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VIA EMAIL – Laura.Pave@maine.gov

September 19, 2025

Laura Paye
Hydropower Coordinator
Maine Department of Environmental Protection
17 State House Station
Augusta, Maine 04333

Re: Maine Department of Environmental Protection (the “Department”) Consolidated Petition for Release from Dam Ownership related to Silver Lake, Alamoosook Lake, and Toddy Pond, 38 M.R.S. §§ 901, et. seq. (the “Petition”)

Dear Ms. Paye:

Bucksport Mill, LLC (“Bucksport Mill”) hereby responds to the September 12, 2025 comments filed by: (1) the Maine Water Company, (2) Bucksport Generation, LLC, (3) the Town of Bucksport and (4) the towns of Orland, Surry, Penobscot, and Blue Hill (the “Towns”) (collectively, the “September 12 Comments”). Some of the September 12 Comments included allegations against Bucksport Mill concerning the completeness of the Petition, the adequacy of the consultation process, and the timeliness of the provision of certain documents. Nonetheless, Bucksport Mill was heartened to read that some variety of entities currently exist or are in the process of being formed that appear interested in taking ownership of the dams after having engaged in various consultation opportunities, not least of which was reviewing the voluminous consultation materials. Therefore, while these comments must necessarily address the allegations as they relate to the Department’s proceeding, Bucksport Mill would like to state up front that it would welcome Bucksport, the Towns, or other entities communicate their intentions and/or proposals to Bucksport Mill so that we all may have the details necessary to move to the next natural step in this process.

Bucksport Mill is concerned that, in the absence of detailed statutory directives, definitions, and requirements, there is a tendency for parties to make assumptions without communicating those assumptions with one another. Those assumptions appear to be creating conflict and frustration, even where it appears folks may be very much aligned. As a specific example, some comments are demanding that Bucksport Mill obtain any consents it might need if we are all so fortunate as to engage in a transfer of dams rather than proceed with a dewatering process. However, Bucksport Mill has stated, and states again here, that no one has approached Bucksport Mill with a proposal to which it might seek consent. Another example of frustrating misunderstandings is the apparent

assumption by some of the September 12 Comments that a transfer to one of the commenting parties would be pursuant to a Department Order and would not require direct communication and negotiation with the owner of the dams. This seems easily remedied through direct communication, and as Bucksport and the Towns are aware, Bucksport Mill has reached out to inquire about any proposals that might inform next steps, such as consents.

With continued interest in a constructive process, Bucksport Mill has limited its corrections of the record only to allegations that Bucksport Mill has in any way failed to follow the statutory process.

Notably, and of particular interest to the Department, no one has questioned that Bucksport Mill owns the dams and is therefore entitled to petition the Department for release, as contemplated by relevant statute. Instead, the September 12 Comments raise questions that may arise in the event of a transfer, which would not be pursuant to a Department Order, but would be negotiated by counterparties. Importantly, those negotiations have not begun. After the extensive exchange of information conducted during the ongoing consultation period, no party has communicated to Bucksport Mill any proposal or associated details under which they might take ownership of all or a portion of the water system (the “Water System”).

Further, some of the September 12 Comments insinuate or allege that Bucksport Mill has failed to engage in consultation. This allegation is unacceptable to Bucksport Mill in light of the extensive exchange of information designed to allow the interested parties to determine whether, after reviewing available information, any party wished to assume ownership of one or more dam. Based on the September 12 Comments, it appears that much work has been done by parties with that wish in mind, but, to date, Bucksport Mill has not received any letter of intent, offer, proposal or information describing the parties’ intentions beyond the general sense of continued interest and demands for consents. Bucksport Mill is therefore also frustrated.

However, the underlying message that parties are still interested is welcome news. Therefore, while for the purpose of the formal proceeding, Bucksport Mill must make abundantly clear that it has fully complied with the TRI requirements of this statutory process, and has actively and exhaustively engaged in consultation, Petitioner has taken the September 12 Comments as its first indication of continued interest, and has already reached out to engage in those conversations, which it anticipates will be much more productive than this public lawyering back and forth. With apologies for the necessity of the extensive legal analysis set forth in Section I below, Bucksport Mill encourages all parties to review Section II and would be delighted to discuss any proposals the parties have for a transfer of ownership.

I. The Department Petition Process

The statute governing this process, *Petitions for Release from Dam Ownership* (the “Release Statute”) has four distinct statutory phases: petition, consultation, assessment of public value, and order to release water (“Release Order”). As described below, Bucksport Mill’s application was accepted as complete on November 1, 2024. Since that time, Bucksport Mill has been continuously engaged with parties to this Petition, including answering questions and providing responsive documents. Notwithstanding those efforts, Bucksport Mill has not (until perhaps today) received any actual indication that any party desires to take ownership of the some or all of the Water System. While Bucksport Mill has been committed to the extensive consultation process in the

hopes that a transfer may be possible, any actual transaction will require a counterparty with whom to negotiate.

A. 38 M.R.S. § 901 – The Petition

38 M.R.S. § 901 contains limited requirements for a petition: contact information, location of the dam(s), plans, and brief descriptions of the condition and recent operations of the dam(s) along with “any other reasonable information the department determines necessary to implement this article.”¹ The statute also requires a period of public notice and the provision of notice to abutting property owners. After submitting its initial petition in July 2024, the Department followed up requesting additional information and requiring Petitioner resolve some notice deficiencies. Bucksport Mill complied with the Department’s requests and submitted a revised Petition on October 18, 2024. The Department requested additional clarity and explanation of real estate rights, which Bucksport Mill timely provided.² The Department accepted Bucksport Mill’s Petition as complete for processing on November 1, 2024.

1. Title, Right, and Interest

The September 12 Comments now challenge Bucksport Mill’s “administrative standing” to petition the Department for relief under the Release Statute due to an alleged lack of requisite title, right, and interest (“TRI”). Because Bucksport Mill is the unrefuted owner of the dams, and because alleged transfer restrictions, even if valid, do not preclude petitioning the Department under the Release Statute, this challenge is without merit.

i. Bucksport Mill, the Owner of the Dams, Has Adequate Title, Right, and Interest to Avail Itself of the Release Statute.

The Release Statute is distinct from most, if not all, Department processes in that there is no express requirement that a petitioner provide evidence of TRI. Explicit in the name of the statute, *Release From Dam Ownership*, of course, is the truism that a petitioner must, in fact, *own* the dam that is the subject of the petition. Bucksport Mill has provided uncontroverted evidence that it is the owner of the dams, and this is enough to petition for relief under the Release Statute. The statute does not require the petitioner to own the dam free and clear of any restrictions or encumbrances. Indeed, the statute contemplates the Department issuing a Release Order to a petitioner, the impact of which may well be statutorily limited by existing property rights.³

However, even if Department Rule Chapter 2 (governing the processing of *applications*) were to apply to this *Petition*, which Bucksport Mill does not concede that it does, it is *ownership* of the dams that is required:

Prior to acceptance of an application as complete for processing, an applicant shall demonstrate to the Department's satisfaction

¹ 38 M.R.S. § 901(A)-(D).

² See Bucksport Mill LLC Supplemental Dam Abandonment Title Memorandum (Nov. 1, 2024).

³ See 38 M.R.S. § 905(2).

sufficient title, right or interest in all of the property that is proposed for development or use.⁴

Notably, Rule Chapter 2 does not require an exhaustive adjudication of contractual obligations, third party interests, or other legal obligations that an applicant may have that bear upon its ultimate ability to move forward with a project. A Department Order has never been held to void, trump, override or otherwise absolve an applicant of any extant legal obligations. Rather, a Department Order represents the Department's position on the activity as governed by relevant statutory considerations. Crucially, the Release Statute explicitly contemplates the scenario in which a dam owner receives a Release Order, but the impact of that Release Order is limited by extant property rights.⁵ Therefore, the reconciliation or clearance of all existing property rights cannot be a prerequisite to petitioning for relief under the Release Statute.

ii. The Petitioner's Right, Title and Interest is Not Impaired by a Lack of Consent.

The September 12 Comments suggest that the Petitioner's standing under the Release Statute is somehow impaired by a lack of consent to transfer under two documents: (1) the terms of Exhibit C (at Section 15) to a Quitclaim Deed with Covenant recorded in the Hancock County Registry at Book 6951, Page 693 (the "Easement") and (2) under Section 4.1(b) of the Amended and Restated Facility Sharing Agreement (the "AFSA") dated October 23, 2019.

The restrictions in question, under either the Easement or the AFSA, are only invoked in the event of a proposed transfer. However, as noted in the Petitioner's August 26, 2025 letter to Bucksport Generation, there has been no actual proposal made for a transfer. Therefore, it is premature for Bucksport Mill to seek consent since there is nothing to consent to. The restrictions in the Easement and the AFSA do not purport to restrict the grantor from engaging in environmental regulatory activity in any manner whatsoever, and the Department should not construe the Easement or the AFSA as a barrier to a petitioner seeking to avail itself of agency action.

Under the Release Statute, there is no guarantee that any real estate transfer would even occur by virtue of a petition. In fact, the statute provides that, if no potential transferee has been identified through Consultation, a Release Order issued applies to the petitioning dam owner – which would still be Bucksport Mill. Therefore, a Department Order pursuant to the Release Statute is only issued where no transfer has taken place, and thus any conclusion that Department action under Section 904 would create circumstances that violate the Easement or the AFSA is absurd.

The Petitioner further notes that the AFSA is not recorded, does not run with, create, or affect any interest in the land, and is a private contract that concerns only its two counterparties. The Department is not the arbiter of the AFSA's performance or enforcement. Even if the provision at Section 4.1(b) is implicated (which it is not) and/or given any effect (which may not be possible),

⁴ 06-096 C.M.R. Ch. 2 § D.

⁵ See 38 M.R.S. § 905(5) ("[A dewatering] order issued under this article does not supersede any property right granted by deed or other legal instrument. An order issued under this article supersedes an order issued under section 840.").

its application would be a matter of contractual obligation between two parties and would not affect the taker of any record interest. Therefore, the AFSA is not part of the TRI analysis.

As to the Easement (and unlike the AFSA), the document and interest in question is a matter of public record. It has also long been visible and known to all relevant parties, and was included and/or referenced in the Petitioner's public response filed on February 21, 2025.⁶ The Petitioner is not under any duty to shine a spotlight on particular provisions for the better understanding of other parties as a part of the Petitioner's showing of TRI for the Department's consideration of the Petition. There has been no obfuscation of the rights asserted by Bucksport Generation, whether expressed in the Easement or the AFSA, although there may have been a delayed analysis of those rights by the Towns.⁷

iii. Whole Oceans Has No Rights to the Water System.

The September 12 Comments reference rights once held by Whole Oceans, which were released on June 28, 2023. Bucksport Mill provided extensive information and documentation regarding this released obligation in its February 21, 2025 production, in response to questions posed by the Towns and the Town of Bucksport. Inexplicably, the Town of Bucksport seems to also suggest that the need for Whole Oceans consent is somehow also invoked by this Petition. Given that the Town of Bucksport appears to understand that these rights were released and are no longer effective,⁸ there is no possible reason for Department to consider the interest of Whole Oceans. As explained in this Petition, Whole Oceans' former interest is in no way germane to this Consultation Period and has no bearing on the validity of the Petitioner's ownership status. Bucksport Mill further notes that Whole Oceans itself has taken no role in the consultation process and there is no reason to view the Town of Bucksport as its representative or proxy to assert rights on its behalf.

iv. Alleged Transfer Restrictions are not Entitled to a Presumption of Validity.

The Petitioner notes that the transfer restrictions, whether described in the Easement or the AFSA, appear to be an absolute or direct restraint on alienation. An absolute restraint on alienation is strongly disfavored under Maine law, as well as being potentially violative of and void under the Rule Against Perpetuities.⁹ This issue is outside of the Department's purview, and the Petitioner does not suggest that the Department should analyze the sufficiency of the Petitioner's TRI

⁶ The restrictions under the Easement and the AFSA are not easily reconciled. The rights under both instruments are held by Bucksport Generation and were signed within weeks of each other, but the AFSA attempts to impose an absolute restriction on any transfer of assets without Bucksport Generation consent, while the Easement (instead) appears to require that no transfer may occur without first offering Bucksport Generation the right to acquire the assets for a fixed price of \$1. Whatever the implications of that discrepancy may be, its reconciliation is not a requirement for the Department's consideration of the Application.

⁷ Bucksport Generation's September 19, 2025 Letter is another instance of the same categorical misunderstanding. The submission of the Petition to the Department is neither an offer nor a transfer. There is no appropriate format of notice that Bucksport Mill can comply with, nor any requirement to advise Bucksport Generation of its background rights under the law at issue.

⁸ Town of Bucksport Letter at fn. 7 (Sept. 12, 2025).

⁹ 33 M.R.S. § 111. *See Keegan v. Estate of Bradbury*, 2025 ME 13 at ¶10 (citing Restatement (Third) of Property (Servitudes) § 3.4) and cases cited therein.

standing with respect to the Rule Against Perpetuities. However, Petitioner respectfully notes that the actual validity of the alleged transfer restrictions is far from established.

It is true that consummation of a proposed transfer may well require resolution (through consent or release) of any existing valid obligations prior to the actual transfer of ownership; a Release Order does not erase existing obligations, nor does it actually transfer ownership. The Department does not have the authority to effectuate a transfer ownership of the dams but rather the authority to facilitate a Consultation Period wherein potential future owners can come forward and negotiate a private transfer with the petitioner. It is simply not legally or factually correct that the Department is in any way involved in a transfer to a third party beyond the statutory requirements of consultation.

2. Any Transfer of the Water System Would Be Subject to Valid Record Third-Party Interests

If there is a transfer of the Water System on any terms, it will be made subject to all outstanding record interests. This is true whether the transfer is to one or more of the interested Towns, to Bucksport Generation, or to any other third party. While the interests of record are voluminous, difficult to summarize comprehensively, and potentially complex, this cannot be the basis for an allegation that the Petitioner lacks sufficient TRI in the Water System. The Petitioner has repeatedly acknowledged the challenge of issuing a catalog of all real estate rights from the past ~100 years that may affect the Water System and its individual component water bodies, riparian parcels, upland parcels, and associated flowage rights.¹⁰ The September 12 Comments seem to suggest that the cumulative complexity of the title requires an extraordinary showing by the Petitioner in order to demonstrate sufficient TRI. Though the complexity of the title may indeed be burdensome to diligence, this complexity has been known from the date of the Petitioner's initial filing and is not proper grounds for the Department to reject the Petition as insufficient based on a lack of the Petitioner's TRI.

We agree that the Department is without authority to release the record indentures to which Maine Water Company is a party. However, this does not preclude Bucksport Mill from utilizing the statutory process for release from dam ownership. Indeed, the statute acknowledges that any eventual Department Order does not and cannot affect private rights.¹¹ The Petitioner has provided substantial record title instruments in support of the Petition but has never claimed that it would be a complete inventory, as that is not the TRI standard. There is therefore no need for the Department to extend the process or require supplemental documentation regarding the title to the Water System in order to conclude that the Petitioner is indeed the owner of the Water System and therefore is the proper (and only) party in a position to seek relief under the Release Statute.

With respect to the interests of Bucksport Generation under the Easement, Counsel asserts that the Petitioner must provide documentation that any transfer or disposition must "comply with the Water Easement flow requirements."¹² While the Water Easement contains a number of "if-then" scenarios regarding water flow, it also states, in Section 5, that the Grantee accepts that the water

¹⁰ See Bucksport Mill LLC Supplemental Dam Abandonment Title Memorandum (Nov. 1, 2024).

¹¹ 38 M.R.S. § 905(2).

¹² Bucksport Generation Letter at 5 (Sept. 12, 2025).

rights it holds are without covenants or warranties about the availability of any water. Once again, the Petitioner does not suggest that the Department is the proper tribunal to interpret complex title instruments. Rather, the Petitioner respectfully notes that the proffer of select provisions from select documents cited in the September 12 Comments give the impression that there is a threshold requirement upon the Department to solve every possible title puzzle prior to agency action, and that is not realistic.

Where Bucksport Mill owns the dams, has provided evidence of said ownership, and no evidence to the contrary has been provided, it has met its TRI obligations with respect to this Department Petition.

B. 38 M.R.S. §902 - The Consultation

The Department's acceptance of a petition as complete triggers the commencement of a consultation period (the "Consultation Period") in which potential future owners can evaluate whether to take ownership of the dams, a process that remains ongoing. Since at least November 1, 2024, when the Department accepted the Petition as complete, all parties have been on notice that the dams are being offered to any interested party, including the Towns and the Town of Bucksport, necessarily subject to the terms of any negotiated transaction. Confusingly, and without support, the Town of Bucksport disagrees: "BuckMill has neither consulted with the Town nor offered the Silver Lake Dam or any portion of BuckMill's Freshwater System to the Town."¹³ However, as evidenced by the substantial record in this Petition, Bucksport Mill has indeed consulted with interested parties, including the Town of Bucksport, through the following actions that seemed to Bucksport Mill to be appropriate and productive, but are undeniably far above and beyond the statutory consultation requirements:¹⁴

- 1) November 15, 2024 - Public Meeting, followed by a web-based Q&A protocol for attendees
- 2) February 21, 2025 - Document Production in response to Information Requests from Towns and Town of Bucksport
- 3) May 2, 2025 - Document Production in response to Second Information Requests from Towns and Town of Bucksport
- 4) May 14, 2025 - Document Production in response to Follow-up Request to Towns
- 5) June 27, 2025 - Site Visit with Bucksport Mill and all interested parties
- 6) July 14, 2025 - Document Production to Bucksport Generation
- 7) August 7, 2025 - Response to Towns answering questions raised during the site visit

¹³ Town of Bucksport Letter at 5 (Sept. 12, 2025).

¹⁴ 38 M.R.S. § 901 requires only that a petitioner explain the process set forth in the Release Statute and inform all statutory parties that the Department may issue an order requiring release water if a new owner is not located.

- 8) August 26, 2025 - Letter wherein Bucksport Mill explicitly seeks Bucksport Generation's general consent to a framework in which the Towns take ownership of the dams.¹⁵

The actions above speak for themselves – Bucksport Mill has engaged in extensive consultation with those who expressed an interest in gathering information to inform any decision that party might make relative to taking ownership of the dams.

II. Negotiations for a Transfer of the Water System

Until it received the September 12 Comments, Bucksport Mill had not been informed whether any party was interested in taking ownership of the dams. Bucksport Mill remains committed to focusing on what it believes to be the preferred outcome of the Petition, which is that – not through a Release Order, but through a transaction between two or more parties – these dams are transferred into the custody and control of those who derive benefit from their existence, maintenance and upkeep. Therefore, Bucksport Mill turns to the question that appears to belong to potential counterparties rather than the Department purposes: whether the information Bucksport Mill has provided is sufficient to inspire the consulting parties to express any formal interest in taking ownership of the dam, such that appropriate next steps can be taken.

A. No Party has Come Forward with a Proposal to Negotiate

The Consultation Period is designed to explore potential transfer opportunities, however, any transfer of the dams will necessarily be a negotiation between counterparties, and not by virtue of a Department Order. Bucksport Mill has only received informal news of potential interest through following along in the media, monitoring activities at the legislature, reading into the fact that folks remain engaged in this Department process, and then reviewing the September 12 Comments. However, Bucksport Mill has not received any direct correspondence requesting a negotiation on a transfer to any particular counterparty, with any proposed terms, on any timeline. Bucksport Mill was both happy to read about the apparent interest of the Towns and the extensive coordination with Bucksport Generation (and others) toward a transfer proposal as described in the September 12 Comments, and quite surprised that it has not been informed of or included in these discussions.

While Bucksport Mill is committed to continuing these discussions, it is currently unable to understand how any parties were disadvantaged, such that additional time is required to consider issues, based on the consent language set forth in the AFSA. Of most practical import, it is not clear to Bucksport Mill that this extra time is needed before parties decide whether they are interested in taking the next step, or whether the parties perceive that the law requires a transfer to be fully negotiated and effectuated prior to the conclusion of the Consultation Period. Bucksport Mill does not believe that the latter position is contemplated by law or additional guidance that has been provided by the Department. Further, and perhaps secondary to the first point above, this consent obligation is not new to any of the parties because an analogous consent obligation is contained in the Easement, which was produced in February 2025 and has been the topic of some correspondence over the many months of consultation. And finally, Bucksport Mill would like to clarify that it was bound by the confidentiality provisions of the AFSA and needed Bucksport Generation's consent to produce it. Bucksport Mill first sought consent in February 2025, and

¹⁵ Bucksport Mill Letter at 2 (Aug. 26, 2025).

followed up on several occasions, but did not receive it until August 2025 when Bucksport Generation itself submitted the AFSA into the record. While all parties would clearly have preferred to see it sooner, Bucksport Mill has not made any effort to hide the existence of consent obligations that may need to be addressed should any transfer of the Water System move forward.

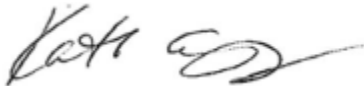
B. The Path Forward

As discussed, there is currently no proposed transaction for which Bucksport Mill could reasonably seek consent. Nonetheless, on August 4, 2025, the towns of Blue Hill, Surry, Penobscot, and Orland made a request for something akin to a blanket consent from Bucksport Generation. While this is an unfamiliar concept to Bucksport Mill, we do not oppose use of this tactic by a potential counterparty and did not object to the Towns making that request of Bucksport Generation. On August 15, 2025, Bucksport Generation indicated it would only respond to such a request if it came from Bucksport Mill. On August 26, 2025, in the spirit of collaboration, but with no clear sense of what it was asking Bucksport Generation to consent to, Bucksport Mill explicitly asked for Bucksport Generation's "general consent to a framework in which the Towns take over the Dams, noting that there was not any "definitive offer or proposal that has been put forth such that BuckGen's formal consent would be triggered."¹⁶ Bucksport Mill objects to the implication (or even express admonition) that it has failed to act reasonably for not obtaining Bucksport Generation's consent to a hypothetical transfer proposal it has not seen and cannot explain.

Bucksport Mill observes that the parties appear to have reached a moment in this Petition where written correspondence and legal posturing is no longer constructive. As has been true since the Petition was filed, and throughout the Consultation Period, which has consisted primarily of Bucksport Mill sharing what information it has related to the dams to inform a potential offer, Bucksport Mill welcomes a conversation with any interested party about what such a party might propose for a transfer of ownership.

Please do not hesitate to contact me if you have any questions or require additional information.

Sincerely,

A handwritten signature in dark ink, appearing to read "Kath Joy", with a stylized flourish at the end.

Katherine Joyce

¹⁶ Bucksport Mill Letter at 2 (Aug. 26, 2025).