

October 16, 2025

Laura Paye
Hydropower Coordinator
Maine Department of Environmental Protection
17 State House Station
Augusta, ME 04333-0017

Subject: Withdrawal of Maine DEP Applications #L-17472-33-L-N (Weston), #L-19751-33-J-N (Shawmut), #L-011244-33-Q-N (Hydro Kennebec), #L-31534-33-A-N (Lockwood)

Dear Ms. Paye:

Brookfield White Pine Hydro LLC (BWPH), on behalf of itself, The Merimil Limited Partnership, and Hydro Kennebec LLC, submits this letter formally withdrawing the above referenced Water Quality Certification (WQC) applications.

On October 21, 2024, BWPH submitted an application for a WQC for the Shawmut Hydroelectric Project (FERC No. 2322). On May 8, 2025, BPWH submitted applications for WQCs for the Weston (FERC No. 2325), Hydro-Kennebec (FERC No. 2611), and Lockwood (FERC No. 2574) projects. The Maine Department of Environmental Protection (Maine DEP or the Department) refers to these four projects collectively as the Lower Kennebec River Dams facilities.

BWPH offers the following general comments related to its decision to withdraw the applications currently pending with the Department.

1. **Sale of Lower Kennebec River Dams:** On September 23, 2025, The Nature Conservancy (TNC) and Brookfield Renewable jointly announced the execution of a purchase and sale agreement for the Weston, Shawmut, Hydro Kennebec, and Lockwood hydroelectric projects. TNC and its partners seek to return free-flowing conditions to the lower Kennebec River through a mix of dam decommissioning, removal, and other efforts.

These plans would render BWPH's proposals for enhancements and modifications to fish passage on the Lower Kennebec moot and warrant the withdrawal of the pending WQC applications. The plans also warrant a pause of the Federal Energy Regulatory Commission (FERC) licensing proceedings for which the WQC applications were required. BWPH intends to seek an abeyance of the licensing proceedings at FERC while TNC further develops its plans for the four projects.

2. **Uncertainty and Overburdensome Fish Passage Standards:** One of the motivating factors for proceeding with the sale of these facilities to TNC is the increasingly complex, expensive, and uncertain regulatory landscape surrounding hydroelectric operations on the Lower Kennebec River.

In its October 12, 2022 denial without prejudice of BWPH's WQC for the Shawmut Project, Maine DEP cited the then-forthcoming National Marine Fisheries Services/NOAA Fisheries Biological Opinion (BO) and FERC Environmental Impact Statement as information necessary to render an informed decision on BWPH's application. Unfortunately, even with this information available, the Department incorporated a range of proposals from the Maine Department of Marine Resources (Maine DMR) which impose overburdensome—and arguably unattainable—fish passage standards in the draft WQC issued on Thursday, October 9, 2025. These proposals are inconsistent with the BO and the FERC Environmental Impact Statement.

The numeric performance standards, infrastructure mandates, and adaptive management

obligations in the draft WQC are not only unprecedented, but they are also biologically unsupported, and lack sufficient technical justification and feasibility analysis. Further, they go far beyond any state goals described in current fishery management plans. Rather than undertake a public process to formally update the 1993 Kennebec River Resource Management Plan, Maine DMR has attempted to avoid review and scrutiny of these measures by including these requirements under cover of WQC comments.

By successfully demanding that the Department add its preferred fish passage measures to the WQCs, Maine DMR is also sidestepping its obligations to Brookfield under the 1998 Kennebec Hydro Developers Group Agreement (the KHDG Agreement). The KHDG Agreement establishes the process and timing for design and installation of fish passage at these dams. It specifically requires Maine DMR, along with the other “resource agencies”, and Brookfield to “attempt to reach consensus on the need, timing and design of permanent upstream fish passage facilities” at each of these dams. If there is no consensus (which is obviously the case here between Maine DMR and Brookfield) then the dispute is to “be handled through the FERC process.” This is exactly what happened: Maine DMR and Brookfield, along with other stakeholders and agencies, commented to FERC on issues of fish passage and FERC, in turn, issued an EIS that decides these issues. That is the end of the process, per the KHDG Agreement. By asking the Department to adopt different measures in the WQC, Maine DMR breached its contractual obligations to Brookfield. The Department’s reliance on Maine DMR’s recommendations is likewise contrary to law.

Brookfield has been and continues to be committed to implementation of safe, timely, and effective fish passage at our facilities, but fish passage measures need to be reasonable and in accord with a comprehensive fisheries management plan developed pursuant to state law. Since 2013 Brookfield has worked closely with state and federal agencies to develop fish passage proposals in accordance with the terms of the KHDG Agreement and the Endangered Species Act, and this collaboration history was reflected in the fish passage proposals included in our WQC applications.

A NOAA Fisheries’ 2023 BO estimated that BWPH’s proposed upstream and downstream fish passage improvements would cost more than \$100 million. This is in addition to the \$15 million BWPH spent installing a state-of-the-art fish lift at the Hydro Kennebec Project in 2018, but which has since sat idle due to procedural delays in allowing us to install new fish passage infrastructure at Lockwood, Shawmut, and Weston. The costs associated with the additional requirements included in the draft WQC far exceed the already extraordinary capital expenditures BWPH has proposed. They also introduce unnecessary uncertainty. Clean energy producers and businesses require predictability when making their investments.

3. **Conflict with State Statute and Rule:** The state’s own water quality standards for all rivers in Maine with water quality classification of Class A, B, or C specifically recognizes “hydroelectric power generation” as a “designated use” of the river, alongside drinking water supply, fishing, agriculture, recreation (swimming, boating), industrial process and cooling water supply, navigation, and as habitat for fish and other aquatic life (38 M.R.S. §465).

Although Brookfield has chosen to sell the Lower Kennebec River Dams, it remains the owner and operator of hydroelectric generating facilities throughout the State. The draft WQC imposes requirements that threaten the continued operation of these other hydroelectric projects—contrary to the public interest in renewable energy and contrary to the State’s own water quality classification and designated uses of many of its rivers. We encourage the Department to develop future WQCs which are technically sound, feasible, and consistent with both environmental protection and Maine’s clean energy, security, and decarbonization goals.

4. **Inadequate Time for Review and Response, Incorporation of Comments:** The timeline provided for review and comment on the draft WQC is insufficient for BWPH and other

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stakeholders to conduct a thorough technical analysis and provide meaningful feedback. The draft is a complex, multi-faceted document—which took the Department the greater part of 11 months to develop—with significant implications for project operations, compliance, and environmental outcomes. The five-business day comment period offered by the Department, while consistent with 06-096 C.M.R. ch. 2 § 17, does not allow for the necessary internal and external expert review, nor for the preparation of a comprehensive technical response.

Similarly, the Maine DEP does not have adequate time to meaningfully consider stakeholder comments and to incorporate substantive changes into the final WQC. The compressed schedule undermines the public process and risks the issuance of a final certification that does not reflect the best available science, stakeholder expertise, or the realities of project operations.

For these reasons and more, BWPH finds that withdrawal of its applications is preferable over a protracted appeal process for facilities which will be sold and require new WQCs for the new owner's decommissioning proposals.

Because BWPH is withdrawing its applications, there are no longer any "requests" before the Department. BWPH explicitly acknowledges that, in accordance with the Clean Water Act regulations and precedent interpreting those regulations¹, while the Department is no longer authorized to act on the applications because the pre-requisite requests are now absent, the Department has not waived its certification authority.

If there are any questions or comments regarding this withdrawal, please feel free to contact me by phone at (207) 755-5605 or by email at Randy.Dorman@BrookfieldRenewable.com.

Sincerely,



Randall Dorman
Manager, Compliance – New England and Rest of Country

¹ Environmental Protection Agency, Clean Water Act Section 401 Water Quality Certification Improvement Rule, 88 Fed. Reg. 66558, 66583 (Sept. 27, 2023); see, e.g., State Water Res. Control Board, Order WQ 2024-0083 (Sept. 18, 2024) (setting aside WQCs issued when there were no pending requests for certification, in light of the EPA's rule precluding certifying authorities from issuing WQCs in the absence of a currently pending request).