

STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

and

STATE OF MAINE  
LAND USE PLANNING COMMISSION

IN THE MATTER OF

CENTRAL MAINE POWER COMPANY  
Application for Site Location of Development  
Act permit and Natural Resources Protection  
Act permit for the New England Clean Energy  
Connect (“NECEC”)

L-27625-26- A-N  
L-27625-TB-B-N  
L-27625-2C-C-N  
L-27625-VP-D-N  
L-27625-IW-E-N

SITE LAW CERTIFICATION SLC-9

SURREBUTTAL TESTIMONY OF GROUP  
4 WITNESS Dr. ARAM J.K. CALHOUN

April 19, 2019

**Introduction**

This surrebuttal testimony is in response to rebuttal testimony of Gary Emond. Throughout Mr. Emond’s rebuttal, he provides speculation in place of fact. He bases his statements on the survey work completed more than 10 years ago described in the TRC consultant position paper for the Maine Power Reliability Project (MPRP) he attached to his rebuttal testimony (Position Paper on the Presence of Significant Vernal Pools in or Adjacent to Transmission Line Corridors, TRC Engineers, LLC, March 2009). I will provide some of the most glaring examples of his overreaching statements and my responses to them below.

## **Responses to Mr. Emond's unsupported claims about vernal pools**

On page 5 of his testimony Mr. Emond asserts that: "Constructing and maintaining transmission line corridors does not negatively affect vernal pool hydroperiod<sup>1</sup>." Mr. Emond cites no evidence or reference for this statement. TRC did not study hydroperiod in the pools they surveyed. In fact, vernal pool hydrology is very sensitive to disturbances in vegetation cover. We have documented responses through peer-reviewed studies showing complex interactions with both surface and groundwater and amount of light exposure resulting from canopy removal (Cohen et al.2016; Calhoun et al. 2017).

Also on page 5 of his testimony, Mr. Emond asserts that: "The early successional habitat associated with transmission line corridors is permeable to amphibian migration." The TRC position paper Mr. Emond cites has no data on the movement patterns of adult and juvenile amphibians to and from breeding pools to terrestrial activity areas. Research at the University of Maine, through my lab and collaborations with Dr. Malcolm Hunter's lab, has rigorously shown the negative effect clear cuts and scrubby vegetation have on emigration at all life stages for amphibians. On Page 13 of the TRC position paper Mr. Emond cites in his testimony, TRC cites a publication on salamander crossings on Rhode Island golf courses conducted by a colleague of mine as proof that utility rights of way (ROW) will not pose an issue for wood frog and spotted salamander emigration. TRC missed the point of the paper by Montieth and Paton, 2006. The question was: Will salamanders cross golf course if they have to. Yes, some of them, some of the time. However, the take-home message of the paper is this:

Spotted Salamanders exhibited distinct preferences for terrestrial habitats by avoiding fairways and selecting forested uplands and forested wetlands... We documented adult Spotted Salamanders crossing fairways to adjacent forest patches; thus, fairways were not a dispersal barrier. Compared to random points, adult Spotted Salamanders selected cool microhabitats with greater leaf litter depth, more coarse woody debris, more canopy cover, less herbaceous cover,

---

<sup>1</sup> Hydroperiod refers to the period of time in which a vernal pool is filled with water

and high densities of vertical and horizontal small mammal burrows. These results suggest that maintaining extensive upland and wetland forested habitats near breeding ponds, with significant amounts of deep leaf litter, coarse woody debris, and high small mammal densities will help sustain Spotted Salamanders (Montieth and Paton 2006).

A cleared ROW, such as the Central Maine Power (CMP) transmission corridor, will not do these things.

Furthermore, other peer-reviewed research contradicts Mr. Emond's assertion that transmission corridors are permeable to amphibian movement. The seminal power line study and edge effect study on wood frogs in Maine was published in highly respected peer-reviewed journals (deMaynadier and Hunter 1998 and 1999; Dr. deMaynadier currently works at the Maine Department of Inland Fisheries and Wildlife (IFW)). Since Mr. Emond did not address the findings of this research, I provide an excerpt from one abstract with the key relevant findings:

For amphibians that breed in temporary pools, juvenile emigration is an important life-history movement linking the aquatic habitat of larvae to the surrounding upland habitats occupied by maturing animals and adults. Among natural populations, the abundance of juveniles and adults of both species [wood frogs and spotted salamanders] declined sharply across a gradient running from relatively mature forest-interior habitat (70-90 yr old) to recently clear cut habitat (2-11 yr old). Similarly, in the **power line experiment**, juvenile wood frogs showed an emigration preference for closed-canopy habitat immediately upon metamorphosis, with the highest capture rates occurring in microhabitats characterized by dense foliage in both the understory and canopy layers (deMaynadier and Hunter 1998).

The key conclusion of the research of deMaynadier and Hunter's work is that edges such as transmission lines and clear cuts are stressors for pool amphibians at all life stages (deMaynadier and Hunter 1999). Multiple stressors lead to lower fitness and more vulnerable populations. Fragmentation through hard or soft edges is unfavorable to these amphibians. Mr. Emond completely ignores this pivotal research.

Also on page 5 of his testimony, Mr. Emond asserts: “The MPRP data strongly indicate that several generations of spotted salamanders have successfully reproduced in these vernal pools. It is therefore logical to conclude that their offspring continue to breed in these pools.”

The TRC position paper has no data on mark-recapture studies over three years that would be needed to document that the offspring continue to breed in these pools (they do not breed every year and most wood frogs breed after their second year). Because spotted salamanders may live beyond a decade, and because they have high natal fidelity, they may continue to breed in suboptimal pools (called ecological traps as they slowly reduce populations) for the rest of their lives. Because there are salamanders (or frogs for that matter) each year is not proof that there is (a) recruitment (referring to the return of juveniles to successfully breed in future years) and (b) enough recruitment to balance ecological traps. Adults are likely to continue to breed in less than ideal pools even if they dry early every year or are now permanent. Low-quality pools, such as those found in ROWs, also intercept animals heading to breed in more suitable habitats. In order to conclude that “Several generations” of spotted salamanders have bred in the pools along the MPRP corridor, it would be necessary to have 30-60 years of data on the pools in question. The TRC study had two years of data and no mark/recapture studies. Mr. Emond’s conclusion that several generations of spotted salamanders are breeding in these pools is completely unsupported by any data.

On page 6 of his testimony Mr. Emond asserts that: “The above findings and proposals demonstrate that maintained transmission line ROWs are compatible with, coexist with, and support healthy and productive vernal pools and do not result in fragmentation.”

This statement is pure conjecture. Demonstration requires research and peer review. The only findings TRC has are survey data and analysis of vegetative cover at the time of the study. What we do know is that wood frogs and ambystomatid salamanders are mature forest specialists; this has been documented in the peer-reviewed literature for decades. Vernal pools are recognized as specialized breeding habitat for

species highly sensitive to open canopies, predation by other amphibians, and by predators associated with edges and within-pool invertebrate predators (e.g. leeches, predaceous diving beetles) in higher densities in more open, longer hydroperiod pools. There are no genetic studies, studies of disease ecology or fitness (as we have done) in the TRC paper. This statement by Mr. Emond should be disregarded. We know that wood frogs and salamanders breed in substandard habitats including roadside ditches, skidder ruts, and ROWs. This does not speak to where their ideal habitat is. *Surviving* is NOT to be confused with *thriving*. The two-year TRC survey is not sufficient to support any conclusions about the health and long-term viability of vernal pool amphibian populations.

On page 8 of his testimony Mr. Emond asserts that: “There is no uncertainty in actual pool numbers and no uncalculated impacts to vernal pools in the project area.”

As a scientist, I am hesitant to speak in absolutes. To state that there is no uncertainty in actual pool numbers is a stretch, but, ultimately, unimportant as the greater issue regarding pool numbers and mitigation is one Mr. Emond has not addressed. The more we study vernal pools, the more questions we have about the animals and all the other functions they provide, particularly with regard to interactions with other ecosystems. To state that there are **no uncalculated impacts** to vernal pools is ignorant of the scientific process and of the complexity of ecological systems. There are almost certainly uncalculated impacts. Here are some of the key ones to consider relevant to this project:

1. Significant vernal pools (SVP) are defined by a political compromise. Using the simple metric of egg mass numbers undervalues the role of all the pools with lesser egg mass numbers that function as landscape elements in a complex system. We know pools contribute broadly to biogeochemical cycles beyond the pool footprint and that other taxa use pools for parts of their life history (e.g., more than 500 species of invertebrates alone and at least half of our amphibian and reptile species)...without counting the egg masses. Unforeseen ripple effects may occur.

2. The role of pool complexes in population dynamics and hydrological functions is not accounted for in assessment of potential ROW impacts.
3. The effects of fragmentation on pool-breeding amphibians has been heavily documented, but CMP has offered no compensation for this effect (Patrick et al, 2008 a,b).
4. The role of sub-standard habitat elements (the pool and the immediate habitat surrounding the pool where traditionally metamorphs may spend their first winter) on overall population health is unknown. We know there is a forest carrying capacity for the terrestrial activity area of pool breeders. As animals exposed to compromised post-breeding habitat (from the working forest and from the ROW) are forced into the remaining optimal habitat, there may be density dependent population effects we cannot predict at this point.
5. Edge effects in our region may influence the microclimate in the forest interior 25 - 35 meters from cleared areas (deMaynadier and Hunter 1999). This is another effect of fragmentation directly impacting prime post-breeding habitat that is not accounted for as an impact in CMP's compensation package.

Also on page 8 of his testimony, Mr. Emond asserts: "The Project ROW will provide valuable vernal pool habitat, as evidenced by the MPRP vernal pool study and will not have an unreasonable impact on significant vernal pools or adverse effects to vernal pool species."

This statement is completely undocumented. The TRC position paper showed no indication that ROWs or any open canopy situations provide valuable vernal pool habitat. They did not study the health and fitness of the animals in the pools.

The TRC study is not a peer-reviewed study. Peer-reviewed studies are subject to scrutiny by one's scientific peers. Only a subset of these studies is published and often after revision or even an addition of further data. That is the highest tier of scientific rigor. Next, there is grey literature that is reviewed by insiders and open to a broader audience as well but can't be rejected per se (e.g. species management

plans, annual reports, etc.). There is a final category that should be considered dark literature that does not receive any level of peer review or public input. The MRPR is dark literature; it is a snapshot survey of vernal pools in existing ROWs. It is *not* a scientific study.

The TRC position paper does not provide a before and after study of what the density or quality of natural pools was before the MPRP ROWs were constructed. There is no baseline of comparison to state that the current pools support a completely recovered and solid population of pool-breeding amphibians and that the pool habitat is “valuable vernal pool habitat.” It lends no insight into amphibian movement patterns, amphibian genetics, amphibian health, amphibian stress levels, amphibian recruitment, amphibian reproductive success rate, or effects on terrestrial activity areas. It provides no data on the microhabitat before and after in terms of density and condition of small mammal burrows, depth and nature of leaf litter, or quality of coarse woody debris. For example, stating that the ROW has burrows, has coarse woody debris, and has leaf litter gives no insight into the quality of these compared to mature forest habitat. It provides no insight on edge effects or other results of fragmentation. The fact that they found more than 600 created pools in the TRC study is alarming to me given what we know about created pools effects on natural pools and breeding amphibians. For example, created pools attract more “weedy” species (as they are often associated with changed hydrology and more open conditions) such as bull and green frogs and invertebrate predators (all prey on larvae and eggs of the pool-breeders and may transfer disease to wood frogs), they often serve as ecological traps intersecting breeders on their way to natal pools, and often suffer high rates of disease mortality owing to higher temperatures (Gahl and Calhoun 2010, Greenspan et al. 2012, Calhoun et al. 2014.)

On page 8 of his testimony, Mr. Emond asserts: “The NECEC will not result in fragmentation or adverse impacts to jurisdictional vernal pools and vernal pool species within or adjacent to the proposed ROW.”

This assertion is unfounded for reasons already provided in response to Mr. Emond's other unsubstantiated inferences. A 53-mile clear cut 150 feet in width going through vernal pools is nothing but fragmentation, and it presents all the unsavory ecological outcomes that come with fragmentation.

**Responses to Mr. Emond's specific objections to statements in my initial testimony**

In addition, Mr. Emond took issue with a number of statements I made in my initial testimony that I will address. On page seven, Mr. Emond objected to my statement that: "It is risky assessing pool quality based on egg mass abundances over short time periods." Mr. Emond appears to have assumed that I was questioning CMP's pool survey methods. However, I was making the larger point that when we developed the metrics for assessing SVPs, we knew that "snapshot" counts would likely underestimate pool usage as breeding populations fluctuate widely based on overwintering conditions and springtime temperature and precipitation patterns. Hence, mitigation only for SVP impacts is likely to underestimate the ecological impacts on the ecological complexes of vernal pool resources.

Also on page seven, Mr. Emond objected to my statement that: "From an ecological perspective, the losses should be well-compensated, not undercompensated, given the level of uncertainty in actual pool numbers and given the level of uncalculated impacts to all vernal pools in the study area." Mr. Emond spends a fair bit of text explaining that the mitigation provided meets the IFW requirements based on the assessed pools. He also states that no pools could possibly have been missed in their survey.

Even if the proposed mitigation meets IFW's minimum requirements for mitigation pool impacts, it is certainly possible a one-year survey, which CMP did for its Site Law application, would miss SVPs. Egg mass numbers in any given pool vary from year to year depending on winter and spring weather conditions. A number of pools in the area of the new corridor are close to the regulatory thresholds of significance, and the significance of some was not able to be determined at the time of the survey. Simply put, it is reasonable to think CMP may have underestimated the number of SVPs in the proposed 53-mile stretch of new corridor. Moreover, the proposed mitigation does not address the role of pool clusters



(groups of three or more pools that share a breeding population and hence often have egg mass numbers below the SVP thresholds; Calhoun et al. 2003) or habitat fragmentation (Patrick et al. 2008 a,b). As I have stated in my initial testimony and in this surrebuttal testimony, the literature is clear that clear cuts and transmission corridors will have a fragmenting effect on pool webs. DEP should require CMP to compensate for these effects, whether or not staff at IFW felt they had the ability to ask for this compensation.

Finally, I take great exception to Mr. Emond's statement on page 9 of his testimony that: "Dr. Calhoun's assertions on potential adverse effects on the NECEC Project on vernal pools are not supported by Maine-specific data or experiences..."

I was clear in my testimony that I have been researching vernal pools for more than two decades in Maine and published more than 60 peer-reviewed articles/books on vernal pools. During this time, I have been active in vernal pool education and outreach in our state, and in organizing national and international workshops on temporary wetlands. My practical experience includes working on wetland policy at all governmental levels and training the next generation of wetland ecologists. On page 15 of the TRC paper that Mr. Emond cites, TRC further states that they likely have the largest vernal pool dataset in Maine. It is clear he did not even scan the literature I provided from my lab, which would make this statement not only ludicrous, but insulting.

In summary, based on my extensive study of and experience with vernal pool ecosystems, I believe that a significant impact on vernal pool communities will result from the proposed project and that we can barely scratch the surface of accounting for the nature and extent of damages that will be incurred. What we can do is avoid or mitigate these damages as fully and responsibly as possible.

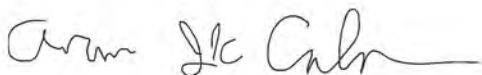
## Citations

- Calhoun, A.J.K., J. Arrigoni, R.P. Brooks, M.L. Hunter, Jr., and S.P. Richter. 2014. Creating successful vernal pools: A literature review and advice for practitioners. *Wetlands* 34(5):1027-1038.
- Calhoun, A.J.K., D. Mushet, LC Alexander, E.S.Dekeyser,L. Fowler,C.R.Lane, M.W.Lang, MC Rains,SC Richter,and SC Walls. 2017. The significant surface-water connectivity of "Geographically Isolated" Wetlands. *Wetlands* DOI 10.1007/s13157-017-0887-3.
- Cohen, M.J., I.F. Creed, L. Alexander, N.B. Basu, A.J.K. Calhoun, et al. 2016. Do geographically isolated wetlands influence landscape functions? *Proceedings of the National Academy of Sciences* 113:1978-1986.
- Gahl, M.K. and A.J.K. Calhoun. 2010. The role of multiple stressors in ranavirus-caused amphibian mortalities in Acadia National Park wetlands. *Canadian Journal of Zoology* 88:108-121.
- Greenspan, S., A.J.K. Calhoun, J.E. Longcore, and M.G. Levy. 2012. Transmissions of *Batrachochytrium Dendrobatidis* to wood frogs (*Lithobates sylvaticus*) via a Bullfrog (*L. catesbeianus*) vector. *Journal of Wildlife Diseases* 48(3)575–582.
- deMaynadier, P.G., Hunter Jr., M.L., 1998. Effects of silvicultural edges on the distribution and abundance of amphibians in Maine. *Conserv. Biol.* 12, 340–352.
- deMaynadier, P.G., Hunter, M.L., 1999. Forest canopy closure and juvenile emigration by pool-breeding amphibians in Maine. *J. Wildl. Manage.* 63, 441–450.
- Patrick, D.A., \*E. Harper, M.L. Hunter, A.J.K. Calhoun. 2008a. Terrestrial habitat selection and strong density-dependent mortality in recently metamorphosed amphibians. *Ecology* 89:2563-2574.
- Patrick, D.A., A.J.K. Calhoun, and M.L. Hunter. 2008b. The importance of understanding spatial population structure when evaluating the effects of silviculture on spotted salamanders (*Ambystoma maculatum*). *Biological Conservation* 141:807-814.

Notarization

I, Aram Calhoun, being first duly sworn, affirm that the above testimony is true and accurate to the best of my knowledge.

Date: April 19, 2019



\_\_\_\_\_  
Aram Calhoun

The above-named Aram Calhoun made affirmation that the above testimony is true and accurate to the best of her knowledge.

Date: April 19, 2019

  
\_\_\_\_\_  
Susan Ely, Attorney-at-law

STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

and  
STATE OF MAINE  
LAND USE PLANNING COMMISSION

IN THE MATTER OF

CENTRAL MAINE POWER COMPANY  
Application for Site Location of Development  
Act permit and Natural Resources Protection  
Act permit for the New England Clean  
Energy Connect (“NECEC”)

L-27625-26- A-N  
L-27625-TB-B-N  
L-27625-2C-C-N  
L-27625-VP-D-N  
L-27625-IW-E-N

SITE LAW CERTIFICATION SLC-9

SUR-REBUTTAL TESTIMONY OF  
GROUP 4 WITNESS DR. DAVID  
PUBLICOVER

April 15, 2019

This testimony is presented in sur-rebuttal to rebuttal testimony presented by CMP witness Kenneth Freye. Specifically, this rebuttal testimony focuses on the issue of the granting of a special exception for the Appalachian Trail P-RR zone. This rebuttal is relevant solely to issues before LUPC.

In response to my testimony that the construction of the new transmission line would have a significant negative effect on the experience of Appalachian Trail hikers, Mr. Freye states (p. 3), “*While Dr. Publicover may believe the Project will degrade the experience of hikers, this opinion is not supported by – and in fact is contradicted by – the visual impact analysis, the Easement, and NPS.*” He also states (p. 2) that my conclusions on the impact of the project on

## SUR-REBUTTAL TESTIMONY OF DAVID PUBLICOVER

AT users are “entirely subjective” and “incorrect”. However, it is Mr. Freye’s arguments that are incorrect.

As described in my pre-filed testimony, the visual impact analysis (Application Chapter 6 Appendix F, Scenic Resources Chart, 1/30/19) rates the visual impact of the project at the Troutdale Road crossing as “Moderate/Strong”, clearly indicating that there will be a negative impact on the scenic quality at this crossing. In addition, the visual impact analysis proposes, and the Applicant has accepted the need for, vegetative screening to mitigate this impact (although I question the effectiveness of this mitigation). Rather than contradicting my conclusion that the project would degrade the experience of AT users as Mr. Freye claims, the visual impact analysis supports it.

Mr. Freye also cites the National Park Service easement, going so far to claim that the impact of the project “cannot be considered unreasonable” because the easement allows for the construction of the proposed transmission line. The primary purpose of the easement was to secure the right of the AT to cross CMP’s property. The easement also recognizes and maintains CMP’s pre-existing rights to construct and maintain transmission lines on their property. The fact that CMP has the legal right to construct the proposed transmission line is relevant to the issue of right, title and interest. However, the fact that CMP has this right does not necessarily mean that this use is consistent with LUPC criteria – that is a separate question. The idea that the fact that the easement allows this use constitutes a determination that LUPC criteria are satisfied is nonsensical and would eliminate the right of LUPC to make this determination on their own.

Mr. Freye also states (p. 3) “*Neither the NPS nor the Appalachian Trail Conservancy (ATC), its agent, has stated that CMP’s proposed use of the Easement area is inconsistent with the purpose of the Easement.*” It would be very difficult for a party to an easement to claim that

## SUR-REBUTTAL TESTIMONY OF DAVID PUBLICOVER

a use which is specifically allowed by an easement was inconsistent with it. However, as I stated above, the fact that the easement allows this use is separate from the question of whether this use is consistent with LUPC criteria.

Finally, Mr. Freye notes the discussions that have been held with MATC and ATC regarding trail relocation and buffering. Mr. Freye states that CMP “would consider” additional plantings “should MATC and ATC so request”. However, an action that *may* be taken if requested by a third party that is not a party to the proceedings cannot be considered mitigation. This vague possibility should be disregarded by LUPC in its determination of whether the impact on the AT has been adequately buffered.

Dated: 4/15/19

by:   
David Publicover

Date: 4/15/19

The above-named David Publicover did personally appear before me and made oath as to the truth of the foregoing sur-rebuttal testimony.



Notary Public

My Commission Expires

\_\_\_\_\_ DENISE M. HORNE  
Notary Public - New Hampshire  
My Commission Expires April 19, 2022

STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

and

STATE OF MAINE  
LAND USE PLANNING COMMISSION

IN THE MATTER OF

CENTRAL MAINE POWER COMPANY  
Application for Site Location of Development  
Act permit and Natural Resources Protection  
Act permit for the New England Clean  
Energy Connect (“NECEC”)

L-27625-26- A-N  
L-27625-TB-B-N  
L-27625-2C-C-N  
L-27625-VP-D-N  
L-27625-IW-E-N

SITE LAW CERTIFICATION SLC-9

SURREBUTTAL TESTIMONY OF GROUP  
4 WITNESS  
Jeff Reardon

April 19, 2019

This sur-rebuttal testimony is presented in response to pre-filed testimony by CMP witness Kenneth Freye regarding alternatives analysis, brook trout habitat and proposed mitigation. This testimony specifically relates to Mr. Freye’s testimony on Issue 3, Alternatives Analysis, filed as part of CMP’s pre-filed rebuttal testimony on March 25, 2019.

Mr. Freye provided responses to my pre-filed testimony regarding the lack of alternatives analysis at three proposed stream crossing sites--Gold Brook/Rock Pond; Cold Stream; and Tomhegan Stream—and my comments about the benefits to cold water fish of proposed mitigation provided by protection of the Lower Enchanted and Basin Tracts.



Gold Brook and Rock Pond Area: Mr. Freye identifies extensive constraints on the siting in this area: (1) Nature Conservancy negotiations for and eventual ownership of a parcel north of the Spencer Road; (2) the desire of landowner Plum Creek Timber (PCT) to “keep the NECEC transmission corridor as close as possible to the T7 R5 BKP WKR (Raymond)/T4 R6 BKP WKR (Hobbs town) town line; (3) “terrain problems” involved with moving the line to the south by up to ½ mile as I suggested in my pre-filed testimony, including high elevations, visibility of the line, and stream crossings of Gold Brook and one of its tributaries. He goes on to note “the person making the suggestion has no experience with siting linear infrastructure, glosses over the physical and social constraints, and only partially considers even the consequences directly relevant to their specific concern.”

Mr. Freye ignores the fact that the portion of my testimony to which he is responding was giving CMP credit for taking measures to minimize impacts to Gold Brook by locating the lines on taller poles. The sentence immediately prior to the section he is commenting on states: *“In this case, however, these impacts were reduced by raising the structure heights at most of these crossings to allow mature trees to be maintained along most of this section of the ROW. These changes were made to address concerns about Roaring Brook Mayfly and Northern Spring Salamander habitat in Gold Brook.”* This section of my testimony actually suggested applying this same tactic to other stream crossings.

However, the extensive discussion of the difficulty in siting the line in this area highlights concerns about CMP’s choice to cross the border in Beattie Township and connect to an existing corridor in Moxie Gore. As Mr. Freye’s discussion makes clear, choosing that general route runs

the NECEC corridor through a region where alternatives are constrained by existing conservation lands, a host of sensitive habitats, difficult terrain, and landowner preferences.

Cold Stream Crossing: Mr. Freye's response notes that "*the language and structure of the deep for the Cold Stream Forest (CSF) parcel makes placing transmission lines very difficult. . . . Had the parties to the acquisition of the CSF been open to an alignment across the CSF, CMP would have seriously considered expanding the existing 100-foot-wide Jackman Tie Line corridor, which crosses Cold Stream about 3/4 of a mile downstream of the NECEC corridor.*"<sup>1</sup> On behalf of Trout Unlimited, I was deeply engaged in the discussions regarding the Cold Stream Forest parcel beginning in about 2011 and through the state's purchase of the property in 2016. We were never approached by CMP regarding alternatives, although we did have discussions with one other party, Maine Huts and Trails, about similar concerns regarding their proposed trail route and hut locations. It is misleading to suggest we were not open to discussing alternatives. We never had the opportunity and in fact were not even aware of CMP's interest in crossing Cold Stream. Looking at the potential Jackson Tie Line option today, from the perspective of impacts to streams, the Jackman Tie Line would likely reduce impacts on both Cold Stream and Tomhegan Stream by routing the NECEC on an existing corridor for the crossing, although site specific analysis would be needed to reach that conclusion. Elsewhere in his testimony, in response to concerns raised by Elizabeth Caruso, Mr. Freye notes that the Jackman Tie Line follows Route 201 from West Forks to Jackman. Following this route could have avoided most of the 53-mile-long greenfield section of the NECEC, limiting it to just 16 miles from Jackman to the Canadian border<sup>2</sup>, which also could have followed Route 201. Unfortunately, CMP did not

---

<sup>1</sup> Freye rebuttal testimony, pages 11-12.

<sup>2</sup> Freye rebuttal testimony, pages 6-7.

discuss this potential with us or with other interested parties prior to completing its alternatives analysis.

Mr. Freye also makes two statements that appear to contradict each other with respect to existing and anticipated future conditions at the Cold Stream crossing. He first notes that: *“The location where the NECEC corridor crosses Cold Stream is very open. The entire stream channel is visible on aerial imagery, due in part to the current location of Capital Road on the south side of the NECEC corridor and the former location of the Capital Road on the north side of the corridor. Tree cover between the two roadways is sparse . . . ”*. He then continues that sentence and paragraph with *“and, based on ground inspection of the former location of the Capital Road, the area will revegetate quickly with alders and other non-capable species to provide stream-side cover and shade along the edges of Cold Stream.”*

Based on photos available on Google Earth, it has been at least 8 years since the Capital Road was re-aligned and a new bridge constructed. An image dated 10/30/2007 shows the old alignment. One dated 11/25/2011 shows the site soon after the new bridge was constructed. The most recent image, from 4/23/2016, shows minimal revegetation of the old road corridor. These three photos are displayed as Attachment 1 to this testimony. On the 4/23/2016 image, the center line and clearing limits of the NECEC (from the Google Earth layer maintained at the Maine DEP GIS portal) are superimposed on the image, showing that what little forest canopy remains in this area will be removed when the NECEC line is constructed. I agree with the Mr. Freye’s assessment that the existing conditions at the Capital Road crossing of Cold Stream are “very open” and that “tree cover is sparse” because of past disturbances, most recently the road re-

alignment. But based on both the evidence from aerial imagery and from personal experience at the site, I disagree that we can expect the area to “revegetate quickly with alders and other non-capable species.” It has been at least eight years since the Capital Road was re-aligned, and we’ve seen little or no revegetation on the former road bed. Based on measurements from Google Earth of the existing conditions, the “very open” condition Mr. Freye notes results from two cleared areas that are approximately 40 feet wide at the old Cold Stream crossing, and approximately 65 feet on the new crossing. As shown in the photo where the NECEC clearing limits are overlaid on existing conditions, that will expand to about 250 feet of cleared area after the NECEC is completed, more than doubling the existing impacts that Mr. Freye notes. These impacts could be avoided with taller poles that allow for full canopy vegetation, but Mr. Freye does not discuss this option.

Tomhegan Stream: Mr. Freye provides information not previously presented about “adjustments” to the location of the Tomhegan Stream crossing. His discussion highlights the sensitivity of this crossing and the surrounding lands, which, in addition to the very high value for brook trout I noted for Tomhegan Stream in my comments, also includes extensive wetlands and other nearby streams. Mr. Freye’s response acknowledges that this crossing is not ideal, because at the crossing location “*Tomhegan Stream consists of one primary channel and a number of braided channels flowing through an area with sparse tree cover*”<sup>3</sup>. Again, this discussion highlights the high ecological values of the region crossed by the new 53-mile NECEC corridor.

---

<sup>3</sup> Frey rebuttal testimony, page 12

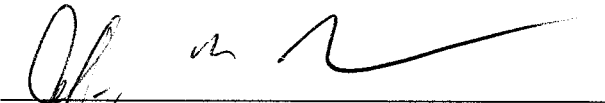
For all three of these crossings—and for crossings of the West Branch and South Branch Moose River and Piel Brook, neither of which are discussed by Mr. Freye—even if CMP could not identify alternative routes with fewer impacts in streams that are important to brook trout, alternatives were available that could have maintained full forest canopy vegetation over the streams. As noted above, CMP used taller poles to reduce impacts to Gold Brook. CMP also proposed taller poles that maintain full canopy vegetation at the Mountain Brook crossing and proposed alternative pole locations to maintain full canopy vegetation on both banks of the Kennebec River. There is no indication that these or other alternatives were considered for these high-impact stream crossings.

Brook Trout Habitat Values of Compensation Parcels: Mr. Freye points out that conservation completed in the past by the Western Mountain Charitable Foundation abuts CMP's proposed Lower Enchanted Tract on the north shore of the Dead River and is across the river from the proposed Basin Tract. This is true, but it misses my larger point—that protection of lands adjacent to the Dead River does not protect habitat for brook trout that is remotely like the smaller, colder, and higher elevation streams that are impacted by the proposed stream crossings. The Dead River in the vicinity of Lower Enchanted, Basin, and Grand Falls tracts—and the abutting lands conserved by the Western Mountain Charitable Foundation—has a brook trout and landlocked salmon fishery supported by annual stocking. CMP has provided no information on the suitability of this habitat for wild brook trout spawning and rearing. The Dead River flows out of Flagstaff Lake, a large, shallow, warm lake, and as a result the Dead River has summer water temperatures that are high enough that brook trout must seek thermal refuge in cold water tributaries. None of these coldwater tributaries are provided any protection by CMP's

proposed mitigation. Mr. Freye notes that the Lower Enchanted Tract includes some frontage on Enchanted Stream adjacent to identified Inland Wading Bird and Waterfowl Habitat associated with Enchanted Stream and Lower Enchanted Pond. He does not note that the proposed compensation parcel does not provided any protection to Lower Enchanted Pond or the downstream IWWH. In any case, this habitat, like the lower section of Enchanted Stream that is within the Lower Enchanted Tract, and like the Dead River, is warm because it drains out of an extensive shallow wetland area. There is a considerable amount of habitat for brook trout in the upstream portions of Enchanted Stream that are colder and higher gradient, as well as in other Dead Stream tributaries like Spencer Stream, Gulf Stream, Salmon Stream, and other smaller tributaries, but CMP proposed no protection on them, or on other similar streams.

Notarization

I, Jeffrey Reardon, being first duly sworn, affirm that the above testimony is true and accurate to the best of my knowledge.

  
\_\_\_\_\_  
Name

April 19, 2019  
\_\_\_\_\_  
Date

Maine Brook Trout Project Director

Title

Personally appeared the above-named Jeffrey Reardon and made affirmation that the above testimony is true and accurate to the best of his knowledge.

Date: 4/19/2019

Notary: Ann Y

**Ann Young**  
Notary Public, State of Maine  
My Commission Expires July 10, 2025

# Reardon Sub-Rebuttal Exhibit 1

- Google Earth Photos of Cold Stream Crossing of NECEC
  - 10/20/2007—Pre- Capital Road Realignment
  - 11/25/2011
  - 4/23/2016—with NECEC Centerline and Clearing Limits



10/30/2007 Image: Pre Capital Road Re-alignment



11/25/2011 Image: Soon after Capital Road Re-alignment



4/23/2016 Image with NECEC Centerline (red) and Clearing Limits (yellow)

