

[ELECTRONICALLY SUBMITTED]
FEDERAL ENERGY REGULATORY COMMISSION
New York Regional Office

ENVIRONMENTAL AND PUBLIC USE INSPECTION REPORT

For the period June 7, 1995 to May 31, 2000

Exemptee Burt Dam Power Company Project No. 7477-NY

Project Name Burt Dam

Location Eighteen Mile Creek Niagara New York
(Waterway or reservation) (County) (State)

Exemption issued May 16, 1986 Type Case Specific

Date of last Environmental/Recreation amendment None

Inspected by Peter J. Puglese Date May 31, 2000

Parts of project inspected Public Safety, Environmental and
Recreational Resources

Weather Partly cloudy, 60°F

Stream Flow Approximately 340 cfs

Accompanied by Mr. Timothy Horanburg, Project Operator, and Mr.
Sean Fairfield, Regulatory Coordinator, both representing the

Exemptee

Summary

The project operates in a run-of-river mode. The public safety program consists of a siren, warning signs, lights, fences and a boat barrier. The siren could not be activated and, thus, a certification was requested. Notwithstanding, it appears that the Exemptee is in compliance with the terms and conditions of the exemption relating to public use, the environment and public safety.

Submitted July 24, 2000

Peter J. Puglese, P.E., Civil Engineer

A. General Description of the Project1. Project Area Description

The project is located on Eighteen Mile Creek, in the Town of Newfane, about two miles upstream of Lake Ontario. The soils at the project are of the well-drained outwash type, while typical riverine trees such as maple and beech dominate the banks. The project is served by State Route 18, which runs along the creek to the Village of Olcott, on the shore of Lake Ontario. The project does not have many unique features other than a well known fall Chinook salmon fishery, downstream of the project.

2. Description of the Development

The project reservoir has a pool surface area of 147 acres and the annual average stream flow is 136 cfs. The water quality in the creek surrounding the project area is classified as 'C' which is suitable for secondary contact recreation. The tailrace provides a good area for the downstream fishery since the salmon migrate up to the dam to attend to spawn. The project operates in a run-of-river mode. Because of the private development on the reservoir, public access is almost non-existent.

B. Project Resources and Facilities1. Public Use Resources and Facilitiesa. Description of Facilities

The project reservoir has no developed public access facilities. Although proposed at one time by the New York State Department of Environmental Conservation (NYSDEC), recreation facilities on the reservoir were not constructed because of local opposition. The land surrounding the reservoir is private property and the Exemptee indicated that the landowners were opposed to fishing by the public.

The Exemptee, with other local entities, constructed the Town of Newfane Fisherman's Park (Photo No. 1). This facility provides the public with access to the downstream areas of the project with an improved trail (Photo No. 2) and parking area. Picnic tables and a porta-potty are also provided at this site (Photo No. 3). The Town of Newfane which charges a \$1 daily use fee during the fishing season operates the facility. The Exemptee indicated that the fishing season covers the months of September through November.

The Town also has a marina and park located at the mouth of the creek near Lake Ontario.

b. Compliance with Requirements/Exhibits

There is no approved recreation plan for the project. Article 2 requires the Exemptee to comply with the terms and conditions established by the Federal and State resource agencies. The Exemptee's assistance with the construction of the Fisherman's Park is in compliance with those terms as expressed by NYSDEC. The project is not subject to the provisions of Part 8 and Form 80 submittals.

c. Adequacy of Public Use Resources and Facilities

The project provides adequate facilities for the present level of recreational use.

2. Cultural Resources and Facilities

a. Cultural Resources

There are no designated facilities or resources pertaining to cultural resources that need to be protected at the project.

b. Compliance with Conditions/Orders

There are no requirements or conditions concerning cultural resources at the project.

c. Adequacy of Cultural Resources Plan and Facilities

At this time, there is no need for a cultural resource management plan.

3. Fish and Wildlife Resources and Facilities

a. Description of Resources/Facilities

The Exemptee operates the project in a run-of-river mode with river flows spilling over the dam to protect a fish and wildlife habitat, downstream of the project (Photo No. 4). The project uses water level sensors on the upstream face of the dam (Photo No. 5) and in the tailrace to control the pond level.

At the present time, a fall Chinook salmon fishery exists downstream of the project. During spawning, they swim upstream to the base of the dam. The Exemptee advised that until 1995 fishermen used snagging to capture the fish since they tend not to take lures in a spawning condition. However, negative publicity over snagging prompted NYSDEC to prohibit this practice in 1995. Traditional fishing is the method allowed by the State, notwithstanding, the spawning condition of the salmon.

b. Compliance with Conditions and Orders

The project was operating in a run-of-river mode with water spilling over the dam (Photo No. 4) and the water level sensors in place at the time of inspection. There was no fluctuation of the reservoir level while the single unit was generating (40 kW) as indicated by Photo No. 6. As such, the Exemptee appeared to be operating the project in an instantaneous run-of-river mode, and, the reservoir elevation was at or above the spillway crest of the dam in accordance with the terms and conditions of the exemption. The Exemptee also keeps a log of reservoir/tailrace elevations and generation.

The method of fishing for salmon is regulated by the State and is not addressed in the exemption.

c. Adequacy of Fish and Wildlife Resources/Facilities

The State resource agency or the U.S. Fish and Wildlife Service have not expressed any concern of inadequacy of the minimum flow.

4. Miscellaneous Environmental Facilities, Resources, Requirements

a. Description of Other Resources

The Exemptee coordinates with the New York State Canal Corporation (NYSCC) to ensure that the natural flow of the creek is

not augmented by diversions from the New York State Erie Barge Canal for the purpose of operating the hydro project. The augmentation from NYSCC is independent of the project and depends upon other requirements.

b. Compliance with Requirements and/or Conditions

Article 9 requires the Exemptee to take measures to ensure that diversions from the canal are not used to augment flows and, thereby, generation at the project.

Subsequently, based on an August 19, 1987 letter, the City of Lockport and NYSDEC negotiated a 40 cfs diversion during the navigation season (and runoff only during the rest) from the Barge Canal into Eighteen Mile Creek but for waste assimilative capacity purposes only. In a letter dated February 28, 1994, NYSCC further specified that the actual average diversion is about 50 cfs and that the Exemptee had not and will never have control over the water diversions into the creek.

c. Adequacy of Miscellaneous Facilities/Resources

The agreement whereby the Exemptee does not control the diversions from the canal system is adequate for complying with Article 9. Basically, the Exemptee has no control over these diversions and can not augment flows to the project.

C. Public Safety

1. Description of Facilities

The Exemptee implements a public safety program. A boat barrier with upstream warning signs on the boat barrier span the reservoir during the recreation season (Photo 7). Two additional signs are placed further upstream. A floodlight is also present on the dam for nighttime visibility.

Fencing is used at the powerhouse and dam areas to prevent access to these areas. The tailrace area is not accessible by anglers or boaters for portage from the dam and the flows below the dam are not particularly forceful. The downstream section of the creek is relatively shallow and fishing is done mainly from the eastern shoreline.

In case of emergency, the tailrace evacuation siren is activated (Photo No. 8). The alarm is to sound if either of two conditions exists: (a) the tailwater level rises by 5.0 feet or more; or (b) the forebay level drops by 1.0 foot and the tailwater level rises by 3.0 feet or more. Related to the siren, a warning sign is located on the downstream side of the powerhouse and one at the start of the trail at Fisherman's Park (Photo Nos. 9 and 10). Both signs read "WARNING SIREN INDICATES A DANGEROUS RISE IN WATER, LEAVE AREA IMMEDIATELY IF SOUNDED".

2. Compliance with Requirements

The Exemptee submitted a revised public safety plan in a letter dated June 8, 1994. This plan is necessary to show the installation of warning and safety devices for the Regional Director's administration of Section 12.42 of the regulations. By letter dated June 13, 1994, this office accepted the public safety plan as satisfying the submission requirements of Section 12.42.

With regard to overhead lines, there are overhead lines that are just upstream of the dam. Further upstream of the overhead lines is the boat barrier. Thus, the boat barrier prevents navigation below the overhead lines. In addition, the Exemptee has observed that canoes or car-top boats have been seen navigating the reservoir; these watercrafts are low in height.

The Exemptee sufficiently complies with public safety requirements at the project except as noted below.

3. Adequacy of Public Safety Measures

The Exemptee was advised of and agreed to the following:

- a. Certify the functioning of the warning siren located on the outside of the powerhouse. On the day of the inspection, the siren could not be activated.
- b. Submit a photograph to show the replacement of a missing public safety warning sign on the fence located on the left (west) abutment as per a telephone conversation with the undersigned and Mr. Sean Fairfield on July 24, 2000 (Photo No. 11).

D. Recommendations and Follow-Up Actions

The Exemptee was sent a NYRO letter dated June 9 2000 requesting a certification for the functioning of the siren. The

Exemptee's letter dated July 6, 2000 noted that an electrical problem was discovered and requested an extension of time. NYRO letter of July 18, 2000 granted a 30 day extension.

Subsequently, in a telephone conversation between the undersigned and Mr. Sean Fairfield on July 24, 2000, it was agreed to replace a missing public safety warning sign located on a fence at the left abutment and that a photograph showing the replacement is to be forwarded along with the above certification.

E. Photographs and Exhibits

Attached are a photo location map and 11 photographs.

Cc: FERC-NYRO
Puglese, P./pjp/jm
07/24/00

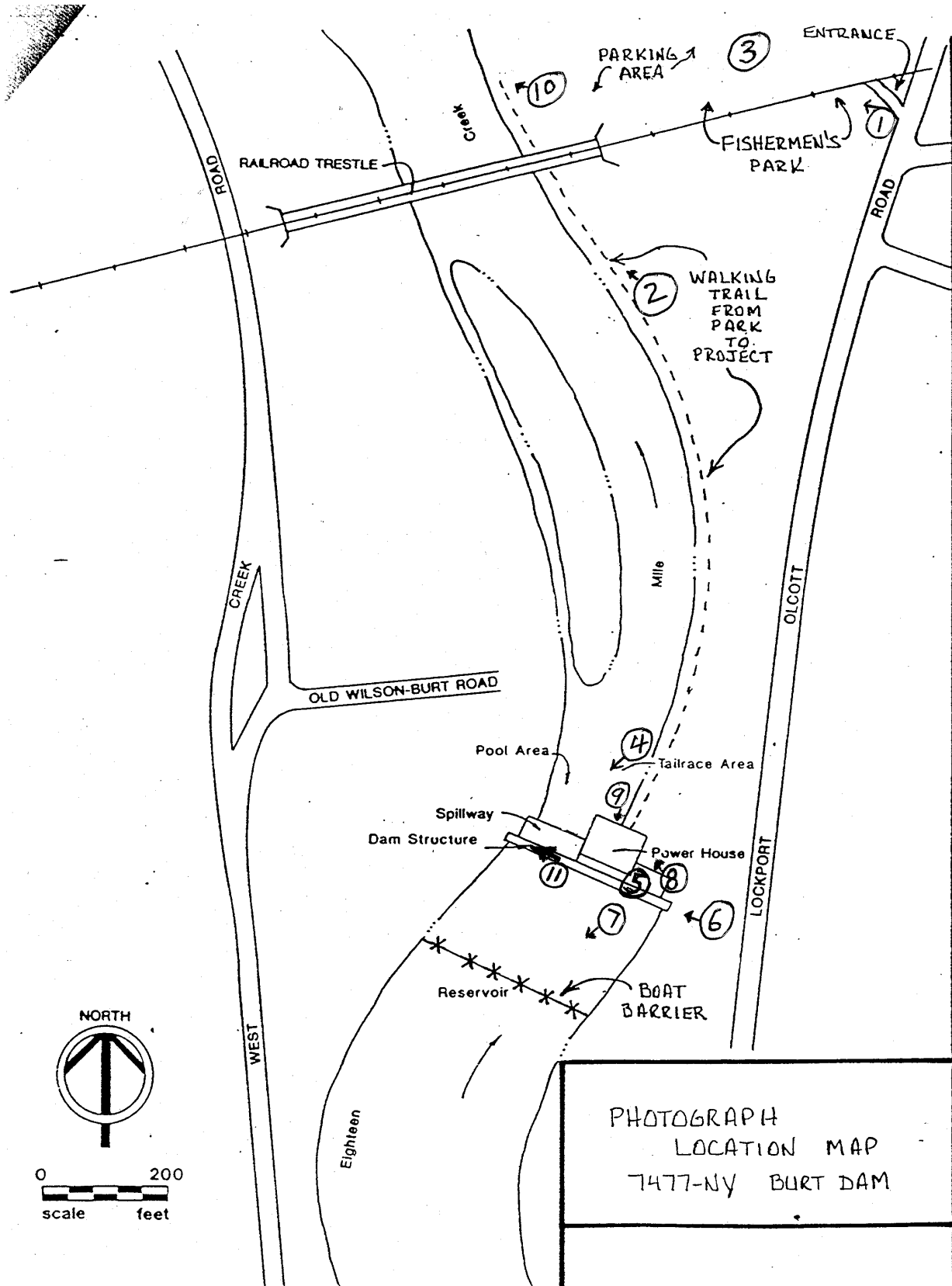




Photo No. 1 - Entrance to the Town of Newfane Fisherman's Park.



Photo No. 2 - Portion of the trail connecting Fisherman's Park to the downstream area of the project.



Photo No. 3 - Porta-potty at the edge of the parking lot in Fisherman's Park



Photo No. 4 - Downstream view of water spilling over the dam.



Photo No. 5 - Contents of white box indicate sensing devices on the upstream face of the dam to measure water level.

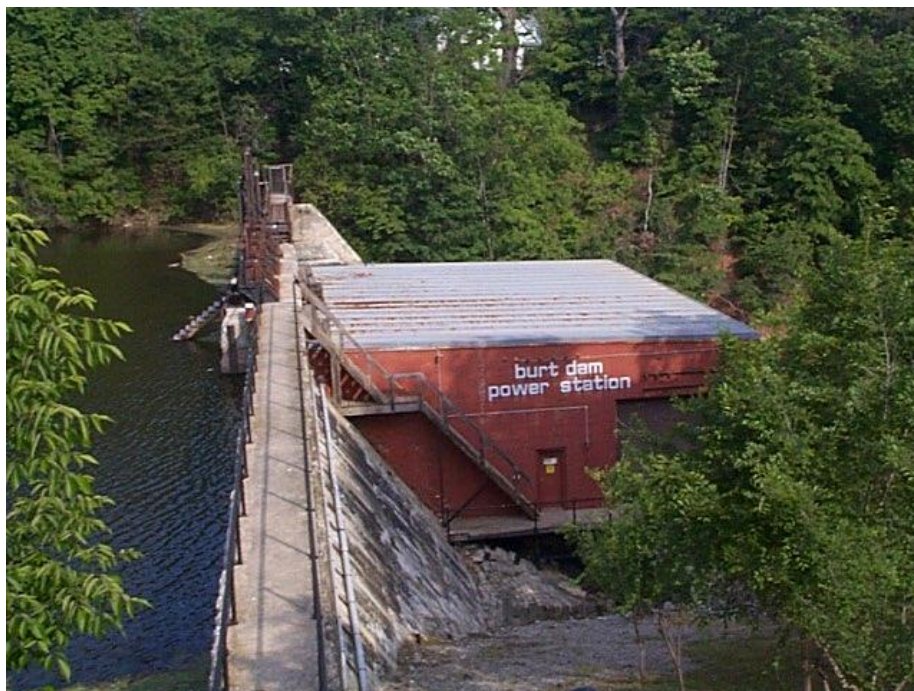


Photo No. 6 - View of the reservoir behind the dam and powerhouse.



Photo No. 7 - Boat barrier upstream of the dam.



Photo No. 8 - Tailrace siren located on the end of east powerhouse wall.



Photo No. 9 - Public safety sign relating to the siren on the powerhouse above the tailrace



Photo No. 10 - Warning sign that relates to the siren on the start of the trail in Fisherman's Park.



Photo No. 11 - Missing public safety sign needs to be replaced on the fence at the left abutment of the dam