

September 12, 2025

**Sent Via Email Only to:** [laura.paye@maine.gov](mailto:laura.paye@maine.gov); [Melanie.Loyzim@maine.gov](mailto:Melanie.Loyzim@maine.gov)

Hydropower Coordinator Laura Paye  
Commissioner Melanie Loyzim  
Department of Environmental Protection  
17 State House Station  
Augusta, ME 04333

**RE: Bucksport Generation LLC Comments on Consent Issue**

Dear Coordinator Paye and Commissioner Loyzim:

Bucksport Generation LLC (“BucksGen”) timely provides the below comments on the impact of its Water Easement and Amended Facilities Sharing Agreement (“AFSA”) (together herein “Mill Documents”) to the petition of Bucksport Mill LLC (“Mill”) for release from dam ownership pending before the Maine Department of Environmental Protection (“Department”). In addition to impacting administrative standing, i.e. “title, right and interest,” the Mill Documents limit the Department’s authority to oversee voluntary transfer of ownership requested by the Mill Petition compliant with 38 M.R.S. § 906, and limits Department authority to issue an order to “release” the Mill from “dam ownership” or to “release” the Mill from “water-level maintenance” pursuant to 38 M.R.S. §§ 903 or 905. Consequently, BucksGen respectfully requests that the Department provide the Mill 180 days to resolve its Water Easement obligations and obtain BucksGen consent pursuant to the AFSA.

**Mill Documents**

In the Spring of 2019, the Mill prepared, executed and recorded in the registry of deeds multiple easements dividing Bucksport Mill LLC from Bucksport Generation LLC. While there were several such easements running to multiple parties, the May 21, 2019, Water Easement, which BucksGen filed with the Department in October of 2024, addressed the entire Fresh Water Supply System for the Mill and was executed by a single Mill employee on behalf of the Mill and BucksGen before the Mill sold the BucksGen assets.

The Fresh Water Supply System is comprised of all three dams and associated infrastructure that are the subject of the Mill Petition. The Water Easement granted BucksGen the right to all water necessary for BucksGen operation of the electric generation assets carved out of the Mill property. The Water Easement assigned all responsibility for Fresh Water Supply System operation, maintenance and capital improvement to the Mill and Whole Oceans.<sup>1</sup> Because the Mill

---

<sup>1</sup> As the Department is aware, Whole Oceans proposed a finfish aquaculture facility for development on the Mill property and is a third party to the Water Easement the Mill imposed on that Mill property to benefit BucksGen.

established its obligations and BucksGen's water rights in an easement, any transfer of any component of the Fresh Water Supply System including the dams is automatically bound to the Mill's delineation of rights and obligations. Put simply, the Water Easement created BucksGen rights and Mill obligations that run with the land to any new owner identified as part of these Department proceedings. The costs associated with the dams are a key criterion to the adequacy of the consultation process supporting voluntary transfer of the dams under Section 902 and any transfer pursuant to Section 903 as is the avoidance of impacts to property rights such as to water levels or flow pursuant to Section 905. The Water Easement contains substantive terms relevant to each of these analyses.

The Mill Documents liquidating the electric generation portion of the Mill property also included the AFSA. The AFSA is a contract between the Mill and BucksGen which was also drafted by the Mill in 2019 and, like the Water Easement, signed by a single Mill employee on behalf of the Mill and BucksGen. The AFSA specifies at Section 4.1(b) that the Mill "shall not sell, transfer or otherwise dispose of all or any portion of the equipment or rights subject to this Agreement, or take any other action that interferes with [...BucksGen's...] rights therein granted hereunder, without the express written consent of" BucksGen. The AFSA defines "Water Facilities" to include the water supply system which is the subject of the Water Easement (i.e. the Fresh Water Supply System discussed above) as rights that are subject to the AFSA.

The AFSA requirement that BucksGen consent to transfer of the dams and associated infrastructure is a precondition to any Mill transfer of those assets as contemplated by the Mill Petition. Without BucksGen consent, the Mill does not have administrative standing for the Department to consider the Mill Petition, the Mill cannot transfer all property necessary to ownership of the dams as required by Section 906, the Department cannot order transfer of the dams under Section 903 compliant with Section 906, nor can the Department properly issue a Section 905 Order.

The Department possesses authority to provide additional time to address the consent issue and obtain clarity regarding the costs of maintaining the dams pursuant to the Water Easement pursuant to Chapter 2 of the Department's Rules Governing Processing of Applications and other Administrative Matters ("Chapter 2") at section 10(D) as well as general principles of administrative standing, and 38 M.R.S. Sections 902(5), 903, 905 and 906. BucksGen therefore respectfully requests that the Department exercise its authority to provide the Mill 180 days to address these issues.

### **Administrative Standing**

On October 18, 2024, the Mill filed "a consolidated Petition for Release from Ownership related to Bucksport Mill LLC's ("Bucksport Mill") ownership of impoundments at Alamoosook Lake, Toddy Pond and Silver Lake." The October 18, 2024, Letter from Attorney Joyce to the Maine DEP re: Petition for Release from Dam Ownership at page 1 ("Mill Petition"). The Mill Petition did not include substantial evidence of administrative standing, which is required of all entities seeking administration action, because it failed to include the Water Easement or documentation of BucksGen consent pursuant to the AFSA. These are critical evidence of administrative standing because, without BucksGen consent, the AFSA bars the agency action that the Mill Petition requests the Department to take and the Water Easement limits the property rights and thus the

scope of the Department's Section 902, 903 or 905 action on the Mill Petition per Section 906. Title, right or interest ("TRI") is one component of administrative standing, the jurisdictional threshold that the Mill must meet throughout Department processing of the Mill Petition, regardless of any Department application of Chapter 2. Said differently, even if the Department were to waive Chapter 2 as to the Mill Petition, it cannot waive the Mill's obligation to establish and maintain standing pursuant to Section 10 because the administrative standing requirement, including the TRI component, exists regardless of the applicability of Chapter 2 of the Department's Rules. The Mill is still required to establish and maintain TRI to support the Department's authority to continue processing the Mill Petition.

The Mill is Required to Establish and Maintain Administrative Standing and Chapter 2 Applies:

While the Department's major projects page notes that: "This petition is not a permit application and is not subject to the Department's Ch. 2 Rules Concerning the Processing of Applications and Other Administration Matters,"<sup>2</sup> the administrative standing provisions of Chapter 2 apply pursuant to their plain language as does the general requirement to establish administrative standing. The TRI requirement applies to all administrative proceedings-- Chapter 2 § 10(D) is merely the Department's regulatory articulation of general principles of administrative standing.

The Department looks to TRI to determine whether the Mill's request for Department action is supported by Mill authority to do the thing that the Department will order or authorize. *Murray v. Inhabitants of the Town of Lincolnville*, 462 A.2d 40, 43 (Me. 1983). TRI "is intended to prevent an applicant from wasting an administrative agency's time by applying for a permit that he would have no legally protected right to use." *Id.* at 43. This is because the primary purpose of the standing determination is to ensure that agencies do not "dissipate their time and energies in dealing with persons who are 'strangers' to the particular governmental regulation and control being undertaken." *Walsh*, 315 A.2d at 207 n.4. Thus, regardless of whether Chapter 2 applies or not, the Mill must provide the Department with BucksGen consent pursuant to the AFSA and with clarity regarding outstanding property rights under the Water Easement to maintain TRI sufficient for the Department to process the Mill Petition.

That said, Chapter 2 applies. Section 2(A) of the Department's Rules lists Department actions to which Chapter 2 applies stating:

Except as provided in section 2(B) or other sections of this rule, this rule applies to the processing of license applications, appeals of Commissioner license decisions, appeals of insurance claim-related decisions made pursuant to 38 M.R.S. § 568-A to the Board, petitions and motions to modify, revoke or suspend licenses, petitions for corrective action orders, and other determinations on specific matters as described in this rule. This rule applies in the absence of more specific procedural requirements imposed by statute or rule.

06-096 C.M.R. ch. 2 §2(A). Thus, Chapter 2 applies because the Department's determination under 38 M.R.S. § 901 *et seq.* is both a Department "determination on specific matters as described in this rule" and because Chapter 2 includes many "more specific procedural requirements" than

---

<sup>2</sup> [Bucksport Mill, Projects, Land Resources, Maine Department of Environmental Protection.](#)

38 M.R.S. § 901 per the above list of Department actions to which Chapter 2 applies. Further, the Note to Section 2(A) of Chapter 2 does not reference 38 M.R.S. § 901 *et seq.* as one of the statutes containing “more specific procedural requirements” that are exempted from Chapter 2. Nor does Section 2(B) of Chapter 2, which lists all exceptions to Chapter 2, mention either dam abandonment petitions or 38 M.R.S. § 901 *et seq.* Finally, Chapter 2 does not include any definition of an application that excludes a petition pursuant to 38 M.R.S. § 901 *et seq.*

TRI must be maintained:

Chapter 2 requires that a petition include “sufficient TRI [title, right or interest] in all the property that is proposed for development or use.” 06-096 C.M.R. ch. 2 §10(D). Chapter 2 also provides that:

[W]hen TRI is disputed before or during the application processing period by information that the Department determines is credible, the Department may require the applicant to provide additional information to address TRI or the disputed evidence. An applicant must maintain sufficient TRI throughout the application processing period. *Id.*

Thus, Chapter 2, articulating general principles of administrative standing, requires that TRI must be maintained during the “application processing period” (i.e. while the Department is reviewing the project). 06-696 C.M.R. Ch. 2 § 10(D).

Here, apparently reading the narrow list of petition requirements in 38 M.R.S. § 901(1) as an exemption from the requirement to establish and maintain administrative standing and from Section 10 of Chapter 2 instead of as supplemental specific procedural requirements additive to the requirements of Chapter 2, the Mill did not provide the Department with the Water Easement or the AFSA. BucksGen provided those documents following requests from municipal entities considering voluntary assumption of ownership of the dams. As noted above, the documentation that BucksGen provided the Department includes: (1) Water Easement rights to specific flow from the dams that are the subject of the Mill Petition which could result in a Department Section 905 Order “for release from [...] water-level maintenance;” and (2) the AFSA which includes a contract provision prohibiting the Mill from doing the second thing that its Department petition pursuant to Section 901 requests, “release from dam ownership.”

The Water Easement and the AFSA, as a recorded easement deed and a fully executed contract, are the credible documentation regarding TRI listed in Chapter 2. *See* 06-696 C.M.R. Ch. 2 § 10(D). Consequently, there is a credible TRI dispute during Department processing of the Mill Petition. The Mill must verify administrative standing by resolving any credible TRI dispute before the Department can continue processing the Mill Petition.

The Department is Authorized to Allow Additional Time to Resolve a Credible TRI Dispute:

Section 10(D) of Chapter 2 explicitly authorizes the Department to allow time for the Mill to submit this evidence of TRI into the administrative record in support of the Mill Petition. *Id.* It is appropriate for the Department to provide additional time allowing the Mill to resolve this credible TRI (i.e. jurisdictional) dispute – including obtaining BucksGen consent and delineating

outstanding operations, maintenance and capital costs for the dams – and provide documentation that any transfer of ownership of assets subject to the Water Easement will comply with the Water Easement flow requirements and of BucksGen written consent pursuant to the AFSA. *Id.*

### **Section 902 Consultation Process**

BucksGen fully supports resolution of these issues in the context of Department proceedings that, in compliance with 38 M.R.S. § 902 (“Section 902”), require the Mill to consult with municipalities to determine whether any wish “to assume ownership of the dam.” *Id.* BucksGen agrees that any entity considering voluntary acceptance of the dams that are the subject of the Mill Petition would reasonably desire a complete understanding of the obligations they would assume under the Mill Documents. While the Department does not order transfer of the dams under Section 902, its oversight of the consultation process, as set forth in Sections 901 and 902 clearly contemplates ensuring that the entities listed in subsection 3 of Section 902, which includes each of the towns, possess reasonable, good faith information regarding the scope of their voluntary assumption of ownership.

For example, Section 901 authorizes the Department to require the Mill to submit “any other reasonable information the department determines necessary to implement this article.” 38 M.R.S.A. § 901(1)(D) (“Section 901”). Section 902 mandates that the Mill “consult with [all municipalities in which the dam or impoundment is located] to determine whether any of them wish to assume ownership of the dam.” 38 M.R.S.A. § 902(1) and (3)(D). Section 906 requires that any transfer pursuant to the Mill Petition, including under Section 902, includes all necessary property rights. 38 M.R.S. § 906 (“Section 906”). Subsection 5 of Section 902 allows the Department to provide the Mill with reasonable additional time to comply with the provisions of Sections 901 and 902- which explicitly includes the Section 901 requirement that the Mill provide all information the Department finds reasonably necessary to the voluntary assumption of ownership.

On August 26, 2025, the Mill filed a letter with the Department arguing that the Mill Petition did not trigger the AFSA requirement that the Mill “shall not sell, transfer or otherwise dispose of all or any portion of the equipment or rights subject to this Agreement, or take any other action that interferes with [... BucksGen’s...] rights therein granted hereunder, without the express written consent of” BucksGen because there was not a final deal in place between the Mill and any volunteer engaging in the Department overseen consultation process pursuant to 38 M.R.S. §§ 901 (“Section 901”) and 902.

Sections 901, 902 and 906 authorize the Department to request that the Mill obtain BucksGen consent pursuant to the AFSA in advance of the Section 902 consultation process and, should the Mill fail to do so, allows for reasonable additional time following review of the Mill report regarding consultation to address deficiencies in the consultation process such as obtaining that consent. While the Mill takes the position that BucksGen consent to transfer of ownership is not triggered until a town agrees to take on ownership of the dam, Department adoption of this approach undermines any municipality’s ability to accurately assess its rights and obligations in advance of committing to assume ownership and improperly shifts the burden of proof away from the Mill to volunteer towns in a manner that is unsupported by the provisions of Section 901, 902

and 906 which require that any voluntary transfer include all necessary property and disclosure of associated rights and obligations.

### **Section 903 Department Order**

The importance of addressing the AFSA consent to transfer and Water Easement obligations issues becomes more acute should there be no Section 902 volunteer. In that case, the Department is required to notify the Department of Inland Fisheries and Wildlife (“IFW”), the Department of Agriculture, Conservation and Forestry (“DACF”), and the Maine Emergency Management Agency (“MEMA”) that an assessment of public value for the dam(s) may be required. 38 M.R.S. § 903(1) (“Section 903”).

Sixty days after receipt of that notice, IFW shall review specific statutory criteria and issue a determination as to whether the best interest of the public requires it to assume ownership of the dam. IFW shall notify the Department of its determination and, if it determined that the best interest of the public requires it to assume ownership than, “the Department shall issue an order directing the dam owner to transfer the dam to the Department of Inland Fisheries and Wildlife within a reasonable period of time.” 38 M.R.S. § 903(2). If IFW determines that it is not in the public interest to assume ownership of the dam(s) then the Department notifies DACF which follows the same determination of public benefit process utilizing its own statutory criteria and then sequentially on to MEMA. 38 M.R.S. § 903(3) and (4). In each case, the agency has sixty days to complete its determination. 38 M.R.S. § 902. The first statutory criterion underpinning each Section 903 agency determination is the “cost of maintaining the dam.” *Id.* Further, any Section 903 Department Order must comply with Section 906 which requires that the Mill transfer all necessary property. 38 M.R.S. § 906. Consequently, to assess this criterion, each agency determination must assess and rely upon substantial record evidence regarding issues such as applicable Water Easement obligations to operate, maintain and make capital expenditures because those obligations implicate the “cost of maintaining the dam.” Given the 60 days available for each agency to create an administrative record supporting its determination, and the Department’s authority under Sections 901, 902, and 906 to request information supporting the Mill Petition, now is the appropriate time to obtain this information for the Department’s administrative record.

Because the Department may, under Section 903, issue an order to the Mill requiring transfer of the relevant dam and associated assets, it is also vital that the Department’s administrative record includes consent to transfer those assets as required by the AFSA which is included in the Department’s administrative record to ensure compliance with Section 906.

### **Section 905 Department Order**

Finally, should there be no Section 902 volunteer to assume ownership and should each of the Section 903 agency determinations conclude that it is not in the public interest to assume ownership of any of the dam(s) such that the Department need not issue a Section 903 Order, then the Department would be required to issue notice that it has not located a new owner(s). 38 M.R.S. § 904. Assuming no timely petition to take on ownership, the Department would begin the process for issuing a release of water order. 38 M.R.S. § 905 (“Section 905”). Any Section 905 Department order constitutes Department action which must include record evidence supporting the Mill’s authority to ask the Department to take that action (i.e. TRI as discussed above). Further,

any Section 905 Department Order must comply with Section 906 which requires that the Mill transfers all necessary property. 38 M.R.S. § 906.

Accordingly, it is vital to the Department that its administrative record supporting any Section 905 order include BucksGen consent pursuant to the AFSA because any such order would be an “action that interferes with [...BucksGen’s...] rights” as a change to any of the dams even if that order complied with Section 905(2) which specifies that the order would not supersede the Water Easement property right to flow from the dam(s).

Boiled down, even though BucksGen’s Water Easement would not be superseded by any Department Section 905 order, that order would interfere with BucksGen’s rights in the fresh water supply system because any Department Section 905 order would alter the status quo. Consequently, it is key that the Department’s administrative record in this matter includes BucksGen’s AFSA consent. Further, it is key that the Department record includes detail regarding outstanding Mill Water Easement obligations as to flow in order to ensure that the terms of any Section 905 Department Order do not purport to supersede the Water Easement in violation of 38 M.R.S. §905(2).

### **Conclusion**

As discussed above, Chapter 2, Section 10(D) and the jurisdictional requirement that the Mill establish administrative standing authorizes the Department to require provision of additional information in response to a credible TRI dispute. Section 901(1)(D), Section 902(5), and Sections 903, 905 and 906 likewise contemplate additional time for Department requests for any information it finds reasonably necessary to ensure the transfer of all property necessary to the Mill Petition while avoiding the Section 905(2) prohibition on superseding existing property rights. Accordingly, BucksGen respectfully requests that the Department provide the Mill 180 days to obtain BucksGen consent to transfer of the dams and associated infrastructure that are the subject of the Mill Petition thereby resolving the above-described credible TRI dispute and delineating any outstanding costs of operation, maintenance, and/or capital investment pursuant to the Water Easement.

BucksGen recognizes the Mill’s request for “... BuckGen’s general consent to a framework in which the towns of Orland, Surry, Penobscot, Blue Hill, and Bucksport take ownership of the dams and related infrastructure located at Toddy Pond, Alamoosook Lake, and Silver Lake...” as per the Mill’s August 26, 2025, letter. BucksGen advises that, other than the Mill filings with the Department, the Mill has not contacted BucksGen to discuss terms for BucksGen consent and/or delineation of Water Easement property rights. BucksGen is committed to proactively initiating discussion with the Mill following submission of these comments.

Sincerely,



Joanna B. Tourangeau

cc: All Individuals Listed on August 20, 2025, email from Coordinator Paye (by email only)