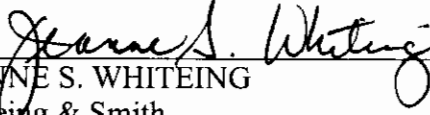



Respectfully submitted,


BY: 
JEANNE S. WHITEING
Whiteing & Smith
1136 Pearl Street, Suite 203
Boulder, Colorado 80302
(303) 444-2549
(303) 444-2365 fax
jwhiteing@whiteingsmith.com

Attorney for the Seneca Nation of Indians

BY: 
SAMUEL C. ALEXANDER
Chief, Indian Resources Section
Environment and Natural Resources Div.
U.S. Department of Justice
P.O. Box 44378, L'Enfant Plaza Station
Washington, D.C. 20026-4378
(202) 514-9080
(202) 305-0271 fax
craig.alexander@usdoj.gov

Attorney for the United States of America

ELIOT SPITZER
Attorney General of the State of New York

BY: 
DAVID B. ROBERTS
Office of the Attorney General
State Capitol
Albany, NY 12224
(518) 408-2516
(518) 474-1573
David.Roberts@oag.state.ny.us

Attorneys for the State of New York

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK
BUFFALO DIVISION**

SENECA NATION OF INDIANS,)	
)	
Plaintiff,)	
)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff-Intervenor,)	
)	
v.)	Civil Action No. 85-CV-411C
)	
STATE OF NEW YORK, et al.)	
)	
Defendants.)	

CONSENT DECREE AND FINAL JUDGMENT

The Seneca Nation of Indians, the State of New York and its officers named as defendants, and the United States entered into and lodged with the Court this Consent Decree, waiving and releasing all remaining claims and defenses that could have been raised in this case. This Court finds that the Consent Decree resolves with finality all remaining issues in this case and hereby enters this Consent Decree and Final Judgment.

I. BACKGROUND

The Seneca Nation of Indians (“Seneca Nation” or “Nation”), a federally recognized Indian Tribe, filed this case against the State in 1985. This case seeks to enforce the provisions of the Trade and Intercourse Act, 25 U.S.C. § 177, with regard to approximately fifty acres of land on the Oil Spring Reservation, of which the State took possession in the 19th century. The State built a dam on Oil Creek, creating the Oil Creek Reservoir, which today is known as “Cuba Lake.” Cuba Lake inundated a portion of the Reservation and additional Reservation lands were used by the State for roads, a spillway and outlet, spoil lands, and flood lands. Sometime later, a portion of the lands was divided into lots and leased by the State to individuals.

In November 1993, the Nation amended its complaint to include those individuals to whom the State leased lake-front lots within the Reservation; a second amended complaint was filed in February 1994, correcting the list of Defendant lessees. The United States filed a complaint in intervention on July 13, 1998.

After the Court issued a ruling on liability, the State, the United States and the Seneca Nation requested, and this Court approved, mediation, with Louis Coffey serving as the mediator. Under Mr. Coffey's auspices, the Seneca Nation, the United States and the State have settled the claims against the individuals that occupied the Cottage Lots within the Claim Area and have entered into this Consent Decree resolving the remaining issues before the Court. Now, without any admission of wrongdoing by any party, the parties wish to reach a final resolution of this case.

II. PARTIES

The parties to this case are the following: Seneca Nation, the United States, the State of New York and officials of the State, including Governor Pataki, Commissioner Joseph Seymour, Commissioner Bernadette Castro Davidson (collectively referred to herein as "the State"), and the following parties ("Cottage Defendants") who previously occupied cottage lots along Cuba Lake within the claim area: Joseph and Susan Chiapuso; Howard B. Whitney Estate; Walter L. Whitney; Jane E. Schuck; Kent Sandford; Richard J. and Beverly A. McCutcheon; Albert A. and Lucy Hoffman; Myles and Sandra Barraclough; Duane G. Glover; Paul H. and Virginia M. Geer; Deborah H. Baldwin; Robert L. and Eugenia Jones; Stephen M. Kane; Scott E. and Rosemary N. Fisher; William A. Campbell; David J. Gibson; Clarence J. Coffman, Sr.; Clarence J. Coffman, Jr.; C. James Coffman, Sr. and Jean Coffman; Eileen W. Garling; Robert F. and Susan F. Van Der Horst; Howard L. and Florence Luzier; Eugene and Louise Hickey; Phillip and Shirley Confer; David C. and Francis E. Williams; Kenneth Campbell; Frederick Tapp; and Susan

Bunker. Since the Seneca Nation last amended its complaint some of the Cottage Lots have changed hands.

By Stipulation between the Seneca Nation and the State of New York filed with the court on October 13, 2004, the parties informed the Court that an agreement with the individual defendants claiming leaseholds had been reached. Pursuant to this stipulation, all claims against the individual leasehold claimants were dismissed with prejudice upon payment to the individuals for their claimed leaseholds and improvements, waivers of claims by all parties against each other relating to the individual lots, and the delivery of quitclaim deeds from the State to the Nation confirming the Nation's ownership and title to the individual lots and improvements. The Seneca Nation, the United States, and the State of New York (collectively, "Consent Decree Parties"), therefore, are the only parties with a live case or controversy in this litigation.

III. TERMS OF THE CONSENT DECREE

The Consent Decree resolves, without an admission or acknowledgment of liability or wrongdoing by any party, all remaining issues in this case. The Consent Decree consists of both a land component and a monetary component. The Consent Decree Parties, by entering into this Decree and taking action in accordance with it, do not admit to any allegation, finding, or determination of fact regarding an appropriate legal remedy in this case, if the remedy phase of the case were to go to trial.

A. LAND

The Claim Area includes the following categories of land: (1) cottage lots; (2) other lakefront lands; (3) lakebed, spillway, and outlet; (4) roads; (5) land subject to flooding, and; (6) spoil lands. The Nation's ownership and title to all categories of land is confirmed by the Consent Decree Parties in accordance with the terms and agreements referenced below.

1. **Cottages.** The State has confirmed the Nation's ownership of and title to the cottage lots through the delivery of two quitclaim deeds to the Nation dated October 29, 2004, and December 8, 2004, which quitclaim deeds are intended to be recorded with the County Clerks of Allegany and Cattaraugus Counties or other appropriate officials.

2. **Other lands.** The State confirms the Nation's ownership of and title to all remaining lands in the claim area, including underwater lands, by quitclaim deed to be delivered within ten days of approval and entry of this Consent Decree by the court, which quitclaim deed is intended to be recorded with the County Clerks of Allegany and Cattaraugus Counties or other appropriate officials.

3. **Cooperative Management Agreement.** The State and the Nation have entered into a Cooperative Management Agreement ("Agreement") which is attached hereto as Exhibit A, and which by this reference is incorporated fully as part of this Consent Decree. By the Agreement, the State and the Nation agree to maintain Cuba Lake at its historic levels, and set out their respective roles in the operation and management of Cuba Lake, the operation and maintenance of the spillway, the roads within the claim area, and other issues relating to use and enjoyment of the Lake.

4. **Easement Agreement.** The Nation has granted to the State an easement for the operation and maintenance of the spillway on the claim area, to control the flow of water over such spillway and to maintain the condition and integrity of the spillway. The Easement Agreement is attached hereto as Exhibit B, and by this reference is incorporated fully as part of the Consent Decree.

B. COMPENSATION

The State agrees to pay the Seneca Nation \$500,000. Such payment shall be made within forty-five (45) days after entry of this Consent Decree upon its approval by the District Court, and no interest shall accrue if payment is made withing the specified period.

C. WAIVERS AND RELEASES

1. **Waiver and Release of Claims by the Seneca Nation and the United States as Trustee for the Seneca Nation.** In consideration for the benefits of this Consent Decree, the Seneca Nation, on behalf of itself and its members, predecessors and successors in interest, and the United States, acting in its capacity as trustee for the Seneca Nation, waive and release all claims against the State relating to the Indian Trade and Intercourse Act, 25 U.S.C. § 177, and related common law claims, which are asserted or could have been asserted in *Seneca Nation v. State of New York et al.*, No. 85-CV-411C, including any claims for damages, mesne profits, or takings.

2. **Waiver and Release of Claims by State.** In consideration for the benefits of this Consent Decree, the State of New York, including any agency, instrumentality, and official of the State, waives and releases all claims and defenses against the Seneca Nation and its members, the United States, and any agency, instrumentality, or official of the Seneca Nation or the United States, that were asserted or that could have been asserted in *Seneca Nation v. State of New York et al.*, No. 85-CV-411C, including any claims for damages, mesne profits, or takings.

D. OTHER TERMS

1. Modification. Any non-material modification of this Decree shall be in writing and signed by the Parties. Any material modification shall be in writing, signed by the Parties and approved by this Court.

2. Binding Effect. This Consent Decree shall be binding upon all Consent Decree Parties, including the agencies, officers, officials, directors, members, employees, successors, assigns, and all persons, firms, corporations or other entities acting under, through, or for them, or in active concert or participation with them.

3. Consent Decree Parties' Rights. Nothing in this Decree is intended to or shall create any rights or remedies in any person other than the Consent Decree Parties.

4. Attorneys' Fees. Each Consent Decree Party shall bear its own costs, including attorneys' fees.

5. Entire Decree. This Consent Decree, including the Exhibits, the Quitclaim Deeds dated October 29, 2004, December 8, 2004, and March 14, 2005, and the Waivers and Releases constitute the entire understanding of the Parties with respect to its subject matter. This agreement has been arrived at in the process of good faith negotiation for the purpose of resolving legal disputes, including pending litigation, and all parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions or acknowledgments of wrongdoing or liability or admissions against interest or shall be used in any legal proceeding other than one for the approval, confirmation, interpretation, or enforcement of this agreement.

6. Effective Date. This Consent Decree, including each of its component parts, shall be effective upon approval by the Court and payment by the State to the Nation as provided in paragraph III.B.

IV. JURISDICTION AND VENUE

This Court has jurisdiction over this action pursuant to one or more of the following statutes: 28 U.S.C. §§ 1331, 1343, 1345, 1362, 2201 and 2202. Venue is properly with this Court pursuant to 28 U.S.C. § 1391(b).

V. ENTRY OF DECREE AND FINAL JUDGMENT


NOW, THEREFORE, before the taking of any testimony and any adjudication of the remedy phase of this case in light of the foregoing, this Court HEREBY

1. FINDS that this Consent Decree resolves with finality the remaining issues in this case, including remedies;

2. ENTERS this Consent Decree and Final Judgment; and

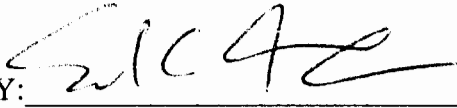
3. DISMISSES this case with prejudice pursuant to the terms of this Consent Decree and Final Judgment, except the Court shall retain continuing jurisdiction over this Consent Decree for purposes of enforcement, including each of its exhibits and component parts.

DATED: Boulder, Colorado
March 14, 2005

BY: 
JEANNE S. WHITEING
Whiteing & Smith
1136 Pearl Street, Suite 203
Boulder, Colorado 80302
(303) 444-2549
(303) 444-2365 fax
jwhiteing@whiteingsmith.com

Attorney for the
Seneca Nation of Indians


DATED: Washington, D.C.
March 15, 2005

BY: 
SAMUEL C. ALEXANDER
Chief, Indian Resources Section
Environment and Natural Resources Div.
U.S. Department of Justice
P.O. Box 44378, L'Enfant Plaza Station
Washington, D.C. 20026-4378
(202) 514-9080
(202) 305-0271 fax
craig.alexander@usdoj.gov

Attorney for the United States of America

DATED: Buffalo, NY
March 11, 2005

ELIOT SPITZER
Attorney General of the State of New York

BY: 
DAVID B. ROBERTS
Office of the Attorney General
State Capitol
Albany, NY 12224
(518) 408-2516
(518) 474-1573
David.Roberts@oag.state.ny.us

Attorneys for the State of New York

SO ORDERED:

Hon. John T. Curtin
Senior United States District Court Judge

EXHIBIT A

**COOPERATIVE MANAGEMENT AGREEMENT
RELATING TO CUBA LAKE between
THE SENECA NATION OF INDIANS and
THE STATE OF NEW YORK**

The Seneca Nation of Indians and the State of New York hereby mutually agree as follows:

1. Parties. The parties to this Agreement are the Seneca Nation of Indians (“Nation”) and the State of New York (“State”). Rights and responsibilities of the State pursuant to this agreement may be assignable to or fulfilled by the Cuba Lake District, a municipality of the State created by chapter 263 of the laws of 1981, provided, however, that any assignment of responsibility shall not extinguish or diminish the State’s ultimate obligations under this Agreement.
2. Historic Levels of Lake. The parties agree that Cuba Lake shall be maintained at its historical levels and that the parties shall endeavor to ensure that the character and integrity of the Lake is maintained at all times.
3. Subject of Agreement. This Agreement is intended to address the respective roles of the parties in the operation and maintenance of Cuba Lake and to address the other related issues. It is understood that each party has various rights and responsibilities under law, and that the parties, as well as the District, will continue to communicate and work together for their mutual benefit.
4. Operation and Management. The State of New York through the Cuba Lake District operates and maintains Cuba Lake pursuant to chapter 263 of the laws of 1981, § 97-www of the State Finance Law (L. 2000 ch. 342), and under the Management Agreement between the State of New York and the Cuba Lake District dated November 19, 2001, subject to the following:
 - a. The Nation shall designate a representative(s) as its liaison to the Cuba Lake District, which may be a Seneca Nation Cuba Lake Commission. Such representative(s) shall receive notice of all meetings of the District, including its Board of Commissioners, and may attend and participate in all such meetings, except those meetings held in executive session pursuant to the laws of the State, so long as such sessions do not involve any matters directly relating to or impacting the Nation or its lands.
 - b. The Nation’s representative shall also receive notice of the District’s preliminary budget, as required by § 13 of chapter 263, as soon as it is available, but no less than ten days prior to the public hearing on such budget provided for by § 13(b), and may submit comment on such budget prior to or at such public hearing.

- c. With respect to the Cuba Lake Management Fund created by State Finance Law § 97-www, the State shall require that, as part of its process for preparing and submitting to the State its annual budget for the Fund, the Cuba Lake District shall meet with the Nation's designated representative(s) for the purpose of explaining, discussing, and receiving comments regarding the proposed budget. Such meeting shall be held on the first Thursday of February at the offices of the Cuba Lake District, or at such other time or place as agreed to by the Nation and the District. Upon any failure of the Nation to attend any such meeting, the District may reschedule such meeting but the failure of the Nation to attend any meeting shall not preclude the District from submitting or obtaining approval of its proposed budget. Upon the submission by the District of the District's proposed annual budget to the State for its review, the State shall examine such submission to ensure that, prior to such submission, the Nation was afforded the opportunity to meet with the District as provided herein, and if such opportunity has for any year not been afforded, the State shall not approve such budget until such time as such an opportunity has been afforded to the Nation.
- d. Independent of the above provisions, the Nation may, if it chooses, submit to the State comment on any proposed budget for the Cuba Lake Management Fund.
- e. The State shall require, as a condition of approval of the annual budget for the Cuba Lake Management Fund, that for all contracts funded by such budget relating to the operation and maintenance of the Lake, if such maintenance is to be performed in whole or in part on Nation land, the bidding process and contract shall require compliance with the Nation's Tribal Employment Rights Ordinance and applicable historic preservation laws, among others.

5. Operation and Maintenance of Spillway.

- a. The parties acknowledge that the spillway and outlet below the spillway are located on Nation land. The Nation, pursuant to an Easement Agreement dated March 17, 2005, has granted to the State an easement for the operation and maintenance of the spillway. Such Easement Agreement is acknowledged to establish a consensual relationship between the Nation and the State.
- b. Except in cases of emergency as described in ¶ 5(e), below, operation and maintenance of the spillway shall be subject to consultation with the Nation as provided for in ¶ 4 above. The routine operation of the spillway to raise and lower the water level of the Lake shall be conducted pursuant to a schedule provided to the Nation at the beginning of each calendar year.
- c. The State also assumes the obligation/right to maintain the outlet immediately below the spillway, subject to consultation with the Nation as described in § 4 above, including the right to keep the outlet free of debris and other obstructions.

- d. The objectives to be furthered by the State in the operation of the spillway shall include: maintaining Cuba Lake as a recreational resource; protecting property adjacent to and in near proximity to the Lake; and preventing flooding of lands and improvements of the Nation or improvements authorized by the Nation below the spillway, beyond any flooding that would occur in the absence of the spillway.
 - e. In cases where circumstances such as heavy rainfall, snow melt, or other extreme conditions require prompt action so as to make consultation impractical, the State may take emergency action to operate the spillway so as to best serve the objectives of ¶ 5(d) without prior consultation with the Nation. In the case of any emergency action which shall include additional release of water from the Lake, the State will, if possible, give the Nation advance notice of such release, and in all other cases of emergency action the State shall notify the Nation as soon as practical after such action has been taken.
6. Roads. Maintenance by the State of the existing roads within the claim area shall continue in accordance with existing or future agreements between the State and the Nation concerning other roads. Such maintenance shall be provided to the traveled way, including ditches, bridges, signage, guidelines, and culverts.
 7. Spillway Safety. The spillway shall be subject to inspection by the New York State Department of Environmental Conservation, or by any other successor state governmental agency, as its procedures may provide, and a copy of any report prepared by such agency, pursuant to its inspection shall be provided to the Nation.
 8. Access to Lake for Users. Cuba Lake shall remain open to the public through public access points off the Oil Spring Reservation. This recognition of access does not imply access to any uplands adjacent to the Lake, other than to lands of the State generally open to the public.
 9. Fishing Licenses. Fishing in the Lake shall be authorized with either a valid Nation or State fishing license, or by persons exempted from license requirements by State law, such as persons under the age of 16 and certain military personnel. For Nation members, individual enrollment cards shall serve as the Nation's fishing license. The parties shall coordinate their regulation of fishing to the greatest extent possible.
 10. Water Quality/Health Regulations Affecting the Lake. The parties agree that maintaining the quality of the water of the Lake is of prime importance. The Nation shall regulate sanitation systems on the Reservation in accordance with Indian Health Service or State law standards, whichever is more protective of lake water quality.
 11. Laws and Regulations. The parties shall enforce their respective laws and regulations within their jurisdictions. Nothing in this agreement is intended to or shall affect the Nation's ownership of or jurisdiction over the Oil Spring Reservation.

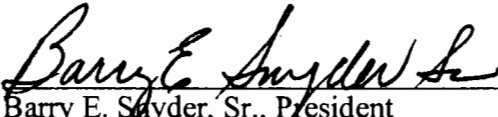
12. Dispute Resolution. This agreement shall be referenced and incorporated in the consent decree in *Seneca Nation of Indians v. New York, et al.*, 85-CV-411C (W.D.N.Y.), and shall be enforced as part of the consent decree, provided:
- a. In the event of any dispute, claim, question or disagreement, the parties shall first attempt to resolve disputes by informal discussions of the matter. Either party may provide written notice of a claim to the other. Each party shall appoint two representatives for purposes of such informal discussion in addition to their designated representatives under this agreement. In the event the parties are unable to reach a consensus for resolution of the matter within sixty days of notice of the claim, or such longer or shorter period as the parties may agree, the parties shall jointly choose a mediator to convene and conduct a mediation session to seek consensus on the issue. The cost of the mediation shall be borne equally by the parties. The designated representatives shall attend the mediation session. The parties may invite such other representatives and/or experts as may be needed to reach resolution of the matter. If consensus cannot be reached with the assistance of a mediator within sixty days of the appointment of the mediator, or such longer or shorter period as the parties may agree, or if the parties are not able to agree on the selection of a mediator, the parties may then seek enforcement of the consent decree.
 - b. If the court determines it has no jurisdiction over a particular claim or dispute, the parties agree that in that event only, the matter shall be resolved through arbitration. The following arbitration procedure shall apply until such time as the parties agree to a different arbitration procedure as part of the State/Nation Transportation Agreement or the parties otherwise agree on a different arbitration procedure.
 - 1) **Written Request.** Either party may request in writing that the matter be resolved through arbitration.
 - 2) **Arbitrator.** The parties shall agree on a single arbitrator within thirty days of the written request. The arbitration shall be conducted at a site convenient to both parties designated by the arbitrator utilizing such rules of arbitration as the parties may agree.
 - 3) **Arbitration Cost.** The cost of the arbitration shall be shared equally by the parties, unless the decision of the arbitrator shall specify otherwise, but the parties shall bear their own costs and attorneys' fees associated with their participation in the arbitration. All arbitration proceedings shall be conducted to expedite resolution of the dispute and minimize cost to the participants.
 - 4) **Remedies.** The arbitrator may impose any relief available in law or equity warranted under the circumstances.

- 5) Arbitration Decision. The decision of the arbitrator shall be final, binding and unappealable. Failure to comply with the decision within the time specified therein for compliance, or should a time not be specified, then forty-five days from the decision, shall be deemed a breach of this Agreement. Either party may bring an action in the United States District Court of the Western District of New York or, if that court declines jurisdiction, in any other court of competent jurisdiction, to enforce or seek review of the arbitrator's decision.

13. Definitions

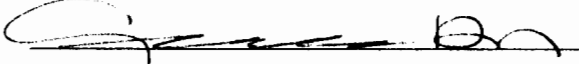
- a. "Spillway" shall mean the structure located at the southwest end of Cuba Lake, on the Oil Spring Reservation, by which the waters of the Lake are restrained and controlled and the level of the Lake raised or lowered, as conditions may require.
- b. "Outlet" shall mean the channel of 1000 feet by 50 feet, directly below the spillway, by which the overflow of the Lake is carried.
14. Notice to the Nation, except as provided for in ¶ 4 of this agreement, shall be made to the Nation's President, or to a person designated by the President to receive such notice.
15. Notice to the State, except as provided for in ¶ 4 of this agreement, shall be made to the Commissioner, New York State Office of General Services.
16. This Agreement shall be effective on the date settlement of the underlying action, *Seneca Nation of Indians v. State of New York, et al.*, 85-CV-411C, now pending in the United States District Court for the Western District of New York, becomes effective after approval by the Court.

Dated _____


Barry E. Snyder, Sr., President
Seneca Nation of Indians
12837 Route 438
Irving, NY 14081

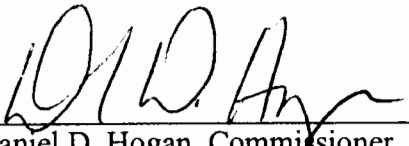
STATE OF NEW YORK)
 : SS.:
COUNTY OF)

On the 17th day of MARCH, in the year 2005 before me, the undersigned, personally appeared BARRY E. SNYDER SR., personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


Notary Public, State of New York
Qualified in County of: Cattaraugus
My Commission Expires 5/19/07

GERALDINE HUFF
NOTARY PUBLIC, STATE OF NEW YORK
No. 01HU6092543
QUALIFIED IN CATTARAUGUS COUNTY
MY COMMISSION EXPIRES MAY 19, 2007

Dated MARCH 14, 2005

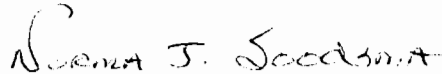

Daniel D. Hogan, Commissioner
New York State Office of General Services
Corning Tower, Empire State Plaza
Albany, NY 12242

STATE OF NEW YORK)

: SS.:

COUNTY OF Albany)

On the 14TH day of MARCH, in the year 2005 before me, the undersigned, personally appeared Daniel D. Hogan, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Notary Public, State of New York
Qualified in County of: Mont.
My Commission Expires 2-28-07

NORMA J. SOODSMA
Notary Public, State of New York
County of Montgomery
#465749
Commission Expires 2-28-07

Approved:


Department of the Interior

Michael D. Olsen
Acting Principal Deputy Assistant Secretary, Indian Affairs

EXHIBIT B

EASEMENT AGREEMENT

This indenture made this 17 day of MARCH, 2005, between the Seneca Nation of Indians, 12837 Route 438, Irving, NY 14081, hereinafter "Grantor," and the People of the State of New York, acting through the New York State Office of General Services, Daniel D. Hogan, Commissioner, Corning Tower, Empire State Plaza, Albany, NY 12242, hereinafter "Grantee;"

WITNESS that the Grantor, in consideration of the payment of one dollar, the receipt of which is acknowledged, and other good and lawful consideration, hereby gives and grants to the Grantee and its successors and assigns the exclusive right, privilege and easement to certain lands of the Oil Spring Reservation, located in Allegany County, in the State of New York, as defined below, for the purposes set forth more particularly in paragraph 2.

1. The property for which this easement is granted shall consist of the spillway and dam structure ("Spillway") located at the foot of Cuba Lake, which serves to impound and regulate the waters of Cuba Lake and the lands on which it is located on the Oil Spring Reservation, as presently contained within the metes and bounds described in Schedule A annexed hereto.

2. With respect to the Spillway and the property described in Schedule A the Grantor grants to the Grantee an easement for the operation and maintenance of said Spillway and to control the flow of water over such Spillway, and to maintain the condition and integrity of the Spillway. Such easement shall include the right to replace, rebuild, remove, modify, and/or repair the Spillway, so long as any new or resulting structure is confined to the metes and bounds specified in Schedule A. Such easement shall also include, upon notice to and consultation with the Grantor, the temporary right of access by the Grantee and its agents and assigns over the lands of the Grantor to perform all such operation and maintenance, including the temporary right to

divert or impound water as may be necessary to carry out the rights granted herein, including the construction of a coffer dam on the present lake bed, or the diversion of water around the spillway to the present channel downstream therefrom. The operation and maintenance of the dam and spillway shall comply with the Cooperative Management Agreement entered into by the parties dated March 11, 2005, and attached hereto as Schedule B.

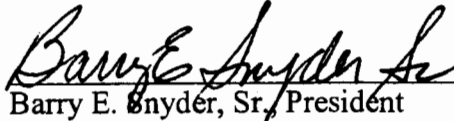
3. This easement shall be effective as long as the easement is utilized for the purposes described in paragraph 2, but it shall cease, and all interests granted herein shall revert to the Grantor, upon the failure of the Grantee to use the easement for any such purposes for a period of five consecutive years.

4. This easement will be strictly construed against the Grantee and is limited to those rights necessary for the purposes of this easement as specified.

5. This easement does not confer and is not intended to confer and should not be construed as conferring upon the general public any right to enter upon the property for any purpose whatsoever, and the rights granted by this easement are limited to the rights described herein.

6. Grantee and its successors and assigns shall have all responsibility and assume all risks in connection with the construction, reconstruction, installation, development, repair, maintenance, and operation of the spillway and dam, and shall be solely responsible and answerable in damages for any and all actions and injuries to persons or property caused solely by said construction, reconstruction, installation, development, repair, maintenance, and operation of the spillway and dam, including any flooding of Seneca Nation lands over and above what may have occurred in the absence of the dam and spillway.

Dated _____



Barry E. Snyder, Sr., President
Seneca Nation of Indians
12837 Route 438
Irving, NY 14081

STATE OF NEW YORK)
 : SS.:
COUNTY OF)

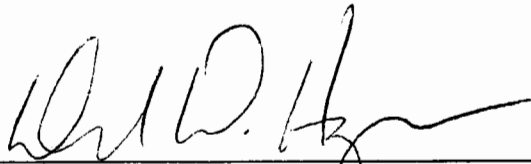
On the 17th day of MARCH, in the year 2005 before me, the undersigned, personally appeared Barry E. Snyder Sr., personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Notary Public, State of New York
Qualified in County of: CATTARAUGUS
My Commission Expires MAY 19, 2007

GERALDINE HUFF
NOTARY PUBLIC, STATE OF NEW YORK
No. 01HU6092543
QUALIFIED IN CATTARAUGUS COUNTY
MY COMMISSION EXPIRES MAY 19, 2007

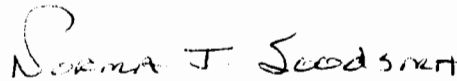
Dated March 14, 2005



Daniel D. Hogan, Commissioner
New York State Office of General Services
Corning Tower, Empire State Plaza
Albany, NY 12242

STATE OF NEW YORK)
 : SS.:
COUNTY OF)

On the 14TH day of MARCH, in the year 2005 before me, the undersigned, personally appeared Daniel D. Hogan, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Notary Public, State of New York
Qualified in County of: Mont.
My Commission Expires 2-28-07

SOEMA J. SOODASMA
Notary Public, State of New York
County of Montgomery
#4653749
Commission Expires 2-28-07

SCHEDULE A

COMMENCING at concrete monument set on the northerly boundary of the Oil Spring Reservation, easterly of County Road 25, said concrete monument having the following coordinate value: N. 815,822.08, E. 1,223,526.49, thence from said Point of Commencement S. 89° 44' 37" W. along said northerly reservation boundary 588.10 feet to a point thereon, thence S. 0° 15' 23" E., at right angles to said boundary, through said Oil Spring Reservation 736.92 feet to the Point of Beginning; thence from said Point of Beginning the following seven courses and distances:

- 1) S. 81° 47' 48" E. 164.15 feet;
- 2) S. 54° 50' 43" E. 77.32 feet;
- 3) S. 40° 17' 52" W. 131.79 feet;
- 4) S. 08° 36' 15" W. 56.17 feet;
- 5) N. 74° 22' 34" W. 99.85 feet;
- 6) N. 12° 09' 25" E. 51.16 feet; and
- 7) N. 17° 35' 56" W. 154.31 feet to the point or place of beginning containing 0.66 acre of land, more or less.

BEARINGS and coordinates are referenced to the New York State Plane Coordinate System, West Zone, NAD83(96), feet.

Reference is made to a map entitled "State of New York, Office of General Services, Map of a survey of the northerly boundary of the Oil Spring Reservation" dated November 2004, filed in the New York State Office of General Services as O.G.S. Map No. 2015.