



United States Department of the Interior
OFFICE OF THE SECRETARY
Office of Environmental Policy and Compliance
5 Post Office Square, Room 18011
Boston, MA 02109

April 14, 2023

4111
IN REPLY REFER TO:
ER 21/0040-0042

Vincent Sapienza, PE
Commissioner
New York City Department of Environmental Protection
59-17 Junction Blvd
Flushing, NY 11373

Subject: FERC Project No: 9690-115
FERC Project No: 10481-069
FERC Project No: 10482-122

Dear Commissioner Sapienza:

This letter follows up on my July 14, 2021, correspondence in response to your June 17, 2021, letter to Secretary of the Interior Deb Haaland regarding the Settlement Agreement (Settlement) filed by Eagle Creek Renewable Energy (Eagle Creek) for its three hydropower projects on the Mongaup River in Sullivan and Orange counties, New York. In our letter, we discussed the U.S. Department of the Interior's (Department) support for the Settlement, concerns raised by the City of New York (City), and our commitment to further discussions as reflected in the July 22, 2021, meeting with your staff, the U.S. Fish and Wildlife Service and the National Park Service.

During the July 22, 2021, meeting, your staff along with staff from the Delaware River Basin Commission (DRBC) proposed to develop a model to further understand the potential impacts of the Settlement on water management in the Delaware River Basin. The City and DRBC discussed and presented the model to Department staff on December 7, 2021. Further clarification was requested by the City regarding the language in the Settlement to support the modeling effort. In response, the Settlement parties have developed an Errata to the Settlement to formalize these clarifications in the Settlement. We acknowledge that the complex regulation of the Projects still present difficulties for modeling the Delaware River Basin system; however, the Settlement conditions increasing reporting by Eagle Creek, as requested by the City, should improve the accuracy of these efforts when compared to the current license conditions. The Office of the Delaware River Master will work with Eagle Creek Hydro after the issuance of a new license to develop a methodology for calculation of Callicoon flows within 180 days of license issuance.

During the second half of 2021, and in 2022, Department staff engaged in discussions with the DRBC to address DRBC's statutory authority and regulation of the watershed under drought conditions, concerns which were shared by the City. As a result of these discussions, the

Settlement parties developed an Addendum to the Settlement acknowledging these authorities, which both the DRBC and the City support.

Both the Errata and Addendum were filed by Eagle Creek Hydro with the Federal Energy Regulatory Commission on March 22, 2023. We appreciate your staff's efforts to review and provide comments on these documents.

We are aware that concerns remain regarding the regulation of the projects and the Settlement's consideration of flows in the Delaware River, for the protection of the federally endangered dwarf wedgemussel (*Alasmidonta heterodon*). In our continued efforts to protect the dwarf wedgemussel and other listed species in the Delaware River Watershed, the Department looks forward to working with the City and other members of the Decree Parties¹ to support your commitment to consider endangered species in the implementation and possible future modifications of the Flexible Flow Management Program (FFMP), as described in section IV.3 and IV.6 of the FFMP 2017.

Thank you for your attention to the Settlement and your efforts to develop the model. The Department continues to support the Settlement, which we believe has been improved by the City's participation. We look forward to our continuing relationship regarding the resources we all strive to protect in the Delaware River Basin. If you have any questions, please contact John Wiley at john_wiley@fws.gov or 607-753-9334. Please contact me at andrew_raddant@ios.doi.gov or 617-223-8565 or if I can be of further assistance.

Sincerely,

Andrew L. Raddant
Regional Environmental Officer

Electronic distribution: vsapienza@dep.NYC.gov
<https://ferconline.ferc.gov/FERCOOnline.aspx>

¹ The Decree Parties to the 1954 U.S. Supreme Court Decree include the State of Delaware, the State of New Jersey, the State of New York, the Commonwealth of Pennsylvania, and the City.