



STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION

VIRGINIA PLUMMER
CHAIR

CYNTHIA S. BERTOCCI
EXECUTIVE ANALYST

TERRY A. HANSON
ADMIN. ASSISTANT

JOHN ELIAS BALDACCI
GOVERNOR

IN THE MATTER OF

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|---|---|
| MERIMIL LIMITED PARTNERSHIP) | MAINE WATERWAY DEVELOPMENT AND |
| Waterville and Winslow, Kennebec County) | CONSERVATION ACT PERMITS AND |
| LOCKWOOD HYDRO PROJECT) | WATER QUALITY CERTIFICATIONS |
| #L-20218-33-C-N) | |
| | |
| HYDRO KENNEBEC LIMITED) | |
| PARTNERSHIP) | |
| Winslow and Waterville, Kennebec County) | |
| HYDRO-KENNEBEC PROJECT) | |
| #L-11244-35-A-N) | |
| | PETITIONS FOR REVOCATION, MODIFICATION, |
| FPL ENERGY MAINE HYDRO LLC) | OR SUSPENSION |
| Fairfield, Somerset County) | |
| SHAWMUT HYDRO PROJECT) | |
| #L-19751-33-A-M) | |
| | |
| FPL ENERGY MAINE HYDRO LLC) | |
| Skowhegan, Somerset County) | |
| WESTON HYDRO PROJECT) | |
| #L-17472-33-C-M) | |

Pursuant to the provisions of 38 M.R.S.A. Sections 341-D(3), 464 et seq., and 06-096 CMR Chapter 2 (Rules Concerning the Processing of Applications and Other Administrative Matters), the Board of Environmental Protection, and as a result of September 28, 2005 and September 29, 2005 petitions¹ of Douglas H. Watts and Friends of Merrymeeting Bay ("FOMB") (collectively, "Intervenors,"), determined to hold a public hearing to consider whether the permits and water quality certifications previously issued for the Lockwood, Hydro-Kennebec, Shawmut, or Weston Hydro Projects should be modified, suspended or revoked. Following that hearing, and consideration of the testimony and written briefs of all parties, the Board has determined, in its discretion, to take no further action to modify, revoke, or suspend the certifications in issue. The Board's reasons follow.

¹ A summary of the petitions, petition proceedings, public hearing testimony, and post-hearing briefs is appended hereto and incorporated herein.



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1. FISH PASSAGE REQUIREMENTS IN EXISTING WATER QUALITY CERTIFICATIONS

On May 26, 1998, various parties² signed the Lower Kennebec River Comprehensive Hydropower Settlement Accord which, among other things, led to the removal of the Edwards Dam in Augusta. Included as part of the settlement accord was the *Agreement Between Members of the Kennebec Hydro Developers Group, the Kennebec Coalition, the National Marine Fisheries Service, the State of Maine, and the U.S. Fish and Wildlife Service (1998 KHDG Agreement)*. The *1998 KHDG Agreement* was intended to achieve a comprehensive settlement governing fisheries restoration on the Kennebec River and Sebasticook River for catadromous³ American eel and anadromous⁴ American shad, Atlantic salmon, alewife and blueback herring at the seven dams covered by the agreement. The then existing water quality certifications and FERC licenses for each of the dams⁵ were subsequently amended to be consistent with the *1998 KHDG Agreement*.

With regard to upstream passage for anadromous fish, the *1998 KHDG Agreement*, and therefore the water quality certifications, require interim upstream passage at the Lockwood Project, the first of the subject dams on the Kennebec River, by May 1, 2006, with permanent passage to be provided based on a biological trigger (2 years after 8,000 shad are passed or some appropriate alternative determined by the state and federal fisheries agencies), but in any event, no earlier than 2010. Biological triggers are also provided for permanent upstream passage at the Hydro-Kennebec, Shawmut and Weston Projects, and dates are established before which upstream passage will not be required at these dams ranging from 2010 to 2014.

Regarding downstream passage for anadromous fish, the water quality certifications require that the dam owners continue, and where needed improve, existing interim operational

² The signing parties to the *1998 KHDG Agreement* included: the City of Augusta; Edwards Manufacturing Company; the Kennebec Coalition (American Rivers, Inc., the Atlantic Salmon Federation, Kennebec Valley Chapter of Trout Unlimited, the Natural Resources Council of Maine, and Trout Unlimited); the Kennebec Hydro Developers Group (Central Maine Power Company, Merimil Limited Partnership, UAH-Hydro Kennebec Limited Partnership, Ridgewood Maine Hydro Partners, L.P., and Benton Falls Associates); the State of Maine (acting by and through the Governor of the State of Maine, the Maine Department of Inland Fisheries and Wildlife, the Maine Department of Marine Resources, and the Maine State Planning Office); the US Department of Commerce (through the National Marine Fisheries Service); and the US Department of the Interior (through the US Fish and Wildlife Service).

³ Catadromous fish migrate as adults from freshwater to the ocean to spawn, and their offspring then migrate back to freshwater as juveniles to grow to maturity.

⁴ Anadromous fish migrate as adults from the ocean to freshwater to spawn, and their offspring then migrate back to the ocean as juveniles to grow to maturity.

⁵ The certification for the Lockwood Hydro project was issued in August 26, 2004 and its FERC license will expire June, 2035. The certification for the Hydro-Kennebec project was issued June 6, 1986 and its FERC license will expire October, 2036. The certification for the Shawmut project was issued May 21, 1981 and its FERC license will expire January 25, 2021. The certification for the Weston project was issued November 17, 1992 and its FERC license will expire November 25, 2036.

