

1 **Q. Re Rattling Brook Dam Refurbishment, Tab 1.3**

2
3 **At page 1 of the report there is a reference to a \$4.5 million project in the capital**
4 **plan for 2012 to design and construct facilities to allow salmon to access the Rattling**
5 **Brook watershed. What is the basis for the requirement to construct these facilities**
6 **in 2012?**

7
8 A. On February 12, 2010, the Department of Fisheries and Oceans (“DFO”) issued an order
9 pursuant to section 20 of the *Fisheries Act*, directing Newfoundland Power to “provide a
10 fish pass around the hydroelectric generation facility on Rattling Brook so as to allow the
11 annual upstream and downstream migration of Atlantic salmon between the Bay of
12 Exploits and the headwaters of Rattling Brook.” A copy of DFO’s letter containing the
13 order is provided as Attachment A.

14
15 In order to comply with the deadlines specified in the DFO order, it is necessary to design
16 and construct the facilities in 2012.

Department of Fisheries & Oceans
Directive Letter to Newfoundland Power



Fisheries and Oceans
Canada

Pêches et Océans
Canada

PO Box 5667
St. John's NL A1C 5X1

Your File Votre référence

Our File Notre référence

BAB 3970-280

FEB 12 2010

Earl Ludlow
President and Chief Executive Officer
Newfoundland Power
55 Kenmount Road
PO Box 8910
St. John's NL A1B 3P6

RECEIVED
FEB 15 2010

Dear Mr. Ludlow:

I write to you in relation to the Newfoundland Power hydroelectric generation facility on Rattling Brook at Norris Arm, NL.

The mandate of Fisheries and Oceans Canada includes the protection and restoration of habitat that sustains fisheries resources. One such resource which is of major economic, social, and biological importance to Canada and throughout the North Atlantic is the Atlantic salmon.

As has been documented over the past several years by a DFO-Newfoundland Power Joint Technical Working Group, significant gains in the production of Atlantic salmon can be realized through the restoration of the access for Atlantic salmon to the headwaters of Rattling Brook. The collaborative efforts of that Working Group have also identified a technically feasible means of restoring passage for salmon that would not unreasonably interfere with the use of the river to generate electricity.

We believe that the recent and planned modernizations of the hydroelectric facility on Rattling Brook create the opportunity to achieve objectives for salmon enhancement and for hydroelectricity generation in a cooperative and balanced manner, as envisioned by the Memorandum of Understanding between DFO and the Canadian Electricity Association. We also acknowledge Newfoundland Power's request for a clear regulatory requirement to support the company's obtaining approval for the investment of resources in such an initiative.

Pursuant to section 20 of the *Fisheries Act*, Newfoundland Power is thus hereby ordered to provide a fish pass around the hydroelectric generation facility on Rattling Brook so as to allow the annual upstream and downstream migration of Atlantic salmon between the Bay of Exploits and the headwaters of Rattling Brook. The fish pass is to be in place to allow the downstream migration of salmon kelts and smolts by May 1, 2013, and the upstream migration of grilse and adult salmon by June 10, 2014.

Canada 

As set out in section 20(3) of the *Fisheries Act*, the place, form and capacity of the fish-way or canal ordered to be provided above must be approved by the Minister before construction thereof is begun. We request that Newfoundland Power provide appropriate plans to DFO for review and approval in a timeframe that will allow the company to comply with the above order.

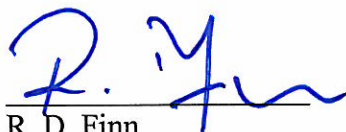
DFO will, in connection with this order, and pursuant to section 20(4) of the *Fisheries Act* specify the flows of water that Newfoundland Power will be required to supply in fishways associated with the fish pass at various times of the year so as to permit the safe and unimpeded descent of fish. The details of that direction, to be provided at a later date, will depend on specifications of the fish pass structures and procedures developed by Newfoundland Power.

DFO is willing to assist and advise Newfoundland Power as the company designs the structures and develops the operating procedures that will be required to satisfy the above order and directions.

I have attached copies of relevant sections of the *Fisheries Act* for your information and reference. I encourage you to contact my office at (709) 772-2442 if you have any questions.

We look forward to continuing to work with Newfoundland Power in realizing this significant contribution to the sustainability of Canada's fisheries resources in a collaborative and efficient manner.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'R. D. Finn', with a stylized flourish at the end.

R. D. Finn
Regional Director
Oceans, Habitat and Species at Risk

TB/hr

Attachment

Excerpted Relevant Sections of the *Fisheries Act R.S., c. F-14, s. 1.*

CONSTRUCTION OF FISH-WAYS

Fish-ways to be made as Minister directs

20. (1) Every obstruction across or in any stream where the Minister determines it to be necessary for the public interest that a fish-pass should exist shall be provided by the owner or occupier with a durable and efficient fish-way or canal around the obstruction, which shall be maintained in a good and effective condition by the owner or occupier, in such place and of such form and capacity as will in the opinion of the Minister satisfactorily permit the free passage of fish through it.

Idem

(2) Where it is determined by the Minister in any case that the provision of an efficient fish-way or canal around the obstruction is not feasible, or that the spawning areas above the obstruction are destroyed, the Minister may require the owner or occupier of the obstruction to pay to him from time to time such sum or sums of money as he may require to construct, operate and maintain such complete fish hatchery establishment as will in his opinion meet the requirements for maintaining the annual return of migratory fish.

Place, form, etc.

(3) The place, form and capacity of the fish-way or canal to be provided pursuant to subsection (1) must be approved by the Minister before construction thereof is begun and, immediately after the fish-way is completed and in operation, the owner or occupier of any obstruction shall make such changes and adjustments at his own cost as will in the opinion of the Minister be necessary for its efficient operation under actual working conditions.

To be kept open

(4) The owner or occupier of every fish-way or canal shall keep it open and unobstructed and shall keep it supplied with such sufficient quantity of water as the Minister considers necessary to enable the fish frequenting the waters in which the fish-way or canal is placed to pass through it during such times as are specified by any fishery officer, and, where leaks in a dam cause a fish-way therein to be inefficient, the Minister may require the owner or occupier of the dam to prevent the leaks therein.