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**Russell B. Pierce, Jr.**

September 12, 2025

**VIA EMAIL/PDF ONLY - [Melanie.Loyzim@maine.gov](mailto:Melanie.Loyzim@maine.gov)  
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Melanie Loyzim, Commissioner  
Maine Department of Environmental Protection  
17 State House Station  
Augusta, ME 04333

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

**RE: DEP Application # L-31353-36-B-N – Bucksport Mill, LLC Consolidated Petition for Release from Dam Ownership relating to Silver Lake, Alamoosook Lake, and Toddy Pond dams, 38 M.R.S. §§ 901, et seq.**

Dear Commissioner Loyzim and Ms. Paye:

On behalf of the Towns of Orland, Surry, Penobscot, and Blue Hill (the “Towns”), we are responding to the Department’s emailed notice of August 20, 2025, inviting further comment and updates on the issues raised in that notice, “including the effect of any provisions of the Facility Sharing Agreement or the Easement on Bucksport Mill LLC’s TRI [“title, right, and interest”] and ability to transfer any of the dams pursuant to 38 M.R.S. §§ 901-909.”<sup>1</sup>

In our view, the terms of these documents providing for either Bucksport Generation, LLC’s written approval of any transfer of ownership of the dams, or related rights in the Easement, prevent Bucksport Mill, LLC from continuing to invoke Title 38’s procedure for transferring the dams to the municipalities. As the Department and all parties are aware, the

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<sup>1</sup> As the Department’s invitation for this comment was directed to these issues, we reserve additional issues we may have on other aspects of the subject of the petitioner’s statutory report on the consultation process. We respectfully request, however, that the parties not be put to an inordinate expense of addressing such issues while this threshold issue of TRI and the petitioner’s compliance with Title 38 remains pending, especially given the remarkable uncertainty that the present issue imposes on the proceedings and on the Towns while it remains undecided by the Department.

Towns are prepared to facilitate a transfer of dam ownership (the Alamoosook and Toddy Pond dams), subject to formal town votes on municipal watershed districts which will be the actual entities taking title to the dams and related real estate. The Towns anticipate that the districts would take title subject to the Bucksport Generation easement and under the terms of the facility sharing agreement (i.e., the watershed districts would be partial “Easement Area” successors of relevant properties under the Easement, and would become successors in interest to “Grantor” [Bucksport Mill] under the Facility Sharing Agreement and its application to the relevant properties subject to that transfer).

After enormous expenditure of time, money, resources, and legislative effort by the key legislators, the Legislature’s Office of Policy and Legal Analysis, and the full Legislature, including the engagement of constituents throughout the Towns, these efforts successfully set the table for the watershed districts to assume ownership of the Alamoosook and Toddy Pond dams. These efforts were largely public and known to the Department and all parties to the petition and interested parties – particularly both Bucksport Mill and Bucksport Generation. And we also cannot ignore the full day of site visits at each dam on June 27, 2027. Clearly the Towns’ dam inspection team from GEI was there throughout the day. No mention (certainly no adequate mention) was ever made by Bucksport Mill or Bucksport Generation representatives on site to any constituent of the Towns or their counsel, of right of transfer/approval issues under the Facility Sharing Agreement (which we had asked for, but did not receive until August 1, when it was Bucksport Generation who gave it to us, not even Bucksport Mill).

This is less than good faith consultation under Title 38. Bucksport Mill has put the Towns to an extraordinary expenditure of time, effort, and money, only to pull the rug out of the whole process at the eleventh hour by exposing a previous failure to follow the terms of the Easement and the Facility Sharing Agreement for transfer of the dams to municipalities (or anyone else) under Title 38. A late “ask” from Bucksport Mill to Bucksport Generation to respond on the issue – only *after* these approval issues were raised first by counsel for the Towns and after the Department’s notice inviting comment – does not cure Bucksport Mill’s non-compliance. Bucksport Generation still has not provided its consent to the transfer in writing, nor addressed the other potentially relevant Easement provisions. In any event, the late “ask” from Bucksport Mill to Bucksport Generation has had no effect to cure the defect in a prospective transfer, as of this writing.

Our more specific comments on the document terms and the applicable Department regulations in issue, follows. We ask at this time, that the Department “return the application” under 06-096 C.M.R. ch. 2, § 10(D) (2024), or dismiss it without prejudice for fundamental noncompliance with Title 38 consultation procedure, including noncompliance with the clear statutory purpose of allowing for dam transfers to interested and able municipalities (as the Towns and quasi-municipal watershed districts here are) in lieu of and to prevent dam abandonment (and consequent water-release orders).

i. The Facility Sharing Agreement

The Department correctly notes the provision of the Facility Sharing Agreement in issue, Article IV Section 4.1(b): “[Bucksport] 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 [Bucksport] Generation's rights therein granted hereunder, without the express written consent of Generation, which consent shall not be unreasonably withheld, delayed or conditioned." Section 9.4 also appears relevant: "Any transfer of the ownership of any material equipment, real property, easements or a change of ownership of Mill or Generation shall be subject to this Agreement and any assignment of this Agreement shall be subject to the new owner or assignee acknowledging this Agreement in a form reasonably acceptable to the Parties."

When Bucksport Mill filed this petition under Title 38, it did not mention these provisions or make specific reference to the agreement. It did not submit the Facility Sharing Agreement with its petition. At the very outset of this matter following the Department's "completeness" determination on the application, we requested a copy of any such agreement "relating in any way to ownership or control of [the dams]," and including specific reference in that very request to Bucksport Generation (*see* our November 12, 2024 request ¶ 8). Our March 27, 2025 follow-up requests asked for it again, in even more specific terms, by requesting any contracts describing Bucksport Generation's responsibility for operating, maintaining, or completing inspections of the dams, including any "other obligations" associated with operation and maintenance. Bucksport Generation mentioned the agreement in its letter of May 14, 2025 (as the Department notes) – Bucksport Generation's counsel had mentioned it also orally to counsel for the Towns, who extemporaneously asked for a copy of it then, orally, and again in separate writing to Bucksport Generation (and, then again, to both Bucksport Generation and Bucksport Mill). The request for the agreement was discussed among counsel (at least among counsel, if not others) at the site visit on June 27, 2025. Why is it that the first time anyone other than Bucksport Mill and Bucksport Generation sees it, is on August 1, 2025 – when it is not even provided on the record by the petitioner, but by Bucksport Generation?

The record now credibly reflects that Bucksport Generation's written approval has been withheld, throughout the entire period of the Title 38 consultation and process, and in light of the Towns' enormous expenditure of time and resources, including necessary legislative action to set up two municipal watershed districts to effectuate accepting transfer of the dams for no compensation as the Title 38 statutory process envisions. The Towns incurred the very significant expense of an independent dam inspection consultant. Bucksport Mill should have had these approvals in hand at petition commencement, or at least much earlier in the process, as petitioner for a process that envisions a consultation period with municipalities (and other interested persons), and potentially State agencies, to effectuate a transfer of dams to avoid the last resort of abandonment and water-release orders. To hold back on the issue, rather than make it front and center to the process, amounts to noncompliance with the Title 38 procedure.

ii. The Easement

The relevant Easement provisions complicate these issues further. Under the Easement's Exhibit C "Terms and Conditions Applicable to the Water Transmission Easement, Water Easement and Access Easement," Section 15(a) provides, in relevant part, ". . . Grantor may not assign or otherwise convey to any other party . . . in any manner any of its rights and/or

obligations in the Easement Areas or under the Easement without first offering to assign such rights and obligations to Grantor [sic]<sup>2</sup> in consideration of one dollar.”

The complication this Easement provision raises is the current suggestion on the record that Bucksport Mill has not made this first offer, or if it has, Bucksport Generation has certainly not yet exercised it nor said that it won’t exercise it. Implicit in the filing of the petition itself, which included submission of the Easement, was that this first offer to assign was already made to Bucksport Generation and not exercised – otherwise, why is Bucksport Mill even filing a petition? After all, the petition will trigger a consultation process for transfer to other parties, including statutorily interested, ready and willing, municipalities. If that whole process can have the rug pulled out from under it by Bucksport Generation’s easement right of assignment, why put the Department and parties to such expense?

And the Easement contains the standard, but significant, “no waiver” provision: “No failure or delay by any party in exercising any right, power or privilege under this Easement, and no lack of use of the Easements, including right to divert water, will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.” Easement, Exhibit A, ¶ 5.

When the petition was filed, apparently Bucksport Mill did not offer to assign to Bucksport Generation, or if it had, it had not received an answer, and nonetheless purported to invoke a statutory consultation process for transfer of the dams. Bucksport Generation has been a party to this proceeding. Is it exercising its right of assignment under the Easement to take over Bucksport Mill’s rights and obligations?

Regardless, any transferee of the dams – dams subject to the encumbrances of the Easement, which run with the land (Easement, Exhibit A, ¶ 4) – would have to secure a release or waiver from Bucksport Generation of this first right of assignment, in order to take clear title. While such a release or waiver might be *implicit* in a Title 38 transfer that happens under the auspices of the Department with Bucksport Generation an interested party to the Title 38 proceedings, legal standards would call for making Bucksport Generation’s release or waiver of the right of first assignment explicit, in writing – and part of the title record.

iii. The Department’s “Title, Right, and Interest” Regulations

The Department’s August 20<sup>th</sup> notice for comment on this issue references the title, right, and interest (“TRI”) provisions of Department rules governing the processing of applications. 06-096 C.M.R. ch. 2, § 10(D) (2024). Relevant provisions include:

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<sup>2</sup> Obvious context suggests this is a typographical error, saying “Grantor” when it should say “Grantee.” Maine courts would likely interpret this easement provision accordingly, correcting the typographical error. When parties agree to a typographical error, the contract or deed language is reformed accordingly, and even when contested, if a typographical error causes no prejudice to the party contesting it, the court will assume the correction. *See, South Portland Associates v. City of South Portland*, 550 A.2d 363 (Me. 1988) (municipal Board of Assessment Review accepted typographical error in noting applicable year of tax abatement application).

When 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.**

06-096 C.M.R. ch. 2, § 10(D) (third paragraph) (bold emphases added).

The Department may return an application before or during the application processing period if the Department determines that the applicant does not have or no longer has sufficient TRI. The Department may refuse to accept an application as complete and may return an application at any time for a lack of sufficient TRI, if it determines that the activity proposed in the application would likely be prohibited by federal, state, or municipal law or fall within a temporary moratorium on the activity.

06-096 C.M.R. ch. 2, § 10(D) (final paragraph).

Thus, whether or not these issues could have been addressed, or should have been addressed, at the time back in October of 2024 when Bucksport Mill filed its petition and the Department determined its completeness (we contend the Department should have been informed by Bucksport Mill, the petitioner, of these issues at the outset of its filing), the determination can nonetheless be made now that, without Bucksport Generation's written approval, the petitioner Bucksport Mill does not have the right to transfer assets to any entity under Title 38. If it thought it *might get* that right later in the process, so as to save its petition at the initial completeness determination stage, it is nonetheless clear that Bucksport Mill doesn't have that right now – Bucksport Generation has not provided approval of a transfer, and appears unlikely to do so. Without Bucksport Generation's approval, "the activity proposed in the application [i.e., transfer of dams under Title 38] would likely be prohibited by federal, state, or municipal law." 06-096 C.M.R. ch. 2, § 10(D) (final paragraph). State law encompasses the law of contracts, property law, and good title standards; and municipal law encompasses facilitating or accepting valid transfers of assets without unresolved encumbrances and defects.

iv. Policy Considerations

No aspect of the current situation is the fault of the Towns. They diligently sought the information about these issues, and the document reflecting them (the Facility Sharing Agreement), from the very beginning with their first information request. It is all information that should have been affirmatively provided to the parties and the Department by Bucksport Mill, even without any requests from the Towns or others – especially in light of the public, known activity and expenditure of time and legislative resources the Towns were incurring on their end, as part of the Title 38 consultation period under a statutory deadline. Bucksport Mill should get no benefit by this delay and its own noncompliance with the statute. Rather, the application should be returned to it for lack of title, right, and interest, or dismissed without prejudice.

Maine recognizes that dams are unique properties having inherent public safety concerns and public interest at both the municipal and state levels. Even though privately owned, they are uniquely and sometimes dramatically matters of public concern and public safety. So, because a dam should not – except as a matter of very last resort – be a property that is abandoned that no one continues to maintain and operate, the Maine Legislature enacted a procedure, 38 M.R.S. §§ 901, et seq., for a private dam owner to petition the Department to abandon ownership, operation, and maintenance of a dam, in a way that intends to protect, first and foremost, the public interest in the dam and its safety. Bucksport Mill applied for relief under that procedure with the present petition. But it never had the right to transfer the dams – to avoid that very last resort – because it was not the complete owner of the dams. The dams were encumbered by easement rights (which Bucksport Mill had sold to Bucksport Generation before its petition). It cannot be that Title 38 countenances this petition in this context, which has only now come to a head. Bucksport Mill does not now have the right to transfer the dams, if it ever had the prospect of that right, so it does not have the right to continue to invoke a statutory procedure fundamentally embedded with purpose and structure to protect the public interest and effectuate dam transfers in lieu of abandonment.

We respectfully request that under these circumstances the petition be returned to Bucksport Mill, and thus dismissed without prejudice.

Very truly yours,

*/s/ Russell B. Pierce, Jr.*

Russell B. Pierce, Jr.

RBP/

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