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VIA ELECTRONIC MAIL

Laura Paye
Hydropower & Dams Program Coordinator
Bureau of Land Resource
Maine Department of Environmental Protection
Laura.Paye@maine.gov
DEP-Hydropower@maine.gov

Re: Lower Kennebec Draft Water Quality Certification

Dear Ms. Paye:

On behalf of Sappi North America, Inc. (Sappi), we submit the following comments on the Maine Department of Environmental Protection's (DEP's) October 9, 2025 draft Water Quality Certification (WQC) for the Shawmut, Lockwood, Hydro Kennebec, and Weston Hydroelectric Projects on the lower Kennebec River.

In June of this year, nearly 100 Sappi employees submitted comments to the DEP encouraging it to issue a WQC that would allow the continued operation of the Shawmut Hydroelectric Project (Shawmut). Their primary concern is that any decision by the DEP that would require significant modification of the Shawmut dam and impoundment, or that would make continued operation of Shawmut uneconomic, could jeopardize Sappi's Somerset Mill. The DEP's draft WQC does just that. By imposing fish passage conditions that DEP knows are impracticable or impossible, that in some cases may adversely affect endangered Atlantic salmon, and that are not grounded in state law, the DEP is threatening the livelihood of the Mill, of the approximately 800 Mill employees, and of the entire Central Maine economy that indirectly relies on the Mill's continued operation. The ripple effect that the WQC would send across the community and region is substantial.

This threat to the Mill is more pressing now that the Applicant announced that it has signed a purchase and sale agreement with The Nature Conservancy (TNC) for the four

dams on the lower Kennebec River.[1] TNC's stated plans for those dams is to "return free-flowing conditions to the lower Kennebec River through a mix of dam decommissioning, removal, and other efforts."[2] Understanding "the vital role of the Somerset Mill for the forest products industry and the state's economy," TNC has committed to "developing a solution with Sappi that fully addresses the Somerset Mill's long-term water system needs."[3]

Sappi, the Applicant, and TNC expected that they had the cushion of the "multiple years" process that any decommissioning and license surrender would take to achieve such a solution, during which time Brookfield would continue to operate the Projects and impoundment levels would be unaltered.[4] Issuing a WQC that imposes uneconomic fish passage obligations on the owner of the dams (be it Brookfield, TNC, or a subsidiary of either) not only accelerates that timeline significantly, but also raises the prospect of immediate decommissioning of Shawmut to avoid the costly improvements and new construction that the DEP's draft WQC would require. In fact, Sappi understands that given the onerous and expensive requirements set forth in the draft WQC, the Applicant intends to withdraw the WQC applications, which clearly would impact the ability of any entity to continue to operate the projects.

This existential threat to Sappi's Somerset Mill is unsupported by State water quality standards, runs contrary to FERC's detailed explanation as to the impracticability of extreme fish passage obligations, and risks the livelihoods of thousands of Central Mainers whose jobs indirectly rely on continued operation of the Somerset Mill. It is illogical and rash for the DEP to require fish passage standards that are grounded in no quantitative State standard and that FERC has rejected as impracticable or unachievable, when in doing so DEP is sounding the death knell for a mill that is crucial to the economy of this state. Each fish passage obligation that would significantly increase the costs of operating Shawmut – or that FERC has determined to be impossible – is addressed below.

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[1] *See, e.g., The Nature Conservancy and Brookfield Reach Deal for Four Lower Kennebec River Dams*, Sept. 23, 2025 Press Release, available at: https://www.nature.org/en-us/newsroom/kennebec-river-restoration/.

[2] *Id.*

[3] *Id.*

[4] *Id.*

American shad

Over dozens of pages of analysis, FERC concluded that while "Brookfield could potentially achieve a 70% effectiveness rate at Shawmut by constructing both a fish lift and a nature-like fishway," the significant additional cost of constructing a nature-like fishway is not justified by the "minimal effect" on shad under current abundance levels.[5] In fact, and based on evidence of record, FERC concluded that requiring a 70% passage effectiveness standard may actually have adverse effects on passage of endangered Atlantic salmon.[6] The nature-like fishway that would be required to achieve 70% passage effectiveness "is substantially less effective at passing salmon than the proposed fish lift, and could attract salmon away from the highly effective fish lift (98.6% effective) and toward the less effective nature-like fishway (56.6% effective). This could potentially adversely affect Brookfield's ability to achieve its proposed 96% upstream passage standard for endangered Atlantic salmon at the Shawmut Project."[7]

For these reasons, FERC concluded "that any potential benefits to American shad passage from requiring a 70% passage effectiveness standard at Shawmut and Lockwood do not justify the additional costs for the fishways (discussed above) that would be needed to achieve them, or the potential adverse effects on passage of endangered Atlantic salmon."[8] It found that, "[f]or river herring and adult shad, there are no fishway alternatives that would enable Brookfield to achieve the recommended passage standards without also adversely affecting salmon passage."[9] FERC also outright rejected a higher standard, finding that "achieving an 85% passage effectiveness rate for American shad at any of the projects under any upstream passage scenario would likely be infeasible."[10]

DEP, however, proposes precisely what FERC rejected as "infeasible" – "an upstream passage performance standard of 85% within 72 hours for American shad and downstream

[5] FERC FEIS at 68 and 436.

[6] FERC FEIS at 68 and 436.

[7] FERC FEIS at 204.

[8] FERC FEIS at 436.

[9] FERC FEIS at 209.

[10] FERC FEIS at 68 and 436.

performance standard of at least 95% within 24 hours for American shad."[11] FERC, in its detailed and years-long environmental review, concluded that no participating entity has shown "how such high standards could realistically be met at the projects."[12] Nevertheless, DEP relies on the comments of the Maine Department of Marine Resources (DMR) on FERC's draft Environmental Impact Statement (DEIS) – rejected with detailed explanation by FERC – to justify these unachievable standards.[13] DEP's passage effectiveness standards are arbitrary and capricious, and will result not only in prohibitively costly upgrades but may very well negatively impact passage of Atlantic salmon.

River Herring

Similarly, and also over dozens of pages of analysis, FERC concluded that while "a 70%, 90%, or 96% passage standard would increase the number of river herring that are available to pass upstream of the Weston Project compared to Brookfield's proposal, there is no information that suggests that Brookfield's proposed fishways could operate at these effectiveness levels."[14] FERC's analysis showed that the only way that Brookfield could potentially achieve the lower-end 70% effective passage rate would be to construct two new fishways at each project.[15] The higher effectiveness rates – 90% or 96% – "would be infeasible at any of the projects under any fishway alternatives."[16] Accordingly, FERC concluded "that we have no basis to recommend these [90% or 96%] standards because achievement of either of them would likely be infeasible under any passage alternatives."[17]

Again, the DEP ignores these detailed findings and conclusions, and instead imposes the highest passage standard for river herring, requiring "an upstream passage performance standard of 96% within 72 hours for alewives and downstream performance standard of at least 95% within 24 hours for alewives," as well as "an upstream passage performance standard of 90% within 72 hours for blueback herring and downstream performance

[11] Draft WQC at 83.

[12] FERC FEIS at 68.

[13] Draft WQC at 53-54.

[14] FERC FEIS at 436.

[15] *Id.*

[16] FERC FEIS at 437.

[17] *Id.*

standard of at least 95% within 24 hours for blueback herring."[18] DEP's grounds for such standards again are the modeling and comments DMR provided to – and were rejected by – FERC.[19] DEP's reliance on DMR's recommended passage effectiveness standards, which FERC found to be "infeasible at any of the projects under any fishway alternatives" is arbitrary and capricious.

Sea Lamprey

Citing FERC tables (Tables 3-12 and 3-13) that find possible an 82.2% cumulative passage of sea lamprey at the four dams, DEP jumps to the conclusion that an 80% upstream passage performance standard therefore is "reasonable."[20] FERC, analyzing its own tables, concluded the opposite, as one additional fish lift at each project at a levelized annual cost of $994,739 per project would be required to consistently achieve an 80% passage rate.[21] Because an 80% passage effectiveness standard would result in the additional passage of "about three fish per year," FERC concluded that "the benefits to the sea lamprey population of holding Brookfield to an 80% effectiveness standard do not justify the costs of the additional fishways that would be needed to achieve them."[22] DEP in its draft WQC makes no explanation as to why, under current abundance of sea lamprey approaching Lockwood, the benefit of three fish to the sea lamprey population is reasonable in light of the near one million additional annual cost at each project. DEP's upstream passage performance standard of 80% for sea lamprey therefore is arbitrary and capricious.

American Eel

Finally, and based on the evidence of record, FERC concluded that "there is no need for an 85% per project passage survival standard that would need to be verified with effectiveness testing at a capital cost of $117,905 per testing event per project ($10,473 levelized). . . . Brookfield would achieve a 95% survival rate for eels at Shawmut under its Proposed Action, but to achieve a 95% per-project survival rate at the other three projects

[18] Draft WQC at 84.

[19] Draft WQC at 54-56.

[20] Draft WQC at 58-59.

[21] FERC FEIS at 437.

[22] *Id.*

it would need to construct new 0.75-inch full-depth trash racks on all powerhouses or implement its Proposed Actions and also shut down the turbines at Weston, Lockwood, and Hydro-Kennebec at night during the eel outmigration."[23] The costs, FERC explained, simply do not justify the benefit of increasing adult eel survival.[24]

What's more, FERC determined that to achieve a downstream performance standard of 95% for American eel, and to confirm such passage, would result in reduced power generation due to shutdowns necessary for effectiveness testing.[25] FERC calculated that such testing would require a generation reduction of 2,583 MWh at Weston, 3,815 MWh at Hydro-Kennebec, and 2,134 MWh at Lockwood, and that there would be additional costs for the effectiveness testing needing to document achievement of the standards.[26]

The DEP, in its draft WQC, plainly disregards this loss of renewable electricity generation, requiring a downstream performance standard of 95% for American eel, an upstream passage performance standard of 90%, two years of effectiveness testing, one or more years of nighttime visual observations below Project spillways and other Project works throughout the upstream eel season, as well as construction of a 0.75-inch or less, full-depth, angled or inclined rack structure in the forebay within 4 years of license or license amendment approval."[27] Such requirements are unreasonable in light of the required reduction in power generation and costly testing and construction obligations.

Conclusion

The State's WQC is meant to ensure compliance with state water quality standards set forth at 38 M.R.S. §§ 464 et seq. State law authorizes the DEP to issue a WQC pursuant to Section 401 of the Clean Water Act when the continued operation of a project will maintain the standards of classification for the affected water bodies, including the State's antidegradation policy. 38 M.R.S. § 464(4)(F)(3). The only numeric standards that the Applicant must demosntrate above and below Shawmut concern the dissolved oxygen

[23] FERC FEIS at 446-47.

[24] *Id.*

[25] FERC FEIS at 447.

[26] *Id.*

[27] Draft WQC at 84.

content of Class B and Class C waters.[28] Otherwise, the State is tasked with ensuring that "the receiving waters must be of sufficient quality to support all aquatic species indigenous to the receiving water without detrimental changes in the resident biological community." 38 M.R.S. § 465(3)(C). In fact, Class B riverine impoundments are generally deemed to meet classification standards if the aquatic life and habitat in those impounded waters achieve Class C aquatic life criteria found at 38 M.R.S. § 465(4)(C), provided that no changes can be made to improve such habitat that does not significantly affect existing energy generation capability. 38 M.R.S. § 465(4)(10).

It is entirely arbitrary to argue over a few percentage points, and a few fish, when the standards the DEP must ensure are qualitative and subjective. For DEP to require "infeasible," unreasonable, and harmful fish passage standards with "no information that suggests that Brookfield's proposed fishways could operate at these effectiveness levels" is entirely arbitrary and is not driven by the applicable statutary language. Imposing standards on Shawmut that would result in that project no longer being economical to operate, or that are downright impossible, cannot be what the Maine Legislature intended. *See* **Attachment A** (June 3, 2025 Letter from Denise Tepler and Vicki Doudera, respectively Senate and House Chairs of the Joint Standing Committee on Environment and Natural Resources, to Commissioner Loyzim). To profess that Maine statute drives the tiny differences in effectiveness levels, despite the huge differentials in the price tag, and that result in passage of only a few additional fish at the expense of 800 Sappi jobs is reckless.

Brookfield designed its existing and proposed upstream fishways at Shawmut through an extensive design review process that considered comments from National Marine Fisheries Service, the U.S. Fish and Wildlife Service (FWS), and Maine DMR, and current best practices specified in FWS's Design Criteria Manual and are consistent with current standards for passage of anadromous fish. As many entities explained to FERC, "construction of new 'state of the art' fishways at the four projects would not necessarily guarantee a high rate of passage effectiveness for all five species of anadromous fish."[29] Certainly it is not worth the cost of such improvements and the existential threat to the Somerset Mill to aim for passage of a few additional fish that is not even guaranteed.

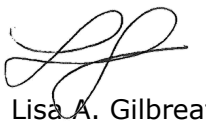
[28] 38 M.R.S. § 465(3)(B) and 38 M.R.S. § 465(4)(B); *see also* Draft WQC at 31-32.

Brookfield's proposals, supplemented by additional proposals from FERC Staff, to operate the existing and new fishways would enhance upstream and downstream passage, would restore habitat connectivity for Atlantic salmon to the project impoundments and tributaries that flow into them, and would assist in meeting the Kennebec Agreement goal of restoring anadromous and catadromous fish species to the Kennebec River at the projects,[30] all without losing a Mill that is the life blood of Central Maine. The Maine DEP should revise its draft WQC to meet the well-thought-out standards that FERC set after years of intensive and iterative environmental review. Maine law does not require that Sappi's Somerset Mill be sacrificed for minimal, if any, benefit to aquatic habitat.

It is imperative that the DEP issue a WQC that ensures the continued operation of Shawmut while the stakeholders work to find a solution that would return free-flowing conditions to the lower Kennebec River but would not impact the Somerset Mill. As currently drafted, the WQC robs all stakeholders of this opportunity.

Thank you for your consideration of these comments.

Sincerely,



Lisa A. Gilbreath

Enclosure

ATTACHMENT A

STATE OF MAINE
ONE HUNDRED AND THIRTY-SECOND LEGISLATURE
COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

June 3, 2025

Melanie Loyzim, Commissioner
Department of Environmental Protection
17 State House Station
Augusta, ME 04330

Re: LD 1210

Dear Commissioner Loyzim:

As you know, this session a majority of our Committee voted "ought not to pass" on LD 1210, An Act Regarding Renewable Electricity Generation by Hydropower Projects. Although a majority of our Committee did not support this proposal, Committee members do share concerns raised during the consideration of that bill regarding the potential effects that the outcome of the ongoing relicensing process for four hydropower dams on the Kennebec River may have on businesses – in particular the Sappi Somerset Mill – and for members of the public that rely on the maintenance of water levels on that river caused by those dams.

We understand that the Department expects this fall to issue determinations regarding water quality certification for those dams and look forward to reviewing those determinations. We request that you provide our Committee with any updates regarding that process as they become publicly available. As expressed during the work session on this bill, this Committee remains committed to supporting the continued operations of those businesses that are dependent upon maintenance of water levels in the Kennebec and to the public's continued access to and use of the river.

Thank you for your attention to this matter and please let us know if you have any questions.

Sincerely,

Denise Tepler, Senate Chair

Vicki Doudera, House Chair

cc: Members, Joint Standing Committee on Environment and Natural Resources