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July 9, 2010

Dear Sirs:

This letter is being sent to you pursuant to the citizens suit provision of the United States Clean Water Act to provide you 60 days notice of our intent to sue your companies under the Clean Water Act for violating the terms and conditions of your State of Maine Water Quality Certification Orders dated August 3, 1998 for the Weston, Shawmut, Hydro Kennebec and Lockwood Dams on the Kennebec River, Maine. 33 U.S.C. § 1365(b).

The Maine Water Quality Certification Orders for these dams state:

"C. INTERIM DOWNSTREAM FISH PASSAGE

The applicant shall continue and where needed improve interim operational measures to diminish entrainment, allow downstream passage, and eliminate significant injury or mortality to out-migrating anadromous fish, in accordance with the terms of the KHDG Settlement Agreement."

The relevant portion of the KHDG Settlement Agreement states:

"In the event that adult shad and/or adult Atlantic salmon begin to inhabit the impoundment above the project, and to the extent that Licensee desires to achieve interim downstream passage of out-migrating adult Atlantic salmon and/or adult shad by means of passage through turbine(s), Licensee must first demonstrate, through site-specific quantitative studies designed and conducted in consultation with the resource agencies, that passage through turbine(s) will not result in significant injury and/or mortality (immediate or delayed)."

Records show that since 2006, adult Atlantic salmon have been annually transported above these dams to the Sandy River via the fishtrap at the Lockwood Dam. Records show that 24 adult Atlantic salmon were transported from the Lockwood Dam to the Sandy River in 2009 and 4 have been passed thus far in 2010. (http://www.maine.gov/asc/research/trap_count_stats.shtml)

Records show that in 2010 at least 38 adult American shad were released above the Hydro Kennebec and Lockwood Dams (http://www.maine.gov/dmr/searunfish/kennebec/index.htm).

The KHDG Settlement Agreement states that before allowing adult Atlantic salmon and adult American shad to pass through your dam turbines, you must "first demonstrate, through site-specific quantitative studies designed and conducted in consultation with the resource agencies, that passage through turbine(s) will not result in significant injury and/or mortality (immediate or delayed)."

Records show that your companies have not conducted "site-specific quantitative studies designed and conducted in consultation with the resource agencies, that passage through turbine(s) will not result in significant injury and/or mortality (immediate or delayed)" to adult Atlantic salmon and American shad.

Records show that adult Atlantic salmon and American shad migrating down the Kennebec River now have access to the turbines of your dams.

Records show that you have failed to show, through site-specific studies approved by state and federal fisheries agencies, that any "interim" measures you have deployed to guide adult salmon and shad away from your turbines actually keep adult salmon and shad from entering the turbines of your dams.

Records show that you have not installed protective barriers at the turbine intakes of your dams which prevent adult Atlantic salmon and American shad from swimming through the turbines. In recent years the owners of the American Tissue Dam on Cobbosseecontee Stream in Gardiner, Maine and the Benton Falls Dam on the Sebasticook River in Benton, Maine have installed such barriers at their turbine intakes at minimal cost. Prior to removal of the Fort Halifax Dam on the Sebasticook River in Winslow, Maine, FPL Energy Hydro and its predecessor, Central Maine Power, installed a steel punch plate across the turbine intakes of the Fort Halifax Dam to prevent fish from gaining access to the project turbines. This barrier was erected voluntarily by FPL Energy at minimal cost. Experience at these dams shows that installation of these barriers at the turbine intakes has reduced turbine-induced mortality of fish at these dams to near zero with minimal effect on generation.

During the period 2001 to 2006 when the Union Gas Dam on Messalonskee Stream in Waterville was breached and its impoundment was dewatered, it was made obvious by visual inspection that the turbine intakes for the dam were completely covered by an iron screen of approx. 0.75 - 1 inch clear space which extended from the top to the bottom of the dam structure and into the stream sediment. This iron screen had been in place at the dam for many decades and upon inspection from 2001-2006 the screen was in very good condition. This is the type of permanent screen which would keep adult Atlantic salmon from gaining access to the turbines of the Weston, Shawmut, Hydro Kennebec and Lockwood Dams.

Since 2006, Madison Paper Industries has annually deployed a 10 foot deep, flexible, Kevlar "fish boom" at the Hydro Kennebec Dam to divert fish to the bypass sluice and to keep fish from entering the project turbines. However, records show that high river flows have prevented installation of this boom until no earlier than May 19th of each year since 2006. These installation dates are past the period when adult Atlantic salmon transported above the dams the previous summer would be expected to migrate downstream past the dams to the Atlantic Ocean in the spring. This migration period begins in April, with ice-out and spring snowmelt run-off, and continues through May and ends in early June.

The flexible Kevlar fish boom at the Hydro Kennebec Dam does not prevent adult Atlantic salmon from entering the project turbines during their April and May migration period because of the admitted difficulty in deploying the Kevlar boom until late May due to high river flows. The annual installation date of the Kevlar fish boom at Hydro Kennebec since 2006-2009 shows this device is not able to allow adult Atlantic salmon kelts to avoid the project turbines during their spring

downstream migration in the Kennebec River.

The water quality certifications make it clear that, absent a site-specific study to the contrary, turbine passage for adult salmon is presumed unsafe. We do not believe site-specific studies would show turbine passage to be safe. The United States Fish and Wildlife Service ("USFWS") and the National Marine Fisheries Service ("NMFS") emphasized the danger of turbines when they listed the Kennebec River Atlantic salmon as endangered: "Dams are known to typically injure or kill between 10 and 30 percent of all fish entrained at turbines [cite omitted]. With rivers containing multiple hydropower dams, these cumulative losses could compromise entire year classes of Atlantic salmon." 74 Fed. Reg. 29344, 29362 (June 19, 2009). USFWS and NMFS also stated:

> Dams also directly kill and injure a significant number of salmon on both upstream and downstream migrations. Injury and mortality due to dams occurs at the smolt and adult life stages. These older life stages are particularly important from a demographic perspective…since slight changes in survival rates at older life stages can drive demographic trends.

74 Fed.Reg. at 29367.

The purpose of filing a 60-day notice under the U.S. Clean Water Act is to create the opportunity for the parties to work together to resolve the alleged violations without litigation. The simplest resolution for this issue would be for your companies to immediately install protective barriers at the turbine intakes of your dams which prevent adult Atlantic salmon and American shad from having any access to the turbines of your dams during their downstream migration. This is a technologically feasible solution which can be done at minimal expense as compared with the dollar revenues these projects annually generate. If you or your staff would like to discuss potential resolutions during the next 60 days, please call me at 622-1003 or email me at info@dougwatts.com.

Thank you for your attention to this matter.

Sincerely,

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