



Norman Hanson & DeTroy, LLC
Attorneys at Law
Two Canal Plaza
P.O. Box 4600
Portland, ME 04112-4600

T 207.774.7000
F 207.775.0806
www.nhdlaw.com
rpierce@nhdlaw.com

Russell B. Pierce, Jr., Esq.

Direct: (207) 553-4621

January 31, 2025

VIA EMAIL ONLY

Melanie Loyzim, Commissioner
Maine Department of Environmental Protection
Melanie.Loyzim@maine.gov

RE: DEP Application # L-31353-36-B-N – Bucksport Mill, LLC Consolidated Petition for Release from Dam Ownership relating to Silver Lake, Alamoosook Lake, and Toddy Pond dams, 38 M.R.S. §§ 901, et seq.

Dear Melanie:

I am writing on behalf of my clients, the Towns of Orland, Surry, Penobscot, and Blue Hill, regarding the above-referenced application for release from dam ownership. As the Department is generally aware, these four Towns have a right under the Dam Abandonment statute (38 M.R.S. §§ 901, et seq.) to consider accepting a conveyance of some or all of the dams subject to this petition. Accordingly, to undertake ordinary and expected due diligence to understand the liabilities and costs associated with the facilities, these Towns asked the petitioner Bucksport Mill, LLC (“Buckmill”) to provide information needed to evaluate the legal responsibilities and costs that come with a potential transfer of one or more dams and associated property and flowage rights.

We asked for information in October during the 15-day notice period under section 901, and again on November 12, 2024, and followed up with Buckmill’s counsel again over two weeks ago. At this point, we have grave concerns about delays in obtaining basic due diligence information responses and the municipal consultation obligations triggered under sections 902 and 908 by the filing. The Towns are functionally being denied their right of consultation under the statute by Buckmill’s delay in fully and openly responding to formal information requests which are essential for the municipalities to perform their due diligence and engage in meaningful consultation as envisioned in sections 902 and 908, so that the municipalities can perform their ordinary and basic governmental functions under the statute as potential public transferees of the dam assets.

We requested information early on in the process but received little of what we requested. As to the rest of the requested information, Buckmill’s attorney responded they would enter into discussions pursuant to section 908 only after the Towns’ official legislative bodies voted to enter into such discussions. While that precondition is not

required by the statute, since the Towns need much of the information Buckmill and AIM hold, each of these four municipalities expeditiously held town meetings called by a warrant, and they each voted affirmatively to trigger the municipal consultation process under Title 38 – so there is no doubt of serious municipal intent to conduct due diligence on these dams. (Orland voted on 12/13; Surry on 12/3; Penobscot on 12/7; and Blue Hill on 11/25.) Well in advance, and in anticipation of these town meetings, on November 12, 2024, the municipalities formally served information requests, with a copy to the Department, for the process of due diligence and receiving information on such subjects as asset costs of operation and maintenance, potential liabilities, dam condition, property and flowage rights, etc.

Any transferee would request such information to understand what they might take over. These requests for information seek the usual and customary information that would be part of any party's due diligence in taking over ownership and operation of such assets. The counsel for Buckmill, Buckmill itself, and its owner AIM no doubt received many of these records from the prior owner and have access to them. We understand that the Town of Bucksport served a substantially similar due diligence information request even earlier, and held its town vote under section 908. All the municipalities had also raised these due diligence requests in the context of the DEP's petition completeness review in October of 2024.

There has been one letter response with little information and no meaningful response to these due diligence information requests. Buckmill's responses indicate that Buckmill will require confidentiality agreements and provide some unclear amount of the requested information but we have seen little in now three months. The Petitioner has consistently indicated that a non-disclosure agreement (NDA) or some form of confidentiality agreement would be necessary before complete information would be shared. On January 13, 2025, I contacted Buckmill's counsel by email, to reiterate our requests for information; while counsel indicated on January 14th that Buckmill was working on gathering the information, the issue of "a framework for confidentiality" was raised again as a premise to providing complete responses to the requests for information that the municipalities need. We have not received a proposed framework for confidentiality. We have not received meaningful substantive response to the information requests.

As an aside, I would note that the Towns oppose an NDA or a confidentiality agreement in these circumstances. The Petitioner, Buckmill, has invoked a public, governmental, regulatory process to transfer or abandon these assets. That process includes procedure for consultation with governmental entities for taking over ownership of the dam assets, ultimately to avert water release orders from the DEP that would have profound public safety, economic and environmental impacts on the public. These four municipalities govern by the town meeting-selectperson form of government, where town meetings and town votes serve as the legislative arm of municipal government. Under these circumstances, we do not read into the Title 38 municipal consultation process any "NDA"

or confidentiality framework or condition to the towns performing their due diligence for taking over these dams.

As you know, members of the Legislative delegation together with select persons from the towns have initiated legislative process for establishing a quasi-municipal entity or district, in the event dam transfer to the towns results from the Title 38 consultation process that we are in. The delegation has indicated, however, that public comment and public meetings are necessary in February, so that the towns have the opportunity to provide input on details and form of that specific charter legislation. It is virtually impossible to hold such public meetings for public comments, in a meaningful and efficient way, with no information from the Petitioner responding to the towns' due-diligence information requests. Citizens will ask about costs to maintain and operate the dams and Buckmill has provided no information on its costs as well as deferred maintenance capital expenses. We understand that a substantial amount of that information exists and is readily available in Buckmill's possession.

1. Request For Extension Under 38 M.R.S. § 902(1-A).

The statutory process contains a 180-day municipal consultation period, which can be extended for an additional 180 days. 38 M.R.S. § 902(1-A). The 180 days will run on April 16, 2025 (or, April 30, 2025, if the "filing" date of the petition is deemed to be the date of the DEP's notice the petition was accepted for filing, under section 901(1)). At this juncture, under section 902(A), we request the additional 180 days under section 902(A), to extend the municipal consultation period to at least October 13, 2025 (or October 27, 2025, using the notice of acceptance filing date). Even if we receive complete responses to the due diligence requests tomorrow, there would clearly be insufficient time for the municipalities to fairly and fully perform their governmental functions and due diligence in finalizing municipal authority – which, for these towns, must include fully-informed town meetings called by warrant, for taking ownership of these dam assets and completing an agreement with Buckmill in roughly two months, along with diligent efforts to have enabling legislation enacted by the Legislature.

This request for extension meets the standard under 38 M.R.S. § 902(1-A)(A), which permits an extension upon a showing that "the municipality needs additional consultation time to facilitate an agreement for municipal ownership of the dam." Clearly, where due diligence requests were made nearly immediately upon filing of the petition, formally reserved upon the Department's determination that the petition was complete under section 901, and reiterated again after the town meeting votes held under section 908 – and, under the real-world exigencies now posed by the legislative process for setting up charter legislation necessary for municipal ownership of the dams – an extension is justified under this standard.

2. Request for DEP Governance and Participation in Consultation Process to Ensure Good Faith and Due Diligence Compliance

At this point, the Buckmill delays in engaging in consultations with the municipalities and providing basic due diligence information is imperiling the timeline for Town meetings that legislators are requesting for input in state charter legislation. We submit that the consultation requirement appears to require DEP to meaningfully enforce the Petitioner's provision of information in consultation in good faith, as well as likely DEP participation to ensure the consultation occurs in good faith as the statute appears to mandate.

Thus, in addition to granting the 180-day extension as noted above, we also request your assistance in moving the Petitioner's provision of due diligence information forward. Certainly, the Legislature did not envision a petitioner who, in the extreme, might not provide any information to municipalities (or potentially interested parties under section 902) until the 179th day of the initial period (then arguing to DEP that no one had agreed to assume ownership on Day 180).

Buckmill was in control of the timing of this process through its decision on when to file the petition in the first instance, and it certainly should have anticipated that standard due diligence information about the dams would be requested as part of the section 902 consultation process. Indeed, if it intended to invoke the Title 38 process in good faith, it would have gathered the information before filing its petition, so that nearly the full initial 180-day period would be available to potential future owners of the dam to perform their due diligence, receive and evaluate the information they request, do their own investigations and research in light of that information, and negotiate the terms of a transfer agreement with the petitioner – and with each party's time to informatively pursue their own approval processes as may be required to assume ownership (such as the municipal charter legislation here).

The fact that we are now roughly halfway through the statutory 180-day period and have received no substantive information, coupled with indications that Buckmill will insist on confidentiality as a precondition to any due diligence performed in the context of a public petition for release of dam ownership with the DEP, suggests that the petitioner may not be proceeding in good faith in consulting with third parties potentially willing to assume ownership of the dams. We therefore request that the DEP express its own concern about the pace of information delivery and indicate a date by which DEP expects Petitioner to provide substantially all of the requested information or be subject to DEP considering it a suitable basis for denying the petition.

3. Conclusion

As it stands, without at least a 180-day extension to the date in October of 2025, and an order that the Petitioner comply fully and publicly with the reasonable commercial due

Melanie Loyzim, Commissioner
Maine Department of Environmental Protection
January 31, 2025
Page 5

diligence requests, the Towns are being denied their right of a meaningful consultation under Title 38's statutory scheme for dam abandonment.

Thank you for your consideration of this request and your assistance in this regard.

Very truly yours,

/s/ Russell B. Pierce, Jr.

Russell B. Pierce, Jr., Esq.

RBP/

cc: Laura Paye, Hydropower & Dams Program Coordinator,
Bureau of Land Resources (by email Laura.Paye@maine.gov)
Katherine Joyce, by email kjoyce@bernsteinshur.com
David Littell, by email dlittell@bernsteinshur.com
Town of Orland; Town of Surry; Town of Penobscot; and Town of Blue Hill [client email]