

June 25, 2026

Hydropower Program
Maine Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017



Transmitted via e-mail to: DEP-Hydropower@maine.gov

RE: Comments of the Maine Council of Trout Unlimited on the Draft Water Quality Certificate for the Lewiston Falls Hydroelectric Project (FERC No. P-2302), Department Order No. L-29808-33-D-N

I. INTRODUCTION AND STANDING

The Maine Council of Trout Unlimited ("Maine TU") submits these comments on the Maine Department of Environmental Protection's ("Department" or "DEP") Draft Water Quality Certificate ("Draft WQC" or "Draft Order") for the continued operation of the Lewiston Falls Hydroelectric Project (FERC No. P-2302) ("Project"), Department Order No. L-29808-33-D-N, issued June 8, 2026.

Maine TU Council is a fisheries conservation organization whose mission is to conserve, protect, and restore Maine's coldwater fisheries and their watersheds. Maine TU Council encompasses six chapters with more than 1,500 members. Maine TU Council and its members fish, paddle, and otherwise recreate on the Androscoggin River and have a direct and substantial interest in the outcome of this Water Quality Certification proceeding. Maine TU Council has participated actively in the FERC relicensing of the Lewiston Falls Project (P-2302) since the commencement of that process in 2021.

Maine TU Council co-signed, with the Cities of Auburn and Lewiston, American Whitewater, the Appalachian Mountain Club, Grow L-A, and the Androscoggin Land Trust, joint comments on the Draft License Application for the Lewiston Falls Project filed with FERC on May 20, 2024 ("DLA Joint Comments"). Maine TU Council supports the positions expressed in those comments and in the City of Auburn's comments on the FERC Ready for Environmental Analysis notice, filed with FERC on July 14, 2025 ("Auburn Comments"), and expressly incorporates them by reference herein.

II. SUMMARY OF COMMENTS

Maine TU Council does not oppose issuance of a Water Quality Certificate for the Lewiston Falls Project. However, the Draft WQC as issued does not contain conditions sufficient to ensure that the Project meets the mandatory Class C designated use of recreation in and on the water, as required by 38 M.R.S. § 465(4)(A). The Draft WQC's finding that six aesthetic flow releases per year satisfies the statutory recreation designated use for a prominent natural waterfall located in the center of Maine's second largest metropolitan area is not supported by the record and is inadequate as a matter of law.

Maine TU Council requests that the Department modify the Draft WQC to require a substantially greater number of aesthetic and recreational flow releases, scheduled in consultation with the Cities of Auburn and Lewiston, including evening and weekend releases that allow working families and low-to-moderate-income (LMI) households to access the river. Maine TU Council also requests that the WQC require routine minimum spill to prevent stagnation and protect dissolved oxygen on the river-right side, adaptive management tied to DO monitoring, and a portage plan to restore through-river access severed by the Project. These requests align with and expand upon the concerns expressed by the City of Auburn regarding the Draft WQC.

Granting these requests will work to the benefit of Maine TU's membership, Lewiston-Auburn residents, and Maine's general public.

III. LEGAL FRAMEWORK: RECREATION AS A MANDATORY CLASS C DESIGNATED USE

The Androscoggin River at the Project is classified as Class C waters pursuant to 38 M.R.S. § 467(1)(A)(2). Section 401 of the Clean Water Act, 33 U.S.C. § 1341, requires that an applicant for a federal license obtain certification from the State that the licensed activity will comply with applicable state water quality standards. The Department may approve a WQC only if it determines that the standards of classification of the water body will be met. 38 M.R.S. § 464(4)(F)(3).

Class C waters must be of such quality that they are suitable for all of the following designated uses:

- drinking water supply after treatment;
- fishing;
- agriculture;
- recreation in and on the water;
- industrial process and cooling water supply;
- hydroelectric power generation, except as prohibited under Title 12, section 403;
- navigation; and
- habitat for fish and other aquatic life.

38 M.R.S. § 465(4)(A). The statute is written in the conjunctive: *all* listed uses are mandatory. A WQC that certifies compliance with some designated uses but fails to adequately protect others does not meet the statutory standard for approval.

The Department's antidegradation policy, codified at 38 M.R.S. § 464(4)(F)(3), independently requires that existing in-stream water uses occurring on or after November 28, 1975, and the level of water quality necessary to protect those uses, be maintained. Public recreation at Great Falls in Lewiston-Auburn predates 1975 and has occurred continuously since. A WQC that results in a net reduction in recreational opportunity relative to the baseline protected by the antidegradation policy cannot be approved.

IV. THE DRAFT WQC'S FINDING THAT SIX AESTHETIC RELEASES PER YEAR SATISFY THE RECREATION DESIGNATED USE IS NOT SUPPORTED BY THE RECORD

The Draft WQC finds that the Project meets the designated use of "recreation in and on the water" based principally on the applicant's proposal to provide six aesthetic flow releases per year of approximately 2,000 to 2,500 cfs from Dam 1 or Dam 3, during the months of July through September, between the hours of 10 AM and 4 PM, on a schedule determined annually in consultation with the Cities of Lewiston and Auburn. Draft WQC, Condition 2(B), p. 39. Maine TU Council respectfully submits that this finding does not withstand scrutiny for the following reasons.

First, since the opening of the Charles E. Monty Station powerhouse in 1990, flows over Great Falls have been reduced by approximately 40 percent, from approximately 146 days per year to approximately 43 days per year. *DLA Joint Comments; Auburn Comments*. The Draft WQC proposes to require only six scheduled aesthetic releases per year, representing approximately 1.6 percent of calendar days. The Draft WQC provides no analysis of how 36 hours of scheduled recreational flow annually constitutes a water body that is "suitable" for the designated use of recreation. 38 M.R.S. § 465(4)(A).

Second, the Draft WQC's aesthetic flow schedule is limited to weekday daytime hours (10 AM to 4 PM) during a three-month summer window. Great Falls is an urban natural resource in the center of a working-class metropolitan area. Nearly half of Auburn households (approximately 46 percent) and a significant portion of Lewiston households qualify for LMI assistance and depend on walking and public transit to access recreational opportunities along the river. *Auburn Comments; DLA Joint Comments*. Six releases scheduled entirely during weekday business hours do not enable shift workers, school-age families, and LMI households to access the riverfront experience the statute requires.

Third, the Project completely severs through-river paddling. There is currently no portage route around Lewiston Falls, and the Draft WQC does not require one. The absence of portage infrastructure is a significant deficiency in meeting the recreation designated use for paddling, fishing access, and navigation. 38 M.R.S. § 465(4)(A).

Fourth, the applicant's own recreation study estimated total use of the Project area recreation sites during the 2022 peak recreation season at 210,814 recreation days, with more than half occurring at Simard-Payne Park during special events. Draft WQC at p. 29. This extraordinary volume of use confirms the importance of the riverfront to the community. It cannot reasonably support a finding that six additional scheduled flow releases per year are sufficient to protect the recreation designated use.

Fifth, the Draft WQC's near-elimination of spill imposes significant mortality on downstream-migrating American eels, a Species of Special Concern under Maine law. The applicant's own eel passage studies documented 74.5% survival for eels passing through the turbines, meaning roughly one in four eels does not survive. By contrast, mortality for eels that pass via spill is zero, as the City of Auburn has noted based on the applicant's own data. Accordingly, every spill event is also a free eel passage event: it simultaneously provides recreational and aesthetic benefit to the public and eliminates turbine mortality for migrating eels. Under a regime of only six spill events per year, the great majority of downstream eel migration is forced through the turbines. The Department's obligation to protect the fisheries designated use of Class C waters, 38 M.R.S. § 465(4)(A), requires it to weigh this mortality cost when evaluating the adequacy of the proposed flow regime. Increasing the frequency and duration of routine spill is among the least costly means available to substantially reduce turbine mortality and protect this aquatic species.

V. THE PROJECT'S LOCATION IN MAINE'S SECOND LARGEST POPULATION CENTER REQUIRES A PROPORTIONATE MITIGATION RESPONSE

The Lewiston Falls Project is located at the geographic and symbolic center of the Lewiston-Auburn metropolitan area, Maine's second largest population center with a combined population of approximately 61,000 residents. Maine TU Council ILP Comments (Sept. 3, 2021). Great Falls is the defining natural and visual landmark of two downtowns. The Androscoggin River at and below Great Falls is in active daily use by residents who live, work, and travel within walking distance.

Immediately abutting the Project boundary, poverty rates in adjacent census tracts run at 25 to 45 percent. In Lewiston, 78 percent of total households qualify for federal housing assistance. In Auburn, 46 percent qualify. DLA Joint Comments; Auburn Comments. For these residents, water-based recreation and access to the falls is not a luxury amenity but a fundamental quality-of-life resource. FERC has required substantially greater recreational mitigation at urban and high-visibility

hydroelectric projects serving comparable communities. Applying the minimum standard proposed by the applicant here is inconsistent with the scale of public impact and the plain requirements of 38 M.R.S. § 465(4)(A).

VI. THE RUMFORD FALLS WQC REQUIRED MORE PROTECTIVE MEASURES FOR A SMALLER COMMUNITY ON THE SAME RIVER SYSTEM

In the Water Quality Certificate issued for the Rumford Falls Hydroelectric Project (FERC No. P-2333), Department Order No. L-024307-33-G-N ("Rumford Falls WQC"), the Department required, among other things: (1) a minimum bypass flow of 200 cfs in the Middle Dam bypass reach specifically to meet the designated uses of recreation in and on the water and fishing; (2) three days of scheduled whitewater boating releases at 1,500 cfs; and (3) three days of scheduled aesthetic flow releases at 1,200 to 1,500 cfs. The Department found that without the minimum bypass flow, the applicant's proposed three aesthetic flow days were inadequate to meet the recreation designated use.

The Town of Rumford has a population of approximately 5,800 residents. The Lewiston Falls Project serves a metropolitan area more than ten times that size. The six aesthetic flow releases proposed by BWPH for Lewiston Falls are numerically fewer than what the Department required at Rumford Falls for a far smaller community. This disparity is difficult to reconcile with the statutory mandate that all Class C waters be suitable for recreation. 38 M.R.S. § 465(4)(A).

Furthermore, the Maine Bureau of Parks and Lands commented during the Rumford Falls WQC proceeding that even three aesthetic flow days were "an inadequate improvement over current flows" and recommended at least ten days of aesthetic releases and ten days of whitewater flows. Maine TU Council submits that if BPL found three days inadequate for a project in a community of 5,800, six days for a project serving 61,000 falls far short of statutory requirements.

The Rumford Falls Project is now licensed under a new 40-year FERC license issued on January 22, 2026, and its WQC conditions represent the Department's current considered judgment as to what is required to satisfy the recreation designated use on the Androscoggin River. That precedent is directly relevant to the present certification.

VII. MAINE TU COUNCIL SUPPORTS THE CITY OF AUBURN'S REQUESTED CONDITIONS

Maine TU Council fully supports the specific recreational mitigation requests set forth in the City of Auburn's REA comments (July 14, 2025). Those requests include:

- A minimum of 40 scheduled aesthetic flow releases per year of at least 4,000 cfs from Dam 1, each of six-hour duration, between May 15 and October 30, developed annually in consultation with the Cities of Lewiston and Auburn;
- Releases scheduled every Friday evening from 4 PM to 8 PM between May 15 and October 30;
- At least ten holiday or community event weekend releases per year, with specific dates determined at an annual meeting between the applicant and stakeholders held each April;
- Coordination of release scheduling with upstream Gulf Island-Deer Rips Project operations;
- Real-time and predictive public flow information accessible online and linkable to municipal websites; and
- Portage design completed within 24 months of license issuance, with construction funded and completed within 48 months.
- A baseline continuous minimum spill over Lewiston Falls during the open-water season (approximately May 15 through October 30) to alleviate stagnation and improve dissolved oxygen and circulation on the river-right side of the channel; and
- Adaptive management conditions requiring additional spill events when downstream dissolved oxygen approaches the Class C threshold of 5.0 mg/L, or when high water temperatures, low inflows, or documented stagnant pool formation occur between June and September.

The applicant's own aesthetic flow study found that flows of 1,600 to 3,000 cfs released from Dam 1 or Dam 3 produce a pleasing aesthetic appearance. Draft WQC at p. 30. The applicant also operates the Gulf Island-Deer Rips Project upstream and already coordinates flows between the two facilities for power generation purposes, as the City of Auburn has noted. This operational control can equally be leveraged to deliver aesthetic flows to Great Falls during periods when natural inflow is otherwise insufficient. The applicant's position that hydrology alone prevents more frequent releases is not fully supported in view of its upstream operational authority.

In addition to the aesthetic benefits, these releases would increase the oxygen levels below the falls, making the aquatic habitat more suitable for salmonids including Atlantic salmon. The waters below the falls to tidewater are designated critical Atlantic salmon habitat. Other aquatic species and the overall ecology would benefit as well.

VIII. ANTIDegradation

The Draft WQC finds that the Project complies with the antidegradation policy because in-stream uses "have generally remained the same since November 1975 and include hydropower generation, recreation in and on the water." Draft WQC at p. 33. Maine TU Council respectfully submits that this finding requires closer examination.

The antidegradation policy under 38 M.R.S. § 464(4)(F)(3) requires not merely that a use category continue to exist in nominal terms, but that the level of water quality necessary to protect those uses be maintained. The opening of Monty Station in 1990 reduced natural flows over Great Falls from approximately 146 days per year to approximately 43 days per year—a 40 percent reduction. The Draft WQC proposes to certify a Project that would further restrict scheduled recreational flow releases to only six days per year. If the antidegradation baseline includes the pre-1990 recreational flow regime, the proposed certification does not maintain the level of water quality necessary to protect the existing recreational use.

Maine TU Council requests that the Department clarify the antidegradation baseline applicable to aesthetic recreational flows over Great Falls and ensure that the WQC conditions require, at minimum, that scheduled flow releases be sufficient to prevent a net reduction in recreational access relative to the antidegradation-protected baseline.

Maine TU Council also notes that in 2020, prior to the commencement of this relicensing, the applicant successfully petitioned FERC to remove approximately four miles of river from the Project boundary, including the Dresser Rips reach below the falls. The City of Auburn opposed that removal, arguing that project operations significantly affect recreational use and river conditions in the removed reach and that boundary decisions should be made with the benefit of the licensing record. Auburn Comments (FERC, July 14, 2025). Brookfield’s ability to coordinate flows at its upstream Gulf Island–Deer Rips facility directly affects flow conditions throughout the removed reach. The antidegradation policy requires that existing in-stream uses occurring on or after November 28, 1975 be maintained. 38 M.R.S. § 464(4)(F)(3). Recreational use and fish passage in the Dresser Rips reach predates 1975. Maine TU Council requests that the Department’s antidegradation analysis expressly address whether Project operations maintain existing recreational and fisheries uses in the downstream reach that was removed from the Project boundary, and whether any conditions on spill, flow scheduling, or emergency access are warranted to protect those uses.

IX. SUMMARY OF REQUESTED CONDITIONS

Maine TU Council respectfully requests that the Department modify the Draft WQC to include the following conditions:

1. *Aesthetic and Recreational Flow Releases.* The applicant shall provide a minimum of 40 scheduled aesthetic flow releases per year from Dam 1 or Dam 3, with a target flow of at least 2,000 cfs, between May 15 and October 30, each of at least 6-hour duration. Release scheduling shall be developed annually in consultation with the Cities of Lewiston and Auburn and shall include a meaningful number

of evening releases (4 PM or later) and weekend releases to serve working families and LMI households.

2. Community Event and Holiday Releases. The applicant shall provide a minimum of ten releases per year on dates corresponding to community events in Lewiston-Auburn or on holiday weekends between May 15 and October 30, with specific dates established annually in consultation with the cities.

3. Public Flow Information. The applicant shall provide real-time and predictive flow information for the Project via SafeWaters or a comparable publicly accessible website, including the proposed schedule of aesthetic flow releases and any cancellations, in a format linkable to the cities' municipal websites.

4. Portage Infrastructure. The applicant shall collaborate with the Cities of Lewiston and Auburn, Maine Bureau of Parks and Lands, and other stakeholders to design, fund, and construct a portage route connecting the Lewiston Falls impoundment boat launch to downstream access points. Design plans shall be completed within 24 months of new license issuance; construction shall be completed within 48 months.

5. Recreation Management Plan. The applicant shall develop and implement a Recreation Management Plan in consultation with the Cities of Lewiston and Auburn, MDIFW, BPL, American Whitewater, and Maine TU Council, with plan updates required no less than once every ten years. The Plan shall include itemized capital and operations and maintenance (O&M) cost estimates for all Project recreation facilities, seasonal maintenance schedules, and specific provisions for Americans with Disabilities Act (ADA) accessibility improvements at all FERC-approved Project recreation sites. The City of Auburn has maintained Project recreation facilities at local taxpayer expense throughout the current license term under conditions of inadequate funding, and has communicated to the Department that the new license must include explicit applicant responsibility and cost commitments for recreation site upkeep.

6. Routine Minimum Spill. The applicant shall provide a baseline continuous spill flow over Lewiston Falls—from Dam 1, Dam 2, or Dam 3—sufficient to maintain measurable flow and circulation across the river-right channel during the open-water season (May 15 through October 30). The volume of this minimum spill shall be established in consultation with MDIFW and the Department based on dissolved oxygen monitoring data, and shall be sufficient to prevent stagnation and maintain DO at or above the Class C standard of 5.0 mg/L throughout the channel. 38 M.R.S. § 465(4)(B). Routine minimum spill shall additionally serve as a continuous downstream passage pathway for American eels and other

diadromous species, eliminating the turbine mortality (approximately 25%) that occurs when downstream-migrating eels are forced through the powerhouse under non-spill operating conditions.

7. Adaptive Management Based on DO Monitoring. The applicant shall implement additional unscheduled spill events whenever continuous downstream DO monitoring records a value at or below 5.5 mg/L between June 1 and September 30, or when high water temperatures, low inflows, or stagnant pool formation are documented on the river-right side. The applicant shall file an annual DO compliance report with the Department by January 31 of each year, summarizing monitoring results and any adaptive management actions taken during the preceding open-water season.

8. Recreational Flow Study. Within 18 months of new license issuance, the applicant shall conduct and file with the Department a Recreational Flow Study evaluating which flow conditions in the Androscoggin River below Lewiston Falls support which recreational activities—including paddling, fishing, wading, and shoreline use—for different user groups. The study shall assess the recreational use implications of the applicant’s ability to coordinate flows with its upstream Gulf Island–Deer Rips facility, and shall evaluate the feasibility of providing recreational flows that meet identified needs. The study shall be developed in consultation with the Cities of Lewiston and Auburn, MDIFW, American Whitewater, and Maine TU Council, and shall inform future adaptive management reviews under Condition 7 above. The Department has independent authority under Section 401 to require this study as a condition necessary to ensure the Project meets the designated use of recreation in and on the water. 38 M.R.S. § 465(4)(A). The City of Auburn has independently requested this study as part of its comments to the Department.

X. CONCLUSION

Recreation in and on the water is not a secondary or discretionary designated use under 38 M.R.S. § 465(4)(A)—it is mandatory. The Androscoggin River at Great Falls in Lewiston-Auburn is one of Maine's most publicly significant natural features, located in Maine's second largest metropolitan area and serving tens of thousands of residents who depend on the river for their quality of life. Six scheduled aesthetic flow releases per year, all during weekday business hours in a three-month window, do not constitute a water body that is "suitable" for the designated use of recreation. The Department has required more protective measures on this same river system for a far smaller community.

Maine TU Council respectfully requests that the Department revise the Draft WQC to require a substantially greater number of aesthetic and recreational flow releases, incorporate evening and weekend releases accessible to working families and LMI households, and require the construction of portage infrastructure. These conditions are achievable, consistent with what the Department has required elsewhere, and necessary to bring the Project into compliance with the plain requirements of Maine law.

We request that this letter be entered into the record for the Department's review of the Water Quality Certification for the Lewiston Falls Hydroelectric Project.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Stephen G. Heinz". The signature is fluid and cursive, with the first name "Stephen" being more prominent than the last name "Heinz".

Stephen G. Heinz

Maine TU Council FERC Coordinator

cc: FERC Docket No. P-2302