



PAUL R. LEPAGE  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY  
LAND USE PLANNING COMMISSION  
22 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0022

WALTER E. WHITCOMB  
COMMISSIONER

NICHOLAS D. LIVESAY  
EXECUTIVE DIRECTOR

# PERMIT

## HYDROPOWER PERMIT HP 29 MAINE WATERWAY DEVELOPMENT AND CONSERVATION ACT

The Maine Land Use Planning Commission (“Commission”), through its staff, after reviewing the application and supporting documents submitted by Kennebec Water Power Company (“KWPC”) for Hydropower Permit HP 28 pursuant to the *Maine Waterway Development and Conservation Act* (38 M.R.S. §§ 630 - 638), finds the following facts:

1. Applicant/Permittee: Kennebec Water Power Company  
c/o Jason Seyfried  
150 Main Street  
Lewiston, ME 04240
2. Date of Completed Application: August 03, 2017
3. Location of Proposal: Taunton Raynham Academy Grant, Somerset County, Maine  
Maine Revenue Service Map SO013 Plan 04 Lot#7  
Somerset County Registry of Deeds: Book 830, Pages 228-229
4. Zoning: (D-RS) Residential Development Subdistrict  
(P-SL1) Shoreland Protection Subdistrict  
(P-GP) Great Pond Protection Subdistrict
5. Affected Waterbodies: Moosehead Lake  
Kennebec River, West Outlet

### Background

6. In March of 1834, a special act of the Maine Legislature created the Moosehead Dam Company and authorized the company to construct dams at the East Outlet of Moosehead Lake in Sapling Township and at the West Outlet in Taunton and Raynham Academy Grant approximately 5 miles to the north. The dams were constructed around 1835.

Kennebec Water Power Company (KWPC) is a corporation established by special act of the Maine Legislature in 1893. KWPC was created to make improvements to the Kennebec River and tributaries, and to provide water storage for downstream hydropower facilities.

The East Outlet and West Outlet Dams are part of the Federal Energy Regulatory Commission's (FERC) "Moosehead Project," (FERC Project No. 2671). The FERC license was first issued on August 5, 1967 and most recently renewed on November 25, 1997.

The Moosehead Project impounds Maine's largest lake, Moosehead Lake, which is approximately 35 miles long and 15 miles wide at its widest points. The Moosehead Project raised the lake level seven feet above the natural lake level for the primary purpose of log driving. The East Outlet and West Outlet Dams do not include hydropower generation facilities; rather they control the flow to the Kennebec River for the benefit of downstream hydropower generation projects.

Prior to the Commission's inception in 1971, the 2.03-acre lot was developed with the West Outlet Dam abutting Moosehead Lake and the West Outlet, Kennebec River.

Moosehead Lake is a "great pond" as defined by the *Natural Resources Protection Act*, 38 M.R.S. § 480-B(5) and is classified as a Class GPA water pursuant to *Standards for the classification of lakes and ponds*, 38 M.R.S. § 465-A.

Pursuant to *Classification of major river basins*, 38 M.R.S. § 467(4)(A)(1), the Kennebec River, main stem, from the east outlet of Moosehead Lake to a point 1,000 feet below the lake (referred to as the East Outlet) is a Class A water. *Standards for classification of fresh surface waters*, 38 M.R.S. § 465(2) describes the standards for Class A waters.

The West Outlet is a popular fishing destination, and the KWPC provides public rights of access at the West Outlet Dam property through maintenance of existing fishing and carry-in boat access facilities in accordance with the FERC License.

A map showing the locations of the East Outlet and West Outlet Dams is included as **Attachment A** of this permit.

### **Administrative History**

7. On March 15, 1985, the Commission issued Utility Line Permit ULP 219 approving, as conditioned, the installation of electric service for the purpose of raising and lowering gates and to provide lighting at the West Outlet Dam.
8. On April 30, 1991, the Commission issued Great Ponds Permit GP 508 authorizing the permittee to raise the elevation of the dam embankments and concrete retaining walls at the East and West Outlet Dams at Moosehead Lake.
9. On October 20, 1994, the Commission issued Water Quality Certification #WQC-0002 certifying the Moosehead Project continuing to operate, as conditioned, will not violate applicable Maine water quality standards.

### **Proposal**

10. KWPC proposes to add rip rap material to the toe of the left and right embankments to mitigate for erosion. The rip rap will consist of 20 to 30 yards of shale/rock and stone and will be placed by an excavator. The material will be delivered to the site via dump truck. Access to the work site will be along the mowed area by the toe of the dam on both sides. The work is estimated to take two days to complete. KWPC states that minimal work will occur in the water, where only the bucket of the excavator is anticipated to contact the water for placement of rip rap near the edge. The excavator itself will not be in the water. A floating silt curtain will be utilized in the tailrace to collect any silt in the water. Spill response equipment will be onsite in the event of an oil spill from the equipment.

### **Agency Review and Comments**

11. Review of the proposal was requested of the Maine Historic Preservation Commission, Maine Department of Inland Fisheries and Wildlife (DIFW), and the Somerset County Commissioners. DIFW responded with no concerns. No other comments were received.

### **Review Criteria and Standards**

12. Pursuant to *Maine Waterway Development and Conservation Act*, 38 M.R.S. § 633
  - (1) a person may not initiate construction or reconstruction of a hydropower project, or structurally alter a hydropower project in ways that change water levels or flows, without first obtaining a permit from the Commission.
  - (2) this subarticle does not apply to activities for which, prior to the effective date of this Act, a permit or permits have been issued pursuant to any of the following laws: Land use regulation laws, Title 12, sections 681 to 689; stream alteration laws, former sections 425 to 430; great ponds laws, former sections 391 to 394; alteration of coastal wetlands laws, former sections 471 to 478; site location of development laws, sections 481 to 489-E; and small hydroelectric generating facilities laws, this subarticle.
  - (3) normal maintenance and repair of an existing and operating hydropower project shall be exempt from this subarticle, provided that:
    - A. The activity does not involve any dredging or filling below the normal high-water line of any great pond, coastal wetland, river, stream or brook; and
    - B. The activity does not involve any dredging or filling on the land adjacent to any great pond, coastal wetland, river, stream or brook such that any dredged spoil, fill or structure may fall or be washed into those waters
13. In accordance with 38 M.R.S. § 636, standard of review criteria for approval are specified in the *Maine Waterway Development and Conservation Act* and *Administrative Regulations for Hydropower Projects*, 01-672 C.M.R. 11 and 06-096 C.M.R. 450 (“Chapter 11”), jointly administered by the Commission and the Maine Department of Environmental Protection (“MDEP”).

### **Based upon the above findings, the Commission concludes the following:**

14. The proposal involves normal maintenance and repair filling on the land adjacent to a great pond and a stream and is not exempt from review under 38 M.R.S. § 633(3)(B).

15. Conclusions about the proposal based on the standard of review criteria in Chapter 11 are as follows:

- 1.) Financial capability and technical ability. Pursuant to Chapter 11, section 5(A)(1), KWPC has the financial capability and technical ability to undertake the project. KWPC provided budget information indicating that the total cost of the proposed project is estimated to be \$6,000. A Kennebec Water Power Company 2017 budget indicates that KWPC is budgeting funds to complete all of the FERC required upgrades at the Moosehead Project in the amount of \$450,000 in 2017. KWPC has owned and operated Moosehead Project under its current FERC license since 1997 and has demonstrated the technical ability to comply with applicable permit conditions and requirements established in other permits issued by the Commission for this facility. See administrative history in findings 7 through 9 of this permit
- 2.) Safety. Pursuant to Chapter 11, section 5(A)(2), KWPC has made adequate provisions for protection of public safety by proposing to direct the public away from the construction activity using barrier tape.
- 3.) Public benefits. Pursuant to Chapter 11, section 5(A)(3), KWPC has demonstrated that the proposal is necessary to support the Moosehead Project which provides significant economic benefits to the public. The Moosehead Project is the major control of flow of the Kennebec River and helps regulate the river for the benefit of downstream resources and for nine downstream hydroelectric projects.
- 4.) Traffic movement. Pursuant to Chapter 11, section 5(A)(4), KWPC has made adequate provisions for traffic movement of all types out of or into the development area. There is no change in vehicle traffic anticipated as a result of the proposal.
- 5.) Project consistent with applicable zoning. Pursuant to Chapter 11, section 5(A)(5), KWPC has demonstrated that the proposal is consistent with the zoning adopted by the Commission. The subject site and proposal are located within D-RS, P-GP, and P-SL1 subdistricts. Water Impoundments are allowed in the D-RS, P-GP and P-SL1 subdistricts.
- 6.) Environmental mitigation. Pursuant to Chapter 11, section 5(A)(6), KWPC has made reasonable provisions to realize the environmental benefits of the project, if any, and to mitigate its adverse environmental impacts. KWPC does not anticipate that the proposal will result in adverse impacts to the environment and therefore does not propose any mitigation.
- 7.) Environmental and energy considerations. Pursuant to Chapter 11, section 5(A)(7), the advantages of the project are greater than the direct and cumulative adverse impacts over the life of the project in consideration of soil stability; fish and wildlife resources; historic and archaeological resources; public rights of access to and use of the affected water bodies; flood control benefits; and hydroelectric energy benefits. Notably, the DIFW provided comments indicating no concerns.
- 8.) Water quality certification Pursuant to Chapter 11, section 5(A)(8), there being no anticipated adverse impacts from the proposal on Moosehead Lake or the West Outlet, there

is a reasonable assurance that the project will not violate applicable State water quality standards.

**Therefore, the staff approves the application of Kennebec Water Power Company, subject to the following conditions:**

1. The Applicant shall abide by Erosion and Sediment Control practices as described in *Land Use Districts and Standards*, 01-672 C.M.R. 10 (10.25,M) (revised May 29, 2017).
2. Limits of Approval. This approval is limited to and includes the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. All variances from the plans and proposals contained in said documents are subject to the review and approval of the Commission prior to implementation.
3. Compliance with all Applicable Laws. The permittee shall secure and appropriately comply with all applicable federal, state and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation.
4. Inspection and Compliance. Authorized representatives of the Commission or the Attorney General shall be granted access to the premises of the permittee at any reasonable time for the purpose of inspecting the construction or operation of the project and assuring compliance by the permittee with the conditions of this approval.
5. Initiation and Completion of Construction. If construction is not commenced within 3 years and completed within 7 years from the date of issuance of this permit, this approval shall lapse, unless a request for an extension of these deadlines has been approved by the Commission.
6. Assignment or Transfer of Approval. This approval shall expire upon the assignment or transfer of the property covered by this approval unless written consent to transfer this approval is obtained from the Commission.

Pursuant to *Rules of Practice*, 01-672 C.M.R. 4.07(1) (last amended October 18, 2013), any person aggrieved by a decision of the staff has a right to a review of that decision by the Commission. A request for such a review must be made in writing within 30 days of the date of signature below.

DONE AND DATED AT AUGUSTA, MAINE, THIS 15TH DAY OF AUGUST, 2017.



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(on behalf of) Nicholas D. Livesay, Director

# Attachment A: Moosehead Project



Sources: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community