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# Memorandum

**To:** Laura Paye  
Maine Department of Environmental Protection  
Bureau of Land Resources  
17 State House Station  
Augusta, Maine 04333-0017

**From:** Katherine A. Joyce  
Peter J. Van Hemel

**Date:** November 1, 2024

**Re:** Encumbrances affecting Silver Lake Dam, Alamoosook Lake Dam, Toddy Lake Dam

This memo is offered in support of Bucksport Mill LLC's petition for abandonment regarding the Silver Lake Dam, the Alamoosook Lake Dam, and the Toddy Pond Dam. Applicant Bucksport Mill LLC has previously submitted materials – a title memorandum and copies of deed materials referenced in that title memorandum – to demonstrate that the Applicant is vested with title to the dams located at Silver Lake, Alamoosook Lake, and Toddy Pond. This memorandum is intended to supplement those materials and to clarify the effects of existing covenants, easements, servitudes and other benefits and burdens which may be appurtenant to the title to the Applicant's land and/or improvements. Specifically, the Applicant wishes to clarify the impact of the Petition for Abandonment on the legal obligations that the Applicant currently has to operate and maintain the dams.

First, the Applicant respectfully requests that MDEP consider the effects of any encumbrances to the Applicant's title in the context of an evaluation of merits of its petition, and in the context of determining an appropriate outcome of the process (i.e. transfer of ownership OR dewatering) rather than the Petition's initial completeness. MDEP may, of course, consider the appurtenant real estate rights and interests affecting the dams in its deliberation of the

Applicant's petition, and/or in its decision(s) affecting the impoundments, including the possible imposition of conditions of approval.

There are numerous existing encumbrances that affect the title to the Applicant's land, including (but not limited to) agreements with various parties related to the complex water systems that are created by the dam impoundments. These include agreements concerning maintenance and operations of the dams themselves. Those agreements which are recorded in the Hancock County Registry of Deeds may create obligations (or benefits in some cases) which are "appurtenant" to the real estate itself – meaning that they cannot be severed unilaterally and that the obligations will bind any successor or assign of the Applicant. That is to say: these obligations are therefore not contractual obligations that affect only the named Applicant on a perpetual basis; any owner of the dams will become and remain subject to appurtenant rights and obligations following the abandonment or transfer of Applicant's ownership.

The fact that there are appurtenant rights affecting the real estate is not, however, a restriction against transfer of the Applicant's interest nor a prohibition against filing the petition requested. Independent of any MDEP process, the Applicant is free to convey its ownership of the dams, or to transfer the Applicant's corporate ownership by a sale or merger, or to otherwise conclude its tenure of ownership by any other legal means. The Applicant respectfully offers that if the ownership of the dams is transferred as a result of the Petition for Abandonment, any appurtenant legal obligations concerning operation and maintenance of the dams would be unaffected except as to the identity of the owner party. The same is true if a holder of those rights transfers its interest – the interest persists but the holder's identity changes. The fact that either party to an appurtenant agreement changes identity (*i.e.*, the ownership of the real estate changes) does not disturb the agreement itself, and in no case does the existence of an appurtenant interest restrict transfers of ownership.

If this process does not result in a transfer of ownership, we would expect a more fulsome discussion of the various interests in play. However, the materials provided establish appropriate title, right, or interest in the dams to support the MDEP initiating substantive review of the Petition, and all of the necessary follow-on actions required of the Petitioner.