

FALLS GUYS

A battle over restoring an abused Capital Region treasure pits an engineer against an environmentalist; and at first glance, they are taking unlikely sides

BY MIRIAM AXEL-LUTE



New York Rivers United executive director Bruce Carpenter at Overlook Park, Cohoes, with the falls in the background.

Chris Shields

‘WHERE ARE THE falls? They’ve turned them off!”

The woman leading a teenage girl into Overlook Park in the Harmony Mills section of Cohoes is more right than perhaps she knows.

Bruce Carpenter, executive director of New York Rivers United, turns away from the 65-foot-high Cohoes Falls, the second-largest falls by volume in New York state. At the moment it looks more like a wide barren cliff with only a tiny trickle running down its center. “It’ll be

back,” he tells them. “At least some of it will.”

Down a hill and behind a big fence is the hydroelectric plant, known as the School Street plant, that has turned off the falls, and has been doing so for nearly 100 years. It diverts the water from the Mohawk River at a dam a mile upstream into a canal that runs along the Cohoes side and uses it to make 38.8 megawatts of energy—about enough to power 38,800 homes. Unless the water flow in the river exceeds the amount of water the plant can use to make power, which generally happens only in the spring, a mile

of river bed and the historic falls are essentially bone dry. And like the falls, the stream of tourists that once visited also has dried up.

Overlook Park is pretty much the only place to view the falls up close today. There’s room for two cars to park, and the four white concrete benches are peeling paint. The view is crisscrossed with dozens of power lines and edged on the left with chain-link fencing, a prefab couple-story garage, and roving maintenance vehicles.

The less-visible problems are more serious: The humming turbines are

chewing up unacceptable amounts of blueback herring and American eel that try to migrate between upstream and the ocean. Even above the dam and below the falls, the river ecosystem is disrupted by what is called daily “peaking”—where a power plant raises the level of water in its impoundment (the lake created by a dam) and then lets a lot of it come rushing through at once, generating more power at times of peak need, but also leaving a “bathtub ring” of exposed bank around the impoundment and stranding fish downstream as the high water recedes. The School Street plant doesn’t



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Albany Engineering Corporation president Jim Besh in Green Island Power Authority's existing hydropower plant.

peak as much as some plants, but its 2- to 3-foot variation is still more than the maximum 6 inches that is considered stable.

No one, except perhaps the current owner of the plant, Brascan, thinks the current state of affairs at the Cohoes Falls is acceptable. Not the federal government, not the state. Not the environmentalists or the whitewater advocates or the local governments or the tribes that consider the falls sacred ground. That's why the plant's federal license hasn't been renewed since it expired in 1993.

It's been 14 years, but that doesn't mean that the answer to the question of what *is* acceptable has been easy to come by.

THE TENSION BETWEEN HYDRO-power plants and rivers is nothing new to Carpenter. In fact, it's been his bread and butter for the past 13 years. He's been involved in environmental issues his whole life, and one of his earliest environmental fights was trying to explain to New Yorkers in the '80s why they should support the Cree Indians who

were fighting a huge HydroQuebec dam proposal, even though it promised New York cheap power. Come 1992, he was managing a car dealership, but itching to get into environmental work full-time.

So he listened when Pete Skinner, a whitewater paddling advocate, came to him looking for someone to staff a new group called New York Rivers United. Advocates like Skinner had been waging battles against various hydro plants for years during their free time. They were burnt out, but they also knew that 43 major hydro projects were all coming up for relicensing at once by the Federal

Energy Regulatory Commission in 1993.

Since FERC licenses last up to 50 years, and most of these projects were easily as problematic as School Street (which was one of the group), environmental and whitewater advocates felt they couldn't just let the licenses breeze through. But the challenge was huge, and they really needed someone on it full-time.

Carpenter asked how they were going to fund it. Skinner said they'd raised \$500 so far, but expected to pull in a few grants. "And so I quit my job," recalls

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Carpenter. He took some crash courses in hydropower relicensing, and waded into the fray with challenges to all 43 licenses.

Of course, it was quickly apparent that one full-time person wasn't enough. The studies done by the companies in the 1980s weren't sufficient, so there were new studies to be done, analyzed and argued over, and a myriad of factors to be negotiated. So the companies, agencies, and advocates agreed that to do this right, they needed to take on one project at a time, on its merits. "Everyone made a decision that we would go basin by basin," recalls Carpenter. "Our organizations all had specific staff to work on this. And they couldn't work on more than one at a time."

Today, Carpenter has the mark of a man who not only raises horses at home on property bordering the Mohawk River outside of Rome, but spends much of his work time on the back roads, visiting every corner of the state for endless meetings in little town halls. His Jeep's windshield is splattered with bugs. The inside smells of stale cigarette smoke and sports a chirping Fuzzbuster. He rarely

isn't it?" he says. "This used to be dry."

After dozens of settlements, Carpenter can point to more individual, concrete successes than your average environmental activist. NYRU boasts 40 miles of dry riverbed rewatered and hundreds of miles newly free-flowing. At the Salmon River in Pulaski, Carpenter fought for a base flow that would be enough to one day reintroduce the native Atlantic salmon. He has forced companies that had been exempt from licensing to get licenses. In other cases, the challenge was balancing the interests of whitewater enthusiasts who liked the peaking flows with the ecological goal of run-of-river operation.

"He's a master," says Skinner. "He's a chess player. . . . We've got some of the best-negotiated settlements in the country. He's really professionalized the job of being a river advocate."

And like anyone doing the same thing for that long, Carpenter has figured out some ways to make it go more smoothly. "Early on, we were fighting all the time," he says. "We had to have facilitators, someone to keep us in our corners. Finally we said, 'We know you [the company] are going to say the project has no impact, and we're going to say we want it all gone, and we're going to end up in the

haven't made hydropower green."

FROM AN ENVIRONMENTAL standpoint, small hydro doesn't have much to apologize for," says Jim Besha, president of Albany Engineering Corporation. "Big hydro does." After 25 years in the industry, Besha is called upon to explain hydropower to government agencies and other groups constantly—he spends four to five hours per week on just that.

"I like to think of myself as environmentally sensitive," says Besha. "I think we can have both." And that's Besha's business model. His formula? Every site is unique, go for elegant integrated design, go above and beyond minimum requirements, and focus on tip-top operations. Besha has in fact moved into owning some plants rather than just developing and operating them for oth-

along the length of the hall.

According to Besha, NiMo got tired of replacing broken panels of glass, and so replaced the whole wall with translucent, insulating plastic panes, getting rid of the view and the cooling function in one swoop. They had to install fans instead.

The plastic is still there, but it's next in line to be replaced, now that the plant has been cleaned up, computerized, and put on a preventative maintenance schedule, improving the power output from 2.5 MW to 7 MW.

Besha also is not afraid of challenge. When he first went to NiMo in the '80s hoping to learn about hydropower, the person he spoke with told him, "I've demolished more hydro plants than you'll ever build. We're going to nuclear."

"I took it as a challenge," says Besha. "I'm probably about even with him." When NiMo reneged on a contract to cooperate the oldest continuously run-

"We've just raised the bar. We haven't made hydropower green."



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leaves the office without his *New York Gazetteer*. "I need a lot of the little roads," he explains. He knows every watershed in the state, telling stories about the dams, rivers, and towns as he munches through his lunch of gas-station gumdrops.

As he drives through Saratoga and Warren counties to the dam at the confluence of the Sacandaga and Hudson rivers, everything looks familiar to Carpenter, though it's been several years since he finished working on the settlement to relicense this plant. He points past the "Danger Swiftly Rising Water" signs (this plant still peaks, though less than it did) to land where the negotiations preserved fishing and boating access that the company wanted to get rid of by selling off the land. And in the town of Hadley, just outside of Lake Luzerne, he stands, glowing with satisfaction, by a rushing stretch of blue water that he had negotiated to be released over the dam. The wide gentle rapids could have been drawn by a child, they are so quintessential an example of a small mountain river. "It's gorgeous,

middle. OK, let's start there.' And it got easier." Besides, after dozens and dozens of meetings with the same company and agency personnel, they had gotten to know each other pretty well, which also eased things along. "We knew each other's birthdays."

Still, when asked if the whole process of being required to balance power and nonpower needs has changed his mind about hydropower being good for rivers or not, Carpenter gives a flat "No." He sticks by NYRU's Web site, which decries hydropower's "lingering reputation as a renewable energy source." "All dams exact a heavy toll on rivers," the site insists, listing fish passage, sediment blockage, and lack of oxygen in the water. "Even small dams can have big impacts."

Gazing down over the dam on the Sacandaga River, he points, pleased, past the tall rumbling power plant down the gorge to where a group of kayakers are putting into the rewatered stretch of river, but then looks back at the curving dam he's just driven across and says somberly, "We've just raised the bar. We

ers because he got fed up with owners who balked at spending the "last million" on the final details like landscaping.

Oh, and don't forget: If a project can't meet both your economic and the environmental standards (which is the case in more projects he's offered than not), then don't do the project.

Besha's main trick for reducing the aesthetic impact of hydropower is underground power houses: 100 to 200 feet straight down into the earth, often "using mother nature's materials," i.e., rock, for the tunnels.

Besha loves to contrast his whole-system-yet-site-specific thinking with corporate-style moves like that of Niagara Mohawk at the Green Island hydropower plant. That plant, which Besha, working for the Green Island Power Authority, took over from NiMo in 2000, was built by Henry Ford in 1920 to provide power for a neighboring factory of his. Generators make a lot of heat, and operate more efficiently when cooled off, so Ford had built in a whole wall of windows facing downstream that could be opened to provide a breeze

ning power plant in the country, in Mechanicville, Besha fought a nearly 10-year legal battle for ownership and control of the historic plant. He won.

The license plate on Besha's new red, leased Acura says PE 41 (PE is the designation for professional engineer). He jokes with his workers about taking a shift himself with the same assurance that he berates other hydro operators for throwing the trash they filter out at the water intake back into the river downstream.

At the Mechanicville power station, which is now coming back on line, he proudly shows off the chestnut paneling in the offices, in the process of being restored, and lists all the ways that the plant, visually, is being restored to its original condition. His plan is to bring schoolkids in for tours, and he wants it to look and sound just like it did in 1898, hiding away all the more modern equipment underground or in back rooms. He's even jackhammering out a massive raised area of concrete in the turbine

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room that wasn't original. His commitment would impress the most obsessive historic preservationist. Well, almost.

The public-relations side of Besha is also in evidence. The line of generators in the historic hall are painted bright yellow, a glorious sight. Historically, they were probably gray, but, says Besha dramatically, if he'd painted them gray they would no longer be here. Why? Because the long line of yellow generators made a spectacular picture that got his fight with NiMo prime press coverage all the way up to *The New York Times*. Looking at the sight, it's hard to argue: Few art directors would have suggested that pic-

Then suddenly GIPA came along with an alternative plan in summer 2004, and by January 2005 Brascan had rushed together a secretive and hurried settlement that copied some of GIPA's improvements, but was much weaker, and was attempting to ram it through the relicensing process despite GIPA having the clearly better plan. They are "trying to sneak this thing through and get FERC to rubber-stamp it," says Besha.

GIPA's plan has been rejected twice by FERC from even being considered as a competing plan, because the law states that competing license applications have to be filed at the same time as the renewal applications. That means GIPA had a window of opportunity from 1988 to 1991. As of now, without lawsuits or leg-

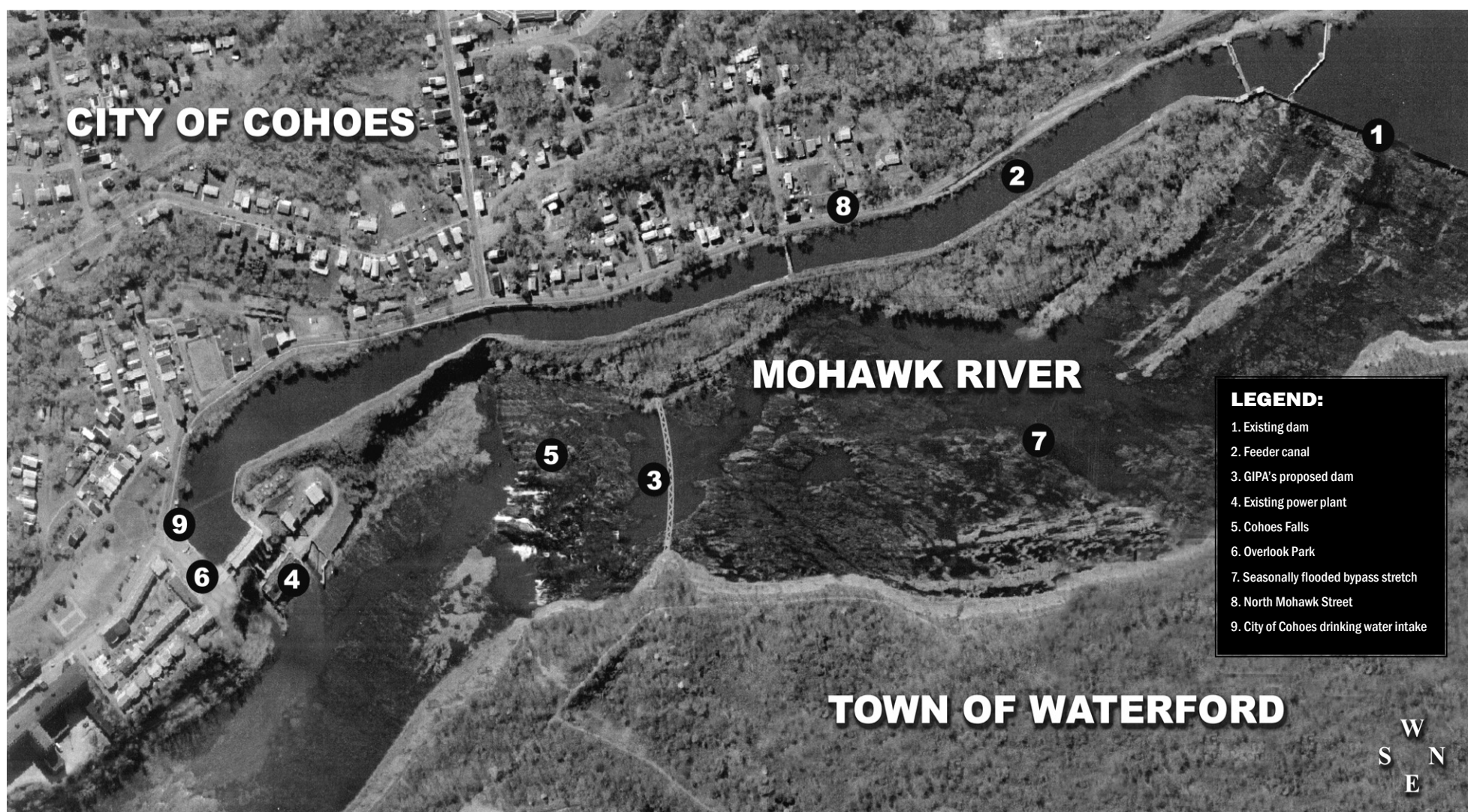
attitude: The GIPA plan proposes to go above and beyond all requirements, he says. The subtext: It doesn't have to be beaten into submission with lawsuits and negotiations.

GIPA's proposal—which it is submitting, despite having had its preliminary inquires denied—includes "100 percent" fish-exclusion screens, a whitewater course at the base of the falls, a river walk, and nighttime lighting of the falls. It would take down the old dam and build a new one closer to the falls that would visually mimic rapids. It proposes a brand-new but unobtrusive underground powerhouse with the existing plant turned into a heritage center (with a Guggenheim-like ramp inside). The new plant would make 100 MW, twice as

enough if it's spread out properly," says Besha. "It may take 800. It may take 1,000. Whatever it takes to make the falls look white and noisy." The river, on average, ranges from several hundred cfs in summer to 25,000 cfs in spring floods. In a dry summer, even 500 cfs over the falls will mean that some summer days the plant doesn't produce any power at all.

Besha certainly got GIPA's word out well. An April 13 public hearing on a state water quality permit for Brascan—the last step necessary before sending the license back to FERC—brought about 100 people, mostly Cohoes-area residents, to the Ukrainian Hall on the tip of Cohoes' Simmons Island.

After an uninspired presentation by Brascan that boiled down to "We're fol-



ture for the front cover of a section if it were in gray.

BESHA AND CARPENTER ARE both persistent, strategic, and passionate. And the fate of the Cohoes Falls has them at loggerheads.

Besha tells the story like this: The relicensing process was stalled for 14 years, the owners—first NiMo, then a group of investors called Orion, then Reliant Energy (of Enron fame), now the Canadian company Brascan (through its American shell corporation Erie Boulevard Hydropower)—didn't care because they got to keep making power without making any improvements. None of them made any improvements.

isolation (both of which are under consideration), it would take an outright rejection of Brascan's application to allow GIPA's to enter consideration.

Everything but bureaucratic inertia is on GIPA's side says Besha: political will, environmental sense and economic sense. What other plan has garnered the support of Joe Bruno and Shelley Silver, of Chuck Schumer, Hillary Clinton, and John Sweeney?

Besha has taken this version to the court of public opinion, telling the story dozens of times, talking to everyone from American Whitewater to the Malta Rotary Club. He travels with a portable easel and a set of graphics that starts with a painting of a loon at the base of the falls. His pitch fits with his business

much power as the proposed settlement agreement, which allows Brascan to add one turbine and bump up to 49.9 MW. GIPA, as a public authority, proposes to sell most of the power it generates through long-term contracts to local governments and businesses in the region in order to help keep taxes down and create jobs.

Then there's water flow. Brascan's settlement agrees to release 120-245 cubic feet per second through much of the year, and 500 cfs only during the day, on weekends and federal holidays, from May 13 to Oct. 31. "Why bother?" snorts Besha. "It's preposterous." He's proposing 500 cfs minimum flow, all the time, subject to a public process to determine if that's "enough." "Five-hundred may be

lowing the rules" ("We believe DEC has conditioned the certificate appropriately in light of its standards" was the highlight), speaker after speaker lashed out at Brascan's offer as insufficient compared to GIPA's alternative (though speakers were supposed to limit themselves to commenting on Brascan's permit). They spoke passionately about keeping local control of the people's natural resources, recovering a dramatic tourism possibility, and not settling for second best.

In three hours, no one but Carpenter and Cohoes Mayor John McDonald, who agreed to support the relicensing as part of settlement to a tax lawsuit in 2001, spoke in favor of granting Brascan a water quality permit.

AT THE INTERMISSION OF THE public hearing, Carpenter's face is serious, but he doesn't appear wildly perturbed, even though many of the people speaking have their facts confused (a common hyperbole was that the settlement won't release any water at all), and even though GIPA has erected a large picture on one side of the hall of the falls in full-spring flood with at least 15,000 cfs flowing over it, as if that's what its plan represented.

"When you involve the public, anything that can get said will get said," was all he would say. And when he got up to speak he gave measured support to the permit, speaking, it seemed, to the public record, and not bothering to correct or argue with the various people who had come before him.

But later, when asked if being portrayed as suddenly on the anti-environmental side rankles at all, some emotion definitely creeps in.

"A lot of those people didn't talk about impacts. They pointed to a picture and said this is beautiful," he says with frustration. "I heard a lot of talk about the falls, but not a lot of talk about the river."

Carpenter defends the results of the negotiating process. "We pride ourselves that we use the framework of environmental law that's out there," he says.

It wasn't a matter of a secretive

"A lot of those people didn't talk about impacts. They pointed to a picture and said this is beautiful."

process that kicked into gear at the whiff of competition either; the public record bears Carpenter out on this point. It took 15 years to get to the School Street settlement for one reason: the decision to work through the "class of 93" relicensing negotiations one at a time. One of them had to come last; School Street, since it involved only one dam rather than a whole river system, but did have the tricky bit about migrating fish, was it.

And the fact that there is limited time for filing competing applications is partially about fairness, notes Carpenter: Once the relicensing process starts, the information is public, so companies coming late into the process have an unfair advantage by getting to read the others' proposals.

As for public involvement, as Judge Kevin Casutto noted at an adjudicatory hearing on April 14, the negotiations were the result of a lawsuit, and "parties who are trying to negotiate a settlement [to a lawsuit] typically do so without members of the public."

Besides, notes Carpenter, there was public involvement: "We represent a lot of the public."

Despite Besha's assessment that Carpenter may have gotten "too close to the process," Carpenter really bristles at the suggestion that his support for the settlement with Brascan is only procedural, a refusal to swerve from a chosen path that turned out not to be the best option.

Carpenter sees this settlement as a hands-down win. The settlement includes run-of-river operation (the opposite of peaking), improved fish exclusion and passage—complete with studies of its effectiveness—and extensive recreational offerings including a footbridge onto the island between the canal and the river and a system of trails there, viewing platform, and a much improved Overlook Park. It does put water into the dry mile of river and over the falls—the same amount as GIPA during likely tourism hours, and enough in Carpenter's estimation to re-create some river habitat.

In fact, Carpenter maintains that it's not only a win, but that GIPA's proposal would not necessarily be more of a win. "The project itself is questionable, whether it would provide the benefits they say it will. The presentation is certainly questionable," he says.

First off, there's the part of the GIPA plan that involves building a new dam only 800 feet back from the falls. What Besha calls rewatering, says Carpenter, is

really creating a new impoundment. (He also claims GIPA does not plan to remove the old dam, though that is part of its proposal.)

As a river person, Carpenter says, the view of the falls is as much about the view back up the gorge as it is about the falls, and a new impoundment would ruin that. "I hate to envision the top of the falls with another dam on it. I can't believe that would be aesthetically pleasing," he says. "My business is river restoration, and GIPA is flooding the last remaining section of the river."

And then there's the water over the falls. When there's more water in the river than a plant can handle, the excess will go over the dam. Since the GIPA plant can handle twice as much water, that excess over the dam will be far less frequent under GIPA's plan (about 7 percent of the time) than under the settlement (It's between 25 and 30 percent now, and will be somewhat less with the new turbine).

"That 15,000 cfs picture will be true more often under Brascan's plan," says Carpenter wryly. This is particularly ironic to him because the hardest public information battle he has is to convince

LIVING HISTORY

In the Haudenosee (Iroquois) tradition, the Cohoes Falls is where the Peacemaker, a Huron who brought peace to five warring tribes and gave them the system of government that came to be known as the Iroquois Confederacy, first appeared to the Mohawks. Benjamin Franklin met with Iroquois at the falls and learned about this system, on which, some scholars say, he based much of the U.S. Constitution.

It is a sacred site to the Iroquois, who visit it periodically for rituals. The Mohawk Nation Council of Chiefs has expressed concern about any projects that would physically alter the falls area, such as proposals by both Brascan and GIPA to adjust the stream bed to spread water more evenly across the falls, and the construction of GIPA's underground powerhouse.

In a letter to FERC, council members also expressed concern, even anger, that GIPA had not discussed its plans with them or written out outreach plans to the tribes.

Jim Besha, who can recite a version of the Peacemaker story at the drop of a hat, says ruefully that GIPA was not able to discuss its plans with the tribes because without the official recognition of FERC as being in the license process, a public entity couldn't conduct official business with a sovereign nation. "I'm sad we didn't take the risk," he says, and promises to start now. He says GIPA is willing to adjust the location of the power plant in order to be sensitive to the site, and believes that if the council got the full story about what GIPA wants to do, it might support the plan.

people that that picture, which is on the cover of GIPA's proposal, does not represent what it is proposing.

The fish-exclusion screen GIPA is proposing is untested on the East Coast, he goes on, and the claim that GIPA makes that it will move the power lines underground to improve the view is absurd, because they are owned by NiMo, not the owner of the plant.

Bottom line, says Carpenter, is that all the folks who assume that GIPA's plan is more environmentally sound, including his own board member Pete Skinner, haven't seen GIPA's plan put through the rigorous testing process required to actually know that. "You don't want to compare a preliminary application to full and complete application because they are not apples to apples and you could be setting yourself up to make mistakes because of generalities," he cautions. And meanwhile, the benefits that the settlement would provide would be delayed by endless lawsuits and a new round of studies.

If GIPA is so sure its plan is better, notes Carpenter, it has an option: It could just buy the plant off Brascan.

"If there were something here truly beneficial to the public, to the river, that could be done by tweaking the law, we'd

do it," he says, "The people who think we are just signing off and supporting the company don't know us."

SKINNER, THE MOST LIKELY CANDIDATE to moderate between Carpenter and Besha, is at this point strongly on Besha's side—not because he thinks GIPA's plan is perfect, but because it carries the aura of "We can do better" that appeals to his idealistic nature. Power lines don't belong to you? Offer to underground the lines for NiMo. (This is something Besha has done before. NiMo is generally receptive he says—after all, it gets new lines for nothing out of the deal. "Some people just need to be more creative," says Besha.) Dam too close to the top of the falls? Move it back. GIPA is not exempt from negotiations, notes Skinner. "They talk a good talk," he says. "I want to see them walk a good walk."

The environmental costs can be weighed and studied—but when it comes to aesthetics, it becomes a matter of personal preference. Skinner, for example, is drawn to GIPA's plan because he prefers the idea of the falls being watered steadily 24 hours a day all year over a chance to get slightly more frequent views of the really high amounts of spillage. "I don't want to have to time my visits to when there's a spill," he says.

At base, "it's a community resource, the community should decide," says Skinner. He and Besha know that only a public outcry will make the necessary legislative or legal avenues they would need to even be considered come to pass. They're not alone in thinking something better could be out there—several parties to the lawsuit, including the Audubon Society and the Adirondack Mountain Club, declined to sign the settlement.

Carpenter, meanwhile, realizes that he probably should have done more himself to promote his understanding of the situation and counter some of the misleading information. Brascan is no help. Someone, perhaps the company's lawyers, has advised them to take a "neutral" approach, which comes off as if they think they don't need to be bothered persuading anyone because the technicalities are all on their side. Take Tom Uncher of Brascan: "I guess really what it comes down to is there's a legal process you go through to get a facility relicensed. We have followed that process. We have hit every marker to make this process happen."

Carpenter shakes his head. Language like that doesn't make his life any easier. He's impatient to see water and fish back in this stretch of the Mohawk and to be able to turn more of NYRU's energy toward its broader watershed protection work rather than relicensing.

Besha and GIPA meanwhile, are settling in for the long haul.

"What we do at Cohoes Falls is it," says Skinner. "We're stuck with it. It ought to be good. . . . No! It ought to be the best we can do."

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