

Re-Classification Submission Responses

1. Waterbody Name: Androscoggin River

2. Location of proposed change in classification: **A)** From a line formed by the extension of the Bath-Brunswick boundary across Merrymeeting Bay in a northwesterly direction upstream to Worumbo dam in Lisbon Falls. **B)** From Worumbo dam to Great Falls in Lewiston/Auburn **C)** From Great Falls to Gulf Island Pond dam.

3. Write a brief statement that justifies why the waterbody should be considered for classification change: This section of the Androscoggin should be considered for an upgrade because the actual conditions exceed those of a Class C waterway and meet those of a Class B waterway nearly all the time. The Androscoggin often seems to be the forgotten river when it comes to requiring and enforcing improvements in water quality or for that matter, fish passage. It was not long ago that the river was considered one of the ten dirtiest rivers in the country (Ex 23). Water quality has improved over time however, and extensive monitoring data support this fact. Not only is it fitting and about time the old classifications are upgraded to reflect current conditions and preserve current water quality, but this is required by state and federal law. The Androscoggin deserves the respect and attention afforded other rivers in Maine.

Reasons for Reclassification to Class B:

- The image of a polluted Androscoggin River (The Dirty Lew) needs to end
- Protection of the gains from the \$55 MILLION spent since 2010 by Lewiston and Auburn on Storm Water overflow – (Ex. 24, 25)
- Protect and enhance: Fishing—Fish passage, boating, recreation
- Protect and enhance: Canoeing, Kayaking, Dressers Rips, Camping
- Protect and enhance: Greenways, bike/walk ways, river trail
- Protect and enhance: Powerfalls LA Festivals—Great Falls Lighting, Feel the Power!
- Protect and enhance: Economic opportunities
- Protect and enhance: Museum in The Streets-River Walk
- Protect and enhance: Conservation Lands: Androscoggin Land Trust-Friends of Merrymeeting Bay, Brunswick Topsham Land Trust managing thousands of acres
- DEP Sonde Readings at August low flows: 8-13-19, 8-28-19 - never below 7ppm at GIP, Great Falls, Durham boat launch (Ex 3)
- USFWS, MDIF&W have protected thousands of acres in Merrymeeting Bay Focus Area, highest value habitat with rare, endangered and threatened, plants, fish, mussels, birds, reptiles, amphibians and insects all subject to receiving waters from the Androscoggin. Much as GPA lakes shall not be polluted by tributaries, neither should the Bay be polluted by the Androscoggin. (Ex 9, 10, 11,12, 18,19)

4. State how the proposed change will affect other users of the waterbody, for example holders of wastewater or stormwater discharge permits or holders of land-development permits. Wastewater dischargers in Maine operate with massive buffers built in to their licenses. For the many years of Androscoggin data collection and compliance with Class B standards, dischargers have been conducting business as usual.

We see no adverse effect to current permit holders unless planning to substantially increase their discharges to the river in which case enhanced treatment would be likely. Our monitoring readings, with rare exceptions, meet Class B standards. Exceptions in the recent past have been limited for the most part to occasional sampling dates preceded by heavy rain events (resulting in higher bacteria) or instances of extremely high water temperature (arguably higher than permitted by law).

Elevated coliform bacteria in particular, are indicative of rain events and may reflect stormwater or wastewater discharges as well as general runoff. Combined sewage overflow or CSO events are exempt from classification limits. While under normal conditions these sources appear to be under control and within limits, during high rain events there appears to be room for improvement, as is the case nearly everywhere, at wastewater and stormwater facilities. As noted in Exhibits 24 and 25, Lewiston and Auburn have made substantial and very much appreciated gains in CSO control in recent years.

Maine's Regulations Relating to Temperature (06-096 CMR Chapter 582) 38 M.R.S.A., Sec. 343-A, 464(5) require that discharge of pollutants not raise the temperature of any river and stream above the EPA criteria for indigenous species (23°C maximum and 19°C weekly average) or 0.3°C (0.5°F) above the temperature that would naturally occur outside a mixing zone established by the Board of Environmental Protection. Pollutant is defined in statute as many things including dirt and heat. For tidal waters, discharge of pollutants may not raise the temperature more than 4°F (2.2°C) or more than 1.5°F (0.8°C) from June 1 to September 1, and may not cause the temperature of any tidal waters to exceed 85°F (29°C) at any point outside a mixing zone established by the Board of Environmental Protection.

In 2005-2006, the US Supreme Court in *SD Warren v Maine BEP* 547 U.S. 370 (2006) held that hydropower dams, because they change the nature of the river waters, are dischargers and polluters. Thus, in a dam-created impoundment when waters become heated over the maximums cited above, they violate Maine statute. When in the rare instance DO levels at a few points in the Androscoggin have been just below the Class B standard, it has been in extremely high water temperatures (i.e. 7/21/13 when water temperatures in Androscoggin impoundments were just under 26 degrees and release flows were not increased to compensate for the heat wave). This situation points to a violation of Maine statutes regarding temperature rather than a problem with classification. In other words, Classification standards cannot and should not be applied to illegal conditions.

5. Provide water quality data, if available (and source of data), that documents the attainment status of the candidate waterbody relative to the designated uses and criteria of the proposed classification.

See Exhibits 26, 27, 28, 30, 35, 36, 37 and 38. All Androscoggin sites since 2009 are VRMP approved sites. Monitoring is conducted once a month from April or May through October (since 2009 under VRMP protocols and prior to that under the Friends of Casco Bay EPA Quality Assurance Plan). Monitors take measurements of water temperature,

specific conductivity and dissolved oxygen using equipment supplied by the Department. Samples are collected for E. coli bacteria and transported to Bowdoin College for analysis by FOMB volunteers using the IDEXX Colilert system approved by EPA

Many years of monitoring data for DO and E. coli show a steady overall compliance with Class B standards (see attached geometric mean histograms, Ex. 1). Increased recreational use is a clear manifestation of water quality improvements. The public appreciates clean rivers (Ex 6, 7) and wants them to stay clean.

6. Provide a summary of known human activities in the watershed of the proposed reclassification that might jeopardize attainment of standards of the proposed classification, for example land-use altering activities, landfills, hazardous waste sites, wastewater discharges, etc.

The Androscoggin watershed has it all, from pristine shores to the full spectrum of land use activities altering both landscape and water quality. Along the proposed section there are hydropower impoundments, gravel pits, agricultural and forested lands, landfills, wastewater discharges from industries and from municipalities. On the Sabattus River, a local tributary, we know there are hazardous waste sites associated with Miller Industries and others. Very limited aquatic life assessment by the department from three locations (two in impoundments and one in free flowing habitat) in 2010 indicates benthic communities consistent with Class C waters in the silt impoundment environments and Class B in the free flowing sample site. Since the vast majority of habitat in the sections proposed for upgrade are free flowing riverine or tidal riverine, there is no justifiable aquatic life basis for denying an upgrade to Class B.

While there may be problems associated with some of these uses, they do not appear to be preventing compliance with DO and bacteria levels required from Class B waters. As mentioned earlier, **“classification is goal oriented as required by the federal Clean Water Act”**. That a land use could jeopardize compliance with the proposed classification some time in the future is irrelevant to an upgrade now, since one aim of the Clean Water Act is to use increasingly higher classifications and attainment goals to steadily improve water quality.

There is widespread municipal and citizen support for a classification upgrade to the lower Androscoggin. Past and present letters of support to date are included herein (Ex. 7).

We appreciate the opportunity to comment on this matter and submit our proposal. We also request the Department support our proposal and carry it forward to the BEP and Legislature. If we can be of further assistance in speaking for the proposal at legislative or other levels, please don't hesitate to contact us.. For the convenience of Department and legislators we have included proposed amendment language from the Bay to Worumbo and from the Bay to Gulf Island Pond Dam (Ex 2). Thank you for your efforts in this matter.