

October 15, 2012

The Honourable James J. Bradley
Minister of the Environment
77 Wellesley Street West
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Toronto, ON M7A 2T5
Telephone: 416 314-6790
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Dear Minister Bradley:

**Request for Minister's Review of Director's Decision that an
Environmental Review Report is Not Required
for the Addendum for the
Proposed Bala Falls Hydro-electric Generating Station**

Reason for Review Request

On September 24, 2012 the Director of the Environmental Assessment and Approvals Branch informed us of her decision to deny our June 29, 2012 request that the subject proposed project be elevated to require an Environmental Review Report.

We request that you review this decision for the following reasons:

- 1) As detailed below, the Director's decision was based on incomplete and invalid information, approvals were incorrectly applied, necessary assessments have not been completed, and there have been environmentally-significant changes which require public consultation. We therefore believe the project does in fact require further study before any approvals are issued.
- 2) As requested by the Ministry of Natural Resources in a letter dated September 17, 2012, we have provided below the written historical evidence they requested to confirm there has been a portage south of the north Bala falls since before the time of the initial Crown patent for this land. Therefore, if the proponent's proposed Alternative 1A new proposal would obstruct this portage on the MNR's Crown land, approving this project would contravene Section 65(4) of the Public Lands Act.

Summary

In the Appendices below we provide detailed explanations and reproductions of the relevant original documents from the Archives of Ontario, Library and Archives Canada, and other sources. As a summary, our main concerns are as follows:

1) Obstruction of the historic and traditional portage

- a) The initial Crown patent for the entire area of interest was granted on February 24, 1874. This grant included all of Lot 33, Concession 7, in the Township of Wood, and was to Thomas Burgess.

- b) In 1837, which was more than 35 years prior to this initial Crown patent, the famed surveyor and cartographer David Thompson travelled up what is now called the Musquash River and the Moon River and he portaged around what is now called the Bala north falls. David Thompson's detailed Journal notes this portage was south of the north falls, on what is now Burgess Island.
- c) As this portage was in existence prior to the initial Crown patent for Burgess Island, the Public Lands Act establishes an obligation to maintain a portage path at the western shore of Burgess Island, and this obligation continues regardless of how the land may be disposed of.
- d) There are two parcels of land on the western shore of Burgess Island, and both were transferred from the Burgess family to the province of Ontario on April 26, 1929. Therefore the obligation to provide a portage on Burgess Island at the Moon River transferred to the province at this time.
- e) The province's construction of the Highway 69 bypass at Bala was completed in 1965 and this project obstructed the southern parcel due to the project's creation of an unpassably-steep slope and the installation of a highway guardrail at the west side of Burgess Island. The obligation to provide the portage would then have continued on only the northern parcel, which continues to be:
 - Known by locals and historians as the portage.
 - Used as a portage.
 - Owned by the province, as this is the MNR's Crown land property directly south of the north Bala falls.
- f) On May 8, 1970 the province transferred the unneeded portion of the southern parcel to the Town of Bala:
 - This transferred land is often referred to as the "road allowance", and is the Burgess Island land along the western shore.
 - This road allowance was later transferred to the municipality.
 - This road allowance would not have the obligation to provide a portage since it could not be a portage due to the slope and highway guardrail constructed by the province. The "portage in fact" and therefore the "portage in law" has been, and continues to be on the northern parcel, which is MNR's Crown land north of this road allowance.

Therefore, if the proponent's Alternative 1A new proposal is so wide as to obstruct portaging along the Crown land to the Moon River, then this would be a contravention of Section 65(4) of the Public Lands Act, and so this new proposal cannot be approved.

2) Addendum presents new and environmentally significant changes

While not described or assessed in their original Environmental Screening Report, the proponent's Alternative 1A new proposal states in Section 2.1.4 and 5.2.2 that it would require the construction of a temporary bridge over the north Bala falls and the use of Margaret Burgess Park during construction (as there is no indication the land south of the proposed site would be available to them). This is an environmentally significant change and as specified in Section B.5.2 of the *Guide to Environmental Assessment Requirements for Electricity Projects* public consultation is therefore required.

Furthermore:

- a) A heritage impact assessment is required for these locations.
- b) The additional economic impact of using these locations needs to be assessed. Therefore further public consultation and study is required.

3) Director's decisions were based on incomplete information

- a) The proponent's flow simulation (last pages of their Addendum Appendices) did not extend far enough to show the impact on marine navigation or the infringement on riparian rights at the town docks on the Moon River or at the private docks which are even closer to the proposed project.
Transport Canada therefore did not have the information needed to make their determination, so their approval must be retracted.
- b) The proponent's new proposal requires more obstruction of the north channel (85% of the cross-sectional area would be obstructed), for a longer period of time (as the construction would be more difficult, due to the proximity to the north dam and highway bridge) and would take longer (as there would be no "rock plug" to block water during downstream construction). We note the proponent has not provided a schedule showing the duration this obstruction would need to be in place, the particular months for this, and the proponent has not considered the recently more-volatile weather patterns.
The proponent needs to provide detail showing that the risk of flooding Lake Muskoka is acceptably low.

4) Director's decisions were based on invalid information

- a) Noise Assessment is incorrect.
 - The proponent notes in their original Environmental Screening Report's Acoustic Assessment Report (Appendix C1, Section 2.2) that "*The only path for the sound to propagate outside of the powerhouse is through the ventilation fan louvers*". As shown in Figure 5.3 and 6.3 of their Addendum, these louvers would be angled substantially more towards the closest Points of Reception (as shown in Figure 3 of the Acoustic Assessment Report).
 - Furthermore, as shown in Figures 5.3 of their Addendum, the noise sources would be closer to the Points of Reception.

Therefore, as a result of the changes to the proposed project for the proponent's Alternative 1A new proposal, both of these factors would increase the noise received at the Points of Reception, so the proponent's Acoustic Assessment presented in their original Environmental Screening report cannot be used for the proponent's Alternative 1A new proposal.

Therefore, the Director's statement in the September 24, 2012 decision letter concerning noise that "... *there have been no changes with respect to these issues ...*" is incorrect, and the noise assessment information is invalid for the proponent's Alternative 1A new proposal.

- b) Construction Laydown information is incorrect.

In Addendum Section 5.2.2 and Figure 5.2 the proponent states the Portage Landing parking lot and Shield parking lot are Crown land and assumes these would be available and used for construction staging purposes. However:

- The portion of the Portage Landing parking lot shown is owned by the Township of Muskoka Lakes, which requires this land to be used for public parking in order to support the area's tourism. Therefore, this land would not be available for construction staging purposes.
- The municipality has a licence of occupation to use the Shield parking lot for parking, so this also would not be available for construction staging purposes.

The proponent needs to provide a plan based on correct information of where construction staging would be done, and also presenting the resulting traffic implications of dealing with these more-distant locations (more truck traffic, trucks turning and merging, and so on).

- c) The proponent has not updated the plan and section views of the proposed structure, so the only such drawings available from their original Environmental Screening Report are therefore invalid. Due to the proposed structure being even closer to the Bala falls, this information is even more important now, and should be provided, as it was before.

5) Proponent has not provided required assessments

- a) For over 100 years, in-water recreation has been very popular both upstream and downstream of the proposed project and yet there has been no assessment, by an organization with the required expertise, of the resulting risk to public safety. The proponent's own flow simulations show dangerously fast water, outside of the downstream safety boom and within feet of where people recreate at the base of the north falls.

The proponent is risking drowning the public, this is completely unacceptable they would create this dangerous situation.

The proponent must be required to have this threat to public safety assessed. This wilful ignorance is unacceptable.

- b) The proponent's Alternative 1A new proposal would have many more, and many more significant impacts on tourism compared to their previous proposal. For example, the proponent outlines some of these in their Addendum, as follows;
- Table 4.1, *Screening Criteria*, Sections 6.1, 6.3, and 7.2.
 - Section 4.6, *Socioeconomic*.
 - Table 5.1, *Comparison of Potential Effects between Alternative 2D and Alternative 1A During Construction Phase*, first page and second page.
 - Section 5.2.2, *Public Access and Use of Land During Construction*.
 - Table 6.1, *Comparison of Potential Effects between Alternative 2D and Alternative 1A During Operations Phase*, first page, second page, and third page.
 - Section 6.2.2, *Adverse Effects on Scenic Landscapes*.
 - Section 6.3, *Significance of Net Adverse Effects*.

As noted in the Watson & Associates Economists Ltd. peer review of the proponent's economic impact study for their previous proposal, the economic impact was not adequately assessed, as there was no examination of the negative impacts (for example, by including such questions in the survey of area businesses, and by interviewing tourists).

Now that the proponent has acknowledged more negative impacts on tourism there is even more need for an economic impact study which includes examining the negative impacts.

6) Approvals have been incorrectly applied

In a report dated September 18, 2012, Transport Canada stated that *"It is unlikely that the regatta will be impacted at all ..."*. However, for over 100 years, Bala Regatta events have included swimming and fun boating activities where it is expected children will tip out of their boats. These activities would continue to be upstream of the proposed project.

Transport Canada has no expertise, mandate, or authority to approve the safety of in-water activities such as swimming. Therefore their broad approval of the Bala Regatta must be retracted.

7) Natural Justice concerns

As presented in a letter to the Director dated July 23, 2012, we have concerns that many of the public's concerns are not receiving an unbiased and fair hearing from the Ministry of the Environment. We have found that for many issues, the Environmental Assessment and Approvals Branch ignores or does not actually answer the questions asked. Also, the Ministry of the Environment appears conflicted for some issues (such as noise, for which it is both the "expert witness" and judge).

We have attached a copy of this letter to this e-mail.

Conclusion

For the above reasons (additional detail provided in the Appendices below), we believe that further study is required. We therefore request a Minister's Review of the Director's decision which denied elevating this proposed project to require an Environmental Review Report.

We request a response to this letter, and that this response only address the issues we have raised in this request for a Minister's Review.

Thank you.

Sincerely,



Mitchell Shnier, P. Eng., on behalf of SaveTheBalaFalls.com

Cc: K. McGhee, Project Manager, Swift River Energy Limited, KMcGhee@m-k-e.ca

Detail

Below we present the detail of our concerns why the Minister of the Environment needs to review the Director of the Environmental Assessment and Approvals Branch's decision denying our requests that this proposed project be elevated to require an Environmental Review Report, as further study is required.

Portage

Section 65(4) of the Public Lands Act states “...Where public lands over which a portage has existed or exists ... any person travelling on waters connected by the portage has the right to pass over and along the portage ... and any person who obstructs, hinders, delays or interferes with the exercise of such right of passage is guilty of an offence.”

This was brought to the attention of the Ministry of Natural Resources in a letter we sent dated August 2, 2012 and as a result we received a reply on August 23, 2012 requesting “sufficient evidence demonstrating that a historical portage exists”. In response, we sent a letter dated September 4, 2012 to the MNR, which was copied to the Director. We have attached a copy of this letter to this e-mail (we have revised it slightly, by adding an additional reference that the book *Bala, The Way It Was* also specifically states on page 28 that the portage was south of the north falls). In this September 4, 2012 letter we provided:

- 1) Details of first-hand accounts from all three of the historical books on Bala confirming that the traditional and historic portage around the Bala falls was, and is, south of the north falls.
- 2) An explanation that “Portage Island” is likely called that since it is the closest island to the portage. That is, the portage would have been extremely important, as it was the only way for the population for a 5,000 km² area upstream to reach Lake Huron. As this island was the closest to this crucial portage, it would make sense to call it Portage Island, even though the actual portage wasn't on this island.
Historically, portaging along Portage Island would have been longer, steeper, rockier, and more uneven, so there is no justification that this could have been the portage route.
- 3) There is a book, *Canoeing and Hiking Wild Muskoka*, by Hap Wilson, which shows the Bala portage as being on Portage Island. I phoned Hap Wilson on October 9, 2012 and spoke directly to him. He reports:
 - a) He wrote the book 15 years ago, and does not recall what research he may have done about the Bala portage, and he did not have his notes available to him.
 - b) Other than looking at the site and possibly speaking to people in Bala, any research he would have done would have been at the public library in Bracebridge. We visited the public library in Bracebridge on October 10, 2012 and spoke to the librarian who confirmed they have no maps or other information on where the portage in Bala is or might have been.
 - c) The portage path shown in the book does not use the town docks on the Moon River, but instead would go down the rock to the north of the north falls – this is a needlessly difficult route, likely used because he was not familiar with the area. This information certainly is not authoritative.

- 4) While people who don't know the area (especially coming up the Moon River) may portage on the north side of the north falls (due to first seeing the town docks on the Moon River), people that know the area portage south of the north falls. Bill Purkis, the current proprietor of Purk's Place (the "boat livery", directly beside the portage) confirms that the locals all know that the "main portage" is south of the north falls. He has known this since about 1956 when he first used the portage, and Bill's father (Tom Purkis, the previous proprietor of Purk's Place) knew this was the portage since he first used it in about 1934. As detailed in our September 24, 2012 letter, the previous owners of the "boat livery", back to at least 1908, also described it as being on the "main portage".

On September 17, 2012 the MNR replied to us stating that our September 4, 2012 letter "does not establish that there was a portage route in place prior to the initial Crown patent", and requested "early surveys, maps or documents". Accordingly, we offer the following.

- 1) Firstly, to establish the date of the initial Crown patent, as shown in Appendix B:
 - a) Figure 1 is page 448 of the "Register of Free Grants under the Free Grant and Homestead Act of 1868" for the period 1868 to 1888. As noted in handwriting at the top of the page, all entries on this register page are for Wood township, and this particular register page is only for Lots on Concession 7, beginning at Lot 29. As is highlighted with red arrows, Thomas Burgess was "located" on Lot 33, which is 52 acres. Figure 2 is an expanded view of this line of the register page, and this shows that the date of this location was November 9, 1873.
 - b) Figure 3 is page 20 of the Index of Land Patents by Name for the period 1873 to 1880. Figure 4 shows an expanded view of the line on this index page where it records that Thomas Burgess was granted the Crown patent of the 52 acres of land of Lot 33, Concession 7, in the Township of Wood, in the County of Muskoka, on February 24, 1874. Figure 5 shows the remainder of this line on this index page.
 - c) In Appendix C, Figure 6 shows the current Ontario Base Map from the Ministry of Natural Resources which confirms that all of Burgess Island is within Lot 33, Concession 7, in the Township of Wood.

In summary, the date of the initial Crown land patent for all of Burgess Island, was February 24, 1874.

- 2) Secondly, to establish that the portage was to the south of the north falls.

David Thompson was a famous surveyor and cartographer who lived from 1770 to 1857. In 1837 he was asked by the British government to find and survey a route from Lake Huron to the Ottawa River as the construction of a canal (complete with locks, so boats would not need to be portaged) was being considered. He kept a very detailed Journal, which is available for viewing on microfilm at the Archives of Ontario in Toronto. The detail and accuracy of his maps are legendary, and these are available for viewing on microfiche at the Library and Archives Canada in Ottawa. Excerpts from these original historical documents are included in Appendix D.

The Journal includes such details as the height of each falls, and the locations of and slope of portages found. Page 13 of his Journal 66a shows that he reached Bala on August 13, 1837 and this page of his Journal is shown in Figure 7.

Before discussing the exact text of this page of the Journal, we present some background notes, as follows:

- a) Thompson numbered each falls up the Musquash River (which he called the Muskako River), beginning at Lake Huron (this area was not called Georgian Bay at the time). As shown in Figure 8:
 - What we now call the Moon Chutes was the 10th Falls.
 - Upstream of that is Ragged Rapids, which he called the 11th Falls.
 - And upstream of that what we now call the Bala Falls (previously the Musquash Falls) he called the 12th Falls.
- b) The book *Nastawgan: The Canadian North by Canoe & Snowshoe*, edited by Hodgins and Hobbs, confirms (on page 31) that Thompson arrived in what we now call Bala on August 13, 1837.
- c) The book *Muskoka and Haliburton, 1615 – 1875*, by Murray, notes on page 87 that Thompson uses the abbreviation “CP” (carrying place) for portage, and the symbol “⊃” for right. Thompson uses other abbreviations, such as “ab^t” for about, “y^d” for yard, “&c” for etcetera, and “Ex^d” for examined.
- d) From the Journal and his assignment, it is clear that Thompson is travelling upstream, from Georgian Bay to Lake Muskoka. Therefore the south side of the north falls would be to his right (which he indicates with a “⊃”).
- e) As shown in Figure 9, the title of Thompson’s map from Lake Huron to the 12th Falls reads:

“To His Excellency, the Right Honorable Lord Metcalf &c &c &c a chart of the Lower part of the Muskako River, from actual survey by David Thompson.

At the time of this work, Thompson was 67 years old and he had the instruments and a lifetime of experience to very accurately record and report his findings. That is, David Thompson’s Journal and maps qualify as early surveys, maps and documents, as requested by the MNR.
- f) The Journal is difficult to read, but with reviewing other transcripts and being able to enlarge the image, most of it can be read by a layperson.

Now to Thompson’s Journal. Referring to Journal 66a, page 13, as shown Figure 7, beginning at the fourth line of this page reads; *“at 11 am came to the 12th Falls which comes boldly down about 12 ft & upper slope about 3 ft, in all 15 ft. The CP is in a Bay ... 100 yd to the ⊃ of the Falls.”*

That is, on Thompson’s first arrival and inspection he is reporting that the portage at Bala is the south channel.

His journal continues for the next day; *“ ... the CP close on the ⊃ of the CP is .. Chan where water still runs when high”.*

That is, Thompson has now determined that:

- a) The portage he had used the previous day is actually a channel which carries water when the water level in Lake Muskoka is high (that is, yesterday’s portage was up the south channel).
- b) The south channel is close to the right of the portage.

In summary, Thompson reports:

- a) The portage is to the south of the north falls.
- b) When the water level in Lake Muskoka is low enough, the south channel can also be used for portaging.

I can forward higher-resolution images of the Journal pages and a transcript of these entries if these would be of interest.

- 3) Note that to reduce flooding in Lake Muskoka, sometime after 1837 and before 1873 the south channel was blasted deeper:
 - a) Thereby creating Burgess Island, and as a result the south channel could no longer be used as a portage.
 - b) Therefore, when the initial Crown land patent was granted on February 24, 1874, the only Bala portage was that on Burgess Island.
- 4) Finally, while we have not found a map showing the portage point along the west shore of Burgess Island, it is known that:
 - a) From David Thompson's written Journal, it is confirmed that:
 - There was a portage beginning somewhere along the west shore of Burgess Island.
 - This portage was already established at the time of the initial Crown land patent.
 - b) The land along the west shore of Burgess Island was transferred by the Burgess family (as they owned the Bala Electric Light & Power Co. Ltd.) to the province of Ontario on April 26, 1929 as a result of instrument WD977 (we can provide a copy of this Indenture if it is of interest). This transfer included five parcels of land (actually, one was a "water lot"), these are identified on the map in Figure 10.
 - c) As shown in the expanded view of this map in Figure 11, this land along the west shore of Burgess Island is comprised of two parcels, which are labelled "Fifthly" and "Thirdly" (which is south of "Fifthly"). The portage would have been over one or both of these parcels.
 - d) The province's action of constructing the Highway 69 bypass at Bala (which opened to the public in 1965) created a steep slope and required the installation of a guardrail on the "Thirdly" parcel.

This action by the province obstructed the portage from being on their "Thirdly" parcel, so the obligation to provide a portage would have continued on their "Fifthly" parcel.

The "Fifthly" parcel is the MNR's Crown land, PIN 48029-0635, and is the proposed location of the proponent's Alternative 1A new proposal.

The official Land Titles Registry "Block Map" for this area is shown in Figure 12, and an expanded view of the area of interest is shown in Figure 13.
 - e) After completion of the Highway 69 bypass in Bala, the province determined they no longer needed the shoreline portion of the "Thirdly" parcel, and on May 8, 1970, this unneeded "road allowance" was transferred to the Town of Bala as

PIN 48029-0638 (on March 24, 2000 this road allowance was transferred to the District Municipality of Muskoka).

- The locations of these PINs is shown in Figure 13.
- This road allowance land would never have had the obligation of providing a portage since it was (and is) unpassable (even when not carrying a canoe).

5) In summary, it has been established that:

- a) There was a portage south of the north falls when the initial Crown patent was granted for the land at the west shore of Burgess Island.
- b) Due to the province's actions – while they owned all the land at the west shore of Burgess Island – the path of this portage was restricted to be only on what is now the Crown land directly south of the north falls.

6) Also, we note that:

- a) The obligations of the Public Lands Act continue regardless of how the land may be disposed of.
- b) The Public Lands Act has no provision for these obligations to be transferred to other nearby land owners.

We therefore request that the proponent's Alternative 1A new proposal be elevated to require an Environmental Review Report to show how this could be built without obstructing this portage and in compliance with the requirements of Section 65(4) of the Public Lands Act.

Other Concerns

The table below presents some of our other environmental assessment concerns.

Issue	Director's Response	Unaddressed Concern
Noise	<p><i>"The concerns you raised about ... noise were previously considered in the initial elevation requests These issues have not been considered as part of my decision as there have been no changes with respect to these issues from the original Environmental Screening Report"</i></p>	<p>The proponent's Addendum Figure 5.3 shows their new proposal would angle the ventilation fan louvers (as are shown in Addendum Figure 6.3) towards the Points of Reception. Also for their new proposal, the noise sources would be closer to the Points of Reception.</p> <p>The proponent's original Environmental Screening Report Acoustic Assessment Report (Appendix C1) notes in Section 2.2 <i>"The only path for the sound to propagate outside of the powerhouse is through the ventilation fan louvers."</i> and in Table 4.1 the distances to the Points of Reception are listed and these distances are used for the calculations in Table 5.1</p> <p>The orientation of the ventilation fan louvers is therefore significant and has changed for the proponent's Alternative 1A new proposal. And the reduced distance to the Points of Reception is also significant. The proponent's noise calculations for their original Environmental Screening Report are therefore invalid and the Director's statement that <i>"there have been no changes ..."</i> is incorrect.</p> <p>As there have been significant changes, the noise calculations need to be corrected to use the information which corresponds to the proposed project.</p>
In-water recreational safety	No response	<p>Compared to the proponent's previous proposal, the fast and dangerously turbulent water exiting the tailrace of the proposed generating station would be substantially closer to, and also angled towards, the in-water recreational area at the base of the north falls. The proponent's own flow simulations (last pages of Addendum Appendices) show this fast water outside of the downstream safety boom, within a few feet of where children play in the water at the base of the north falls. Yet there has been no assessment of the risk to public safety by a competent authority.</p> <p>The risk to in-water recreation needs to be assessed.</p>
Tailrace flow direction and location	<p>Reports that <i>"Transport Canada reviewed the modifications to the Project in the addendum documentation, and has confirmed to the Ministry of the Environment that it does not have any outstanding concerns with regards to potential impacts to navigation as a result of the modified Project."</i></p>	<p>The proponent's Flow Velocity Field drawings at the end of their Addendum Appendices do not extend to show the flow at or near the Town docks on the Moon River or at the private docks (which are even closer).</p> <p>The proponent therefore did not provide the information Transport Canada would need to determine the impact on marine navigation and riparian rights.</p> <p>Therefore, the public still does not have assurance that marine navigation would be safe, and that riparian rights would not be infringed. The Transport Canada report's conclusions cannot be used until the public can know that the</p>

Issue	Director's Response	Unaddressed Concern
		<p>proponent has provided the information needed for this report to be credible. The impacts to marine navigation and riparian rights needs to be assessed.</p>
Use of Margaret Burgess Park and requirements for temporary bridge over north channel	No response	<p>The proponent's Addendum states that both Margaret Burgess Park and a temporary bridge over the north channel would be required for construction purposes. The proponent's original Environmental Screening Report did not indicate the use of either of these two locations for construction purposes, which would be environmentally significant (for example, the temporary bridge would require significant foundations, likely including excavation and pouring concrete). According to Section B.5.2 of the <i>Guide to Environmental Assessment Requirements for Electricity Projects</i>, environmentally significant changes require public consultation, and this has not been done.</p> <p>Furthermore, the Archaeological Assessment and Heritage Impact Assessment done for the original Environmental Screening Report did not consider these two locations, and the Addendum did not provide these assessments either.</p> <p>Also, Margaret Burgess Park is important for tourism, and this area not being available for tourist use (and a construction bridge over the north channel) would have an additional negative impact on tourism, and therefore the Economic Impact Study is deficient.</p> <p>Public consultation is therefore required. And because the use of these two locations was not assessed in the proponent's original Environmental Screening Report, an Environmental Review Report is required so that the impacts of the two locations can be reported through; an Archaeological Assessment, a Heritage Impact Assessment, and an Economic Impact Study.</p>
Increased north channel obstruction (of 85%) during construction causes risk of flooding Lake Muskoka	<p><i>"... typical Lake Muskoka flows occurring during the construction period will be able to pass without disruption while this coffer dam is in place</i></p>	<p>The MNR reported in a letter dated August 23, 2012 that <i>"It is anticipated that the discharge from the south dam will be sufficient to pass the flows from Lake Muskoka typically seen ..."</i>. It is well known that climate change in recent years has resulted in weather patterns with more extremes. Therefore, using long-term historical averages to predict the probability of the flow capacity through Bala being sufficient are no longer valid.</p> <p>An assessment showing the margin of safety for a variety of percentile flows during different months of the year is required.</p>
Fish mortality	No response	<p>The proponent is using incorrect values in their fish mortality calculations and has not provided any explanation or justification for this. For example, the</p>

Issue	Director's Response	Unaddressed Concern
		proponent needs to provide an explanation of why they are using a significantly lower net head than they state elsewhere in their Environmental Screening Report.
Road obstructions and traffic delays	No response	<ul style="list-style-type: none"> • Construction vehicle queuing and loading would restrict District Road 169 to a single lane of traffic for both directions, and this would result in significant traffic delays. Given the construction period of over a year, the public (and emergency response agencies) need to know of the traffic impacts now, as part of the environmental assessment, as the detour is over 50 km. • The proponent incorrectly assumes that the Portage Landing and Shield parking lots would be available for construction staging purposes, but this is incorrect. • As the construction site would not be large enough for truck loading and queuing, there will be more impact to traffic, not less as is stated in Addendum Section 5.2.3. <p>The proponent needs to provide a traffic plan and impact study based on correct information.</p>
Completion bond	<i>“the procedures associated with blasting and excavation for the intake will not be changed.</i>	<p>The proponent's new proposal creates substantially more risk to public infrastructure (as excavation would be directly adjacent to the north dam and highway bridge), yet we note the proponent has no assets, no employees, and no operations. The public deserves to know – now, as part of the environmental assessment the following:</p> <ul style="list-style-type: none"> • The protection which would be provided for life and property. • The risk assessments done for these structures. • The assurances the proponent will offer to ensure the project would be completed, regardless of any technical or financial issues they may encounter.
Scenic flow		<p>The promised public consultation has been meaningless and ignored by the proponent so far. The proponent would have no motivation to be any more receptive to the community's concerns in the future.</p> <p>Therefore, the scenic flow negotiations with the community must be completed as part of the environmental assessment.</p>
Economic impact study		As there would be more construction disruption (use of Margaret Burgess Park, truck queuing and loading blocking a lane of traffic, temporary bridge over the north falls, truck loading and queuing along the highway) and more

Issue	Director's Response	Unaddressed Concern
		<p>operational impact (blocking access to the south side of the north falls, structure taller and closer to the north falls), there would be more impact on tourism, and therefore more negative economic impact.</p> <p>This should be assessed by the proponent, through interviews and surveying of area business owners and visiting tourists. The proponent has not even attempted these low-cost and common data-gathering steps and should be directed to do so.</p>
Appearance		<p>While many Muskoka generating stations are inaccessible to the public, the Bala Falls are unique in that they very accessible and are popular tourist destinations. They are in fact the highlight of any trip to Bala. However, the location of the proposed powerhouse would be directly in view from the most common vantage point – and the proponent has not provided any credible drawings showing the structure.</p> <p>The proponent should be directed to provide credible renderings, as well as plan and section views. These were provided for their original Environmental Screening Report, there is no justification for providing less information just because they have changed the proposed project.</p>
Cycling	<p><i>“The concerns you raised about ... cycling were previously considered in the initial elevation requests These issues have not been considered as part of my decision as there have been no changes with respect to these issues from the original Environmental Screening Report</i></p>	<ul style="list-style-type: none"> • The tailrace of the proponent's Alternative 1A new proposal would be closer to and angled towards the long-time in-water recreational area at the base of the north falls. Cycling would create new dangers, for example, people may not realize that plant operation has begun, and as shown in the proponent's flow simulation, dangerously-fast water would be outside of the downstream safety boom, and within a few feet of this recreational area. • The proponent has not offered any scientific information showing the resulting unnatural and daily water level changes would not negatively impact the shoreline habitat.

Table 1 – Specific Unaddressed Environmental Concerns

448

Wood

368. REGISTER of Free Grants under the Free Grant and Homestead Act of 1868.

Con 7

LOT.	CON- CESSION.	ACRES.	NAME OF THE LOCATER.	DATE OF LOCATION OR SALE.			WHETHER FREE GRANT OR PURCHASE.
				Day.	Month.	Year.	
<i>Book 10 p. 369^{2/2}</i>	<i>7</i>	<i>33</i>	<i>not open for location</i>				
<i>30</i>		<i>37</i>	<i>not open for location</i>				
<i>31</i>		<i>26</i>	<i>John Reed Board</i>	<i>5</i>	<i>April</i>	<i>1882</i>	<i>Mar 22 - 7</i>
<i>32</i>		<i>41</i>	<i>John Reed Board</i>	<i>20</i>	<i>April</i>	<i>1882</i>	<i>Mar 31 - 7</i>
<i>33</i>		<i>52</i>	<i>Thomas Burgess</i>	<i>9</i>	<i>Nov</i>	<i>1873</i>	<i>13, 14, 15, 16 - B. Medora</i>
<i>34</i>		<i>86</i>	<i>Adaphian Knight</i>	<i>9</i>	<i>Jan</i>	<i>1877</i>	
<i>35</i>		<i>98</i>	<i>Thomas Jones</i>	<i>19</i>	<i>August</i>	<i>1887</i>	

Figure 1 – Top half of page 448, Register of Locations in Muskoka District, 1868-1888, entitled *Register of Free Grants under the Free Grant and Homestead Act of 1868*

RG 1-566, MS 693, microfilm reel 161, Archives of Ontario

As noted in hand-writing at the top of page, this particular page is for Wood Township, Concession 7, Lot numbers beginning at 29.

Entry for Thomas Burgess is highlighted with red arrows.

<i>33</i>		<i>52</i>	<i>Thomas Burgess</i>	<i>9</i>	<i>Nov</i>	<i>1873</i>	<i>13, 14, 15, 16 - B. Medora</i>
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Figure 2 – Excerpt from above, shows; entry for Lot 33, is 52 acres, to Thomas Burgess, on 9 Nov 1873, and notes his other land grant is lots 13 through 16 of Concession B, in the Township of Medora

NAME OF GRANTEE	ACRES	DATE OF PATENT	LOT	CONCESSION OR STREET	TOWNSHIP OR TOWN	COUNTY	WHEN ISSUED	TO WHOM ISSUED	BOOK, FOLIO	REMARKS
Barley, James	100	29 January 1874	1/2 of 13		North Sullivan	Hellington	23 February 1874	Common Crown Lands	52 50	Crown Sale
Boggs, James	200	29 January	13 9		Sullivan	Grey	23		49 208	
Boehardt, Jacob	50	20	1/2 of 12	20	Hellierforce	Renfrew	23		3 237	Free Grant
Broughton, John	100	11	14 8		Cardiff	Waterborough	23		4 55	
Burnett, James	100	21	5 4		Stephenson	Muskoka	23		52 77	Crown Sale
Burger, William	808	21	29 and 30	21	Hellierforce	Renfrew	24		3 241	Free Grant
Burton, Angus	100	9	1/2 of 12	9	Renfrew	Grey	26		52 98	Crown Sale
Billingham, John A	111	11	16 7		Hills	Muskoka	26		3 248	Free Grant
Brown, Jim	100	11	36 10		Artemesia	Grey	26		52 91	Crown Sale
Burton, Angus	100	9	1/2 of 12	9	Renfrew	Grey	27		52 98	
Burdman, William	100	24	11 24		Renfrew	Renfrew	27		52 105	
Boehardt, Jacob	100	23	1/2 of 10	11 20			28		52 124	
Braunmiller, Frederick	101	24	25 7		Alice	Renfrew	28		52 125	
Brownthal, Jakob	106	24	26 7				28		52 126	
Brasch, James	112	23	17 B				28		52 129	
Borison, Samuel A	100	10	1/2 of 16	4	Peel	Hellington	3 March		52 115	
Busch, James	365	14	Mining Section One P. Six 1 st seven th and eight th 1 st 2 nd 3 rd 4 th 5 th 6 th 7 th 8 th 9 th 10 th 11 th 12 th 13 th 14 th 15 th 16 th 17 th 18 th 19 th 20 th 21 st 22 nd 23 rd 24 th 25 th 26 th 27 th 28 th 29 th 30 th 31 st 32 nd 33 rd 34 th 35 th 36 th 37 th 38 th 39 th 40 th 41 st 42 nd 43 rd 44 th 45 th 46 th 47 th 48 th 49 th 50 th 51 st 52 nd 53 rd 54 th 55 th 56 th 57 th 58 th 59 th 60 th 61 st 62 nd 63 rd 64 th 65 th 66 th 67 th 68 th 69 th 70 th 71 st 72 nd 73 rd 74 th 75 th 76 th 77 th 78 th 79 th 80 th 81 st 82 nd 83 rd 84 th 85 th 86 th 87 th 88 th 89 th 90 th 91 st 92 nd 93 rd 94 th 95 th 96 th 97 th 98 th 99 th 100 th		near Keppigon River	Hingham	3		50 17	
Bowers, Susannah Mary	1/2	3 March			Alice	Huron	14		52 157	
Buchholz, Francis	115	24 February	12 B			Renfrew	5		49 226	
Bucki, Samuel	6	13	7, 8 and 9	1/2 side Bruce St.	Minden	Peterborough	5		52 133	
Buxton, Henry	100	5 March	13 7		Hills	Grey	5		49 229	
Barr, Alexander	100	27 January	31 8		Howick	Huron	16		52 169	
Bentley, Henry	100	24	19 12		Lunenburg	Hastings	16		5 2	Free Grant
Besley, George Barlow	131	6 March	26 + 27	11	Nelson	Muskoka	16		5 14	
Buder, Martin Jr.	200	23 February	19 and 20	24	Hellierforce	Renfrew	17		52 171	Crown Sale
Burgess, Thomas	52	24	33	7	Woods	Muskoka	17		52 182	
Boldt, John	114	2 March	14	B	Alice	Renfrew	17		52 183	
Breddy, William	150	27 February	236 237 238	44 57 69 82	Hellierforce	Grey	10		1 118	Cancelled Patent Book
Beaton, William	104	24	27 B		Hills	Muskoka	10		5 17	Free Grant
Blaney, Daniel	50	11 March	70 2 Range A B C D E F		Holland	Grey	13		52 224	Crown Sale
Bohn, Christian	91	2	6 11		Alice	Renfrew	14		52 234	
Behm, Charles	100	9	24 6				14		5 18	Free Grant
Brown, Mary Ann	98	12	10 5		South Power	Grey	14		49 239	Crown Sale
Bowers, Robert	112	2	5 C 5/2 5/3 5/4 5/5 5/6 5/7 5/8 5/9 5/10 5/11 5/12 5/13 5/14 5/15 5/16 5/17 5/18 5/19 5/20 5/21 5/22 5/23 5/24 5/25 5/26 5/27 5/28 5/29 5/30 5/31 5/32 5/33 5/34 5/35 5/36 5/37 5/38 5/39 5/40 5/41 5/42 5/43 5/44 5/45 5/46 5/47 5/48 5/49 5/50 5/51 5/52 5/53 5/54 5/55 5/56 5/57 5/58 5/59 5/60 5/61 5/62 5/63 5/64 5/65 5/66 5/67 5/68 5/69 5/70 5/71 5/72 5/73 5/74 5/75 5/76 5/77 5/78 5/79 5/80 5/81 5/82 5/83 5/84 5/85 5/86 5/87 5/88 5/89 5/90 5/91 5/92 5/93 5/94 5/95 5/96 5/97 5/98 5/99 5/100	5 C 5/2 5/3 5/4 5/5 5/6 5/7 5/8 5/9 5/10 5/11 5/12 5/13 5/14 5/15 5/16 5/17 5/18 5/19 5/20 5/21 5/22 5/23 5/24 5/25 5/26 5/27 5/28 5/29 5/30 5/31 5/32 5/33 5/34 5/35 5/36 5/37 5/38 5/39 5/40 5/41 5/42 5/43 5/44 5/45 5/46 5/47 5/48 5/49 5/50 5/51 5/52 5/53 5/54 5/55 5/56 5/57 5/58 5/59 5/60 5/61 5/62 5/63 5/64 5/65 5/66 5/67 5/68 5/69 5/70 5/71 5/72 5/73 5/74 5/75 5/76 5/77 5/78 5/79 5/80 5/81 5/82 5/83 5/84 5/85 5/86 5/87 5/88 5/89 5/90 5/91 5/92 5/93 5/94 5/95 5/96 5/97 5/98 5/99 5/100	Hingham (east end)	Huron	16		1 118	
Belding, William Wallace	100	3	48 2	C. of Pendang R.	Nedonia	Demcor	16		52 8	Cancelled Patent Book
Berron, Edward D	409	17	14 7				16		52 16	Crown Sale
Boland, John A	138	17	12 and 13	13 Grande Pointe	St Josephs Islands	Ngoma	17		52 16	
Boule, Henry	50	11	24 25		Grattan	Renfrew	19		5 28	Free Grant
Baile, Meason	206	16 January	19 12		Hellierforce	Renfrew	19		54 9	Crown Sale
Blaug, John	150	12	20 11		Havary	Waterborough	20		52 211	
			1/2 of 10	10 10	Hamadham	Notfolk	20		52 215	

Figure 3 – Index of Land Patents by Name, 1873 to 1880, Page 20.

Ontario Government Record Series RG 53-56, MS 1, Reel 10,

All entries on page are for 1874. Entry for Thomas Burgess is highlighted with red arrows.

Besley, George Barlow	131	6 March	26 + 27	11		Nelson				Muskoka
Buder, Martin Jr.	200	23 February	19 and 20	24		Hellierforce				Renfrew
Burgess, Thomas	52	24	33	7		Woods				Muskoka
Boldt, John	114	2 March	14	B		Alice				Renfrew

Figure 4 – Excerpt from above, shows left side of entry for Thomas Burgess. Is for 52 acres, Date of Patent is February 24, 1874, for Lot 33, Concession 7, in the Township of Wood in the County of Muskoka.

Nedonia	Muskoka	6	5	14	
Hellierforce	Renfrew	7	52	181	Crown Sale
Woods	Muskoka	7	52	182	
Alice	Renfrew	7	52	183	

Figure 5 – Continued excerpt from above, shows right side of entry for Thomas Burgess. Land patent was issued March 7, 1874, and the actual land patent document is in Book 52, Folio 182.

Portage Island

Boundary of Lot 33, Concession 7, Township of Wood

Burgess Island

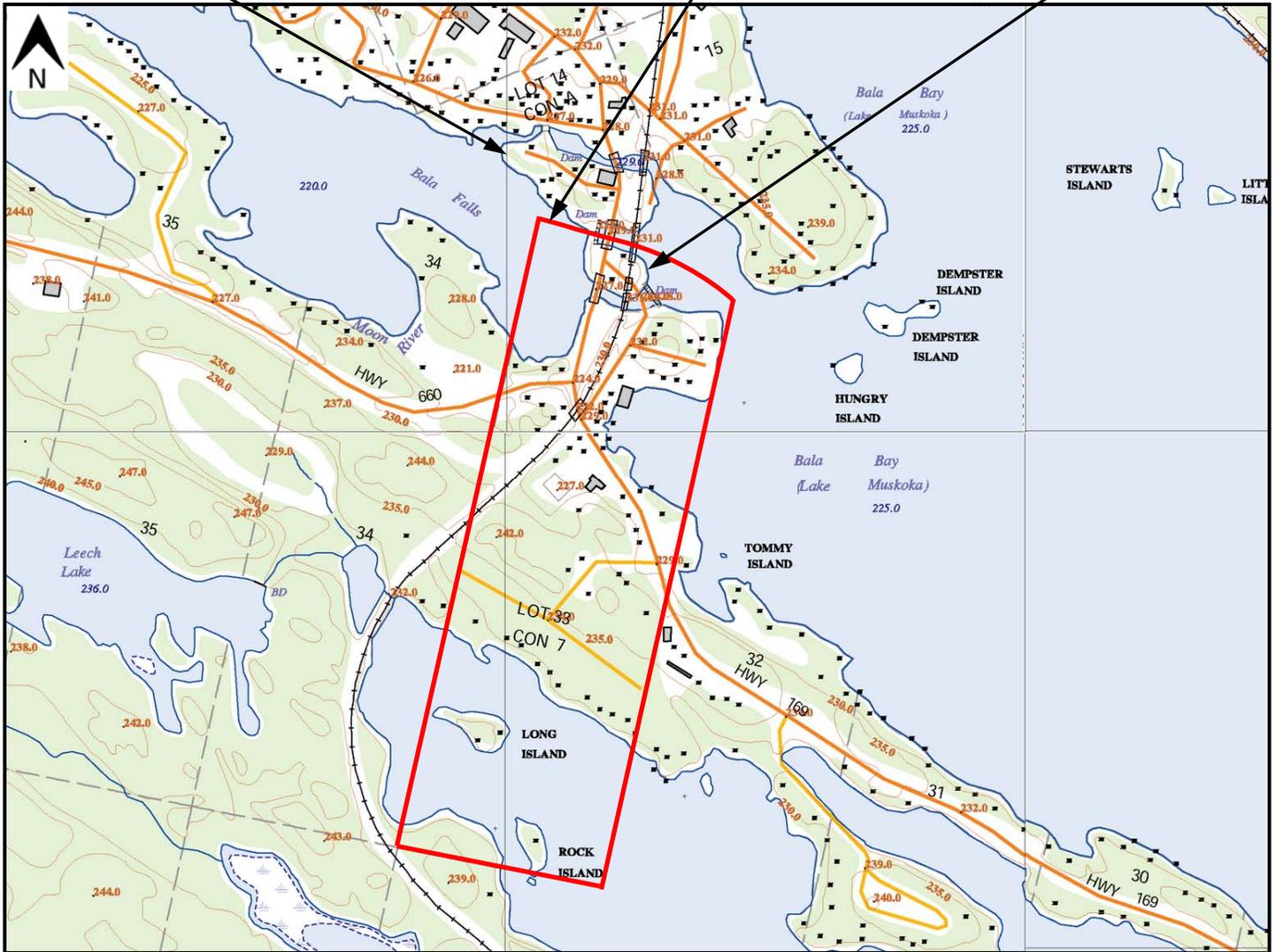


Figure 6 – Section of Ministry of Natural Resources Ontario Base Map, with added red highlighting identifying boundaries (and projected boundaries) of Lot 33, Concession 7, Township of Wood, showing that it includes all of Burgess Island.

Aug¹³ Sunday Feb¹⁸ - The Co of this C^o the 11th Feb¹⁸ - 1848
 AM loaded and set off, everything is wet & rattling. Go 1/2 mi
 from the Bay in a lake for the Courthouse & the bridge -
 at 11 AM came to the 12th Falls which come boldly down abt
 17 ft & upper slope abt 3 ft in a 1/2 ft. The C^o is in a bay about
 100 yds to the S of the Falls. Carried over & put out all our
 things to dry as the sun was clear & fine west wind, every thing
 is in a sad condition. At noon obs^d the alt^{itude} 110^o 35' in 9 obs^{er}
 enough I think, but none at 1st Fall. Then 7th at 1/2 pt the rain
 in the west again came on but our things were tolerably dry
 & we ex^{pected} the provisions to be all in the best order we could
 The Forest is all well & devoid of getting full of small holes & will
 soon be well off. We camped for the night. Showers of rain
 & calm but thank God not many times to what we have
 had. Writing 13th Falls C^o 18 ft descent below camp. 19 ft 1/2 ft

Aug¹⁴ The most day cloudy & heavy. Wrote up my Journal
 to this morning. at the C^o close on the S of the C^o is an old
 Chan where water still runs when high. it has all the regu-
 lar steps of rock of the fall & can easily be in view with a look
 or 2 looks if required - much of the rock is in strata & can
 be lifted up. In the C^o from lower end. top 18^{ft} the water by the
 same beach runs abt 8 ft above its present level. 18^{ft} top 18^{ft}
 top 18^{ft} top 18^{ft} - 3 ft 3 in top 20 ft dec 8 ft - 18^{ft} the Co to 100 yds
 From the head of this 12th C^o down the River Co to 100 yds. still water
 then Co to the head of the Fall to 100 to 150 yds. the Co of the Fall then
 bends west and discharges into the Bay. But not far on the C^o it
 is still water. At 9-32 AM set off & held on to 11 AM just when
 rain came on & we drove at 10th AM set off & held on to 11th AM when
 when very heavy rain, with loud Thunder came on, & we had to
 keep under the shelter of a 10th of rock, & let it fall on us to 3rd fall
 when we crossed the Co to an old 100 yds & camped. where Indians
 have been. At 3rd fall the rain ceased but the weather cloudy & heavy
 evening - by 1/2 pt I wrote up my Journal - every thing again wet
 & my paper for drawing wet. From the camp about due to the
 there appears a fine body of hard wood & further west of land, but also
 the shore & side banks are covered with grey granite rock. as if

Figure 7 – David Thompson, Journal and Notebook No. 66a, Page 66 13
Is part of Fond Series F 443-1, Archives of Ontario

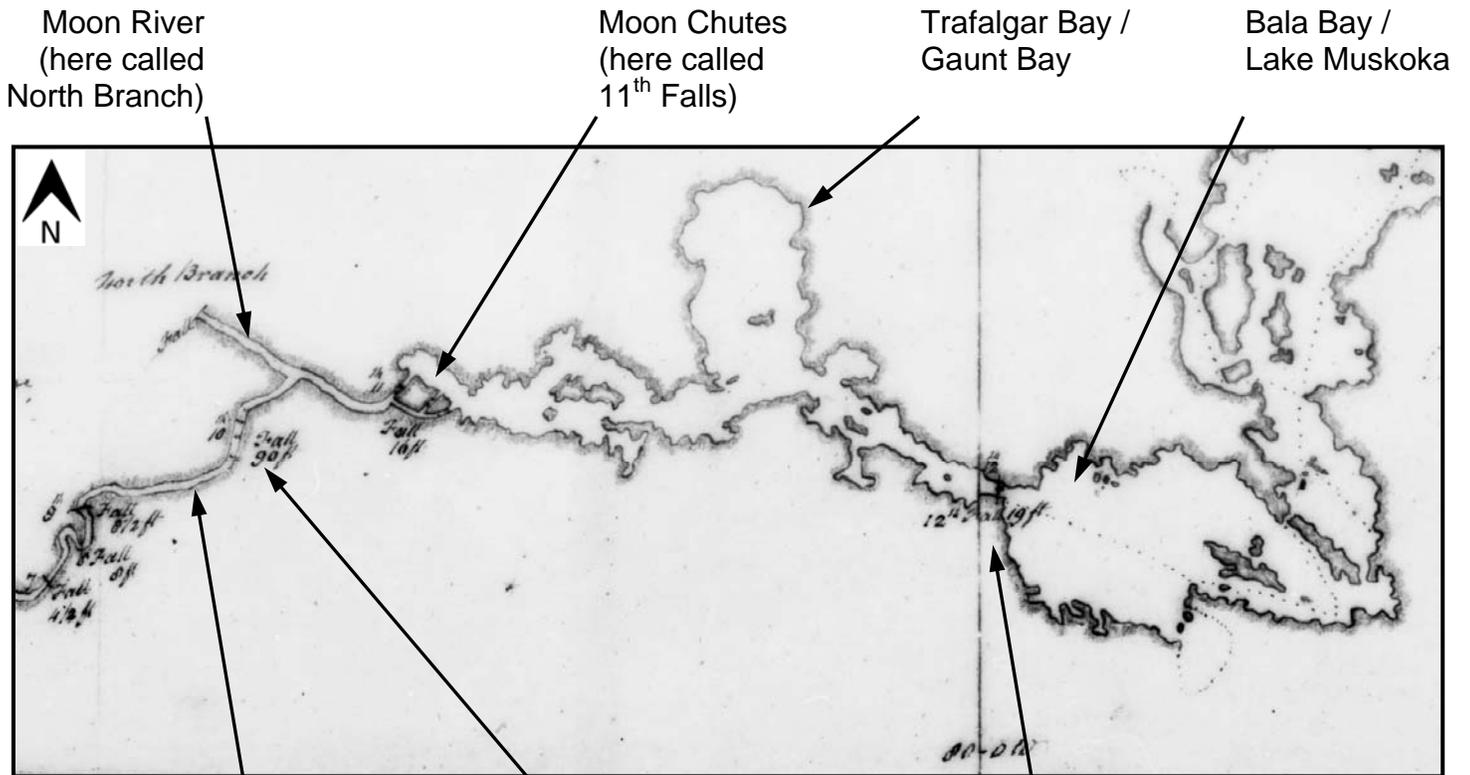


Figure 8 – Section of David Thompson’s “Map of the Muskoka River and Lake Huron to Cross Lake”, 1837

NMC119075, RG11M 90111, Library and Archives Canada

Musquash River
(here called
Muskako River)

Ragged Rapids (here
called 10th Falls)

Bala Falls (here called
12th Falls)

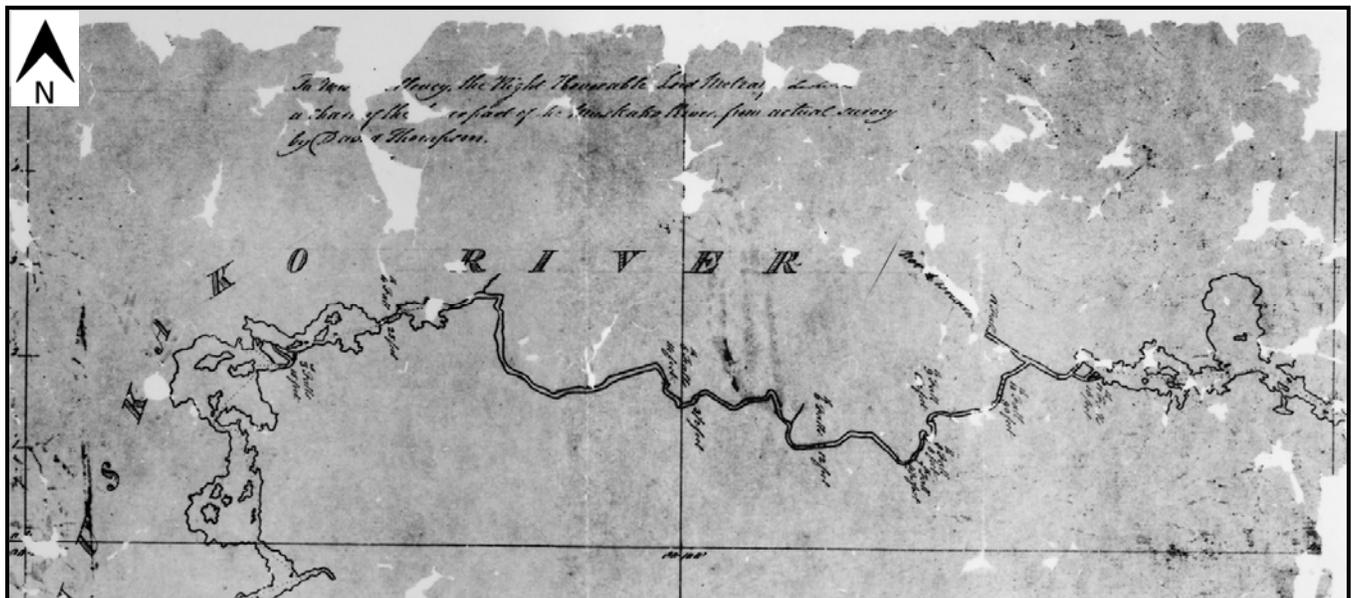


Figure 9 – Section of 1837 map entitled “To His Excellency, the Right Honorable Lord Metcalf & c & c a chart of the Lower part of the Muskako River, from actual survey by David Thompson.”

NMC8907, Library and Archives Canada

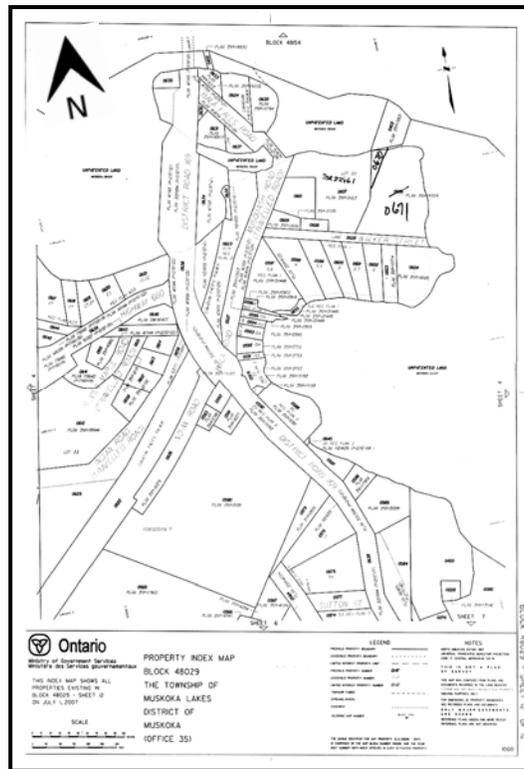
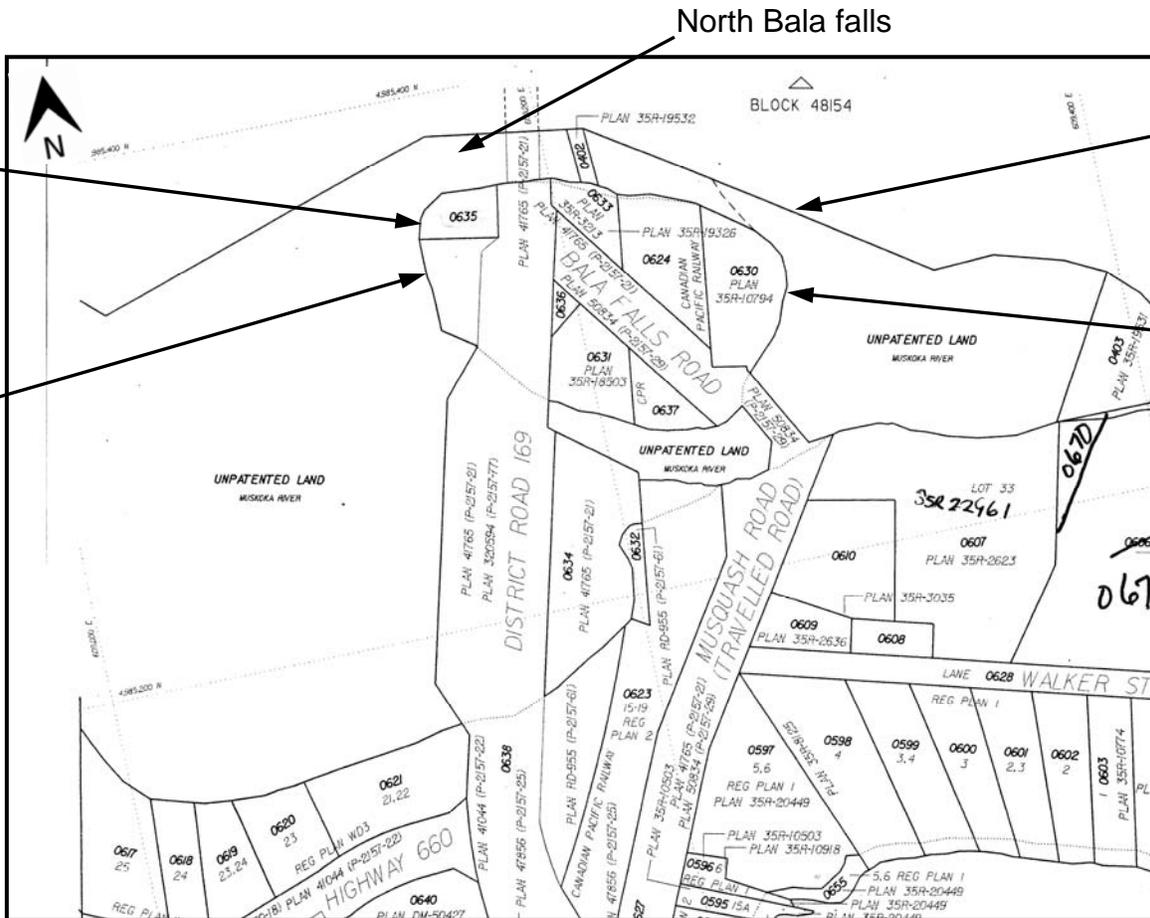


Figure 12 – Ontario Ministry of Government Services Property Index Map, Block 48029, The Township of Muskoka Lakes, District of Muskoka, Sheet 12 of 12, July 1, 2007

MNR Crown land directly south of north falls (“Fifthly” north parcel), is PIN 48029-0635

Municipal land south of Crown land (“Road Allowance” is west section of “Thirdly” south parcel), is PIN 48029-0638



North Bala falls

Boundary between Townships of Medora (north) and Wood (south)

Burgess Island

Figure 13 – Excerpt from above Block map