

**LOWER KENNEBEC RIVER  
COMPREHENSIVE HYDROPOWER  
SETTLEMENT ACCORD**

**EXHIBIT B**

*Agreement Between Members of the Kennebec Hydro Developers  
Group, the Kennebec Coalition, the National Marine Fisheries  
Service, the State of Maine, and the US Fish and Wildlife Service*

**AGREEMENT BETWEEN  
MEMBERS OF THE KENNEBEC HYDRO DEVELOPERS GROUP,  
THE KENNEBEC COALITION,  
THE NATIONAL MARINE FISHERIES SERVICE,  
THE STATE OF MAINE  
AND  
THE U.S. FISH AND WILDLIFE SERVICE**

**I. Parties.**

This Agreement (hereinafter "Agreement") is by and between:

A. each member of the association known as the Kennebec Hydro Developers Group ("KHDG"), to wit:

1. Central Maine Power Company, owner of the following hydroelectric facilities that are the subject of this Agreement: Fort Halifax (Federal Energy Regulatory Commission ("FERC") Project No. 2552); Shawmut (FERC Project No. 2322); and Weston (FERC Project No. 2325);

2. Kennebec Hydro Resources, Inc., on behalf of Merimil Limited Partnership, owner of the following hydropower facility that is the subject of this Agreement: Lockwood (FERC Project No. 2574) ;

3. UAH-Hydro Kennebec Limited Partnership, owner/agent of the following hydropower facility that is the subject of this Agreement: Hydro-Kennebec (FERC Project No.2611);

4. Ridgewood Maine Hydro Partners, L.P., owner of the following hydropower facility that is the subject of this Agreement: Burnham (FERC Project No. 11472);

5. Benton Falls Associates, owner of the following hydropower facility that is the subject of this Agreement: Benton Falls (FERC Project No. 5073);

B. each member of the association known as the Kennebec Coalition, to wit: American Rivers, Inc; the Atlantic Salmon Federation; Kennebec Valley Chapter of Trout Unlimited; the Natural Resources Council of Maine; and Trout Unlimited;

C. the National Marine Fisheries Service, U.S. Department of Commerce;

D. the following agencies of the State of Maine:

Maine Department of Inland Fisheries and Wildlife; Maine Department of Marine Resources; and the Maine State Planning Office; and

E. the United States Fish and Wildlife Service, U.S. Department of the Interior.

In this Agreement, reference to "the resource agencies" hereinafter is understood to mean the following parties: the Maine Department of Inland Fisheries and Wildlife, Maine Department of Marine Resources, Maine Atlantic Salmon Authority, National Marine Fisheries Service and United States Fish and Wildlife Service.

## **II. Purposes.**

This Agreement is intended to accomplish the following purposes: to achieve a comprehensive settlement governing fisheries restoration, for numerous anadromous and catadromous species, that will rapidly assist in the restoration of these species in the Kennebec River after the termination on December 31, 1998 of the existing agreement between the State of Maine and the Kennebec Hydro Developers Group; to avoid extensive litigation over fish passage methodologies, timetables and funding; to assist in achieving the removal of the Edwards dam; and to fund the next phase of a restoration program for these species on the Kennebec River.

## **III. Elements that apply to all parts of this agreement:**

### **A. Effective Date.**

This Agreement will become effective upon:

1. signature by all parties of it; and
2. signature by all parties to this Agreement, and signature of Edwards Manufacturing Company, the City of Augusta, Maine, and the National Fish and Wildlife Foundation of appropriate settlement documents to be submitted to FERC pursuant to 18 C.F.R. §385.602.

### **B. Required Filings with Regulatory Agencies**

The parties agree that, immediately after this Agreement and the Lower Kennebec River Comprehensive Hydropower Settlement Accord become effective, they will make joint, formal filings to FERC requesting that FERC:

1. incorporate all applicable terms of this Agreement into existing or proposed FERC licenses for hydropower facilities owned by KHDG

members;

2. only issue amended or new licenses for the KHDG facilities incorporating all applicable terms of this Agreement if, and at the same time as, FERC approves the transfer of the FERC license for the Edwards Dam from Edwards Manufacturing Company and the City of Augusta to the State of Maine;
3. defer action on the motion by Central Maine Power Company for rehearing of the Fort Halifax license, issued by FERC in November 1997, pending FERC's decision on both the transfer of the FERC license for the Edwards Dam to the State of Maine and FERC's incorporation of the applicable terms of this Agreement into existing or proposed FERC licenses for hydropower facilities owned by KHDG members;
4. allow Central Maine Power Company to withdraw its motion for rehearing of the Fort Halifax license in the event that FERC incorporates all of the applicable terms of this Agreement into existing or proposed FERC licenses for hydropower facilities owned by KHDG members; and
5. stay action on fish passage installation obligations at the Fort Halifax, Benton Falls, Lockwood and UAH-Hydro Kennebec facilities pending its decision on transfer of the FERC license for the Edwards Dam and incorporation of applicable terms of this Agreement into existing or proposed KHDG licenses.

The parties also agree that, immediately after the two aforementioned agreements become effective, they will make joint, formal filings to the Maine DEP requesting that the Maine DEP immediately incorporate all applicable terms of the final settlement Agreement into existing or proposed water quality certifications for the hydropower facilities owned by KHDG members.

KHDG members shall withdraw all motions and appeals upon the issuance of final non-appealable orders from FERC and the Maine DEP incorporating the terms of this Agreement into KHDG licenses.

**C. Failure to Achieve Timely Approvals.**

1. In the event that FERC or Maine DEP choose to alter or prohibit execution of any term and condition contained in this Agreement considered essential to any party (including all dates for performance) or have not issued final, non-appealable, FERC licenses and DEP water quality certifications (amended or new) for all KHDG projects by June 1, 1999; or

2. in the event that FERC does not approve the transfer of the FERC license for the Edwards Dam from Edwards Manufacturing Company and the City of Augusta to the State of Maine, or has not ruled on said transfer request by June 1, 1999, or FERC approves amendments or new licenses for the KHDG facilities prior to approving the transfer of the Edwards license,

then unless all parties agree to amend this Agreement to incorporate any changes made by FERC or the Maine DEP or agree to extend the final approval and transfer dates beyond June 1, 1999 or agree to waive the need for FERC approval of the transfer of the FERC license for the Edwards Dam, then this Agreement becomes null and void and all payments made by KHDG pursuant to paragraph III of this Agreement will be returned to KHDG, except for \$140,000.00, to be used by the State to pay for trapping and trucking of alewife during 1999.

Notwithstanding the foregoing, in the event that either FERC or Maine DEP has not issued a final, non-appealable license or water quality certification for the Burnham Project by June 1, 1999, this Agreement shall not become null and void so long as: FERC and Maine DEP have issued final, non-appealable licenses and water quality certifications to all the other KHDG projects incorporating the applicable terms of this Agreement; Maine DEP has issued a letter to the owner of the Burnham Project guaranteeing that any water quality certificate issued for the Project will incorporate the applicable terms of this Agreement and will not impose conditions regarding fish passage that are inconsistent with the applicable terms of this Agreement; and the Kennebec Coalition and the resource agencies have issued letters to Maine DEP and FERC supporting the incorporation of the applicable terms of this Agreement into the license and water quality certificate for the Burnham Project.

If this Agreement shall become null and void due to one of the aforementioned events, the parties agree that KHDG may submit, and the other parties to this Agreement will support, a motion to FERC seeking to extend the compliance dates for installation of permanent upstream fish passage in the Lockwood, Fort Halifax, UAH-Hydro Kennebec and Benton Falls licenses for the same period of time that lapsed between the date of filing of the joint motion to amend licenses and the date whereby this Agreement became null and void. In the event that KHDG seeks to extend the compliance dates for installation of permanent upstream fish passage for a period of time beyond the lapsed time, the other parties to this Agreement reserve the right to oppose extension of these compliance dates for any period beyond the aforementioned lapsed time.

#### D. Term of Agreement

If by December 2014 the biological triggers for permanent upstream passage

facilities discussed herein have not been met at one or more of the dams covered by this agreement, the parties will meet to assess the progress in restoring species covered by this agreement (alewife, American shad, blueback herring, Atlantic salmon, and American eel), and will attempt to reach consensus on future fish passage measures. Any disputes will be handled through the FERC process.

E. Consultation process

The functional and final design of any interim or permanent upstream or downstream fish passage or collection facility discussed herein must be approved in writing by the resource agencies prior to filing that design with the Federal Energy Regulatory Commission and Maine Department of Environmental Protection. Any disputes will be handled through the FERC process.

F. Effectiveness studies

KHDG dam owners will conduct effectiveness studies of all newly constructed interim and permanent upstream and downstream fish passage facilities at project sites. Study plans for these effectiveness studies will be filed with FERC and Maine DEP no later than the date on which passage at a particular project becomes operational, and will be subject to a consultation process with, and written approval from the resource agencies. In the event that effectiveness studies show that passage at individual projects is less than the targeted passage efficiency goals, KHDG dam owners will make a good faith effort to achieve these goals through modification of facilities and/or operations, following consultation with the resource agencies. In the event that studies show that, subsequent to said modifications, passage at individual projects continues to be less than the targeted efficiency goals, resource agencies may seek continued funding for trap and truck or other programs, or other mitigation from KHDG dam owners. Any disputes will be handled through the FERC process.

G. For American eel at all projects:

1. KHDG dam owners and DMR, in consultation with NMFS and USFWS, and subject to approval by FERC, shall undertake a three-year research project designed to determine: (a) the appropriate placement of upstream passage for American eel at each of the seven KHDG facilities based upon field observations of where eel are passing or attempting to pass upstream at each facility; and (b) appropriate permanent downstream fish passage measures, based upon radio telemetry and other tracking mechanisms, and field observation. Consultation between KHDG and the resource agencies to design and coordinate the research project shall begin no later than June 1, 1998. Performance of the studies shall begin during the 1998 migration

season if possible, but in no case later than the 1999 migration season. The studies shall be in effect for three complete migration seasons, and shall be completed, including data compilation and analysis, by December 31, 2001.

2. The studies shall be supervised by DMR, based upon objectives and methods agreed to by KHDG and the resource agencies, and subject to approval by FERC. The studies shall cost no more than \$427,000, and shall be paid for by DMR.
3. Based on the results of these studies and beginning no later than January 1, 2002 and ending no later than June 30, 2002, KHDG dam owners and the resource agencies shall engage in consultation to attempt to reach agreement on the appropriate location of upstream eel passage at each facility, and the appropriate permanent downstream passage measures to apply to each facility.
  - a. Upstream passage. KHDG dam owners agree that, if agreement is reached on the location of upstream eel passage at each facility, KHDG dam owners will install said passage at each facility during 2002. The cost to KHDG dam owners of materials for each upstream eel passage facility shall not exceed \$10,000 and the total cost of materials to KHDG dam owners per dam shall not exceed \$20,000, in the event that construction of more than one upstream passage facility is required per dam. The parties shall jointly request FERC to amend licenses and insert the agreed-upon terms and conditions for upstream eel passage.
  - b. Downstream passage. If agreement is reached at consultation on the appropriate downstream passage measures, the parties shall jointly request FERC to amend licenses and insert the agreed-upon terms and conditions for downstream eel passage.

If consensus is not reached on either upstream passage location or downstream passage measures by June 30, 2002, any party shall be free to petition FERC to amend any license to insert appropriate terms and conditions.

4. In the event that, during the course of the eel tracking studies, it is revealed that certain interim downstream measures are needed to avoid significant downstream turbine injury and/or mortality (immediate or delayed) at a particular site, KHDG dam owners will consult with the resource agencies and agree to undertake cost-effective measures designed to minimize

mortality at that site.

5. In the event that DMR does not receive the necessary appropriation or legislative spending authorization required to fund the studies discussed in paragraph III.G.1. & 2. above, the provisions in this Agreement governing American eel, found in paragraphs III.G.1 through III.G. 4, are null and void, but all other provisions of this Agreement remain in full force and effect. In the event that paragraphs III.G.1 through III.G.4 become null and void, any party may petition FERC to amend any license regarding upstream and downstream passage of eel.

H. Reporting.

Continuous progress assessments will be undertaken through annual reports which will be filed with FERC by KHDG dam owners, consistent with current practice by KHDG dam owners.

I. Support on Edwards removal.

KHDG dam owners agree to publicly and actively support removal of Edwards dam, as recommended in the Kennebec River Basin Maine FEIS, including stating such support in filings to FERC and other governmental agencies with responsibility for granting regulatory approval of the removal. Other activities in support of removal of the Edwards dam will be undertaken if mutually agreed upon by parties.

J. Successors, Assignees or Purchasers; notification

KHDG dam owners agree that the terms and conditions contained in this Agreement shall bind and inure to the benefit of all entities that might become successors, assignees or purchasers of any licensee. Each KHDG dam owner agrees to provide notice of the existence of this Agreement, and a copy thereof, to any prospective buyer of its hydropower facility.

K. Termination of all prior agreements

The parties agree that this Agreement supercedes and terminates all prior agreements, whether written or oral, including specifically the *Agreement Between the State of Maine and Kennebec Hydro Developers Group*, dated January 22, 1987, relating to the subject matter herein. In the event that this Agreement becomes null and void pursuant to Paragraph III.C. of this Agreement, then the aforementioned *Agreement Between the State of Maine and Kennebec Hydro Developers Group* shall remain in effect pursuant to its terms and conditions, with



the exception that the obligation for installation of permanent upstream fish passage facilities at Lockwood, Fort Halifax, UAH-Hydro Kennebec and Benton Falls shall be extended as provided in Paragraph III.C. of this Agreement.

**IV. Terms and conditions for specific projects:**

**A. BIOLOGICAL ASSESSMENT PROCESS FOR LOCKWOOD, UAH-HYDRO KENNEBEC, SHAWMUT AND WESTON**

The schedule described herein for installing permanent upstream fishways at Lockwood, UAH-Hydro Kennebec, Shawmut and Weston projects is based primarily on the anticipated growth in the population of American shad in the Kennebec River. However, the State of Maine's goal is to restore anadromous species (with the exception of lamprey) to their historic range. This means restoring other anadromous species above Lockwood, UAH-Hydro Kennebec, Shawmut and Weston including Atlantic salmon, alewife, and blueback herring. The resource agencies will continue to assess the status and growth of the population of shad and other anadromous fish populations in the Kennebec River, as is being done on the Saco River and elsewhere in Maine. Should the growth of salmon or river herring runs make it necessary to adopt an alternative approach for triggering fishway installation (i.e., one not based on the project specific, biologically-based trigger number for shad), the resource agencies will meet with the licensee(s) to attempt to reach consensus on the need, timing and design of permanent upstream fish passage facilities at the Lockwood, Hydro-Kennebec, Shawmut, and Weston projects. Disputes will be handled through the FERC process.

**B. LOCKWOOD AND UAH-HYDRO KENNEBEC**

**1. Interim upstream fish lift.**

At the Lockwood facility, licensee shall install an interim trap, lift, and transfer facility for American shad, river herring, and Atlantic salmon at the powerhouse, to be operational by May 1, 2006. Licensee recognizes and acknowledges that the success of the resource agencies' and Kennebec Coalition's efforts to restore shad, and to begin the restoration of Atlantic salmon to the Kennebec River Basin and achieve established fisheries management goals is dependent upon: (a) the State's ability to collect sufficient quantities of healthy shad brood stock from the Sebasticook River at the Fort Halifax dam, and from the Kennebec River at the Lockwood dam to use in DMR's Waldoboro hatchery and for stocking in upstream waters; and (b) the resource agencies' and other interested

organizations' ability to collect available brood stock of Atlantic salmon from the Sebasticook River at the Fort Halifax dam, and from the Kennebec River at the Lockwood dam, to initiate a Kennebec River salmon hatchery operation. Licensee further recognizes and acknowledges that, assuming the prior removal of the Edwards dam, installation of an interim fish lift at the Lockwood dam in 2006 is needed, and Licensee will not seek to eliminate or defer this installation requirement before FERC or other regulatory bodies.

A part of the interim passage design and construction would include mechanisms (e.g., video monitoring) to allow operators and resource agencies to assess the effectiveness of the interim facility in trapping all species that seek passage. The interim lift shall be designed to empty into a trap and truck collection facility with adequate capacity for "holding" large quantities of fish, and not designed to discharge into the canal area.

In the event that the Edwards Dam has not been removed by May 1, 2006, any party to this Agreement retains the right to petition FERC to establish a new date for installation of an interim trap, lift, and transfer facility at Lockwood for American shad, Atlantic salmon and river herring. It is understood that this ability to petition for a new date in the event that Edwards has not been removed applies only to the installation of interim fish passage at Lockwood, and permanent fish passage at Fort Halifax, as specified at paragraph IV.E.1.d.2. herein.

2. Permanent upstream passage.

Permanent upstream passage at Lockwood and UAH-Hydro Kennebec shall be operational 2 years following the earlier to occur of either of the following biological triggers. In no event shall permanent upstream fish passage be required to be operational before May 1, 2010.

- a. 8000 American shad in any single season captured at the interim trap, lift, and sort facility at Lockwood; or
- b. a biological assessment trigger initiated for Atlantic salmon, alewife or blueback herring, as described in IV-A above.

3. Downstream passage at Lockwood

- a. Interim passage beginning upon the effective date of this Agreement:

(1) Generally. Licensee will continue and where needed improve

existing interim operational measures (e.g. controlled spills, temporary turbine shutdowns, sluiceways), to diminish entrainment, allow downstream passage of out-migrating alewife, Atlantic salmon, blueback herring and American shad, and eliminate significant injury or mortality (immediate or delayed) to out-migrating species. Licensee agrees to consult with state and federal agencies to develop an approved plan for interim downstream passage facilities and/or operational measures to minimize impacts on downstream migrating fish, with evaluation based on qualitative observations.

(2) Passage through turbines. Licensee and the resource agencies agree that fish passage by means of sluiceways and/or controlled spills are the first and preferred approach to interim downstream fish passage at Lockwood. In the event that fish passage using these methods is not successful<sup>1</sup>, and to the extent that licensee desires to achieve or continue interim downstream passage of out-migrating alewife, and/or juvenile Atlantic salmon or shad by means of passage through turbine(s), licensee must demonstrate, through site-specific qualitative 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). If, after three years of such studies, the resource agencies, based on good cause shown, do not believe that the qualitative studies conclusively demonstrate that turbine passage is not resulting in significant injury and/or mortality, and licensee desires to achieve interim downstream passage of these species through turbine(s), licensee must demonstrate through site-specific quantitative studies that turbine passage will not result in significant injury and/or mortality (immediate or delayed). The quantitative studies shall be designed and conducted in consultation with the resource agencies.

In the event that adult shad and/or adult Atlantic salmon begin to inhabit the impoundment above the Lockwood 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

---

<sup>1</sup> Construction of new diversionary structures to achieve success is not required by this Agreement.

turbine (s) will not result in significant injury and/or mortality (immediate or delayed). In no event shall licensee be required to make this quantitative demonstration for adult shad and adult Atlantic salmon before May 1, 2006.

Licensee shall conduct studies (designed in consultation with the resource agencies) prior to the date by which permanent downstream passage facilities are to be operational to determine the effectiveness of various downstream passage techniques in preparation for the design and installation of permanent downstream facilities.

- b. Permanent passage: Permanent downstream facilities will be operational on the date that permanent upstream passage is operational. Licensee will be permitted to install permanent downstream passage at an earlier date if it so chooses.

4. Downstream passage at UAH-Hydro Kennebec

- a. Interim passage beginning upon the effective date of this Agreement:

(1) Generally. Licensee will continue and where needed improve existing interim operational measures (e.g. controlled spills, temporary turbine shutdowns), to diminish entrainment, allow downstream passage of out-migrating alewife, Atlantic salmon, blueback herring and American shad, and eliminate significant injury or mortality (immediate or delayed) to out-migrating species. Licensee agrees to consult with state and federal agencies to develop an approved plan for interim downstream passage facilities and/or operational measures to minimize impacts on downstream migrating fish, with evaluation based on qualitative observations.

(2) Passage through turbines. To the extent that licensee desires to achieve or continue interim downstream passage of out-migrating alewife, and/or juvenile Atlantic salmon or shad by means of passage through turbine(s), licensee must demonstrate, through site-specific qualitative 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). In the event that adult shad and/or adult Atlantic salmon begin to inhabit the impoundment above the UAH-

Hydro Kennebec 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). In no event shall licensee be required to make this quantitative demonstration before May 1, 2006.

Licensee shall conduct studies (designed in consultation with the resource agencies) prior to the date by which permanent downstream passage facilities are to be operational to determine the effectiveness of various downstream passage techniques in preparation for the design and installation of permanent downstream facilities.

- b. Permanent passage: Permanent downstream facilities will be operational on the date that permanent upstream passage is operational. Licensee will be permitted to install permanent downstream passage at an earlier date if it so chooses.

5. Applicability of this Agreement to FERC Relicensing of Lockwood.

The resource agencies and the Kennebec Coalition stipulate that the terms and conditions contained herein that are relevant to the relicensing at Lockwood (e.g.; type of fish passage, dates for installation) will be the same terms and conditions that will be sought during relicensing, including the water quality certification process. Certain issues not covered in this Agreement (e.g. boat ramps, access, minimum flows) will still need to be resolved during the relicensing process.

C. SHAWMUT

- 1. Permanent upstream passage at Shawmut shall be operational 2 years following the earlier to occur of either of the following biological triggers. In no event shall permanent upstream fish passage be required to be operational before May 1, 2012.
  - a. 15,000 American shad passed in any single season in the permanent passage facility at UAH-Hydro Kennebec; or
  - b. a biological assessment trigger initiated for Atlantic salmon,

alewife or blueback herring as described in IV -A above.

2. Downstream passage:

a. Interim passage beginning upon the effective date of this Agreement:

(1) Generally. Licensee will continue and where needed improve existing interim operational measures (e.g. controlled spills, temporary turbine shutdowns, sluiceways), to diminish entrainment, allow downstream passage of out-migrating alewife, Atlantic salmon, blueback herring and American shad, and eliminate significant injury or mortality (immediate or delayed) to out-migrating species. Licensee agrees to consult with state and federal agencies to develop an approved plan for interim downstream passage facilities and/or operational measures to minimize impacts on downstream migrating fish, with evaluation based on qualitative observations.

(2) Passage through turbines. Licensee and the resource agencies agree that fish passage by means of sluiceways and/or controlled spills are the first and preferred approach to interim downstream fish passage at Shawmut. In the event that fish passage using these methods is not successful<sup>2</sup>, and to the extent that licensee desires to achieve or continue interim downstream passage of out-migrating alewife, and/or juvenile Atlantic salmon or shad by means of passage through turbine(s), licensee must demonstrate, through site-specific qualitative 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). If, after three years of such studies, the resource agencies, based on good cause shown, do not believe that the qualitative studies conclusively demonstrate that turbine passage is not resulting in significant injury and/or mortality, and licensee desires to achieve interim downstream passage of these species through turbine(s), licensee must demonstrate through site-specific quantitative studies that turbine passage will not result in significant injury and/or mortality (immediate or delayed). The quantitative studies shall be designed and conducted in consultation with the resource agencies.

---

<sup>2</sup> Construction of new diversionary structures to achieve success is not required by this Agreement.

In the event that adult shad and/or adult Atlantic salmon begin to inhabit the impoundment above the Shawmut 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). In no event shall licensee be required to make this quantitative demonstration for adult shad and adult Atlantic salmon before May 1, 2006.

Licensee shall conduct studies (designed in consultation with the resource agencies) prior to the date by which permanent downstream passage facilities are to be operational to determine the effectiveness of various downstream passage techniques in preparation for the design and installation of permanent downstream facilities.

- b. Permanent passage: Permanent downstream facilities will be operational on the date that permanent upstream passage is operational. Licensees will be permitted to install permanent downstream passage at an earlier date if it so chooses.

#### D. WESTON

- 1. Permanent upstream passage at Weston shall be required to be operational 2 years following the earlier to occur of either of the following biological triggers. In no event shall permanent upstream fish passage be required to be operational before May 1, 2014.
  - a. 35,000 American shad captured in any single season in the permanent upstream facility at Shawmut; or
  - b. a biological assessment trigger initiated for Atlantic salmon, alewife or blueback herring as described in IV-A above.
- 2. Downstream passage:
  - a. Interim passage beginning upon the effective date of this Agreement:

(1) Generally. Licensee will continue and where needed improve existing interim operational measures (e.g. controlled spills, temporary turbine shutdowns, sluiceways), to diminish entrainment, allow downstream passage of out-migrating alewife, Atlantic salmon, blueback herring and American shad, and eliminate significant injury or mortality (immediate or delayed) to out-migrating species. Licensee agrees to consult with state and federal agencies to develop an approved plan for interim downstream passage facilities and/or operational measures to minimize impacts on downstream migrating fish, with evaluation based on qualitative observations.

(2) Passage through turbines. Licensee and the resource agencies agree that fish passage by means of sluiceways and/or controlled spills are the first and preferred approach to interim downstream fish passage at Weston. In the event that fish passage using these methods is not successful<sup>3</sup>, and to the extent that licensee desires to achieve or continue interim downstream passage of out-migrating alewife, and/or juvenile Atlantic salmon or shad by means of passage through turbine(s), licensee must demonstrate, through site-specific qualitative 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). If, after three years of such studies, the resource agencies, based on good cause shown, do not believe that the qualitative studies conclusively demonstrate that turbine passage is not resulting in significant injury and/or mortality, and licensee desires to achieve interim downstream passage of these species through turbine(s), licensee must demonstrate through site-specific quantitative studies that turbine passage will not result in significant injury and/or mortality (immediate or delayed). The quantitative studies shall be designed and conducted in consultation with the resource agencies.

In the event that adult shad and/or adult Atlantic salmon begin to inhabit the impoundment above the Weston 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

---

<sup>3</sup> Construction of new diversionary structures to achieve success is not required by this Agreement.



in consultation with the resource agencies, that passage through turbine (s) will not result in significant injury and/or mortality (immediate or delayed). In no event shall licensee be required to make this quantitative demonstration for adult shad and adult Atlantic salmon before May 1, 2006.

Licensee shall conduct studies (designed in consultation with the resource agencies) prior to the date by which permanent downstream passage facilities are to be operational to determine the effectiveness of various downstream passage techniques in preparation for the design and installation of permanent downstream facilities.

- b. Permanent passage: Permanent downstream facilities will be operational on the date that permanent upstream passage is operational. Licensee will be permitted to install permanent downstream passage at an earlier date if it so chooses.

**E. SEBASTICOOK RIVER DAMS**

**1. FORT HALIFAX**

- a. Purpose in establishing new dates for installation of permanent fish passage.

Licensee recognizes and acknowledges that the success of the resource agencies' and Kennebec Coalition's efforts to restore shad to the Kennebec River Basin and achieve established fisheries management goals is dependent upon the State's ability to collect sufficient quantities of healthy shad brood stock from the Sebasticook River and the Kennebec River below the Lockwood dam, to use in DMR's Waldoboro hatchery and for stocking in upstream waters. Licensee further recognizes and acknowledges that, assuming the continued operation of the Fort Halifax dam and the prior removal of the Edwards dam, permanent fish lift capable of passing, unharmed, sufficient quantities of alewife, shad, and Atlantic salmon to meet stated fisheries management goals shall be operational at Fort Halifax in 2003. Licensee further recognizes and acknowledges that resources agencies and the Kennebec Coalition are

agreeing to allow licensee to delay installation of such a lift until 2003<sup>4</sup> in order to allow licensee sufficient time to decide if continued operation of the Fort Halifax dam is economically viable, and that the schedule of time for such decisionmaking allowed under this Agreement is sufficient for this decisionmaking.

b. Temporary Fish Pump for Alewife.

By no later than May 1st of the first migration season following the removal of the Edwards Dam, anticipated to be removed in 1999, licensee shall install and have fully operational a temporary fish pump and trap and transport facility, effective in safely capturing upstream migrating alewife in quantities sufficient to meet DMR's restoration goals for alewife. If at any time the temporary fish pump at Fort Halifax is not successfully passing alewife in quantities sufficient to meet these restoration goals, licensee agrees to undertake emergency interim measures (e.g., seining) to capture alewife and otherwise take immediate corrective actions.

In the event that the Edwards Dam is not removed in 1999 and river herring continue to be trapped at Edwards, the temporary fish pump at Fort Halifax shall be installed and operational prior to the first spring migration season for river herring following the removal of the Edwards Dam.

c. Temporary Capture of Shad

By no later than May 1st of the first migration season following the removal of the Edwards Dam, anticipated to be removed in 1999, licensee shall install, have fully operational and maintain and operate below the Fort Halifax dam all measures except for construction of permanent upstream passage facilities, necessary to capture shad unharmed<sup>5</sup> in sufficient quantities to satisfy the needs of DMR for hatchery spawning of shad at its Waldoboro shad hatchery, so long as populations of shad have been sighted in the waters below the Fort Halifax dam.

d. Permanent Upstream Fish Passage

(1). Installation of Permanent Passage. Unless licensee has

---

<sup>4</sup> Assuming licensee does not choose to remove or partially remove the dam.

<sup>5</sup> KHDG and the resource agencies will evaluate whether measures such as installation of floating weir(s), angling, dip netting, seining, and gill netting are capable of capturing shad unharmed.

surrendered its FERC license at Fort Halifax and FERC has ordered the dam to be decommissioned by summer 2003, licensee shall, by May 1, 2003, remove the temporary fish pump and all temporary shad collection mechanisms, and install and have fully operational a lift facility capable of successfully trapping and trucking and passing upstream American shad and river herring in quantities sufficient to meet established fishery management goals, and Atlantic salmon in quantities sufficient to meet the Atlantic Salmon Commission's goals. Licensee will not seek to eliminate or defer beyond 2003 the requirement to provide permanent fish passage (whether by permanent fish lift, removal, or partial removal) before FERC or other regulatory bodies, except as provided in paragraph IV.E.1.d (2) below.

(2). Reopener if Edwards Dam Not Removed. In the event that the Edwards Dam has not been removed by 2001, any party to this Agreement retains the right to petition FERC to establish a new date for installation of permanent upstream fish passage at Fort Halifax for American shad, Atlantic salmon and river herring. It is understood that this ability to petition for a new date in the event that Edwards has not been removed applies only to the installation of permanent fish passage at Fort Halifax and interim fish passage at Lockwood, and as specified herein at paragraph IV.B.1.

2. **BENTON FALLS**

Permanent upstream passage capable of passing sufficient quantities of alewife, shad and Atlantic salmon to meet stated fisheries management goals shall be constructed one year following the occurrence of all of the following events: (1) passage upstream at Fort Halifax (by temporary or permanent mechanisms, including trapping, sorting and trucking) of alewife; and (2) installation of alewife fish passage, and/or the removal of dams, at all of the following four locations: the Newport Dam; the outlet of Seabasticook Lake; the outlet of Plymouth Lake at the head of Martin Stream in the town of Plymouth; and below the outlet of Pleasant Pond on Stetson Stream in the town of Stetson. In no event shall permanent upstream passage be required to be operational before May 2002.

3. **BURNHAM**

a. Upstream Passage. Permanent upstream passage capable of passing sufficient quantities of alewife, shad and Atlantic salmon to meet stated fisheries management goals shall be constructed one year following the occurrence of all of the following events: (1) passage upstream at Fort Halifax (by temporary or permanent mechanisms, including trapping, sorting and trucking) of alewife; and (2) installation of alewife fish passage, and/or the removal of dams, at all of the following four locations: the Newport Dam; the outlet of Sebasticook Lake; the outlet of Plymouth Lake at the head of Martin Stream in the town of Plymouth; and below the outlet of Pleasant Pond on Stetson Stream in the town of Stetson. In no event shall permanent upstream passage be required to be operational before May 2002.

b. Downstream Passage. Permanent downstream fish passage at the Burnham project shall be operational the second year following issuance of a FERC license. Beginning on the effective date of this Agreement in 1998 and continuing until the installation of permanent downstream passage, licensee shall install or otherwise undertake additional interim downstream passage measures needed to eliminate significant downstream injury or mortality (immediate or delayed) of river herring during downstream migration, upon direction by DMR based upon observation of downstream mortality. These interim measures are similar to interim measures undertaken at the dams at Damariscotta Mills and Pumpkin Hill.

#### **V. Funds for Fisheries Restoration of the Kennebec.**

KHDG dam owners will pay \$4,750,000 to the State of Maine, c/o the National Fish and Wildlife Foundation ("NFWF"), pursuant to an agreement entered into between NFWF and the State of Maine, at scheduled payment intervals listed below. KHDG dam owners' payments to the State will be used only for anadromous fisheries restoration in the Kennebec, including funding for restoration of alewife, shad, blueback herring, and salmon; the eel studies described herein; and costs incurred by the State in connection with removing the Edwards Dam.

The schedule of payments by KHDG dam owners to the NFWF is: \$2,375,000.00, received by NFWF on or before January 15, 1999; \$935,000.00, received by NFWF on or before January 15, 2000; and \$180,000.00 per year, received by NFWF on or before January 15, for each of the years beginning January 15, 2003 and continuing up to and including January 15, 2010.

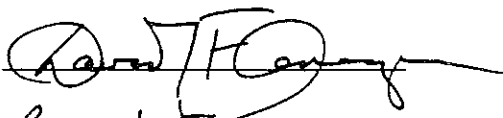
KHDG dam owners that are signatories to this Agreement are jointly and severally liable for all payments listed herein.

**VI. Enforceability**


The parties to this Agreement acknowledge that there may be no adequate remedy at law for any breach of the terms of this Agreement and, therefore, that any party shall be entitled to obtain specific performance of any other party's breach hereof, in addition to and without waiver of any other available remedy should such relief be determined to be appropriate.

SEEN AND AGREED TO THE DAY OF , 1998, by:


**Central Maine Power Company**

By:   
Its: *President*  
Dated: *26 May 98*

**Kennebec Hydro Resources, Inc.  
on behalf of:  
Merimil Limited Partnership**

By:   
Its: *President*  
Dated: *26 MAY 98*

**UAH-Hydro Kennebec Limited Partnership**

By:   
Its: *General Manager*  
Dated: *MAY 26, 1998*

Ridgewood Maine Hydro Partners, L.P.

By: \_\_\_\_\_

Its:

Dated:

Benton Falls Associates

By: \_\_\_\_\_

Its:

Dated:

American Rivers, Inc.

By: \_\_\_\_\_

Its:

Dated

The Atlantic Salmon Federation

By: John W. Wright

Its: V.P. Conservation Programs

Dated May 26, 1998

Kennebec Valley Chapter of Trout Unlimited

By: Barbara Baum

Its: President

Dated May 18, 1998

Ridgewood Maine Hydro Partners, L.P.

By: [Handwritten Signature]

Its:

Dated:

**Benton Falls Associates**

By: \_\_\_\_\_

Its:

Dated:

**American Rivers, Inc.**

By: Rebecca P. Wodden

Its: PRESIDENT

Dated MAY 18, 1998

**The Atlantic Salmon Federation**

By: \_\_\_\_\_

Its:

Dated

**Kennebec Valley Chapter of Trout Unlimited**

By: \_\_\_\_\_

Its:

Dated


**Ridgewood Maine Hydro Partners, L.P.**

By: \_\_\_\_\_

Its:

Dated:

**Benton Falls Associates**

By:  \_\_\_\_\_

Thomas A. McNish

Its: Secretary and Treasurer

Dated: May 26, 1998

**American Rivers, Inc.**

By: \_\_\_\_\_

Its:

Dated

**The Atlantic Salmon Federation**

By: \_\_\_\_\_

Its:

Dated

**Kennebec Valley Chapter of Trout Unlimited**

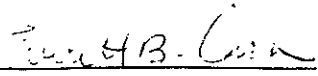
By: \_\_\_\_\_

Its:

Dated

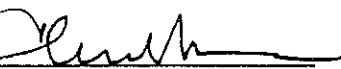


**Natural Resources Council of Maine**

By: 

Its: Executive Director  
Dated May 26 1998

**Trout Unlimited**

By: 

Its: President/CEO  
Dated 5/26/98

**National Marine Fisheries Service, U.S. Department of Commerce**

By: 

Its:  
Dated: 5/26/98

**State Planning Office, State of Maine**

By: 

Its: Director  
Dated: 5/26/98

Maine Department of Inland Fisheries and Wildlife

By: *[Signature]*

Its: *Commissioner*

Dated: *5/26/98*

Maine Department of Marine Resources

By: *Lewis M. Felge*

Its: *COMMISSIONER*

Dated: *5/26/98*

United States Fish and Wildlife Service, U.S. Department of the Interior

By: *[Signature]*  
*for Michael J. Bartlett*

Its: *New England Field Office Supervisor*

Date: *5/26/98*