

September 26, 2022

From: The Kennebec Coalition (Atlantic Salmon Federation U.S.; Maine Rivers; Natural Resources Council of Maine; Trout Unlimited and Kennebec Valley Chapter of Trout Unlimited) and Conservation Law Foundation

To: Kyle Olcott  
Hydropower Coordinator  
Bureau of Land Resources  
Maine Department of Environmental Protection  
17 State House Station  
Augusta, ME 04333-0017

*(via email only)*

**Re: Comments on Brookfield White Pine Hydro LLC additional information for the Shawmut Hydroelectric Project, L-019751-33-I-N**

Dear Mr. Olcott:

The Kennebec Coalition and the Conservation Law Foundation believe that the measures that Brookfield proposed in its September 21, 2022 amendments to its Species Protection Plans (SPP) for the four lower Kennebec dams are nothing more than window dressing. They will fail to provide any meaningful benefit for fish passage for the following reasons:

1. Two-inch screens are too large to prevent smolts from entering turbines. Even if two-inch screens prevent kelts from entering turbines, Brookfield still has no evidence that kelts will utilize existing downstream passage facilities or survive even if they do. Brookfield has no data on downstream passage for kelts whatsoever. In addition, 2-inch screens are not sufficient to prevent juveniles or adults of other native diadromous fish from entering turbines. As we have stated in numerous comments to the Maine Department of Environmental Protection and Federal Energy Regulatory Commission, restoring Atlantic salmon without simultaneously restoring the full suite of diadromous fish that coevolved with salmon is not possible. Screens must be inclined and no larger than 0.75 inches to be effective.<sup>1</sup>

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<sup>1</sup> MDMR. 2021. Comments on Notice Of Intent To Prepare An Environmental Impact Statement For The Proposed Project Relicense, Interim Species Protection Plan, And Final Species Protection Plan, Request For Comments On Environmental Issues, Schedule For Environmental Review, And Soliciting Scoping Comments on the Lockwood (FERC No. 2574), Hydro-Kennebec (FERC No. 2611), Shawmut (FERC No. 2322), and Weston (FERC No. 2325) Hydroelectric Projects. December 22.P. 3. FERC Accession Number 20211223-5269.

2. Brookfield's proposed shutdown periods (the last week of April to the last week of May) do not cover the full range of smolt migration, which runs from April 1 to June 30 as Maine's Department of Marine Resources has said many times<sup>2</sup>, and shutdowns only at night will do nothing to help smolts migrating during the day. In addition, Brookfield has proposed no shutdowns at all for the Weston Project.
3. Brookfield has proposed no improvements to its upstream passage plans at any of the four dams. For the reasons we have documented in previous comments<sup>3</sup>, Brookfield's upstream passage proposals will fail, dooming the Kennebec to the same fate as the Connecticut and the Merrimack and likely driving Atlantic salmon to extinction in the United States.
4. Brookfield continues to use statistical tricks with Normandeau's inadequate downstream passage data to try to inflate the survival rate of smolts. Examination of individual fish passing through the four dams show that only 56% of smolts survive to reach the river below the Lockwood Dam after starting above Weston.<sup>4</sup> None of Brookfield's statistical analyses change this fact, and none of Brookfield's proposed measures in its September 21, 2022 filing are sufficient to raise downstream passage to anything close to an acceptable level.
5. Brookfield has no data on estuary mortality. Delayed mortality for smolts often manifests in the estuary and increases with the number of dams smolts need to pass as shown in research from the Penobscot.<sup>5</sup> Any claims that these measures would address delayed mortality lack supporting data and are meaningless.

As we have said many times before, we urge DEP to require Brookfield to come up with a meaningful solution to fish passage issues on the Kennebec. Brookfield's insufficient revised application for water quality certification of October 15, 2021 failed to do so. The recent "additional information" filed on September 21, 2022 is no better and fails to remedy its many deficiencies. Furthermore, the recent filing appears nearly one year later after the revised application was filed, and after this Department has already issued a draft denial without prejudice pending federal agency NEPA analysis (a FERC Environmental Impact Statement) and ESA analysis (a NMFS Biological Opinion). Brookfield has known for almost a full year that the DEP considers the 401 certification application for Shawmut insufficient to meet water quality standards, and has simply done nothing to address the serious deficiencies.

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<sup>2</sup> See, for example, FERC Accession Number 20220401-5030, pdf file p. 12.

<sup>3</sup> See, for example, FERC Accession Number 20210816-5050, Pp. 9-25. See also Comments of the Kennebec Coalition and Conservation Law Foundation on the Revised Brookfield Application for Water Quality Certification (WQC) at the Shawmut Dam (February 16, 2022).

<sup>4</sup> FERC Accession Number 20210816-5050, Pp. 25-44.

<sup>5</sup> *Ibid.*, Pp. 28-29.

## Conclusion

In closing, the Shawmut Dam fails to meet the Kennebec River's water quality standards and nothing in Brookfield's supplemental filing on the application for water quality certification has changed that. The Department should deny Brookfield's application.

Respectfully submitted, this 26<sup>th</sup> day of September, 2022.

The Kennebec Coalition (Atlantic Salmon Federation U.S.; Maine Rivers; Natural Resources Council of Maine; Trout Unlimited and Kennebec Valley Chapter of Trout Unlimited) and Conservation Law Foundation

Sincerely,

by:

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cc:

Commissioner Melanie Loyzim, Maine Department of Environmental Protection