

May 14, 2025

Via email only to: kjoyce@bernsteinshur.com

Bernstein Shur
Attn: Katherine Joyce
100 Middle Street
West Tower
Portland, ME 04101

RE: Clarification of Information Provided by Bucksport Mill LLC regarding Bucksport Generation LLC

Dear Attorney Joyce:

Bucksport Generation LLC (BucksGen) is in receipt of the materials filed in early March, 2025 by Bucksport Mill LLC (Mill) with the Maine Department of Environmental Protection (Department) regarding Mill's dam abandonment petition which, once again, include misstatements of BucksGen obligations and rights.

BucksGen provided the Department with a copy of its easement over the water supply system (Water Easement) that includes the dams and associated assets at Toddy Pond and Alamoosook and Silver Lakes (Water Supply System). While the easement speaks for itself, as a property right, it runs with the property binding those to whom the property is conveyed.

As you are aware, in addition to these property rights, the Mill bears contractual obligations to BucksGen. The easement and the Mill's contracts with BucksGen require BucksGen's advance written consent to transfer of any of the assets that comprise the Water Supply System and that consent is conditioned on Mill ensuring that the new owner complies with all Mill obligations. Your recent correspondence as part of the Department's consultation process with various potential transferees of portions of the Water Supply System does not clearly articulate this precondition.

The Mill's correspondence to the Department misstates or exclude two additional obligations in addition to its failure to recognize the precondition described below.

BucksGen's Discretionary Aid In lieu of Contribution:

The Mill stated in two letters to counsel for five municipalities that if "Bucksport Generation elects not to provide operating personnel to manage the Water Supply System, it is obligated to pay \$50,000 per year to Bucksport Mill." In fact, BucksGen is not required to pay the Mill \$50,000.

¹ Letters from Mill Legal Counsel at Response 6.

Section 2.6(a) of the Amended Facilities Sharing Agreement between the Mill and Bucks Genstates the terms by which BucksGen will “make available” to the Mill “to the extent available, in [BucksGen’s] sole and absolute discretion,” certain employees “in order to assist Mill, at Mill’s direction with (i) weekly maintenance and sampling of water for pH and outflow at the grit-pit until the new leachate line is installed (December 31, 2019), and (ii) maintaining certain activities ongoing activities, operations, maintenance, assisting in preparing environmental reporting for Mill’s submission, and compliance obligations pertaining to the Water Facilities consistent with current practices.

To the extent [BucksGen] is unwilling to undertake the activities set forth in items (i) or (ii), [BucksGen] shall pay Mill an amount equal to the cost for such services up to but not in excess of \$50,000 per year, in which case Mill shall be responsible for undertaking any such activities not performed by Generation.” Put more simply, if BucksGen opts not to supply its personnel to do those tasks, then it would pay the Mill’s cost of executing those tasks up to a cap of \$50,000 [based on actual, documented costs]. This work or pay arrangement was established in an agreement between the Mill and BucksGen which the Mill cannot unilaterally transfer to third parties like the towns.

The Mill’s Obligatory Maintenance of Dams and Associated Assets:

The Water Easement obligates the Mill to maintain the dams and associated assets that are the subject of the Department’s proceedings by:

1. Engaging a qualified third party engineer at least every three years “to assess and provide a written evaluation of the condition of the Downstream Infrastructure with respect to the integrity of the components and performance of the filtering process [...] who shall identify and make recommendations for required maintenance and capital repairs and/or replacements, if any, and proposed preventative maintenance and capital repairs and/or replacements, if any, that in the professional opinion of the engineer are reasonably required in order to provide for the reliable delivery of Water to the Total Property in quantities to satisfy the needs of [...BucksGen...] and to cause the filter station to operate at design standards, subject to customary wear and tear (Baseline Operating Standards) for the next five Fiscal Years.” Water Easement Exhibit C §7(a)(i) at page 36. This report shall be shared with BucksGen and the costs of the engineer paid from the R&M Account. Id.
2. The Mill simultaneously shall undertake the same process for the Upstream Water System which report shall likewise be shared with BucksGen but paid for not by BucksGen but 50/50 by the Mill and Whole Oceans (WO). Id. 7(b)(i) at page 37.

² Downstream Infrastructure is the portion of the property covered by the Water Easement running from Silver Lake to the Mill property (such as the Silver Lake intake, pipeline, filter house, communications equipment etc.). Water Easement, Exhibit C § 1.

³ Upstream Water System is the portion of the property covered by the Water Easement that is not Downstream Infrastructure- primarily everything from Toddy Pond through Alamoosook Lake to Silver Lake. Water Easement, Exhibit C § 1.

3. On or before May 1 of each year the Mill “shall” provide BucksGen and WO a Downstream Infrastructure Maintenance Budget for the next Fiscal Year in order to ensure that the Downstream Infrastructure can operate consistent with Baseline Operating Standards,” “a budget for anticipated capital repairs for the next Fiscal Year and estimated” for the next five years, a “timeline for expenditures for the next Fiscal Year,” a summary of maintenance and capital repairs/improvements over the past year and an accounting of the expenditure of funds from the R&M Account and balance remaining. Water Easement Exhibit C §7(a)(ii) at pg 37.
4. For the Upstream Water System, the Mill must provide BucksGen with a proposed maintenance plan and budget for the next year and a budget for anticipated capital repairs or improvements for the next year and estimated over the next five years accounting for the recommendations of the third-party engineer report. These costs come from the Upstream R&M Account which was to be funded by the net sales proceeds from the sale of Mill saltwater pumps to WO. Water Easement Exhibit C § 8(b) at page 38.

While the Mill has not provided BucksGen with any of the above required information, it should do so as part of the consultation with the Towns in the current stage of the Department’s dam abandonment process.

The Mill’s Obligation to Provide Reports and Cost Estimates to BucksGen:

As part of the consultation with the Towns regarding acceptance of transfer of the dams and associated assets as required at this stage of the Department’s dam abandonment process, the Mill filed multiple documents that address the status of maintenance and capital repairs to the Water Supply System and compliance with the above terms of the Water Easement that were not previously made available to BucksGen.

Specifically, the Mill filed with the Department a November 3, 2021 assessment of the dams. The assessment for the Silver Lake Dam completed by the Acting State Dam Inspector for the MEMA Office of Dam Safety concluded that the Silver Lake Dam was in “unsatisfactory” condition due to the following dam defects: uneven & settled stone wave protection, uneven embankment surfaces of sporadic settlement, seeps from both embankments, general efflorescence on most concrete surfaces, and sediment and reeds in the channel” but found “no sign of incipient structural failure.” The report provided a list of six recommendations to improve the safety of Silver Lake Dam. *Id.* These recommendations included authentication and testing of the EAP before spring run-off; rooting out of brush on the embankments and 20’ downstream of the toe then cover with topsoil and grass; develop and O&M plan and twice annual inspection plan; locate all toe drains and sumps and monitor and record flows twice a year beginning in May; locate and map all leaks and record leak flow for May and November and compare results; and report results of these recommendations after the spring run off each year. *Id.*

⁴ MEMA Report dated November 3, 2021 at page 3.

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The Mill's first quarter 2025 filing with the Department also included O&M Manuals dated October 2024 for the three dams that were prepared by Haley Ward, an environmental consultant and engineering firm. These manuals appear designed to address the issues identified in the November 2021 MEMA Report.

This Department filing by the Mill additionally provided a five-year capital repair/improvement budget for "Water Supply (Dams)" for fiscal years 2021-25 showing a 2025 budget of \$76,545 and what appears to be an expense budget for 2018-2024 that shows 2024 expenses of \$345,476. The Mill produced CAPEX Dam Budgets for each of the three dams prepared by Haley Ward and dated January 29, 2025. These appear to include costs for regular O&M that includes work identified in the November 2021 MEMA Report (i.e. brush and tree removal near embankments and maintenance of flow pathways) as well as going forward costs if Haley Ward were to assume responsibility for maintenance and capital repairs/improvements. These annual costs for Silver Lake Dam are approximately \$200,000-\$300,000 with annual costs for the other two dams being roughly similar resulting in a gross total of \$600,000-900,000/year.

While these materials appear to provide certain of the information required by Exhibit C to the Water Easement, the Mill has not provided the annual accounting of Mill budgeting of funds from the R&M Account and the Upstream R&M Account to address the work identified in these documents. BucksGen anticipates receipt of same by the May 1 deadline in Exhibit C to the easement. BucksGen notes that your letters to the municipalities also reference an over \$100,000 cash out of the WO easement which cash out should be accounted for the in R&M Account.

We look forward to receipt of the Mill budgeting from the R&M Account and Upstream R&M Account to address outstanding repair, maintenance and improvement work on the Water Supply System and remind the Mill of its commitment to obtain advance BucksGen approval for any transfer and its characterizations of BucksGen rights and responsibilities.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joanna B. Tourangeau", with a stylized, overlapping loop structure.

Joanna B. Tourangeau

cc: Laura Paye, Maine Department of Environmental Protection Dams Program