



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
ACTING COMMISSIONER

MEMORANDUM

TO: Board of Environmental Protection

FROM: Dana Murch, Dams & Hydro Supervisor
Bureau of Land & Water Quality

DATE: February 2, 2006

RE: **Petitions for Revocation, Modification or Suspension of Permits and Water Quality Certifications for the Brunswick, Pejepscot, Worumbo, Lewiston Falls, Upper Androscoggin, Gulf Island-Deer Rips, Riley-Jay-Livermore, Lower Baker Mill, Upper Barker Mill, Hackett Mills, and Marcal Hydro Projects**

STATUTORY AND REGULATORY REFERENCES

State law, at 38 MRSA Section 341-D(3), provides that, after written notice and opportunity for hearing, the Board may modify in whole or in part any license, or may issue an order prescribing necessary corrective action, or may act in accordance with the Maine Administrative Procedure Act to revoke or suspend a license, whenever the Board finds that any one of seven specified criteria are met

Section 27 of the DEP's Chapter 2 Rules for the Processing of Applications and Other Administrative Matters (06-096 CMR 2) provides that any person may petition the Board to revoke, modify or suspend a license and sets forth the procedure for the Board to consider and act on any such petition. After notice and opportunity for the petitioner and the licensee to be heard, the Board shall dismiss the petition or schedule a hearing on the petition

STANDARD TO BE APPLIED

The Board may only modify, or take such other actions as are listed in Chapter 2, Section 27, after a hearing. Whether to dismiss or proceed to hearing is discretionary with the Board. Factors to consider in exercising that discretion include whether the petition describes a sufficient factual basis that, if proven at a hearing, would support the requested action by the Board, with reference to the standards listed in Section 27, A through G. The Board must also consider whether there are any legal impediments to the Board taking the requested action.

PROJECT LOCATIONS

The Brunswick, Pejepscot, Worumbo, Lewiston Falls, Upper Androscoggin, Gulf Island-Deer Rips, and Riley-Jay-Livermore Hydro Projects are located on the Androscoggin River in the municipalities of Brunswick, Topsham, Lisbon, Durham, Lewiston, Auburn, Turner, Greene, Leeds, Livermore, Livermore Falls, Canton, and Jay

The Lower Barker Mill, Upper Barker Mill, Hackett Mills, and Marcal Hydro Projects are located on the Little Androscoggin River in the municipalities of Auburn, Poland, Minot, and Mechanic Falls

PROJECT PERMITS/CERTIFICATIONS/LICENSES

Except as discussed below, all of identified dams are currently operating pursuant to Maine Waterway Development and Conservation Act Permits and/or Water Quality Certifications that set forth various conditions for the construction and/or operation of these projects. In some cases, these conditions approve or require the installation of anadromous fish passage facilities (e.g., the Brunswick, Pejepscot, and Worumbo projects). In other cases, these conditions include a reopener for the future installation of fish passage facilities for specific anadromous fish species (e.g., the Lewiston Falls, Gulf Island-Deer Rips, Riley-Jay-Livermore, Otis, Barker Mill Upper, Hackett Mills, and Marcal projects). Finally, in one case, these conditions do not require any anadromous fish passage (e.g., the Upper Androscoggin project). None of these regulatory actions include specific provisions for passage for American eels. Except as discussed below, all of the identified projects are also currently operating with licenses issued by the Federal Energy Regulatory Commission that incorporate the terms of the DEP permits and/or certification.

There is no permit or water quality certification currently in effect for the Upper Androscoggin Project.

On September 21, 2005, the DEP approved water quality certification for the Gulf Island-Deer Rips Hydro Project. This action has been appealed to the Board and has not yet been incorporated in a new FERC license for the project.

PETITIONS

Friends of Merrymeeting Bay has filed a petition requesting that the Board revoke, modify or suspend the Maine hydropower permits and water quality certifications for the Brunswick, Pejepscot, Worumbo, Lewiston Falls, Upper Androscoggin, and Gulf Island-Deer Rips Hydro Projects on the Androscoggin River to provide for immediate safe upstream and downstream passage for American eel and, within the scope of their historic range, for American shad, blueback herring, alewife, and Atlantic salmon.

Douglas H Watts has filed a petition requesting that the Board modify the water quality certifications issued for the same projects as well as for the Livermore, Riley and Jay Projects on the Androscoggin River and the Lower Barker Mill, Upper Barker Mill, Hackett Mills, and Marcal Hydro Projects on the Little Androscoggin River to provide immediate safe and effective upstream and downstream passage for American eel Douglas H Watts also requests that the Board modify the water quality certifications issued for the Brunswick, Pejepscot and Worumbo Projects to require safe passage for sea lamprey

Petitioners contend that four of the criteria set forth for the revocation, modification, or suspension of a license are met Specifically, the petitioners contend that:

- The licensed activities pose a threat to human health or the environment,
- The licenses fail to include standards or limitations legally required on the date of issuance,
- There have been changes in conditions or circumstances that require revocation, suspension or a temporary or permanent modification of the terms of the licenses, and
- The licensees have violated laws administered by the Department

STATEMENT OF ISSUE BEFORE THE BOARD

Whether there is a sufficient basis to support scheduling a public hearing on the petitions to revoke, modify or suspend the permits and/or water quality certifications previously issued for the Brunswick, Pejepscot, Worumbo, Lewiston Falls, Upper Androscoggin, Gulf Island-Deer Rips, Riley-Jay-Livermore, Lower Barker Mill, Upper Barker Mill, Hackett Mills, or Marcal Hydro Projects?

DEPARTMENT RECOMMENDATIONS

After consideration of the Petitioners' arguments and a review of the agency record for the projects at issue, the Department recommends that

- The petition of Friends of Merrymeeting Bay to revoke, modify or suspend the permits and/or water quality certifications for the Brunswick, Pejepscot, Worumbo, Lewiston Falls, Upper Androscoggin, and Gulf Island-Deer Rips Hydro Projects be dismissed, and
- The petition of Douglas H Watts to revoke, modify or suspend the permits and/or water quality certifications for the Brunswick, Pejepscot, Worumbo, Lewiston Falls, Upper Androscoggin, Gulf Island-Deer Rips, Riley-Jay-Livermore, Lower Barker Mill, Upper Barker Mill, Hackett Mills, and Marcal Hydro Projects be dismissed

LIST OF EXHIBITS

Page Exhibit

- ___ Location map

- ___ Summary of eel/anadromous fish passage facilities/requirements for Androscoggin River dams and Little Androscoggin River dams

- ___ Draft Board Order dismissing petitions

- ___ Petition of Friends of Merrymeeting Bay

- ___ Petition of Douglas H Watts

- ___ Response to Petitions Miller Hydro Group

- ___ Response to Petitions Topsham Hydro Partners

- ___ Response to Petitions FPL Energy Hydro Maine LLC

- ___ Response to Petitions City of Lewiston

- ___ Response to Petitions International Paper Company

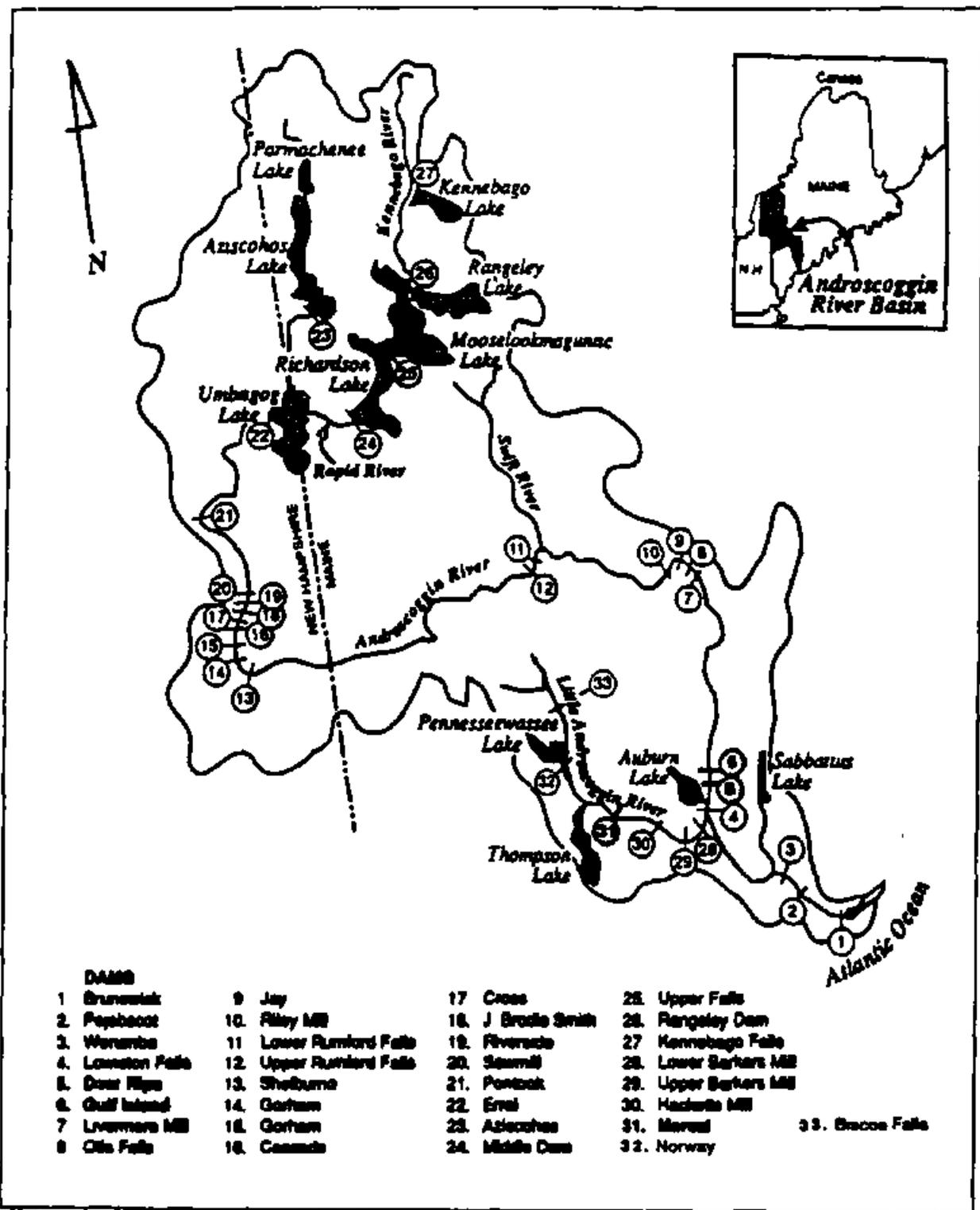
- ___ Response to Petitions Rumford Paper Company

- ___ Response to Petitions Ridgewood Maine Hydro LLC

- ___ Response to Petitions Hackett Mills Hydro Associates

ESTIMATED TIME OF PRESENTATION 2 hours

LOCATION MAP



**SUMMARY OF EEL/ANADROMOUS FISH PASSAGE
FACILITIES/REQUIREMENTS FOR ANDROSCOGGIN RIVER DAMS
AND LITTLE ANDROSCOGGIN RIVER DAMS**

**SUMMARY OF EEL/FISH PASSAGE FACILITIES/REQUIREMENTS
FOR DAMS ON THE ANDROSCOGGIN RIVER**

February 2, 2006

Project	Eels	Anadromous Fish
Brunswick	No specific upstream or downstream eel passage facilities or operational measures	Permanent upstream (vertical slot fishway) and downstream fish passage facilities installed in 1983 ①
Pejepscot	No specific upstream or downstream eel passage facilities or operational measures	Permanent upstream (lift) and downstream fish passage facilities installed in 1988
Worumbo	No specific upstream or downstream eel passage facilities or operational measures	Permanent upstream (lift) and downstream fish passage facilities installed in 1989
Lewiston Falls	No specific upstream or downstream eel passage facilities or operational measures	Reopener for passage facilities for anadromous fish upon request from DMR or Atlantic Salmon Commission ②
Upper Androscoggin③	No specific upstream or downstream eel passage facilities or operational measures	No requirements for passage for any anadromous fish
Gulf Island-Deer Rips	No specific upstream or downstream eel passage facilities or operational measures	Reopener for passage facilities for Atlantic salmon upon request from the Atlantic Salmon Commission
Riley-Jay-Livermore	No specific upstream or downstream eel passage facilities or operational measures	Reopener for passage facilities for Atlantic salmon upon request from the Atlantic Salmon Commission
Otis④	No specific upstream or downstream eel passage facilities or operational measures	Reopener for passage facilities for Atlantic salmon upon request from the Atlantic Salmon Commission
Rumford Falls⑤	No specific upstream or downstream eel passage facilities or operational measures	No requirements for passage for any anadromous fish

① Sea Lamprey are currently excluded from passage above the Brunswick Dam by the Department of Marine Resources

② Historically, the range of Atlantic salmon was to Rumford Falls, but the Great Falls (Lewiston Falls) presented a barrier to other sea-run fish (e.g., alewives and American shad)

③ The Upper Androscoggin Project is located within the Lewiston Canal System

④ The Otis Project is not subject to the pending petitions for revocation, modification or suspension

⑤ The Rumford Falls Project not subject to the pending petitions for revocation, modification or suspension

**SUMMARY OF EEL/FISH PASSAGE FACILITIES/REQUIREMENTS
FOR DAMS ON THE LITTLE ANDROSCOGGIN RIVER^①**

February 2, 2006

Project	Eels	Anadromous Fish
Barker Mill Lower	No specific upstream or downstream eel passage facilities or operational measures	Permanent downstream fish passage facilities installed No requirements for upstream passage for any anadromous fish
Barker Mill Upper	No specific upstream or downstream eel passage facilities or operational measures	Permanent downstream fish passage facilities installed Reopener for upstream passage facilities for anadromous fish upon request from DMR
Hackett Mills	No specific upstream or downstream eel passage facilities or operational measures	Permanent downstream fish passage facilities installed Reopener for upstream passage facilities for anadromous fish upon request from DMR
Marcal	No specific upstream or downstream eel passage facilities or operational measures	Permanent downstream fish passage facilities installed Reopener for upstream passage facilities for anadromous fish upon request from DMR or Atlantic Salmon Commission

① This summary only includes those dams on the Little Androscoggin River that are addressed in the pending petitions for revocation, modification or suspension

Prepared by Maine DEP

Draft Department Recommendation to be send under separate cover

Draft Board Order Denying Petitions