and recorded in the Cumberland County Registry of Deeds in Book 694, Page 15, and by land and interests in land conveyed to Mary Little Hale Dana by deed dated April 14, 1906 and recorded in the Cumberland County Registry of Deeds in Book 790, Page 363;

On the South by a line northerly of the Lower Falls, so called, running from the East line to a line easterly of Denil Fish Ladder;

On the West by the line easterly of Denil Fish Ladder, the inboard side of any remaining retaining structures lying upstream of the Denil Fish Ladder, and the high water mark of the westerly bank of the Presumpscot River;

Excepting, however, the entire portion of the island in the River lying above the high water mark of the Presumpscot River. Notwithstanding the foregoing, the description of the Protected Property is intended to include all submerged land within the boundaries, up to the high water mark of the River.

The Protected Property is subject to existing easements of record, including rights conveyed to Dana Warp Mills by deed dated July 11, 1900 and recorded in the Cumberland County Registry of Deeds in Book 694, Page 15, and by land and interests in land conveyed to Mary Little Hale Dana by deed dated April 14, 1906 and recorded in the Cumberland County Registry of Deeds in Book 790, Page 363.

Exhibit D to Settlement Agreement:

Operations and Maintenance Plan
Denil Fishway
Saccarappa Site, Westbrook, Maine

November 2016

S. D. Warren Company
89 Cumberland Street
Westbrook, Maine 04092

1.0 Overview

This Operations and Maintenance Plan for the Denil fishway (“Plan”) describes the procedures to be utilized by S.D. Warren Company (“Warren”) to operate and maintain the Denil fish passage facilities that will be located at the Saccarappa site in Westbrook, Maine. Warren will utilize a systematic process to annually review and evaluate management policies and practices related to operation and maintenance of the Denil (as defined below) and related facilities with the goal of ensuring safe, timely, and effective passage for target species of fish.

2.0 Denil Fishway Components

The main components of the Denil fish passage facilities (“Denil”) include the following:

- A double Denil fishway with entrances near the downstream end of the existing tailrace channel.
- A counting and trapping facility at the exit end of the double Denil fishway.
- Mechanical gates at the exit end of the fishway to control the flow of water into the fishway.
- Mechanical gates at the entrance end of the fishway to facilitate maintenance.
- Any portion of the tailrace guard wall that may remain after decommissioning of the Saccarappa Project.

3.0 Operations

All upstream passage facilities shall be operational each year during the following upstream migration periods:

Species	Upstream Migration Period
Blueback herring	May 1 - July 15
American shad	May 1 - July 15
Atlantic Salmon	May 1 – July 15

4.0 Operating Range

The operating flows (or design flows) refer to the range of stream flow over which a fish passage facility must operate to achieve safe, timely, and effective passage. It is also important to note that this range represents the entire river flow during the fish passage season and does not represent the discharge through the Denil. For the Denil, the low design flow in the river is 300

cfs. The high design flow is 2,150 cfs. The Denil will remain operational within the upstream migration period specified in Section 3.0 while flows on the Presumpscot River are within this range.

5.0 Fishway Discharge

Fishway discharge refers to the range of flows (within the ladder) over which the fishway exhibits hydraulic conditions that are favorable to fish migration. Discharge through the Denil is related to the water surface elevation in the middle pool. A stage discharge curve will be developed as part of the design of the Denil.

6.0 Entrance Weir Boards

Entrance jet is critical to effective fishway attraction. The entrance jet velocity on a Denil may be influenced through the installation of weir boards at the entrance. The purpose of the weir boards is to reduce the cross-sectional flow area and accelerate the flow at the entrance. The goal is to produce a velocity of 4 to 6 feet per second at the entrance. This typically correlates to a 9 to 12-inch hydraulic drop between the Denil entrance water surface and the tailwater. Warren will install a sufficient number of weir boards at the entrance to effect this drop during the fish passage season. Hydraulic drop will be measured consistently against staff gauges installed in the entrance channel and in a quiescent area of the tailwater immediately near the Denil entrance. USGS Type E staff gauges are recommended.

7.0 Annual Counting of Fish Passing the Denil

Starting in 2024, from May 1 through July 15 Warren will count the number of river herring and American shad that exit the Denil. Warren will install video cameras at the exit end of each side of the Denil. The video cameras will remain operational from May 1 through July 15. Warren will view a sufficient portion of each day's videos to determine if river herring and American shad are using the Denil and to estimate the number of blueback herring and shad exiting the Denil, using methods mutually agreed upon by Warren and the Maine Department of Marine Resources ("MDMR"). If any Atlantic salmon are observed during the process of reviewing the video for river herring and American shad, the observations will be recorded. The results of the viewing and counting process will be reported by December 31 each passage year as part of the annual fishway reporting, as described in section 9 below.

8.0 Inspections and Maintenance

Inspections and Maintenance during Pre and Post Migration Periods: Each July after the Denil is shut down, and each April prior to startup, Warren will inspect the Denil. Maintenance

will be undertaken to correct any abnormalities or deficiencies noted during the inspections. The inspections will include the following elements:

- Inspection of each baffle for any damage. Repair or replace baffles if required.
- Inspection of sediment build-up in entrance and exit channels and resting pools. Remove sediment if the depth of sediment on the floor of the pools / channels exceeds 6 inches.
- Inspection of the interior of the Denil for debris. Clean debris as required.
- Testing and inspection of each mechanical gate at the Denil. Repair gates as needed.
- Inspection of the Denil to ensure structural stability and no leakage that interferes with the effectiveness of the Denil.

Inspection and Maintenance during the Upstream Fish Migration Period: Warren will inspect the Denil weekly to ensure it is operating as designed, and to identify any functional issues and inspect for debris. Any trash that accumulates on the exit end bar rack will be removed as quickly as possible. If the baffles are found to be damaged, they will be replaced promptly. To ensure prompt replacement of the baffles, Warren will have on site two replacement baffles.

Inspection and Maintenance during Non-Migration Periods: Annually, during the non-fish migration period, Warren will dewater the Denil. Major maintenance activities should occur at this time, including the inspection of the structural integrity of the Denil.

Resource Agency Inspections: Warren will make commercially reasonable efforts to permit MDMR and/or U.S. Fish and Wildlife Service (“USFWS”) personnel to conduct inspections of the Denil during normal business hours, within 48 hours of a request or as soon as possible thereafter. Warren will provide the required site safety training before access can be granted, and MDMR/USFWS personnel shall adhere to the safety requirements during its inspections.

Emergency Conditions: In order to minimize potential damage to the Denil, Warren will monitor impending weather conditions to stay informed of emergency conditions that may require the closing of the fishway gates to minimize damage. These emergency conditions include, but are not limited to floods or other similar circumstances. Warren will promptly notify MDMR and USFWS when such an event requires the precautionary measures of dewatering the Denil or closing the gates to the Denil.

After a flood event, the Denil will be dewatered and inspected in a manner similar to that of the pre-migration season inspection. Warren will determine if a significant amount of debris is present in the Denil or if damage has occurred. After a flood event, Warren will return to normal operations as soon as reasonably feasible.

9.0 Reporting and Record Keeping

By December 31 of each year, Warren will provide an annual report to USFWS, MDMR, and the Federal Energy Regulatory Commission (FERC), as applicable, detailing the implementation of this plan, including any deviations and a process to prevent those deviations in the future, and any proposed modifications to the plan. Warren will meet with USFWS and MDMR on request to discuss the results of the annual reports.

Warren will record the operation and inspection activities in an operation and maintenance log on a contemporaneous basis. This log likely will be kept electronically and is to be promptly made available to MDMR for review if/when requested by MDMR.

The inspection log shall include the following schedule and items to be addressed, if applicable.

Upstream Fish Migration Season

- Monitor and remove debris buildup.
- Record and describe physical flaws including debris accumulation, structural deficiencies, leaks, etc. and if/when the deficiencies are fixed.
- Trash rack inspection. Clean trash rack as needed.
- Inspection of gates. Repair or replace as necessary.

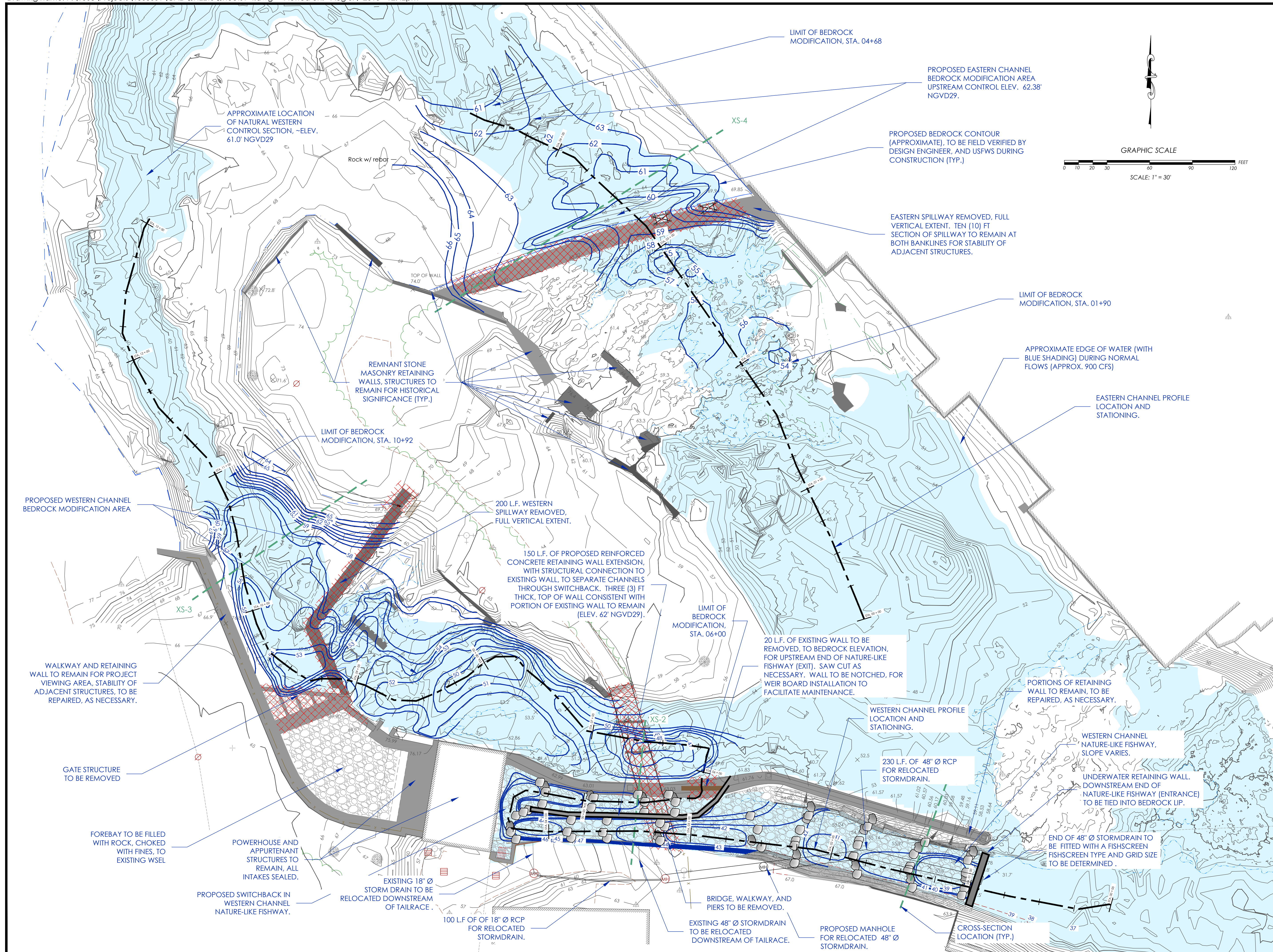
Non-fish Migration Season

- Ensure undesirable vegetation is removed
- Inspection of structural integrity of Denil
- Repair and replace damaged baffles as needed

10.0 Operation and Maintenance Plan – Annual Review

- Warren shall keep the Plan updated on an annual basis, to reflect any changes in Denil operation and maintenance planned for the year.
- If the USFWS requests a modification of the Plan, Warren shall respond to the requested modification within 60 days of the request by filing a written response with USFWS and serving a copy of the response on FERC and MDMR, as applicable.
- Any modifications to the Plan shall require consultation with the USFWS and approval by FERC, as applicable, prior to implementation.

End of Document



CALL BEFORE YOU DIG!
 MAINE LAW REQUIRES
 3 WORKING DAYS NOTICE
 PRIOR TO CONSTRUCTION - STOP CALL
 REFERENCE TITLE 23 MRSA,
 SECTION 3360-A
 DIG SAFE SYSTEM, INC.
 1-888-344-7233, OR 811

PROJECT NOTES
 1. BASEMAP SURVEY TOPOGRAPHY AND BATHYMETRY OBTAINED FROM ACHERON ENGINEERING SERVICES PLAN ENTITLED "SACCARAPPA TOPOGRAPHY AND BATHYMETRY", DATED 09/08/2014. HORIZONTAL DATUM NAD83, STATE PLANE MAINE WEST, ZONE 1802, FEET. VERTICAL DATUM NGVD29, FEET.

30% DRAFT
 NOT FOR CONSTRUCTION

DATE	DESCRIPTION
REVISIONS	

JACOB E. HELMINIAK
 Professional Engineer
 ME Lic. No. 13350

DATE

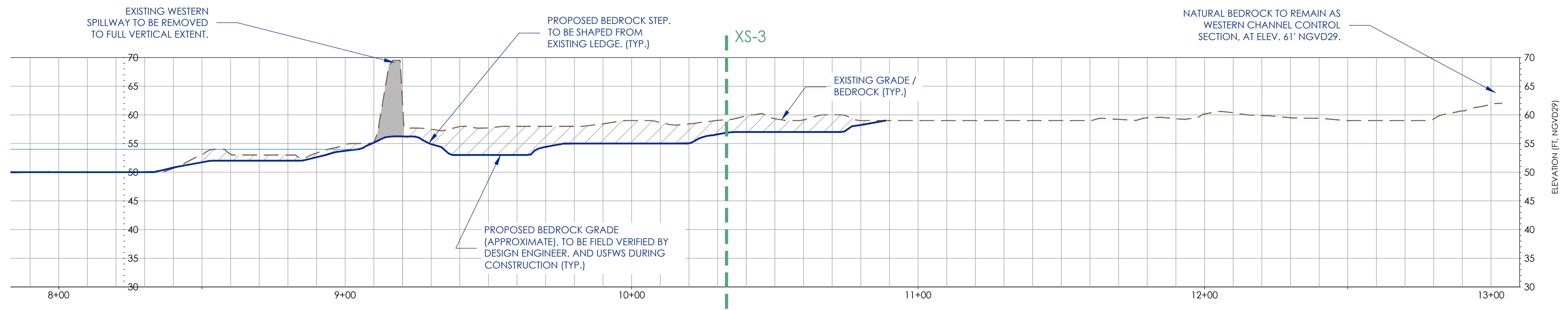
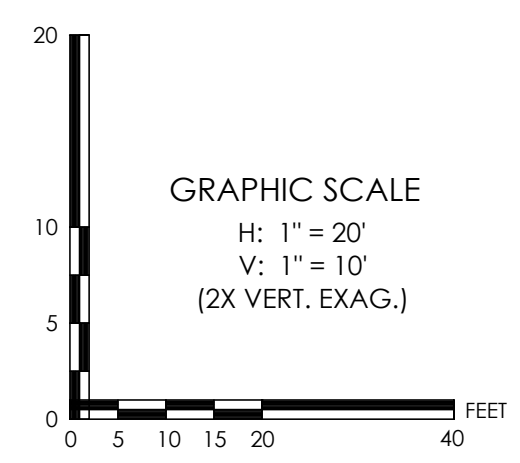
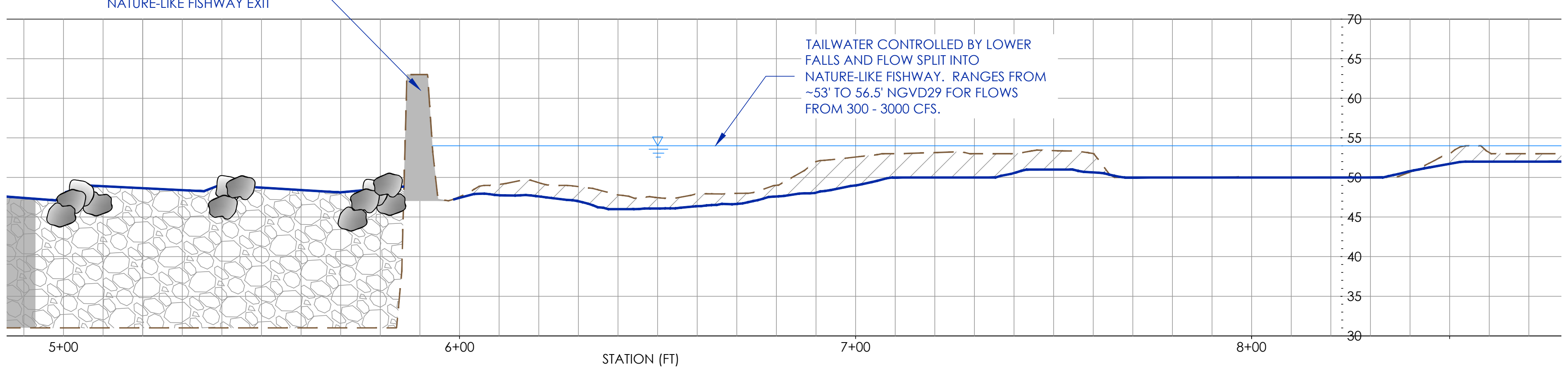
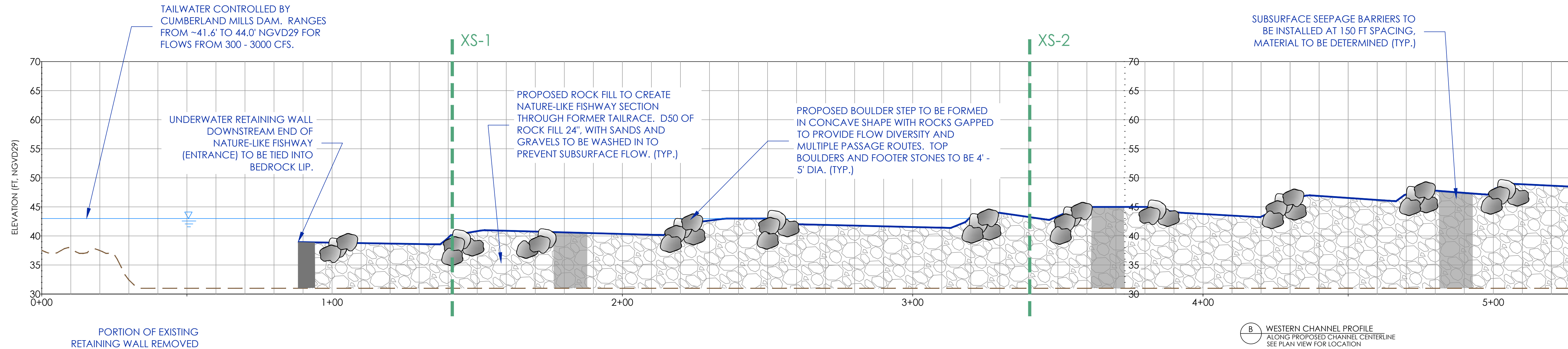
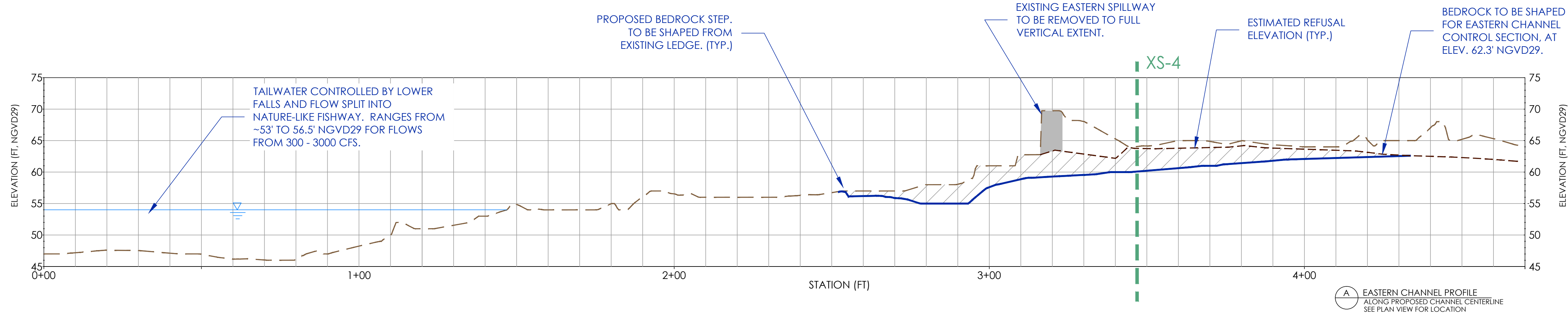
PRINCETON HYDRO, LLC **PH**

SCIENTISTS AND ENGINEERS
 1108 OLD YORK ROAD, SUITE 1
 P.O. BOX 720
 RINGOES, NEW JERSEY 08551
 PHONE: 908.237.5660
 FAX: 908.237.5666
 WWW.PRINCETONHYDRO.COM

PROJECT NAME/LOCATION:
 SACCARAPPA FALLS FISH PASSAGE
 PRESUMPSCOT RIVER
 CITY OF WESTBROOK
 CUMBERLAND COUNTY, MAINE

DRAWING NAME:
 PROPOSED
 TWO-CHANNEL ALTERNATIVE
 PLAN VIEW

DATE:	JULY 10, 2015
PROJECT NO.:	1508.001
SCALE:	1" = 30'
DRAWN BY:	JEH/RA
CHECKED BY:	LASW



CALL BEFORE YOU DIG!
MAINE LAW REQUIRES
3 WORKING DAYS NOTICE
PRIOR TO CONSTRUCTION - STOP CALL
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30% DRAFT
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DATE	DESCRIPTION
REVISIONS	

JACOB E. HELMINIAK
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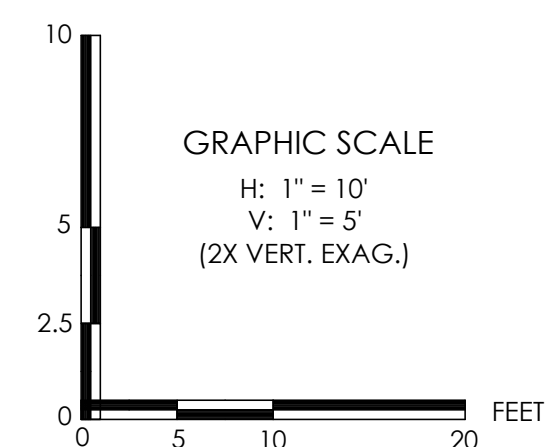
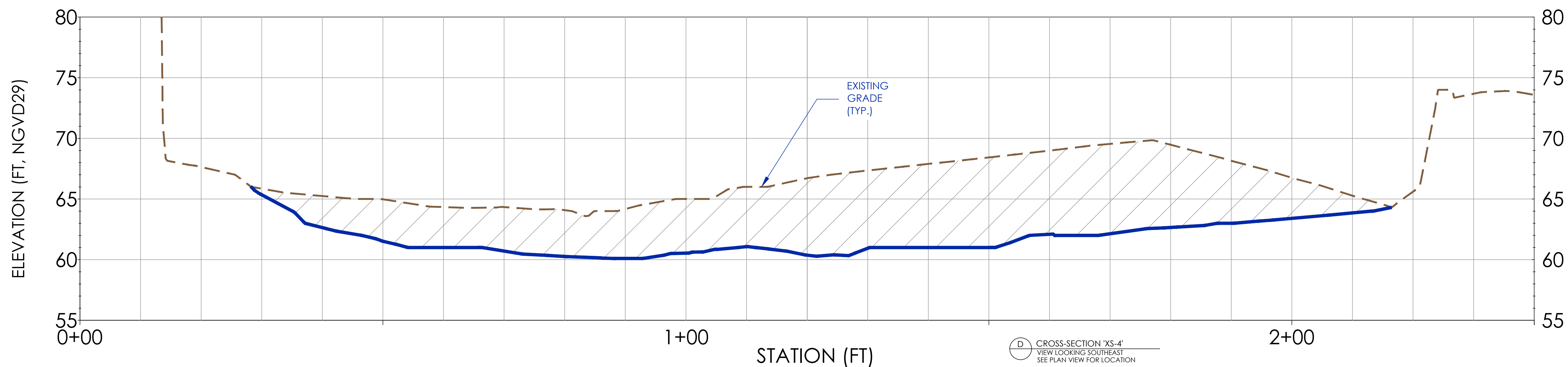
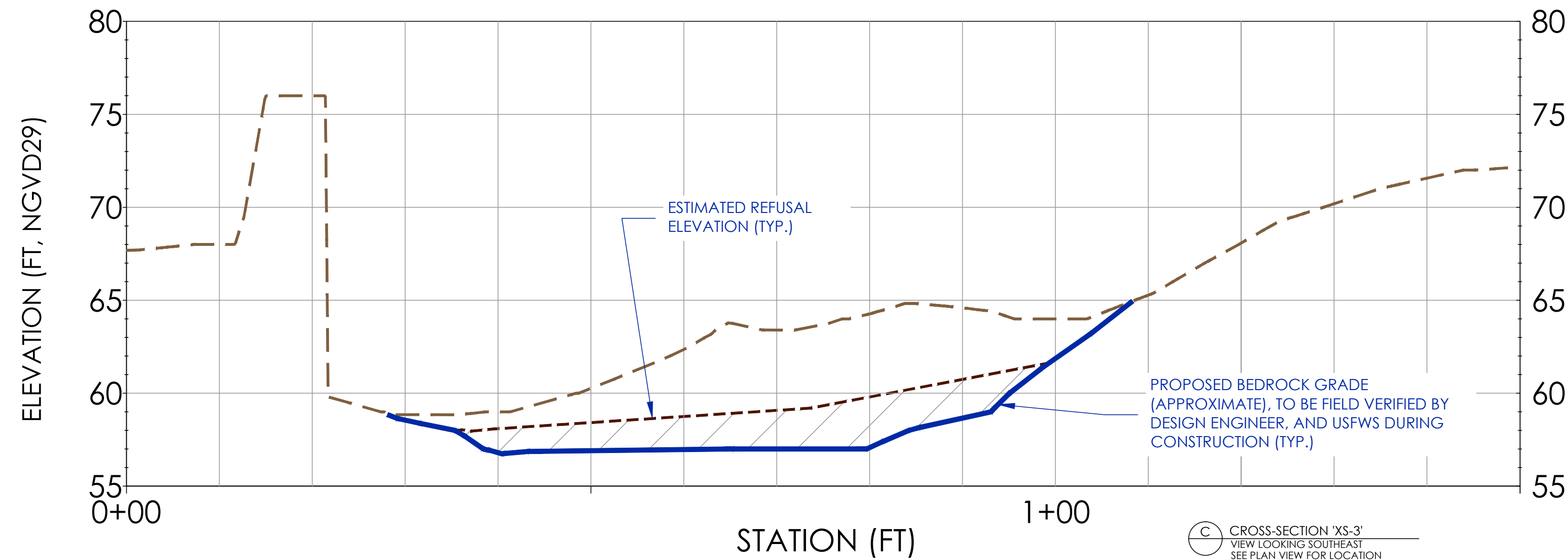
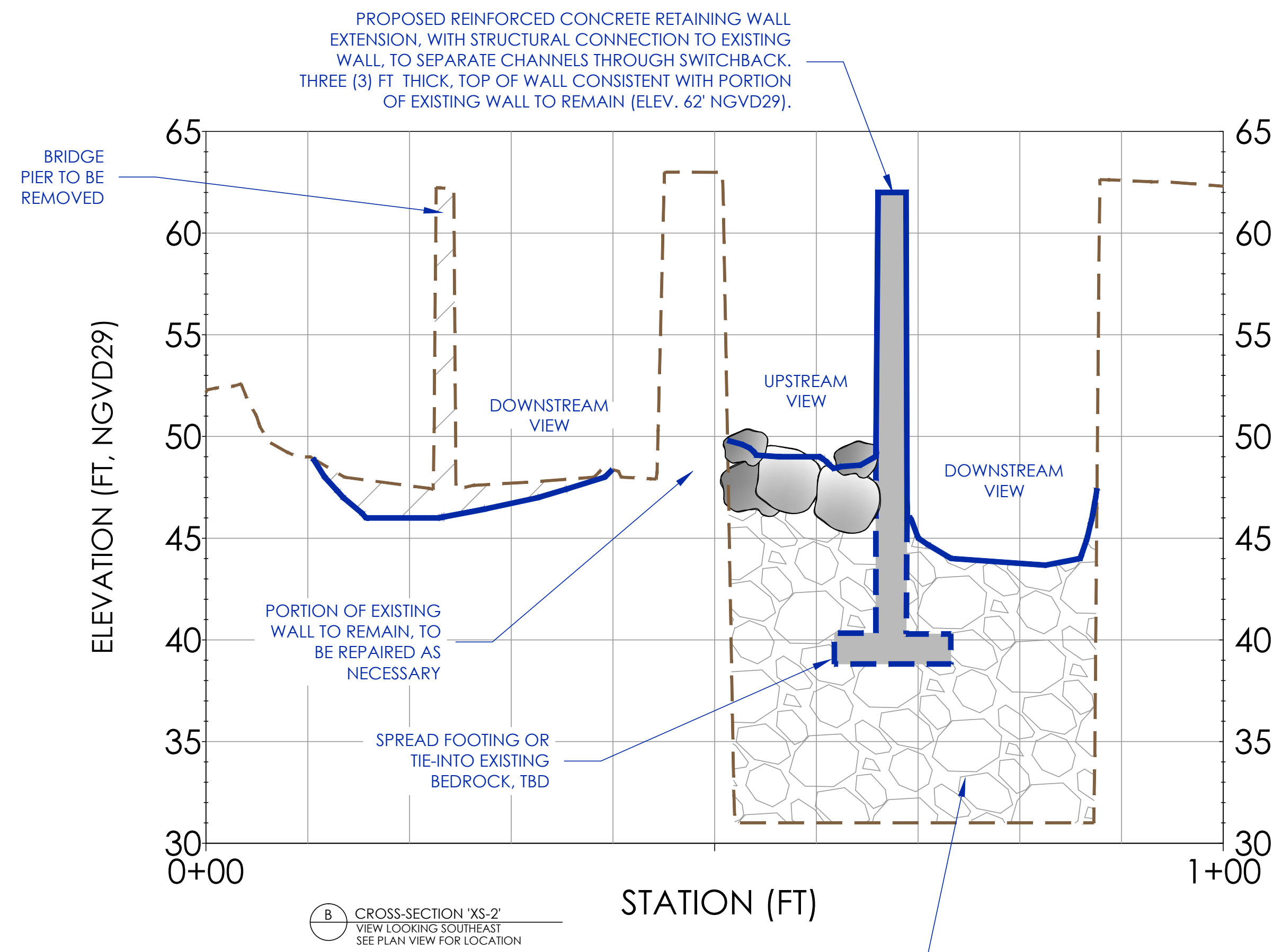
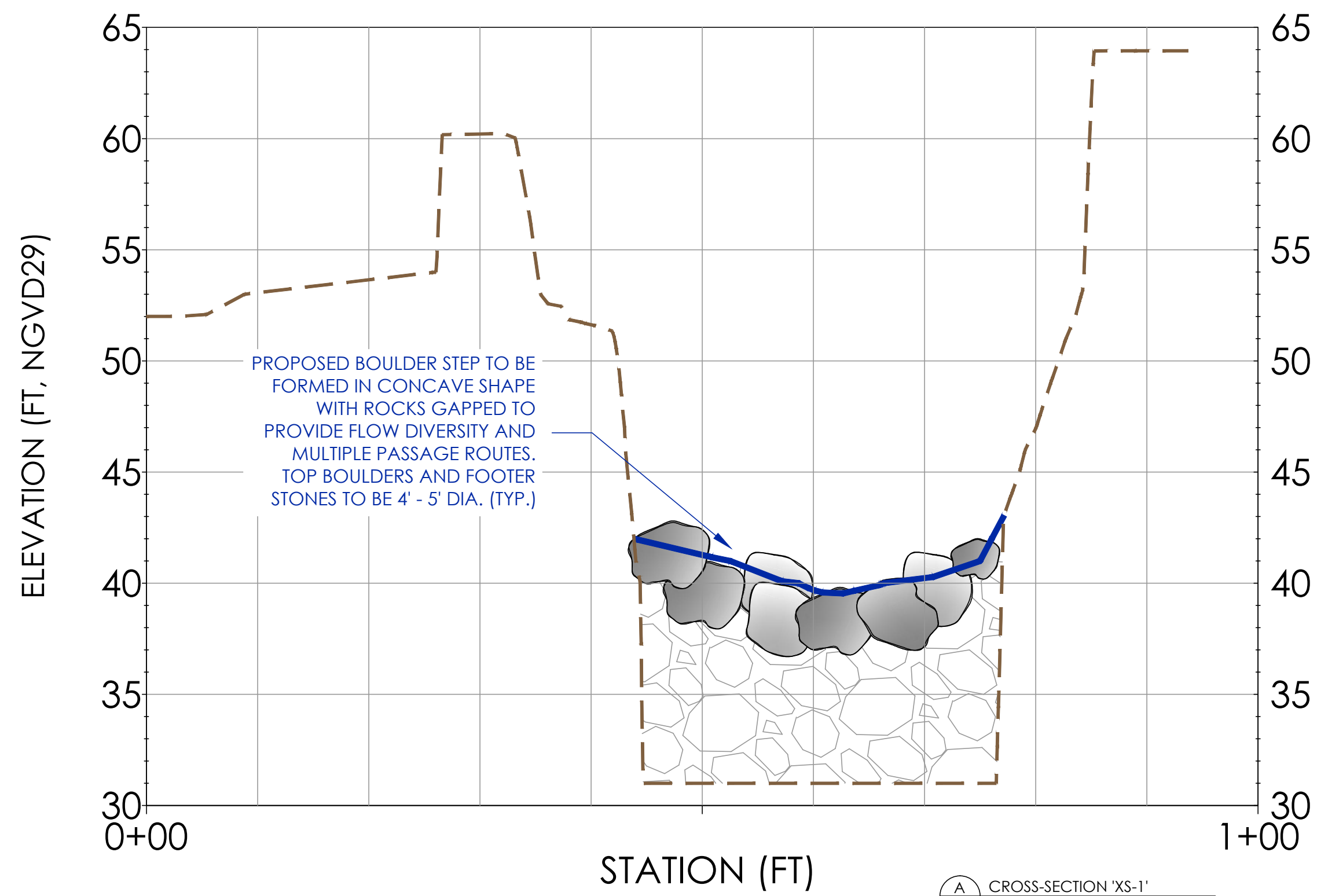
SCIENTISTS AND ENGINEERS
1108 OLD YORK ROAD, SUITE 1
P.O. BOX 720
RINGOES, NEW JERSEY 08551
PHONE. 908.237.5660
FAX. 908.237.5666
WWW.PRINCETONHYDRO.COM

PROJECT NAME/LOCATION:
SACCARAPPA FALLS FISH PASSAGE
PRESUMPSHOT RIVER
CITY OF WESTBROOK
CUMBERLAND COUNTY, MAINE

DRAWING NAME:
PROPOSED
TWO-CHANNEL ALTERNATIVE
PROFILES

DATE:	JULY 10, 2015
PROJECT NO.:	1508.001
SCALE:	AS SHOWN
DRAWN BY:	JEH/RA
CHECKED BY:	LASW

SHEET NO. **2** OF **4**



PROPOSED ROCK FILL TO CREATE NATURE-LIKE FISHWAY SECTION THROUGH FORMER TAILRACE. D50 OF ROCK FILL 24". WITH SANDS AND GRAVELS TO BE WASHED IN TO PREVENT SUBSURFACE FLOW. SUBSURFACE SEEPAGE BARRIERS TO BE INSTALLED AT 150 FT SPACING, MATERIAL TO BE DETERMINED (TYP.)

CALL BEFORE YOU DIG!
MAINE LAW REQUIRES
3 WORKING DAYS NOTICE
PRIOR TO CONSTRUCTION - STOP CALL
REFERENCE TITLE 23 MRSA,
SECTION 3360-A
DIG SAFE SYSTEM, INC.
1-888-344-7233, OR 811

PROJECT NOTES
1. BASEMAP SURVEY TOPOGRAPHY AND BATHYMETRY OBTAINED FROM ACHERON ENGINEERING SERVICES PLAN ENTITLED "SACCARAPPA TOPOGRAPHY AND BATHYMETRY", DATED 09/08/2014. HORIZONTAL DATUM NAD83, STATE PLANE MAINE WEST, ZONE 1802. FEET. VERTICAL DATUM NGVD29, FEET.

30% DRAFT
NOT FOR CONSTRUCTION

DATE	DESCRIPTION
REVISIONS	

JACOB E. HELMINIAK
Professional Engineer
ME Lic. No. 13350



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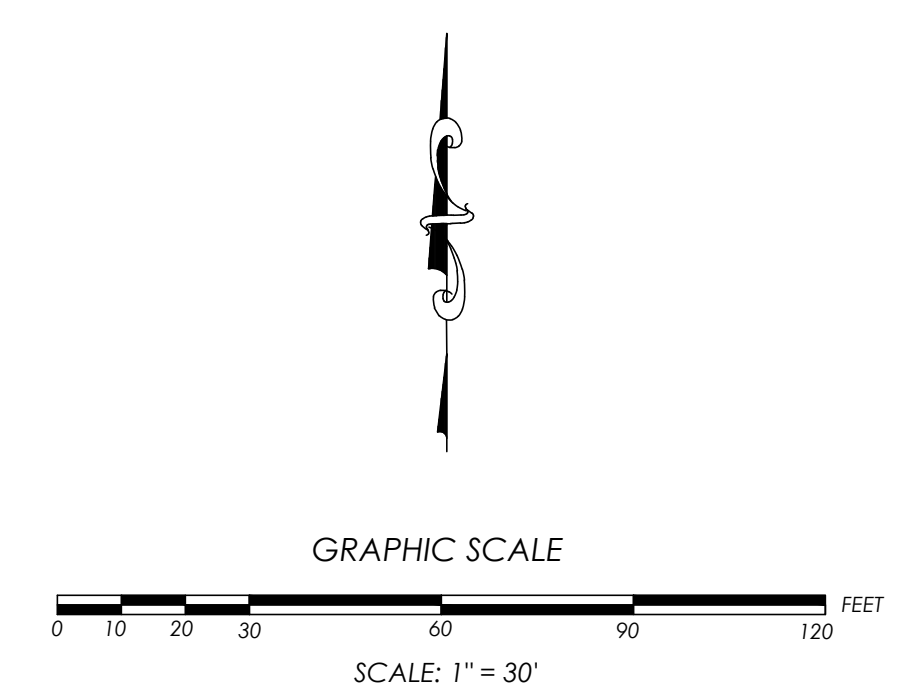
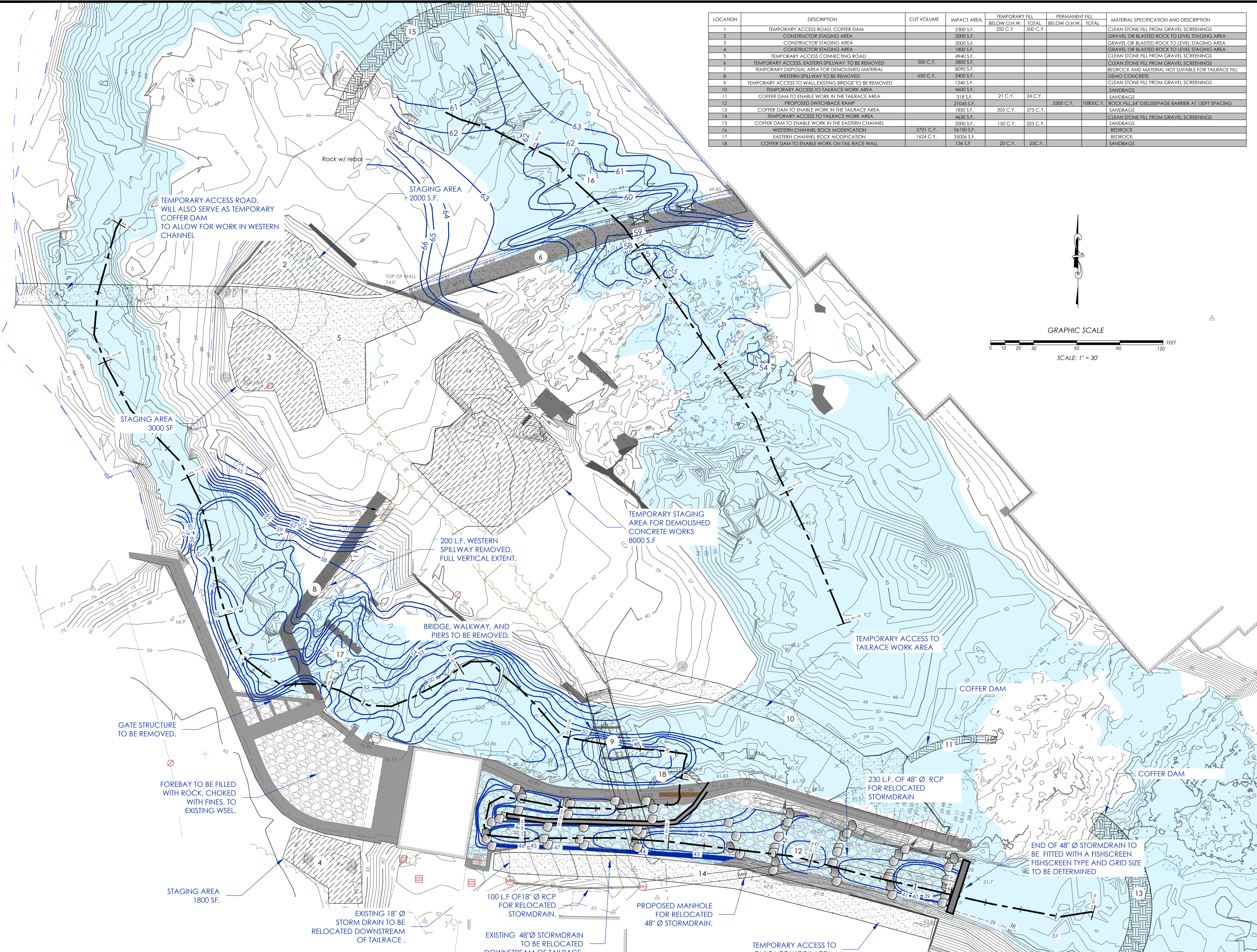
PROJECT NAME/LOCATION:
SACCARAPPA FALLS FISH PASSAGE
PRESUMPSCOT RIVER
CITY OF WESTBROOK
CUMBERLAND COUNTY, MAINE

DRAWING NAME:
PROPOSED
TWO-CHANNEL ALTERNATIVE
CROSS-SECTIONS

DATE:	JULY 10, 2015
PROJECT NO.:	1508.001
SCALE:	AS SHOWN
DRAWN BY:	JEH/RA
CHECKED BY:	LASW

SHEET NO.
3 OF **4**

LOCATION	DESCRIPTION	CUT VOLUME	IMPACT AREA	TEMPORARY FILL BELOW O.H.W.	PERMANENT FILL BELOW O.H.W.	TOTAL	MATERIAL SPECIFICATION AND DESCRIPTION
1	TEMPORARY ACCESS ROAD, COFFER DAM		2300 S.F.	250 C.Y.	500 C.Y.		CLEAN STONE FILL FROM GRAVEL SCREENINGS
2	CONSTRUCTOR STAGING AREA		2000 S.F.				GRAVEL OR BLASTED ROCK TO LEVEL STAGING AREA
3	CONSTRUCTOR STAGING AREA		3000 S.F.				GRAVEL OR BLASTED ROCK TO LEVEL STAGING AREA
4	CONSTRUCTOR STAGING AREA		1800 S.F.				GRAVEL OR BLASTED ROCK TO LEVEL STAGING AREA
5	TEMPORARY ACCESS CONNECTING ROAD		4940 S.F.				CLEAN STONE FILL FROM GRAVEL SCREENINGS
6	TEMPORARY ACCESS, EASTERN SPILLWAY, TO BE REMOVED	500 C.Y.	3800 S.F.				CLEAN STONE FILL FROM GRAVEL SCREENINGS
7	TEMPORARY DISPOSAL AREA FOR DEMOLISHED MATERIAL		8090 S.F.				BEDROCK AND MATERIAL NOT SUITABLE FOR TAILRACE FILL
8	WESTERN SPILLWAY TO BE REMOVED	650 C.Y.	2400 S.F.				DEMO CONCRETE
9	TEMPORARY ACCESS TO WALL EXISTING BRIDGE TO BE REMOVED		1240 S.F.				CLEAN STONE FILL FROM GRAVEL SCREENINGS
10	TEMPORARY ACCESS TO TAILRACE WORK AREA		4600 S.F.				SANDBAGS
11	COFFER DAM TO ENABLE WORK IN THE TAILRACE AREA		318 S.F.	21 C.Y.	24 C.Y.		SANDBAGS
12	PROPOSED SWITCHBACK RAMP		21045 S.F.			5300 C.Y.	ROCK FILL 24" D50 SEEPAGE BARRIER AT 150FT SPACING
13	COFFER DAM TO ENABLE WORK IN THE TAILRACE AREA		1850 S.F.	205 C.Y.	275 C.Y.		SANDBAGS
14	TEMPORARY ACCESS TO TAILRACE WORK AREA		4630 S.F.				CLEAN STONE FILL FROM GRAVEL SCREENINGS
15	COFFER DAM TO ENABLE WORK IN THE EASTERN CHANNEL		2000 S.F.	150 C.Y.	223 C.Y.		SANDBAGS
16	WESTERN CHANNEL ROCK MODIFICATION	2721 C.Y.	56150 S.F.				BEDROCK
17	EASTERN CHANNEL ROCK MODIFICATION	35006 C.Y.	35006 S.F.				BEDROCK
18	COFFER DAM TO ENABLE WORK ON TAIL RACE WALL	1624 C.Y.	134 S.F.	20 C.Y.	25C.Y.		SANDBAGS



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30% DRAFT
 NOT FOR CONSTRUCTION

DATE	DESCRIPTION
REVISIONS	

JACOB E. HELMINIAK
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DATE



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PROJECT NAME/LOCATION:
 SACCARAPPA FALLS FISH PASSAGE
 PRESUMPSCOT RIVER
 CITY OF WESTBROOK
 CUMBERLAND COUNTY, MAINE

DRAWING NAME:
**PROPOSED
 TWO-CHANNEL ALTERNATIVE
 CONSTRUCTION PLAN**

DATE:	JULY 10, 2015
PROJECT NO.:	1508.001
SCALE:	1" = 30'
DRAWN BY:	JEH/RA
CHECKED BY:	LASW