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To: Laura Paye, Hydropower Coordinator, Maine DEP
Re. Lewiston Falls Hydropower Water Quality Certificate, FERC No. 2302
Date: February 6, 2026
Via email: Laura.Paye@maine.gov

Laura,

On July 9, 2025 Brookfield White Pine Hydro (a wholly owned subsidiary of Brookfield Renewables) submitted to the Maine DEP its application for Water Quality Certification (WQC) for the Lewiston Falls Hydroelectric Project (the "Application"), which is undergoing relicensing by the Federal Energy Regulatory Commission (Commission or FERC) as FERC Project No. 2302. With the Draft and Final WQC issuance for the Lewiston Falls project scheduled for this spring sometime, please accept these Friends of Merymeeting Bay (FOMB) comments, suggestions and requests for inclusion into the record in this matter. Including the attached statement regarding FOMB's standing in this matter (Attachment A).

As you know, the Maine DEP, under its delegated Clean Water Act authority must either (1) deny the Application, (2) approve the WQC, or (3) approve the WQC with one or more conditions upon determining the project in question meets Maine water quality standards. For the reasons set forth more fully below, if the Maine DEP approves the Application, FOMB is requesting the Maine DEP issue a conditional WQC.

Concurrent with the Application, and with all other FERC licensing and WQC proceedings in the state of Maine, is a separate regulatory, administrative and legislative process know by statute as the "Triennial Review". Its stated purpose is to comprehensively evaluate Maine's water bodies and their water quality classifications to either maintain or upgrade the classifications of those waters. The Maine DEP makes a recommendation to the Board of Environmental Protection (BEP"), which may or may not adopt that recommendation, and the Board in turn makes a recommendation to the state legislature who also may or may not adopt the Board's recommendation. There is also the potential for appellate litigation pertaining to the final agency actions in this process. As a result there are several avenues upon which the classification of a water body – subject to Manie DEP WQC water quality standards – can be upgraded to a higher classification. Only the legislature has the authority to change classifications.

Once determined, these water quality classifications form the basis of Maine DEP's water quality analysis of the WQC and for the purposes of that analysis are determined by Maine DEP as of the date the WQC application is filed. As a result of these two separate but related processes, the issue then becomes what course of action should occur from a compliance or enforcement standpoint should the water quality classification change during the application analysis or, in the

event a 30-50 year FERC license is issued, during that FERC license period. FOMB asserts that as a matter of policy Maine DEP should strongly consider and implement as a matter of course a condition in WQCs to accommodate that potential change in classification as the Triennial Review will occur by statute once every three years and thus could occur for example up to thirteen time during a new FERC license period.

With respect to the Lewiston Falls WQC this issue has become particularly acute, as two separate NGO proposals recommended that segments of the Lower Androscoggin in or near Brookfield's Project Area be upgraded from Class C to Class B. Neither proposal was recommended to the BEP by the Maine DEP and the Board did not recommend either proposal to the legislature. The Board did however express some ambivalence to the legislature regarding the upgrade effort on the section proposed by Grow L+A and encouraged the Environment & Natural Resources Committee members to feel free in considering this proposed upgrade. The legislature is considering the matter presently and has heard a presentation by the Maine DEP of its Triennial Review Report and will be taking public comment on proposed, related legislation soon.

This is not the first time this issue has surfaced with respect to the Androscoggin River's water quality, and it is not likely to be the last. As one outcome of the previous Triennial Review (held during 2021), the lowest section of Androscoggin River from Worumbo dam to its mouth in Merrymeeting Bay was reclassified by the legislature from C to B despite DEP not recommending an upgrade. Noteworthy, and discussed more fully below, is that as with the current Grow L+A proposal now before the legislature, which FOMB is supporting, like the previous upgrade that passed, there is again excellent actual field data showing Class B attainment. With respect to both the prior and present legislative processes, any new (non-emergency) legislation passed into law however does not technically go into effect until 90 days after the end of legislative session. This prior reclassification bill was flexible in approach, including as a reclassification option the entire section from Merrymeeting Bay to Gulf Island Pond dam. DEP made Brookfield White Pine Hydro aware of this in a letter of January 3, 2022¹ since Brookfield was beginning their relicensing process for the Lewiston Falls facility. Thus, Brookfield has been aware for a long time that their Project Area could receive a classification upgrade.

At the same time as the last Triennial bill was working its way through the legislature, Topsham Hydro's Pejepscot Hydroelectric project was in the latter stages of their FERC relicensing and the DEP was getting ready to issue Pejepscot's WQC. The final upgrade bill covering the only lowest river section (because we did not at the time have robust data for the upper section) was

¹ MDEP is aware of a proposed bill to the State Legislature which is an act to reclassify a section of the Androscoggin River to Class B4. The proposed legislation may impact the reach of the Androscoggin River in which the Lewiston Falls Project resides and may cause a change in water quality standards. Further, a proposal for upgrade to Class B is currently before the Board of Environmental Protection, which views the proposed change favorably. Therefore, classification of the Androscoggin River may change during the relicensing of the Lewiston Falls Project, and so MDEP recommends that, when conducting the studies outlined below, BWPH consider the results of the water quality studies in accordance with both Class C and Class B Water Quality Standards and water quality classifications. *See:* Kathy Howatt, former DEP Hydropower Coordinator in January 3, 2022 letter to Luke Anderson BWPH regarding FERC No. 2302 –In Lewiston Falls Hydroelectric Project Pre-Application Document Comments on Study Request Submission.

passed by the legislature and signed by the Governor towards the end of session now reclassifying this reach to Class B.

Unfortunately, during the interval between end of legislative session and termination of the 90-day waiting period, the DEP issued the Pejepscot WQC for Class C. The effect of this would have been to negate the legislative intent in upgrading this section of river in which the Pejepscot project area was a large part. DEP's then hydropower coordinator refused to either alter the draft WQC classification from C to B or insert some simple conditional language allowing for upgrade compliance when it went into effect.

DEP's refusal to accommodate legislative intent and the goals of Maine's water quality statutes forced FOMB and other appellants Grow L+A; Downeast Salmon Federation ("DSF"); Native Fish Coalition ("NFC"), Maine Chapter; Friends of Sebago Lake ("FOSL") and the Maine Council of Trout Unlimited (TU) ("MCTU") to appeal the Department decision back to the BEP where, ultimately we were successful when the Board agreed to a change in the WQC language to accommodate the legislative upgrade of the segment in question from Worumbo dam to Merrymeeting Bay to class B. DEP's refusal to accommodate improved water quality would have violated antidegradation statutes and held this reach hostage to lower water quality standards for the next 40 years. This appeal effort happened at great expense and time for all involved and was entirely unnecessary.

We submit these comments in hopes of avoiding a similar scenario now and into the future.

As you know, an upgrade reclassification proposed was submitted this Triennial by Grow L+A for the next upriver section of lower Androscoggin from Worumbo dam to Gulf Island Pond dam. Not only do very high water quality data gathered by FOMB in 2025, much of it during exceptional drought condition, support the Class B proposal 100% but other historical data submitted during the Triennial and going back to the 1990's largely support Class B. While the Department again refused to recommend an upgrade and this time the BEP concurred, there is strong interest in the legislature to introduce a reclassification amendment of the Department's Triennial bill, LD 2187 that would upgrade this section of the Androscoggin. Unfortunately, in the absence of a WQC condition accommodating changing water quality classification, it looks very much like we may again see a timely and potentially conflicting intersection in processes between Triennial Review reclassification and issuance of a WQC, this time for Lewiston Falls.

DEP statutory changes called for in LD 2187 such as allowable excursions in dissolved oxygen, could if passed, help make classification upgrades more easily attainable in the future. So, whether the current Androscoggin proposed upgrade gets legs and moves through the legislative process this session becoming law or whether it comes back in three years, conflicts with a static WQC will persist. This problem of improved water quality held hostage to an inflexible 40 year WQC is not necessarily limited to the Androscoggin and could happen on any number of water bodies subject to FERC licensing.

State and federal water quality goals and statutes call for continued improvement of water quality without any degradation. It is against the best interests of the state and contrary to water quality goals and laws to let a rigid WQC override improving water quality for upwards of half a

century. Not only that but such a practice is absurd since it does not allow easy adjustments for improved water quality or technology changes that may have positive effects on efficiency, fish passage, water quality or climate change. Simple **adaptive management conditional language in all WQC's should in fact be standard boiler plate.**

For example, the state of Colorado's Water Quality Control Commission's regulations (5-CCR-1002.82 et. seq.) explicitly provides for a [Conditional Certification](#) stating at Section 82.5 (A) (3): *"The Division may condition water quality certification on adaptive management to address changes in the Project's predicted impacts and/or future changes in applicable water quality classifications and standards. The Division, as a part of the conditional certification, may require water quality monitoring, based on site-specific circumstances, to ensure that BMPs are performing as designed and that the Project complies with all applicable conditions."*

Similarly, Washington State's [WQC Guidance Manual Water Quality Certifications for Existing Hydropower Dams](#) (Publication #04-10-022, May 2005) states at page 20 that WQC General Conditions include: *"Conditions are subject to changes based on new relevant state or federal laws that reflect better understanding of how to protect beneficial uses."* and *"Conditions are subject to changes based on new information as may be necessary to meet water quality standards, TMDLs, and other applicable requirements of state law."* Washington' guidance further states at page 49 that an integrated aquatic species management plan should be designed and implemented and that the plan should include: *"Provisions for adaptive management as new technologies are developed and/or conditions change"*.

Finally, the Clean Water Act itself in Section 401(d) delegates to states the authority to include conditions in a federal license or permit certification to ensure that a project complies with effluent limitations and *"any other appropriate requirement of State law"*. This broad language is often used to enforce stricter future standards implanted at the state level.

FOMB, Grow L+A and other Androscoggin reclassification supporters² request the Department add a condition to the Lewiston Falls WQC requiring without any formal reopener actions or additional FERC approvals, compliance with Class B standards when and if such a reclassification should occur. Our proposed WQC conditional provision is simple and universal:

"When and if a state water quality reclassification is upgraded by the Maine legislature becoming law, and inclusive of the water body of which licensee's project area is a part; licensee shall comply with the new classification requirements."

And where, as here, given the history of changing and upgraded water quality classification with respect to the Androscoggin and the water bodies affected by the Lewiston Falls WQC and FERC license the following conditional provision is requested:

² Cities/towns of Brunswick, Topsham, Durham, Lewiston & Auburn; Grow L+A, Friends of Merrymeeting Bay, Merrymeeting Bay Trout Unlimited, Natural Resources of Maine, Androscoggin Watershed Council, Atlantic Salmon Federation, Trout Unlimited-Maine Council, Downeast Salmon Federation, Friends of Casco Bay, Native Fish Coalition, Friends of Sebago Lake, Androscoggin Land Trust, Brunswick-Topsham Land Trust, Conservation Law Foundation

Given the likelihood and possibility that water bodies within the project area may receive an upgraded water quality classification during the life of the renewed FERC license, this condition provides adaptive management flexibility ensuring the license and WQC holder will comply with improved federal or state water quality criteria if and when they may occur. The license holder shall meet current Class C water quality standards until such time as a classification upgrade to B may occur at which time the upgraded conditions shall be met as soon as reasonably practicable but no later than one year following the reclassification change.

The key principle is that any flexibility or condition in the WQC must be tied to ensuring compliance with applicable water quality requirements as defined by federal or state law. The flexibility in the language allows for adaptive management and response to regulatory updates with minimal additional regulatory processes.

Thank you for your consideration,

A handwritten signature in black ink, appearing to read 'Ed Friedman', with a long horizontal flourish extending to the right.

Ed Friedman, Chair
Friends of Merrymeeting Bay
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edfomb@comcast.net

C.C.
Scott Sells
Peter Rubins
Steve Heinz
Luke Frankel
Luke Anderson

Attachment A

FOMB Statement of Standing – 2/6/2026.

Friends of Merrymeeting Bay (FOMB) is a non-profit Maine corporation formed in 1975 with over 450 members. FOMB is dedicated to preserving the ecological, aesthetic, historical, recreational, and commercial values of Maine's Merrymeeting Bay and its watershed, including the Androscoggin River. FOMB accomplishes its mission through research, advocacy, land conservation, education, and litigation. FOMB has a long history of affirmed and approved legal standing before state and federal courts and FERC in matters pertaining to Merrymeeting Bay and its watershed including of course the Androscoggin River.

With respect to Maine DEP's water quality Triennial Review and specifically the proposed reclassification from Class C to Class B of waters in and proximal to the Lewiston Falls Water Quality Certification Project Area now before the state legislature, FOMB members collected and analyzed actual field data in such waters using their own financial, organizational and material resources under established state and federal protocols to show Class B attainment. Results were shared with MDEP as the sampling season progressed.

FOMB has members who have been very active in efforts to preserve Atlantic salmon and water quality in the Androscoggin River. For example, Plaintiffs' members have successfully petitioned and sued the Services to include the salmon population of the Kennebec (part of the same Merrymeeting Bay SHRU as the Androscoggin) in the GOM DPS, have for years advocated before federal and state agencies and courts for better salmon passage at Androscoggin and Kennebec dams, and have regularly monitored water quality of the Androscoggin, Kennebec and smaller tributaries since 1999 including at times within the Lewiston Falls Project Area. FOMB members have also advocated for better shad passage at Brunswick and have conducted shad counts for several years below Brookfield's Brunswick dam which adversely impact upstream and downstream fish passage on the Androscoggin including through the Project Area. FOMB members have submitted numerous Androscoggin River upgrade proposals over the years and organized and implemented the intensive data gathering effort supporting the current reclassification proposal.

FOMB has members who are interested in maintaining the natural biodiversity of the Androscoggin River and its environs. FOMB has members who live near, own property near, and recreate on and near the Androscoggin River and Merrymeeting Bay. FOMB has members who, among other activities, kayak on, canoe on, fish in, walk and hike along, lead guided trips on, and enjoy observing and photographing aquatic life and wildlife in and around the Androscoggin River and Merrymeeting Bay. Their enjoyment of these activities is impaired by low water quality, poor flows and the diminution of the size and health of the

Atlantic salmon, shad and river herring populations in the Androscoggin River. FOMB members have for many years coordinated and implemented aerial bald eagle nest surveys and chick sampling/banding on the Androscoggin River above, within and below the Lewiston Project Area.

FOMB members enjoy and in many ways receive great value from the presence of wild Atlantic salmon and shad and want the numbers of wild salmon and other diadromous species in the Androscoggin River to be as plentiful as possible. They also want the Androscoggin River population of salmon to eventually recover to the point of no longer being endangered. The dearth of Atlantic salmon, shad and other diadromous species in the river diminishes FOMB members' use and enjoyment of the river as well as diminishing the river's ecological value and integrity. If Atlantic salmon were populous enough in the Androscoggin River, for which the Project Area is considered Critical Habitat, FOMB members would fish for and eat that salmon (as well as shad). They cannot do so now because the salmon are endangered and the river between Brunswick and Pejepscot is in non-attainment (4-C) for shad because of Brunswick's fish passage (Note: this section of river received a previous Class B upgrade despite the Category 4-C non-attainment for shad presence). Recovery of Atlantic salmon and shad in the rivers would increase economic opportunities for FOMB members because there would be a greater demand for guided trips they could lead for paddling, fishing, fish-spotting, bird watching or photography, and for other purposes.

Cleaner water means a healthier river for everything in and associated with it. For instance a cleaner river means healthier fish populations which then provide a better food supply for bald eagles, osprey, great blue herons and kingfishers all of which provide bird watching opportunities for FOMB members and other river users. Mammal populations like river otter, muskrat, beaver, bear, mink and deer also profit from a cleaner Androscoggin River.

When actual river quality (as in the case of the Androscoggin) surpasses that of its state classification this allows room to pollute while still meeting the existing lower classification. If this pollution occurs, it technically violates antidegradation statutes for which compliance is unfortunately regulated primarily through classification. If a WQC does not allow for a classification upgrade, it is allowing for room to pollute as well as creating a ceiling on possible upgrades. Such a scenario on the Androscoggin creates multiple harms (i.e. aesthetic, economic and culinary) to wildlife and to FOMB as an organization and to its members who are aggrieved and can suffer particularized injuries; for the reasons stated above. Easy to implement adaptive management conditions in a WQC allowing for improvements in water quality with subsequent licensee compliance (if not already meeting standards for the classification upgrade) prevent such harms.