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VIA EMAIL – laura.paye@maine.gov

September 19, 2025

Laura Paye
Hydropower Coordinator
Maine Department of Environmental Protection
17 State House Station
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Re Town of Bucksport Follow-on Comments in Bucksport Mill, LLC Petition for Release from Dam Ownership and Water Level Maintenance – Status of Town of Bucksport Resolve 2025-28 To Continue Exploring Ownership of Silver Lake Dam

Dear Ms. Paye:

Thank you for the further opportunity to comment to the Department in this matter. I write as attorney for the Town of Bucksport (the Town) together with my fellow shareholder Suzanne Breselor Lowell from our real estate and title practice group.

Because there are differing positions in this instance from our firm, we want to make it clear that our firm has consent of both the Town of Bucksport (the Town) and Bucksport Mill, LLC (BuckMill) to set up an ethical wall to separately represent each client adverse to one another.¹

Summary

With developments in this petition matter it has become clear that the Petitioner has not and actually cannot comply with the statutory requirements of dam abandonment statute within the time frames of the statute. The Town respectfully suggests that the petition should be returned

¹ Essentially, we are separate law firms split with one attorney team representing the BuckMill and separately another team, including myself and my real estate and title colleague Suzanne Breselor Lowell representing the Town.

because i) it is deficient under the statute, 38 M.R.S. §§ 901-909, ii) Petitioner lacks the necessary legal rights, including sufficient title, right, and interest, to comply with the statute and Department's rules, and iii) it does not serve the purpose of the statute, which is to provide a process for state and municipal entities to protect public safety and welfare by acquiring dams before dam owners may abandon.

On the TRI, we note that the statutory structure here requires the Petitioner seek a new owner of the dam, 38 M.R.S. §§ 902(1) & (3), and be able to transfer the dams for no consideration (other than transfer costs) to state agencies and the municipalities. *See* 38 M.R.S. § 906(1) which prohibits the Department from issuing a water release order to a dam owner who seeks compensation for a dam. The current owner here received prior compensation for granting water rights to others, and now seeks to abandon dams so heavily encumbered that no reasonable agency or municipality can accept them (without releases). Here, as discussed in the Town's September 12 letter, the numerous financial and performance obligations with which the Petitioner has burdened the property make it impossible to effect a transfer for "no consideration" without obtaining release of these obligations. The Petitioner, in effect, sold interests in the Water System including water supply and its obligation to operate and maintain the dam for consideration and now seeks to keep such substantial consideration received while potentially burdening public agencies or the municipalities with these encumbrances. The Town views this conduct as inconsistent with 38 M.R.S. § 906(1).

The Town put significant effort into facilitating a release of BuckMill's encumbrances with Bucksport Generation, LLC ("BuckGen") and others. The Town intended with such releases to put authorization to proceed on the November ballot. Only the grantees (not BuckMill as grantor) can release these encumbrances. To our knowledge, before the very end of August, BuckMill did nothing to seek a release of these obligations from its grantees as required under the Easement to facilitate a transfer.

Notably, the clear language of the dam abandonment statute goes beyond the Department's regular Chapter 2 TRI requirements and the Town believes additionally that the property is subject to substantial additional financial obligations to third-parties that effectively make a transfer impossible. This interpretation is consistent with the public policy goals of the statute, which is to provide a path for public ownership of dam properties before they are abandoned to ensure proper and safe maintenance and protection of public safety, wildlife, and local interest. There is no indication that the purpose of the statute is to enrich private parties at the expense of the public.

For each of these three reasons, any one of which is sufficient basis, the Town requests the Department return the Petition as deficient to the Petitioner. We suggest BuckMill consult with the parties to obtain necessary consents and arrangements to transfer the dam(s) before refiling with the Department.

The Town of Bucksport's Concerns

The Town wishes to be clear that it is willing to work with the Petitioner and other interested parties to reach a full settlement consistent with the statute. 38 M.R.S. §§ 901-909. As stated in the Town's September 12 comments, the Town has already passed a formal resolution to express interest in taking over the Silver Lake dam facilities.

The Town's actions are consistent with 38 M.R.S. § 908. The Town does observe that 38 M.R.S. 908 appears to contemplate on the full consultation period provided for in 38 M.R.S. § 902 to "facilitate an agreement for municipal ownership of the dam" 38 M.R.S. § 902(1-A)(A). The statute recognizes that without adequate consultation and process to negotiate a transfer, a Town vote to authorize assumption of dam ownership will be virtually impossible for a Maine municipality to meet the requisite Town notice, ballot printing, absentee ballot availability and/or Town Meeting requirements. As related more fully in the Town's September 12 comments, the Town now finds itself caught in the precise bind that 38 M.R.S. § 902 and § 909 seek to remedy. The Petitioner neither procured consent nor even notified BuckGen of its intention to potentially transfer some or all of the dam properties in a timely manner. By the time BuckMill provided its first request to BuckGen, 10 months after filing the second Petition with the Department (and 13 months after filing its first Petition), the timing for a local ballot was already critical. In Bucksport's case, late August was the deadline for the Council to vote issues onto the November ballot to start preparation of the ballots with its printing firm that can be available for absentee ballots consistent with Maine election law.

The Town views the late notice to BuckGen as inadequate to procure adequate rights to transfer the dam. This is further complicated by the need for the Town to procure releases from BuckGen as part of a closing. Alternatively, we were hopeful that BuckMill might obtain those releases from the encumbrances in the 2019 easement that it put into place.

If the Department returns the petition as suggested, the Town will proceed with the Petitioner and other interested parties under the consultation process prior to refiling.²
The record before the Department presents the following questions for consideration:

1. Is the Petitioner's TRI sufficient under the Department's Chapter 2 rules governing the processing of applications and other administrative matters?
2. Is the Petitioner's TRI sufficient to satisfy the additional requirements of 38 M.R.S. §§ 901-909 that it offer any dams to State agencies and municipal owners to identify alternative owner(s)?
3. Do the encumbrances on transfer and sale pose a sufficient frustration of the statutory scheme to conclude this process at this mature stage of the proceeding?
4. Do the encumbrances requiring provision of available water together with dam maintenance, operations, reporting, and capital upgrades pose a sufficient frustration to the statutory requirement that the dams be offered for no consideration (compensation)

² The Town will seek to include BuckGen, Whole Oceans, and Maine Water in that process for Silver Lake though the Town acknowledges the necessity of including these three parties is driven by the BuckMill obligations to them to maintain and operate the dam and not by 38 M.R.S. § 902.

such that the petition should be returned as insufficient until these encumbrances are released?

5. Does BuckMill's late August request to BuckGen seeking permission to transfer, and lack of negotiations to procure that approval earlier pose a frustration to the statutory purpose in 38 M.R.S. §§ 901-909?
6. Is consultation inadequate under 38 M.R.S. §§ 901-909?
7. Does the contractual commitment of BuckMill to not transfer any part of the Freshwater System ("Water System") without BuckGen's consent demonstrate a lack of sufficient "right" to transfer the dams until BuckGen consent is granted?
8. Likewise, does BuckGen's apparent ability to enjoin a transfer to another party if BuckMill attempts to transfer without BuckGen's consent pose a sufficient frustration of 38 M.R.S. §§ 901-909 to return the petition to BuckMill until consent is obtained?

The Town respectfully submits that if the answer to any of these eight questions is yes, the petition should be returned to the Petitioner.

The Petition Deficiencies Identified by the Orland, Blue Hill, Surry, Penobscot and BuckGen.

The Town agrees with the additional reasons and rationales offered by the Towns of Orland, Blue Hill, Surry, and Penobscot.

The Town agrees with the comments of the Towns of Orland, Blue Hill, Surry, and Penobscot. It is clear that these Towns and Bucksport have expended enormous effort of time, money, and resources. As the Department is aware, the Legislature also expended time and resources to pass legislation to enable these Towns to acquire the Alamoosook and Toddy dams. No consultation has occurred in the Town's view. A large public meeting with zero back and forth discussion is not consultation as set forth under 38 M.R.S. §§ 902, which requires "consulting with the persons who appear at that meeting," rather it is a public presentation with opportunity to ask questions and answers presented later in legal discovery format. The Town previously noted it specifically requested consultation at the single public meeting and that consultation has not yet occurred. As discussed in more detail below, the Town agrees with these four Towns that BuckMill's rights to transfer the dams are insufficient as a matter 06-096 C.M.R. § 10(D); 38 M.R.S. §§ 901-909. The policy considerations in the four towns' letter are appropriate for the Department's consideration.

BuckGen's comments filed September 12 make it clear that inadequate notice was provided to BuckGen by BuckMill's request for consent by letter dated August 26, 2025. With respect to the July 2-25 production of the Amended Facilities Sharing Agreement, the Town also agrees with the BuckGen view that BuckMill has inadequate administrative standing to proceed because its filing did not include appropriate consents from its own grantees, which hold the ability to approve a transfer or not, as BuckMill's grantees of those rights. The Town also agrees with the BuckGen analysis of the process under 38 M.R.S. §§ 901-909 and, in particular, under Sections 902, 903, and 905 of the statute, which would come later in a dam abandonment petition process if it proceeds. But unlike BuckGen, the Town does not request the process here be extended but

rather the petition be returned so parties may negotiate a solution to facilitate a future BuckMill filing.

Consultation was also deficient as addressed in the Town's September 12, 2025 letter to the Department.³

In the next section, we analyze the issues raised by the four Towns and BuckGen in more detail.

Title, Right, and Interest Required by 38 M.R.S. §§ 901-909

As observed already, the Dam Abandonment statute, 38 M.R.S. §§ 901-909, requires not merely a *prima facie* showing on TRI similar to the Chapter 2 Department requirements, but also requires the ability to transfer the properties to satisfy the requirements of 38 M.R.S. §§ 901-909. Under this statute, the Petitioner must have adequate right to transfer the dams and associated properties without seeking consent or waiver from other parties, and for no consideration (except for reasonable transfer costs). It is now clear that the Petitioner lacks sufficient rights as a matter of law and fact.

The Town does not dispute that BuckMill holds fee title to the dam property based on what it submitted. Providing a copy of a deed is typically sufficient to demonstrate TRI under the Department's Chapter 2 rules, CMR 06-096, §10(D). However, material for DEP's consideration in this instance is that BuckMill's fee title is encumbered by restrictions on transfer put in place by the Petitioner itself in 2019, as well as older Indentures to Maine Water Company's predecessor, Bucksport Water Company. Because of these restrictions, BuckMill lacks the legal ability to freely alienate the property. The TRI in this instance is insufficient to demonstrate TRI under 38 M.R.S. §§ 901-909 as well as under the Department's Chapter 2 application processing rules.

In 2019, Mill granted easements to BuckGen and Whole Oceans as addressed in the Town's September 12 comments. The Town emphasizes that BuckMill's grant to BuckGen of an obligation to maintain and operate the dam and make water available to BuckGen, significantly enhanced the value of BuckGen as a going concern. BuckMill's commitment to maintain a water supply allows BuckGen to operate as a generation facility even when natural water flows without a dam would not allow such operation. In short, substantial value was created, and later received, by BuckMill in the 2019 sale when it sold off BuckGen. Separately, when BuckMill sold off a large parcel to Whole Oceans for an aquaculture operation also requiring a water supply, BuckMill made similar commitments for substantial proceeds to BuckMill. The Town understands that BuckMill additionally received hundreds of thousands of dollars in fees from Whole Oceans to maintain the water supply after selling these properties in 2019. In order to support the lucrative sale of these rights to BuckGen and Whole Oceans, BuckMill committed to water supply and extensive maintenance and reporting obligations (the "Easement Obligations").

³ The Town notes that counsel for BuckMill reached out to inquire as to consultation on September 18, 2025 via email at 4:24 p.m.. The Town indicated that it is interested in consultation via email response at 4:29 p.m. The Town asked that I convey that at this point there is simply insufficient time remaining to reach an agreement for any of the Towns to get a ballot measure on the ballot for this November's election.

Notable for the Department's current inquiry: to further enhance the value of the Easements, BuckMill agreed to restrictions on its right to alienate the property. BuckGen and Whole Oceans were granted essentially rights of first refusal to acquire the property for nominal consideration if BuckMill elects to sell the Water System. This right of purchase binds the dams and associated property and prohibits the sale without adherence to or waiver of the procedures proscribed. Even if BuckGen declines to acquire the Water System, there are two additional restrictions on BuckMill's right to transfer or sell the Water System:

The Water Easement states in Section 16(a) that "[i]n the event that [BuckMill] elects to sell... the Fresh Water Supply System...[BuckMill] agrees that it will provide [BuckGen] written notice of such election or proposed sale and (i) [BuckGen] shall have a ninety (90) day option to purchase the Fresh Water Supply System for one dollar[.]" Even more complicated, there is an additional step under the easement restrictions: In the event that BuckGen does not opt to purchase the property for \$1, BuckMill must next offer to sell the property on set terms to Whole Oceans. It is undisputed that this has not occurred, meaning an additional party has the ability to block the transfer of the property in addition to BuckGen.

While BuckMill has provided preliminary diligence documents pursuant to three requests, they have had no consultation or discussions with the Town much less an agreement to sell. Therefore, BuckMill has not "elected" to sell the Fresh Water Supply Rights and no "proposed transaction" exists so as to even make notice timely under Section 16(a) of the Water Easement. BuckMill's act of filing of the Petition in fact demonstrates that sale discussions with the Town have not proceeded to the point where it could be considered a proposed sale. The Town has requested but the potential parties to the transaction have not engaged in discussions, much less agreed to timing, consideration, or any other material terms to trigger either of these two restrictions.

As discussed in our September 12 letter, the Town does not believe it has the ability to accept the Fresh Water Supply Rights in the current encumbered state, given the expense and burden of the obligations to BuckGen and Whole Oceans that would require the public to provide substantial benefits from the public fisc to private parties. As there have been no consultations, discussions, or negotiations at all, the Town has not had the opportunity to voice such concerns to BuckMill and hear any proposed solutions. In essence, the Town is unable to accept title to the property in its present state and would require the release of several record encumbrances before it could do so. Without such releases, there simply is no deal. Unless and until there is an actual proposed transaction - a "meeting of the minds between the parties" on transfer or purchase terms - BuckMill cannot fully comply with the requirements of the Water Easement that it drafted itself to give notice to BuckGen of its election to transfer or sell the Water System. BuckMill's attempt to do so in August 2025 was therefore premature. This legal issue may be why BuckMill delayed in providing notice and request for BuckGen's consent to a transfer that it not yet arranged - in fact, not even seriously negotiated.

Unless and until BuckGen and Whole Oceans waive their rights to preempt a sale by purchasing the property, BuckMill's legal right to sell or transfer the dam properties is subordinate to the

rights of third parties under the documents BuckMill itself drafted and entered into in 2019. BuckMill decided to put these restrictions on alienation into the easements granted to BuckGen and Whole Oceans and cannot now argue in good faith that it has sufficient right to transfer the dam properties.

In short, BuckMill has gotten the process required by its own 2019 documents backwards. BuckMill does not have sufficient rights to pursue a dam abandonment petition without acquiring the consent of BuckGen and Whole Oceans. Since BuckGen was just notified, and because the terms of the sale are not yet set, BuckMill has no basis to claim BuckGen and/or Whole Oceans will be reasonably required to grant consent. The prerequisites to tee up an offer for BuckGen to accept or decline are simply not set yet as a result of inaction on negotiating a sale or transfer.⁴

This is a DEP Determination of Adequacy with a DEP Administered Statute

This is not a determination of real estate law in a court of law. The TRI determination is a DEP determination under Title 38 and the DEP's rules. The DEP TRI determination may be informed by principles of real estate law but is not dictated by real estate law. It is an administrative determination of the Department on adequacy of Petitioner's rights to proceed in front of the Department. It is clear that the right to transfer or sell the dams is currently not a right that BuckMill has regardless of any fine distinctions it may attempt to parse. The Department does not need to make real estate determinations, only whether TRI is sufficient under Chapter 2 and under the 38 M.R.S. §§ 901-909 structure for the Department to proceed further in light of 10-months of record development.

Related but Separate Contractual Limitations on Transfer

Lastly, there are clearly contractual prohibitions on BuckMill as well. Should DEP determine, despite the multiple parties with the ability to hold up any transfer of the Fresh Water Supply Rights to Town(s), that BuckMill has sufficient TRI for DEP to consider the petition, DEP should then additionally consider that by failing to comply with the terms of the Water Easement and the Amended Facilities Sharing Agreement by and between BuckMill and BuckGen ("AFSA")⁵ and obtain consent of BuckGen to a transfer, BuckGen can block a transfer or sale of the dam(s).

Unnecessary Delay from Failure to Follow Basic Real Estate Process to Prepare for a Transfer Has Wasted Substantial Resources.

Unfortunately, BuckMill has caused unnecessary expense and delay for DEP and any potential buyers of the dam property. Providing notice to BuckGen and Whole Oceans and obtaining appropriate consent and/or waivers of the purchase rights should have been a simple step,

⁴ The same appears to apply to Whole Oceans easement rights.

⁵ The AFSA is a contractual agreement between private parties and not a title encumbrance of record. Section 4.1(b) prohibits BuckMill from selling "the equipment or rights subject to" the AFSA, and 5.2(b) expressly provides BuckGen with the right to seek equitable remedies for BuckMill's default, including, without limitation, injunctive relief to halt a sale process if consent to the sale has not been obtained in advance.

common in real estate transactions where a property restriction on alienation such as a right of first refusal or offer. This is standard real estate transaction practice: the terms must be followed and a waiver (given or deemed given by elapse of time) obtained before the proposed purchase or transfer can move forward or, as in the present case, a Petition for Abandonment filed with adequate interest to meet TRI requirements and to comply with the statutory process.

Unfortunately, BuckMill neglected to follow a simple process point for this transaction and filed the Petition, inaccurately presenting an unencumbered right to alienate the property. This failure to obtain adequate consent has wasted significant time and resources on the part of the Towns, the parties to which BuckMill sold in 2019, and the Department. For this reason, the petition should be returned and not accepted until BuckMill has satisfied its obligations under the Water Easement it bound itself to in 2019.

Secondly, BuckMill is a party to the AFSA, a separate and material contractual agreement that requires consent of BuckGen to a transfer of the Fresh Water Supply System. Failure of BuckMill to obtain BuckGen's consent to the transfer of the assets subject to the AFSA is a material breach of that agreement. BuckMill's failure to obtain the consent required by the AFSA and instead proceed with the Petition without even seeking such consent could result in a court enjoining any transfer of the property.

Any contention by BuckMill that it has properly complied with the regime it created for the for-profit operation of the dam assets in order to enable it to have and maintain the necessary TRI to support its Petition for Abandonment is incorrect and inconsistent with the requirements of 38 M.R.S. §§ 901-909. While compliance with these requirements is well within BuckMill's ability and control, its current ability to transfer the dam assets is subject to the rights of multiple other parties. The Petition should be returned pending BuckMill's compliance with the easements and agreements to which it has bound itself.

Sincerely,



David Littell
Shareholder
Energy and Environmental



Suzanne Breselor Lowell
Shareholder
Real Estate

cc: Commissioner Melanie Loyzim
Maine Assistant Attorney General Jack Dafoe
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