

Meidel, Susanne K

From: Aidan McGrory <acmcgrory@gmail.com>
Sent: Thursday, August 19, 2021 10:26 PM
To: Meidel, Susanne K
Subject: Triennial Review of Water Quality Standards Presumpscot River Comment

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello Susanne!

I hope all is well. My name is Aidan McGrory and I am a 24 year old that grew up living on the lower half of the Presumpscot River in Falmouth Maine. Recently, an activist group in my town, Friends of the Presumpscot, has put forward a motion to upgrade the stretch water that I spent my whole childhood swimming in from Class C to Class B.

After reading the DEP's response in this report, I totally see the valid points for waiting to collect more data and waiting until the next review period in 3 years to make a decision. I am a scientist, and I always love when people take their time to gather data and analyze it for important questions.

Unfortunately, I believe the timing of this situation will not allow for inaction in the meantime to be possible. The Presumpscot shaped my life and I have seen firsthand the recovery it has overgone in the last 15 years. If we do not move to grant this water Class B status now, or at least mandate that **no new point source discharges may be established in the meantime**, then I am afraid that this ecosystem will take us back many steps, some of which may be potentially irreversible.

Furthermore, in my last 15 years on the river, I have seen the users of the area at least double in number. More residents means more potential harm for all those that use the river if it is not aptly protected. Conversely, if we do protect it, the lower Presumpscot gives rich nature access to those who need it most, the youth residents of Portland, who may otherwise not have many ways to access nature.

I really appreciate you reading this email and hearing my call for action!

I am excited to attend the meeting in August on October 7th for the public, but until then, I really appreciate you hearing me out!

Thank you so much!

Best,
Aidan McGrory

August 30, 2021

Maine Board of Environmental Protection, ATTN: Mark Draper, Chair
Maine Department of Environmental Protection
SHS 17
Augusta, Maine 04333



Submitted via e-mail

Subject: Upgrade of the Waters of the Lower Androscoggin River from Water Quality Classification C to Water Quality Classification B.

Dear Chairman Draper and Members of the Maine Board of Environmental Protection:

This responds to the Meidel, Susanne K email of August 18, 2021 seeking public comment regarding the MBEP Triennial Review. In consequence, on behalf of its six chapters and over 2,000 members, Maine Council of Trout Unlimited (TU) would like to express its intensifying support for the upgrade of the waters of the lower Androscoggin River from Water Quality Classification C to Water Quality Classification B.

Trout Unlimited has been engaged with this issue since late in 2019 through the Grow L+ A Working Group. Here we learned that reclassifying this section of the Androscoggin River had been proposed to the Maine Department of Environmental Protection (DEP) for some time, but had not been approved. Data gathered by the cities of Lewiston and Auburn, and the Friends of Merrymeeting Bay has demonstrated that this river section meets the requirements for reclassification to Class B, and it is high time to protect the gains that have been made there. Upgrading the water quality classification would help preserve these standards and encourage greater recreational use and enjoyment of the resource by both our membership and Maine's general public.

TU has been active in its support of efforts by the Maine Department of Marine Resources, the Maine Department of Inland Fisheries and Wildlife, the National Marine Fisheries Service, and the U.S. Fish and Wildlife Service to restore anadromous fish runs to the lower Androscoggin, Sabattus River, and Little Androscoggin River. Upgrading the classification of the lower Androscoggin would serve to enhance the effectiveness of this effort, contribute to the health of resident fish, and improve the health of the ecology of the greater watershed. Of additional note is that the lower Androscoggin is designated critical Atlantic salmon habitat. It is completely incongruous that waters of this importance should carry Maine's lowest water quality classification, particularly after 50 years have passed since it served as the motivation for Senator Ed Muskie's Clean Water Act. We are all aware of the attention currently being focused on restoration of Atlantic salmon to the Kennebec River Watershed. The Androscoggin is in the same salmon habitat recovery unit (SHRU) as the Kennebec. Please understand that the restoration methodology being employed requires all of the critical habitat to be restored for the restoration effort to be successful.

Objections to the upgrade center on fears that if plants upstream were to discharge at the maximum licensed capacity, the lower Androscoggin would not meet Class B standards. There have been improvements to technology since those licenses were issued, and the watershed would suffer if it returned to earlier

conditions. What is more, addition of oxygen required to maintain DO levels in the Gulf Island Pond upstream could be adjusted to ensure that this key component of water quality is properly maintained.

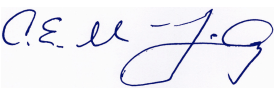
Please do not rely on the same factors used in the past by Maine Department of Environmental Protection in recommending denial of the reclassification. The prime example was clearly articulated in the Greenfire Law Memorandum [Rachel Doughty, Greenfire Law, PC, RE: Reclassification of the Lower Androscoggin River to Class B, March 31, 2020] - modeling cannot be used to contradict uses actually being attained. The memorandum cites the legal precedence for this and other arguments MDEP staff has inappropriately used in the past as bases for recommending denial of reclassification. Reclassification should have been recommended years ago.

The Clean Water Act and Maine's anti-degradation policy require that "[w]hen the actual quality of any classified water exceeds the minimum standards of the next highest classification, that higher water quality must be maintained and protected. The board shall recommend to the Legislature that that water be reclassified in the next higher classification." (38 M.R.S. § 464.4.F.4; see also 40 C.F.R. § 131.20(i)) The plain language of the law must take precedence. It is a matter of law for the board to recommend the upgrade to the legislature.

Many of our members remember what the lower Androscoggin was like before the passage of the Clean Water Act. The cities of Lewiston and Auburn have invested over \$50,000,000 since 2010 to improve the water quality, and that is what has made the difference. Please protect their investment and give Atlantic salmon restoration its best chance of success in the watershed, the SHRU, and the state of Maine.

Accordingly, we urge that the board forward its strongest recommendation to the legislature that the Water Quality Classification of the lower Androscoggin River be upgraded from C to B.

Sincerely and respectfully,



C. E. McGinley
Chair, Maine TU Council

Meidel, Susanne K

From: Greg D'Augustine <greg.daugustine@gmail.com>
Sent: Tuesday, August 31, 2021 1:10 PM
To: Meidel, Susanne K
Subject: Triennial review of water quality standards: Lower Androscoggin River

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Susanne:

As a property owner on the Androscoggin, and a board member of Maine Rivers I ask that BEP continue efforts to upgrade the classification of the lower Androscoggin, from approximately Great Falls to MerryMeeting Bay from it's current "C" listing to "B". It's clear that the water quality in that segment has improved immensely over the past 30 years, and it is time to move forward on recognition of that improvement.

At the very least, BEP should enact or lobby for enactment of ongoing water testing in that segment of the river, with the expense paid by those who are profiting from the river, i.e. industries adding waste to the river, and Brookfield Hydro. Detailed testing should resolve the issue of determining whether or not the river meets class "B" standards, and should take precedence over any modelling done in the past.

Best wishes,
Greg D'Augustine

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Greg D

FOGL



Friends of Graham Lake

September 4, 2021

Mark C. Draper, Chair
Board of Environmental Protection
c/o Susanne Meidel
17 State House Station
Augusta, ME 04333-0017

Via e-mail

RE: DEP Triennial Review of Water Quality Standards, public comment on the revised staff recommendations to the Board

Dear Chair Draper:

The Friends of Graham Lake (FOGL) is a community organization with 200 members from 4 towns that abut the lake (Ellsworth, Mariaville, Waltham and Fletcher's Landing). We wish to state for the record that we agree with most of the revised recommendations by DEP staff for changes in state water quality standards.

We are the founding members of the FOGL lake association, the acting officers, and most of us are direct abutters to the lake. We are pleased that the DEP has committed to formulating turbidity water quality criteria. We understand that this will take some time and appreciate that work has already begun. This decision will greatly improve the water quality, protect recreational and property values, and enhance wildlife and fishery habitat for the lake. We ask that the Board support this recommendation.

We are concerned that the revised staff recommendations do not currently support a water classification upgrade for the tributaries to Donnell Pond. We understand the uncertainty with respect to EPA's concern about licensed stormwater discharges and protection of Class A/AA and Outstanding Natural Resource Waters. However, these streams are mainly in BPL lands and unorganized territories and in some cases extend into Franklin and Sullivan. These streams do not receive any stormwater discharges and never will. We agree with The Nature Conservancy that these should be upgraded to Class A to make them consistent with other water resources in the Tunk – Donnell Pond Public Reserve Lands. Thank you for your attention.

Sincerely,

Ed and Anne Damm, Diane and Brad Perry, Mark Whiting and Catherine Fox



Susanne Meidel Susanne.K.Meidel@maine.gov
Maine Department of Environmental Protection
Bureau of Water Quality
17 State House Station
Augusta, ME 04333-0017

October 3, 2021

Dear Susanne,

Below is **Friends of the Presumpscot River's written testimony to the BEP** regarding reclassifying the lower Presumpscot River from Class C to Class B.

Context - Here is DEP's final recommendation to the BEP:

DEP recommendation: The Department does not have enough information at this point to fully evaluate whether the lower Presumpscot River could meet Class B criteria at all times during critical conditions of high water temperature, low flow, and maximum licensed discharge levels. These critical conditions are what the Department considers when reissuing waste discharge licenses. No current continuous dissolved oxygen data or in-stream nutrient data are available for low flow, high water temperature conditions. The department will need to collect and evaluate data taken during these conditions before making a determination on a classification upgrade. For this reason, the Department is unable to support the upgrade proposal at this time.

The Department commits to collecting new data as deemed necessary and as possible¹⁴, and began this effort in the summer of 2020 and will continue it in 2021. 2021 sampling includes the collection of biological monitoring data at two locations in the segment proposed for upgrade and at one reference site upstream, as well as the collection of continuous water quality data at one location in the lower river. Data from 2021 will allow an initial assessment of the effect of Sappi North America in Westbrook shutting down a paper machine, and thus reducing their discharge, by the end of 2020. The new data will be used to update the existing model. The new model output, which is expected to be available in 2021/2022, together with other relevant new data (for example from the VRMP) will allow the Department to evaluate the proposed upgrade to inform an upgrade decision to be made at the next opportunity for re-classification. This opportunity may arise during the next Triennial Review, during an independent Reclassification Initiative, or in response to a legislative proposal.



Friends of the Presumpscot River (FOPR) written testimony regarding DEP's recommendation not to reclassify the lower Presumpscot to Class B at this time for the reason that more data and analysis on water quality is needed

FOPR requests that the BEP take one or more of the following actions:

1. Override DEP's recommendation and ask the legislature to reclassify the lower Presumpscot to Class B.
2. If the BEP decides not to approve reclassification to Class B at this time, we ask the BEP to further protect the lower river by amending the Maine statute §467.9.A.(4) from this -- (4) From Saccarappa Falls to tidewater - Class C. — to this — (4) From Saccarappa Falls to tidewater - Class C. Further, there may be no new direct discharges to this segment after January 1, 2023. (See precedent for this exact action in §467.9.A.(2) "*From its confluence with the Pleasant River to U.S. Route 202 - Class B. Further, there may be no new direct discharges to this segment after January 1, 1999.*")
3. If the BEP fails to take either action 1 or 2 above, we respectfully request that the BEP explain how it will enforce the rule that no new discharge will be allowed that lessens water quality in the lower river when the DEP does not know what the lower river water quality is at this time.
4. If the BEP fails to take either action 1 or 2 above, we ask that Friends of the Presumpscot River's 2020 proposal to reclassify the lower river to Class B remain open until DEP completes its data gathering and analysis and a final determination is made as to whether to approve this reclassification.

RATIONALE:

1. **REMINDER:** Maine's water quality classifications are aspirational, and a body of water does not need to meet the standards of a higher classification at all times in order to qualify and be approved for an upgrade. That said, the lower reach of the Presumpscot exceeded Class B standards for DO in 100% of the water quality monitoring results from May – September 2019 (as stated in FOPR's March 2020 proposal to reclassify) and had only one date when E.coli failed to meet B standards.

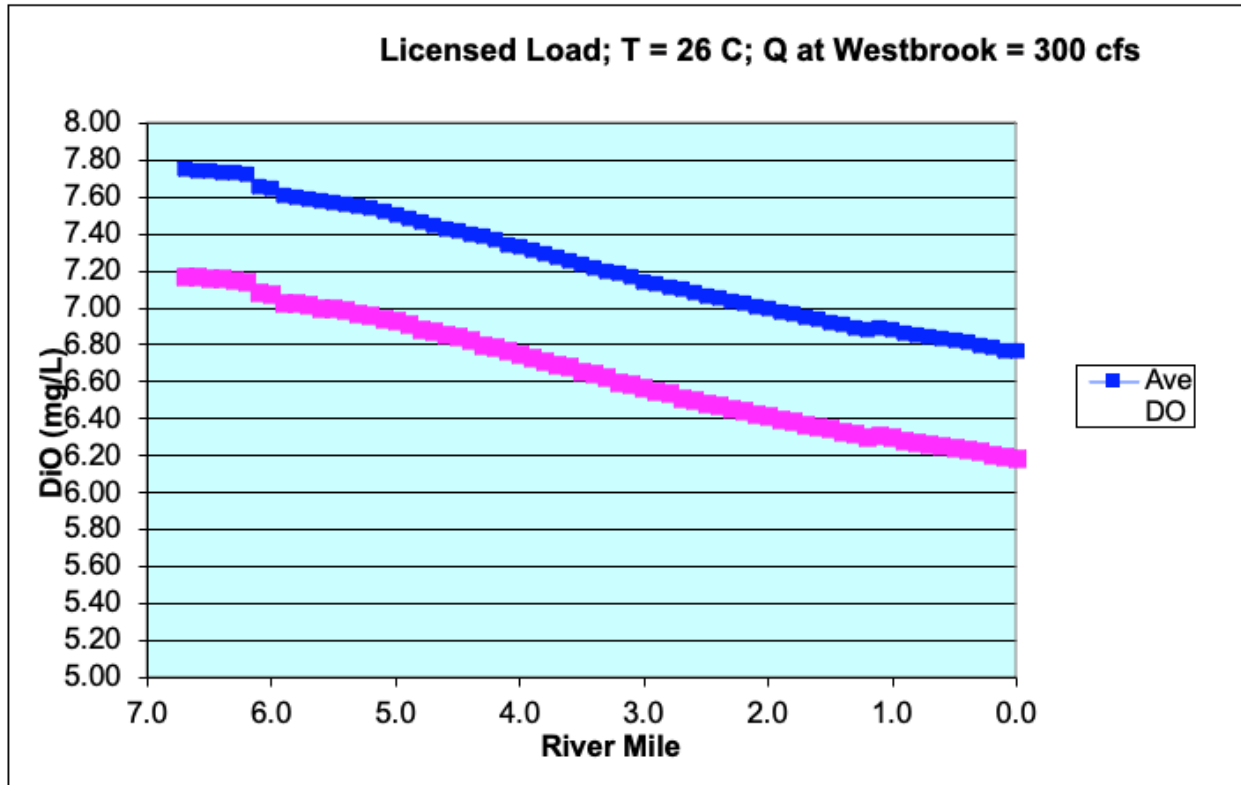
2. **FURTHER EVIDENCE to address DEP's question about whether the lower river will currently meet Class B water quality standards under the most adverse conditions allowed:** The 2011 Presumpscot River model (cited by DEP as the most recent) was updated by DEP's Peter Newkirk in 2011 to include modeling for what was then the proposed new minimum summer low flow at Eel Weir Dam (June 1 – September 30). The 2015 Eel Weir license confirmed that new summer low flow (408cfs vs. the previous 270 cfs). Peter's 2011 model graph for 408cfs at Eel Weir (438cfs at Westbrook) shows the Class C section of the Presumpscot meeting B standards for all but the most dire circumstance — and that was 10 years ago. Substitute today's Average Dissolved Oxygen data for 2011 Average DO data and the improvement of the river at and below Saccarappa is so significant that modeling on current data will surely meet Class B in the lower river at all times. –*See graphs and calculations on pages 4 and 5*

3. **A CLEAR PATH FORWARD:** There is a clear path forward to ensure that Class B standards are met at all times in the lower Presumpscot River. Clear Path as seen by FOPR:
 1. Reclassify lower Presumpscot from Class C to Class B
 2. Maintain and enforce current discharge licenses for Portland Water District and Sappi's SD Warren Westbrook Mill with no changes to those licenses
 3. Issue any new discharge licenses, or expansions to current licenses, with terms and conditions that will allow the lower river to continue to meet Class B standards
 4. Continue to encourage the City of Westbrook to reduce or eliminate CSOs
 5. Continue to work with municipalities and other entities to restore health to currently impaired streams flowing into current Class B waters along the Presumpscot
 6. Update the 2011 Presumpscot River Model to better inform close decisions related to water quality over the next few years

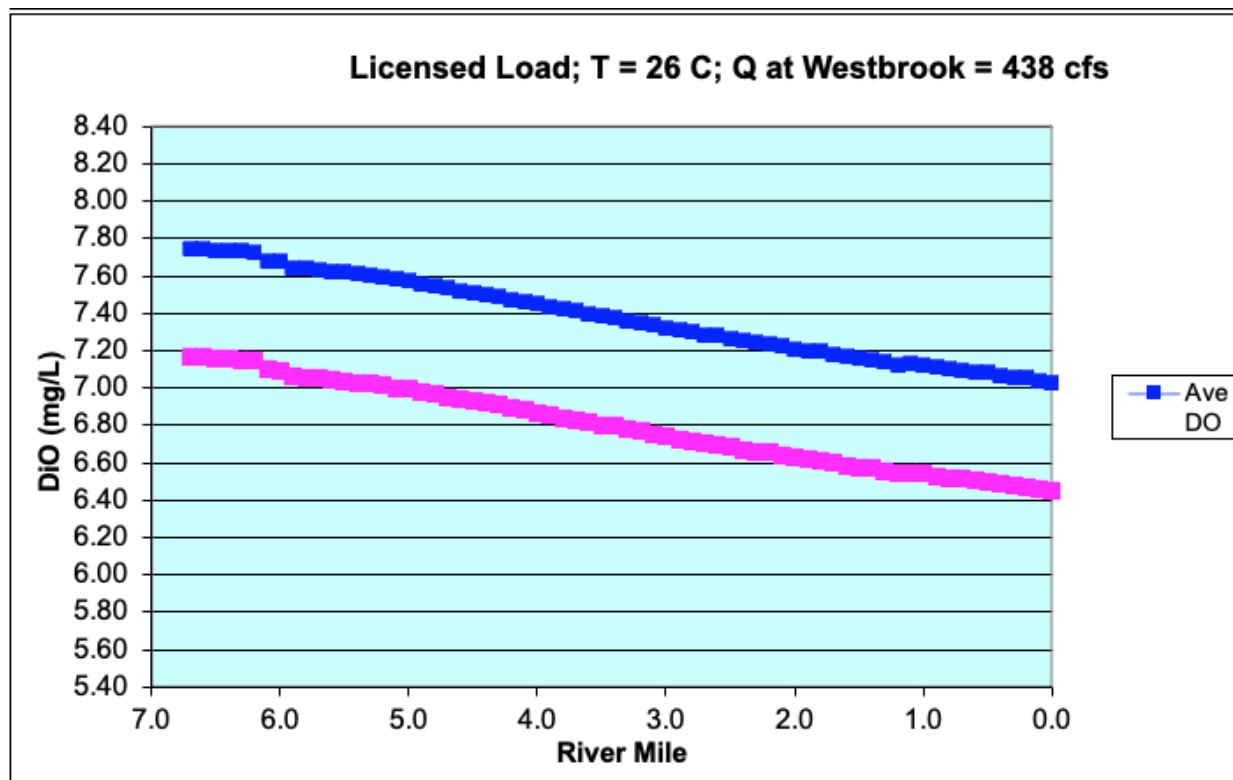
4. **THE RISK OF WAITING TO UPGRADE:** The risk of postponing this reclassification for up to 4 years (next triennial cycle) is that if there are one or more requests for new discharge licenses to be issued or current licenses expanded, then the decisions on those requests would be based on meeting the Class C DO standard of 5.0. If allowed to remain Class C for 4 more years, events could take place that would turn the improvement trend around and degrade the lower river close enough to the Class C minimum that it would no longer meet Class B. We do not want these hard-earned gains to be erased.

DEP PRESUMPCOT RIVER MODEL 2011 – Lower River plots

Water Quality Model (2011) Minimum DO Plots – Two Minimum Flows from Eel Weir (270 cfs & 408 cfs)



SOURCE: Maine DEP



Source: Maine DEP

“When I made my presentation to the PRWC in June of 2011, I showed the attached plots of the modeled DO under critical water quality conditions of low flow, high temperature and maximum licensed point discharges. The top one is for the current 270 cfs (300 at Westbrook) minimum discharge from Eel Weir and bottom one is for the proposed 408 cfs (438 at Westbrook). The modeled minimum DO concentration just above Presumpscot Falls (River Mile 0.0) would increase from 6.18 ppm to 6.45 ppm. This is still below the Class B criterion of 7.0 ppm.”

– Peter Newkirk, Maine DEP, January 31, 2013

Note: PRWC is the Presumpscot River Watershed Coalition, which was active implementing the Presumpscot River Management Plan from 2004 - 2014

Given that since 2011:

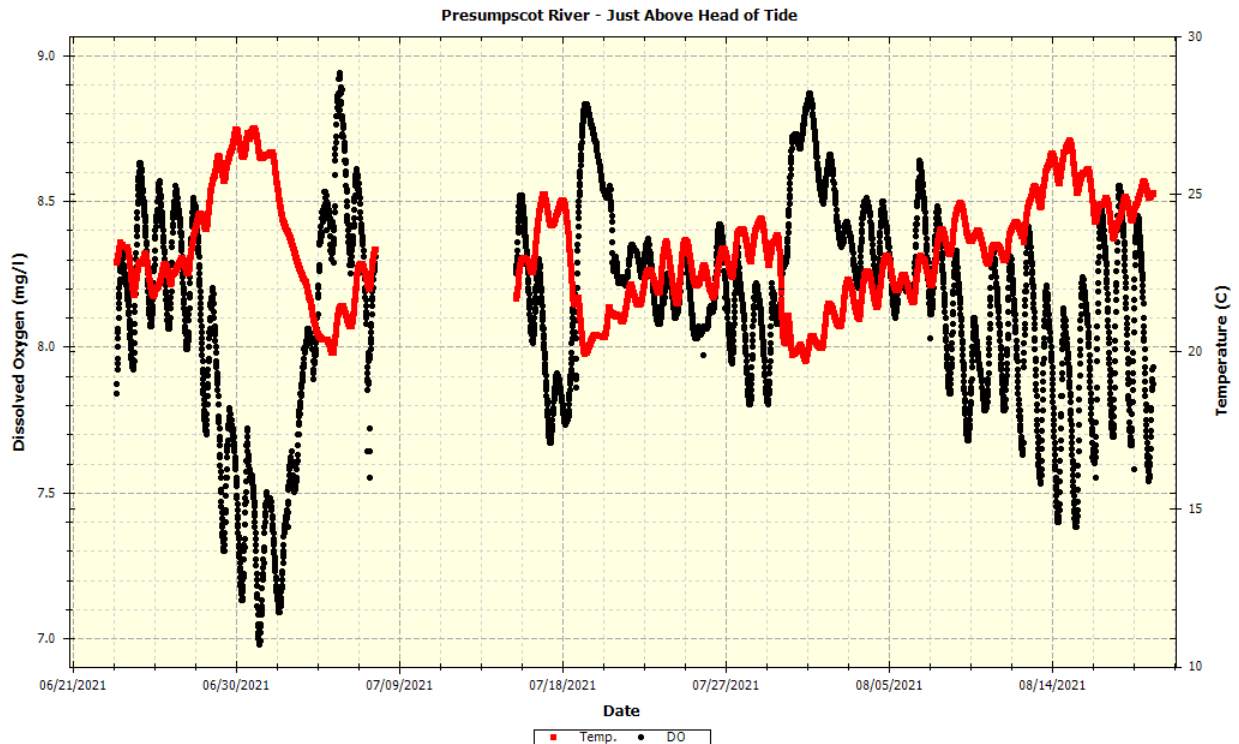
1. **That average** dissolved oxygen at mile 6.8 (Bridge Street, just below Saccarappa Falls) has increased by 1.4 ppm from 7.8 to 9.2,
2. **And average** dissolved oxygen at approximately mile 1.5 (Blackstrap Road) has increased by 1.9 ppm from 7.2 to 9.1,
3. **And 2011 Worst Case** dissolved oxygen at mile 0.0 was projected to be 6.45 ppm,

Conclusion:

Then there is no doubt today that Worst Case dissolved oxygen at mile 0.0 has increased by at least the needed 0.55 ppm to meet the Class B standard of 7.0 ppm, and has, in fact, probably increased to more like 7.7 – 8.1 ppm

I will add that we applaud DEP’s efforts to collect more data and better understand the lower Presumpscot River. It is surely time to update the model. DEP has shared the DO and temperature data collected at River Mile 0 from June 21 – August 20, 2021. We are not surprised that this data supports our position that the lower river be reclassified from C to B. It should also be noted that all these readings occurred during a period when the **Sebago Lake outlet dam (Eel Weir) flows were at or below minimum flow required** in the Eel Weir Project license. In fact Eel Weir flows were either 200 or 270cfs for the entire period of March 2 through September 20, 2021. Not until September 21 did Sappi increase flow to 408cfs. SOURCE: <https://presumpscotriver.tumblr.com/>.

So, here is the DEP data from this extreme low-flow period this past summer followed by notes from DEP’s Rob Mohlar that accompanied the data.



SOURCE: Maine DEP



Rob Mohlar's notes on the data:

Here is a quick look at the most pertinent aspect (dissolved oxygen and temperature) of this summer's dataset. I only deployed one sonde this year, but I was able to capture the majority of the critical summer period. This sonde was deployed just above the falls/rapids, very near head of tide. The deployment site is where I would expect to see the most critical river conditions occurring.

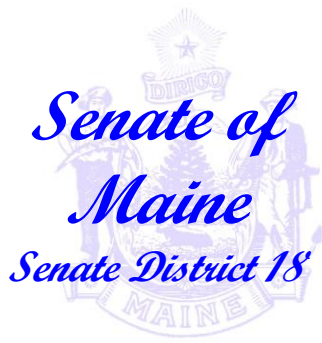
- Generally, the data looks pretty good, but the sag in early July is fairly typical of most years.
- The worst sags are generally associated with highest river temperatures, and this was not a particularly warm summer.
- The gap in the data reflects a period where I pulled the sonde due to concerns about potential flood flows.
- The overwhelming majority of this data is comfortably above the 7.0 mg/l Class B Standard, but the data also highlights the unavoidable critical summertime conditions. These critical conditions provide little to no assimilative capacity.

Interpreting the graph without benefit of the underlying data, it is noteworthy that the moment of "unavoidable critical summertime conditions" yielded a DO level of 6.96 – 6.98 ppm for a few hours. This should not preclude reclassification to Class B.

Thank you for your consideration. Let us know if you have questions or wish to discuss.

Time has come today for Class B,

Will Plumley
FOPR Board Member, Co-Founder, and Past President
On Behalf of the Friends of the Presumpscot River and its Board of Directors
wsplumley@gmail.com
207-595-2134



Senator Lisa Keim
3 State House Station
Augusta, ME 04333-0003
(207) 287-1505
Lisa.Keim@legislature.maine.gov

Judiciary Committee
Government Oversight Committee

Mark Draper, Chair
Maine Board of Environmental Protection
17 State House Station
Augusta, ME 04333

Dear Mr. Draper,

I write to express concern with the proposal to reclassify the lower Androscoggin River from Class C to Class B. This reclassification will negatively impact my district, potentially significantly.

As recently as 2019, the Department opposed a previous attempt to do an upgrade stating that it had determined that "there is no feasible approach to ensure attainment of Class B dissolved oxygen criteria in the lower Androscoggin River." It is my understanding that the Department's study of the issue this year has revealed that the lower Androscoggin River still does not meet Class B standards and reclassifying it now would put all existing dischargers into non-compliance. Most concerning, the Maine DEP has indicated that a 54% reduction in discharge limits for the ND Paper Rumford Mill and Pixelle Jay Mill will be needed.

There is valid concern that the upgrade, if approved, would stifle economic development and raise costs to ratepayers all along the length of the river, including the communities of my district. The Department has been clear that it must and will regulate all discharges to achieve and maintain the applicable water quality classification should the lower part of the river be upgraded to Class B. The impacts of the upgrade reach far beyond the lower Androscoggin. Proposals to reclassify the lower Androscoggin have been rejected numerous times in the past. The river still does not meet the requirements for reclassification and therefore, new attempts to reclassify it should again be rejected.

Sincerely,

A handwritten signature in blue ink that reads "Lisa M. Keim".

Lisa Keim
State Senator

Maine



Rivers

**OUR MISSION IS TO
PROTECT, RESTORE AND
ENHANCE THE ECOLOGICAL
HEALTH OF MAINE'S RIVER
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**P.O. BOX 782
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CONTACT@MAINRIVERS.ORG

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October 7, 2021

Maine Board of Environmental Protection
17 State House Station
Augusta, ME 04333-0017

Dear Chair Draper and members of the Bureau of Environmental Protection,

Maine's rivers, streams, lakes and ponds are stunning, with tremendous ecological and economic value. Maintaining their ecological function and health is perhaps the best gift we can give future generations. We appreciate the opportunity to offer our comments regarding the Maine Department of Environmental Protection's 2021 Triennial Review of Water Quality Recommendations.

Maine Rivers is a nonprofit with a mission to protect, restore and enhance the ecological health of Maine's river systems. We have been deeply engaged in advocacy and restoration efforts throughout the state for over two decades. We work with individuals, communities, agencies and organizations to foster river restoration and facilitate opportunities for public educations and decision-making. We are in the final stages of work to complete the China Lake Alewife Restoration Initiative to restore a run of nearly one million returning adult alewives. We are also a long-time member of the Kennebec Coalition.

This is the first reclassification to be seen by the Maine Board of Environmental Protection in over 10 years, although the process is organized to occur every three years. As such we believe that this is an exceptional opportunity for the Board to engage in the process, and offer the leadership and direction necessary to solidify hard-won restoration gains and take advantage of appropriate conservation opportunities. Maine's success in preserving exceptional conditions and incrementally improving conditions stems from the explicit articulation that optimizing and preserving high quality waters is the goal of the State (§464.1 and §464.4.F(4)). Reclassification is vital to this process. We note that reclassification is an action by the Board of Environmental Protection (§464.2.A-D) to make recommendations to the Legislature.

Our comments fall into three categories. First, we want to support the Department's recommendations for a number of upgrades. Second, we want to call attention to the years of effort and energy that allow us to consider the upgrade of the Presumpscot River. Third, we ask the Board take a more productive and ambitious approach in considering a series of proposed Class AA upgrades.

Support for significant Upgrades

Maine Rivers greatly appreciates the Department's support for a number of upgrades, most notably the West Branch Penobscot and East Branch tributaries in the new KWW National Monument. We note that these upgrades, while long overdue, will provide value and tangible benefits for future generations. We are pleased to support them and believe that their inclusion offers long-term benefits to the state Maine and our waters.

Presumpscot River Upgrade

The Presumpscot River is now an amenity to the State Maine, after decades of commitment from state and federal agencies, businesses, local communities, nonprofit organizations, civic entities, and many, many dedicated individuals. The health of the river has benefitted from broad partnerships, legal initiatives, as well as technical innovations. Now the proof that these partnerships and years of focused work have been successful is shown in the reestablishment of viable runs of previously extirpated diadromous fish species, revitalizing local ecology and contributing to the health of Casco Bay and the Gulf of Maine. The Presumpscot River should be celebrated as a success story and that success should be carried forward by reclassification of the river section from Saccarappa Falls to Head of Tide at Presumpscot Falls. All current available data indicates that this segment attains Class B.

The removal of the Smelt Hill dam, fish passage at Cumberland Mills and the significant work done at the site of the Saccarappa Dam are separate but connected actions that have acted to improve the habitat and water quality of the Presumpscot River. We ask the Bureau to recommend this upgrade, noting its importance to the communities through which it flows, including Portland, Falmouth and Westbrook. Maine residents would be well served by a display of leadership from the Bureau to acknowledge the great story of the Presumpscot, and move forward a recommendation for this upgrade.

Class AA Upgrades

We are profoundly dismayed about a group of upgrades that are currently not recommended by the Department. DEP's reclassification document explains that DEP is advising the Board not to recommend upgrade to Class AA for certain waters, including the South Branch of the Sandy River and tributaries, sections of Orbeton Stream, as well as section of streams within the Machias, Narraguagus and Penobscot River basins. The DEP cites "regulatory uncertainty" related to EPA's designations that are under consideration as they relate to the development of stormwater regulation. Here, we urge the Board to propose these waters for upgrade.

We note that the proposal contains sound documentation of the ecological importance of these waters and the clear expectation they are currently attaining the standards of Class AA for ecological, social, scenic or recreational importance. DEP appears to be making the judgement based on concern about the outcome of some future decisions by the DEP and EPA that would cause these waters to be unlicensable for certain stormwater discharges. DEP appears to be preemptively excluding legitimate, high quality candidate

waters because of their concerns for consideration at some future time with as yet unknown future circumstances. We object to the overly cautious rationale that mires Maine in inaction rather than moving us forward in pursuit of protection and maintenance of water quality.

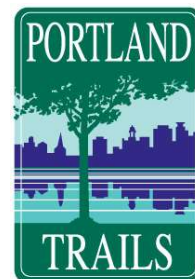
We see that the Department is imposing a false standard for Class AA—that this class can only include waters that will never have stormwater, licensable or not. The standard for Class AA is that they have “ecological, social, scenic or recreation importance” and attain the associated criteria that protect these characteristics. We urge the Board to propose these waters for upgrade to protect these waters for their highest values and not shield the Department from future indefinite decisions involving stormwater management. It is the DEP’s responsibility to maintain the standards of the classification “which the legislature intends for the body of water” (§464.1), not to make the water body licensable for some future development possibility.

We further note that DEP’s failure to support water quality upgrades for the Sandy River streams is out of step with Atlantic salmon recovery plans for the Kennebec. The waters represent excellent spawning and nursery habitat, and should be protected. A failure to support this upgrade would run counter to the commendable precedent by the DEP for Downeast and Penobscot watersheds where DEP has supported upgrades for Atlantic salmon restoration.

Thank you for your consideration,

A handwritten signature in dark ink, reading "Landis Hudson". The signature is written in a cursive, flowing style.

Landis Hudson
Executive Director



Susanne Meidel
Maine Department of Environmental Protection
Bureau of Water Quality
17 State House Station
Augusta, ME 04333-0017

Portland Trails supports the upgrade of the Presumpscot River from Class C to B. We hope that you will override the DEP recommendation and ask the legislature to reclassify the Lower Presumpscot to Class B.

We maintain trails along most of the length of the Presumpscot River from downtown Westbrook to Casco Bay. The health of the river is most important for the ecology of this riparian corridor through Maine's largest city. But, it is also important for the 100,000 people that walk, run, ride or paddle its length.

With the removal of the Saccarappa dam, there is very clear evidence the river quality is moving in a positive direction toward attaining class B. Further, the statute states that "Upgrades to classification are appropriate where it is socially and ecologically desirable." Reclassifications are aspirational and the waters do not need to meet the new standard at the time of reclass. However, they must be trending that way and achieving the B standard must be viable. Both are strongly the case here on the Lower Presumpscot.

We can no longer live in a world of status quo. We must be aspirational. And, in this case, this is minimally aspirational. This is very much in our reach. Please reclassify the Presumpscot River Class to B.

Thank you for accepting and reading our comments.

Sincerely,

A handwritten signature in black ink that reads "Kara Wooldrik".

Kara Wooldrik
Executive Director

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Executive Director

Kara Wooldrik

Meidel, Susanne K

From: Matthew Scott <mscott.afs@gmail.com>
Sent: Thursday, October 07, 2021 6:55 AM
To: Meidel, Susanne K
Subject: BEP meeting this AM

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning Suzanne,
I am unable to make the BEP meeting this morning.
I do support the staff recommendations for the three year review and proposed changes.
Sorry I cannot be there in person for the support.
Best regards,
Matt Scott

--

Matthew Scott
Aquatic Biologist, Emeritus
AFS, AIFRB, & NALMS



Friends of Casco Bay Casco BAYKEEPER

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October 15, 2021

Susanne Meidel
Maine Department of Environmental Protection
Bureau of Water Quality
17 State House Station
Augusta, ME 04333-0017
Susanne.K.Meidel@maine.gov

Dear Susanne,

Friends of Casco Bay submits the following comments in support of Friends of the Presumpscot River's (FOPR) proposal to upgrade to Class B: Presumpscot River from Saccarappa Falls to Head of Tide at Presumpscot Falls (Lower Presumpscot). For over 30 years, Friends of Casco Bay has worked to improve and protect the environmental health of Casco Bay. In tandem with organizations such as FOPR, we have made major strides to reduce point source pollution and restore water quality to the Bay and its tributaries, including to the Lower Presumpscot. This stretch of river, which at one time could not attain Class C standards, now meets Class B standards. Upgrading this segment would forever protect this achievement and be a remarkable way to celebrate the 50th anniversary of the Clean Water Act.

The Lower Presumpscot was once known as "the dirtiest little section of river in the state."¹ Point source pollution contributed high loads of toxins, such as dioxins, and decreased dissolved oxygen levels.² Dams degraded natural river functions, including blocking fish passage. Residents, led by FOPR, banded together to restore the river. Their efforts led the State to upgrade the segment from Dundee Dam to the confluence of the Pleasant River to Class A and to ban further point source discharges from the confluence of the Pleasant River to Little Island.³ At the same time, stronger permit requirements reduced pollution from the S.D. Warren mill. The FERC dam relicensing process led to efforts to remove some dams and construct fish passage at others. Our members now see sturgeon in the Lower Presumpscot and increasing runs of anadromous fish further up river.

DEP thus far has not outright opposed the upgrade. Rather it first wanted to collect more data and now has expressed concerns regarding whether the upgrade would affect the river's assimilative capacity. Assimilative capacity is the ability for pollutants to be absorbed by an environment without detrimental effects to the environment or those who use of it. The crux of the issue is whether: "[n]aturally occurring degrees of DO fluctuations would provide no assimilative capacity (if we upgraded to Class B), based on the very conservative way that [DEP]

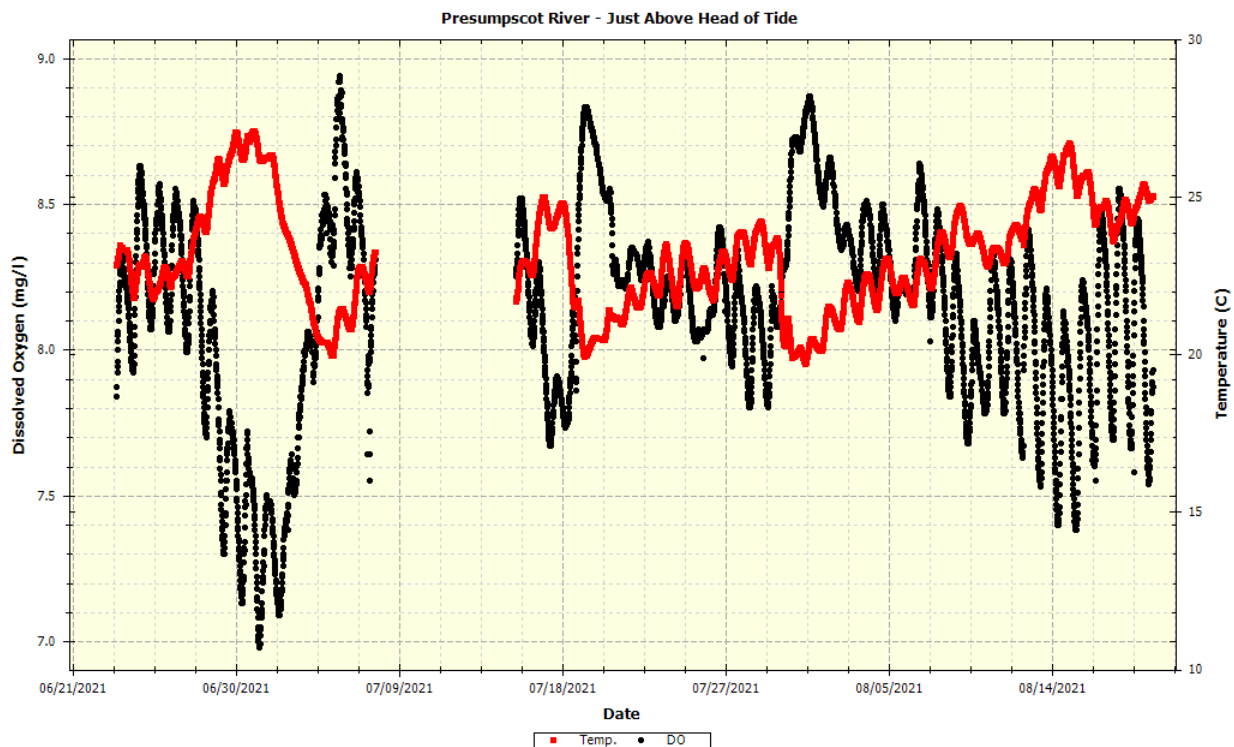
¹ Robert M. Sanford et al., *River Voices, Perspectives on the Presumpscot*, at 239 (2020).

² This segment also had low dissolved oxygen and high concentrations of dioxins in fish. *Id.* at 246.

³ *Id.* at 241-245.

interpret[s its] DO criteria.⁴ DEP raises a very interesting question. In essence, the question asks whether a water body that meets Class B criteria should remain classified as Class C to allow for times that natural cycles of respiration might briefly cause DO to dip below 7 parts per million? The answer should be no based on the following analysis.

This summer, DEP deployed a sonde to continuously collect data in the Lower Presumpscot. A graph of that data is depicted below. To meet Class B, the segment must maintain DO levels at or above 7 parts per million or 75% of saturation, whichever is higher.⁵ The graph shows that DO saturation remained well above 75% saturation. With one minor excursion, DO also remained above 7 parts per million. On or about July 2, DO briefly dipped below the 7 parts per million threshold (to about 6.98). This slight dip may not be statistically significant. It likely reflects a short period of respiration in the natural diurnal cycle of the river that does not cause detrimental effects to the environment or its users.



As was amply acknowledged at the recent BEP hearing, even by the attorney for Sappi, the Clean Water Act aspires to restore water quality and urges us to set the highest attainable water quality classifications.⁶ It expressly prohibits us from degrading water quality.⁷

⁴ 09/24/2021 email Mohlar to Frignoca.

⁵ 38 M.R.S. § 465(3)(B)(2018).

⁶ See 33 U.S.C.A. § 1251(a)(1972); see also Andrew Fisk, *The Clean Water Act in Maine: Goals and Financing*, 17 Me. Pol’y Rev. 26, 28-29 (2008) (discussing the Clean Water Act’s goal of improving waters).

⁷ See e.g., 33 U.S.C.A. § 1342(o)(1)(1972) (prohibiting the relaxation of permit limits that are based on state standards, such as water quality standards); 38 M.R.S. § 464(4)(F) (2018) (stating that when the quality of classified water exceeds the minimum standards of the next highest classification, the higher water quality must be maintained and protected, and the board shall recommend that water be reclassified.”); 40 C.F.R. § 122.44(1)(d)(ii)(1983).

For these reasons and those set forth in the FOPR comments, Friends of Casco Bay requests that the BEP override DEP's recommendation and ask the legislature to reclassify the Lower Presumpscot to Class B.

Respectfully submitted,



Ivy L. Frignoca, Casco Baykeeper
Friends of Casco Bay
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South Portland, ME 04106
Office: (207) 799-8574 ext. 202
Cell: (207) 831-3067
ifrignoca@cascobay.org

10-16-2021

To: The Board of Environmental Protection, Triennial Review,

Rivers are part of the Public Domain defined as: “the state of belonging or being available to the public as a whole.” They are the arteries and veins of our little planet earth.

We ask the Board of Environmental Protection endorse LD 676 and to find a way to work with industry, government and the public to reclassify the Androscoggin below Gulf Island Dam to Class B according to the law that states: “Once a River has met a higher quality, that it cannot be allowed to slip backwards.” Muskie’s Androscoggin deserves this status on the 50th anniversary of the Clean Water Act. This request is from a coalition including: Friends of Merrymeeting Bay, Grow L+A River Working Group, The Androscoggin Land Trust, Maine Rivers, Trout Unlimited, the cities of Lewiston, Auburn, Brunswick and others. This includes the Public Domain of over 200,000 Maine citizens.

I want to talk about science and the law.

Science Data Collection:

DEP VOLUNTEER DATA COLLECTION; The data we present to you is from the DEP volunteer program over the past 20 years, and is collected by hundreds of volunteers, for hundreds of hours early in the morning. **The DO data shows that the River has met Class B 99% of the time. That is 361 days a year.** E Coli is also way below the maximum. (See page 1 of Graphs)

CSO IN LEWISTON-AUBURN; (See page 2 graphs) **Lewiston and Auburn have spent 50 million dollars over the past 10 years on CSO** and Lewiston has one big project scheduled to meet their goals. (25 million \$) Low Flow toilets have reduced waste water considerably. All the cities on the Lower Andro are working on lowering their CSOs.

Electronic Sondes: (see page 3 graphs) **We request the DEP to install permanent Sondes along the Andro dams to document elusive 7Q10 and billed to the hydro-paper bubbler corporation. When was the last documented 7Q10 on the Andro in the past 50 years?** in this age of information, this is the state of the art in hydro data collection. At our request, the DEP installed electronic Sondes in three locations, Gulf Island Dam, Lewiston Falls and the Durham boat launch, at low Sept drought flows in Sept. 2019 for a 15 day period. The readings are all above 7PPM at minimum required licensed flows reflecting drought conditions. Note on the graph, my readings that day for the same locations using the DEP DO testing device are below what the electronic Sondes recorded. This implies that for accurate **reading electronic Sondes should be installed at all questionable sites on a yearly basis for the DEP to** make modern scientific data collection its standard. The cost should be shared with the hydro and paper industries for their licensing.

The Law(see page 4 attached) “The department’s refusal to recommend and upgrade violates the legal standard in the **Clean Water Act, ‘that a state revise its standards to reflect uses and water quality actually being attained.’**”

The History--In 1942 the Androscoggin River was so polluted that it actually peeled paint off houses and was harmful to the health of all 200,000 people living along the river. The Maine Supreme Court ordered that a River commission be headed by a Bates College chemistry professor, Dr. Walter

Lawrance, to aid the clean up of noxious waste water effluent polluting the River. He helped change the paper manufacturing process from Sodium, to the Kraft Method which helped a little.

1972: Sen. Ed Muskie passed the Clean Water and Air Act with good intentions of cleaning up the River within 10 years. It didn't happen. It has taken legislation ever step of the way to get industry to comply with Muskie's dream.

1990: Sen. John Nutting, a dairy farmer that lives on the Androscoggin in Leeds passed the contentious "Color, Odor and Foam Bill" that put industry on notice to clean up their effluent. They found that by complying that they actually could burn some of the waste and make electricity.

1996: Sen. Nutting passed the Dioxin Bill

2004: Sen. Nutting again passed the Phosphorus Bill

The point is that nothing has happened without legislation. Our Bill LD 676 recognizes the science of water testing and data over the past 20 years that shows the River, from the outflow of Gulf Island Dam down through Brunswick, meets B standards of 7PPM 99% of the time. That is 361 days out of the year and the Clean Water Act is Goal Oriented by law.

CONCLUSION:

Industry has never self regulated and legislation has been the only way to convince them that it is not their river to pollute. **The Public Domain and the Law does not allow them to add pollutants over their current usage that will reduce DO in the lower Androscoggin. Our data shows the water below Gulf Island Dam, down through Brunswick, meets Class B now without any changes. The paper companies are all working well below their licensed maximum flows and have the technology to keep them that way through the licensing process.** The paper company's fears are unsubstantiated as the data shows that B has been attained for past 20 years of their standard operations. There is a major difference between Classification and Licensing.

At our meeting with Brian Kavanah and Rob Mohlar two years ago, we asked them to show us a model of the Andro that would meet B Class and they said, "we can't make a model that will work". We asked, "what is our recourse?" and they said that would be "the legislature". Now LD676, after a NO RECLASS to the ENRC from DEP, is being tabled and virtually blocked by the DEP because of it's negative recommendation. Our recourse is for the BEP to recommend LD676 go to the legislature to be voted on. THE LEGISLATURE SETS CLASSIFICATION!

We request the Board of Environmental Protection to endorse LD 676 to the Environment and Natural Resources Committee and let the legislature see the data, and vote to reclassify the lower Androscoggin to Class B. Hopefully we can reclassify Muskie's Androscoggin to Class B for the 50th Anniversary of his Clean Water Act of 1972 and his comments at that time: "Can we afford clean water? Can we afford rivers and lakes and streams and oceans which continue to make life possible on this planet? Can we afford life itself?" Lets live up to Sen. Muskie's dream and make the Androscoggin the "Poster Child" of the Clean Water Act 50 years later. Please endorse LD676.

Respectfully,

Peter Rubins GROW L+A RIVER WORKING GROUP

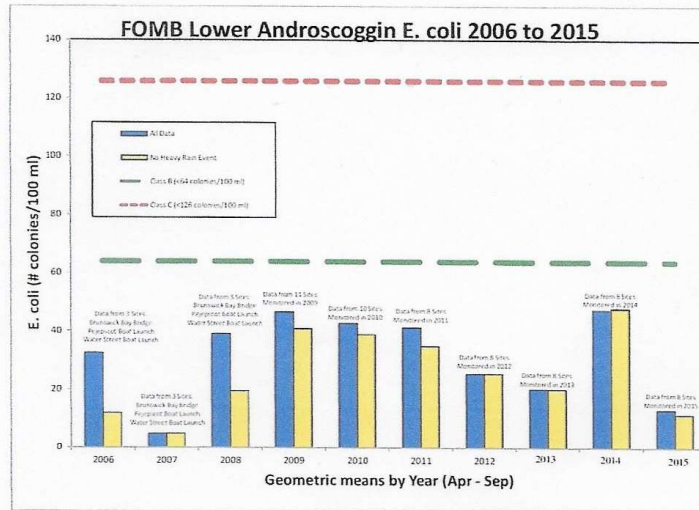
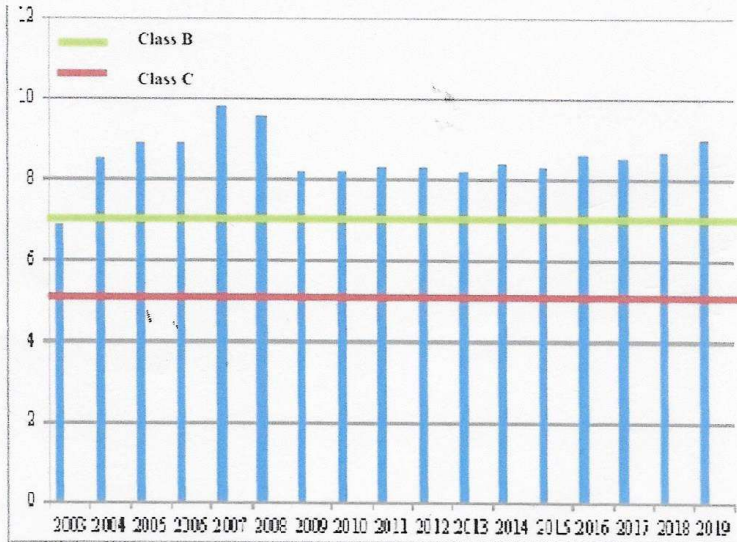
Upgrade the Lower Androscoggin from Class C to Class B Fact Sheet

38 M.R.S.A. § 464 (4) (F) (4)

“When the actual quality of any classified water exceeds the minimum standards of the next highest classification, that higher water quality must be maintained and protected. The board shall recommend to the Legislature that water be reclassified in the next higher classification.”

What do the data show?

Dissolved Oxygen - Geometric Means Lower Androscoggin 2003-2019 Class C Spent, Class B Tppm



*

Exhibit 4

Section 3 CSO Improvements - Nineteen Years of Progress
(2000-2018)

Tighe&Bond

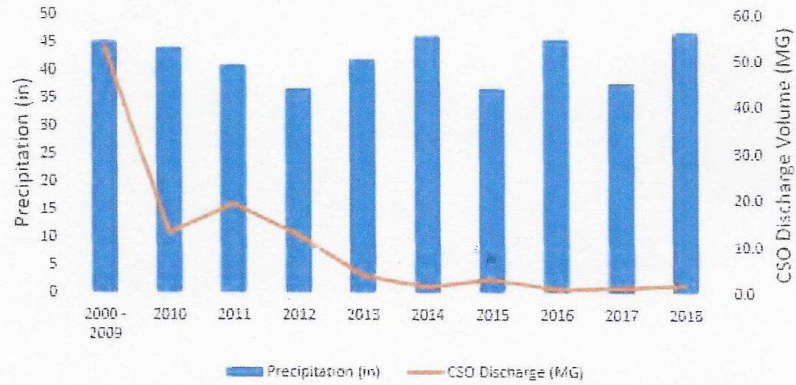


FIGURE 3-6
Auburn Sewer District 2000-2018 Precipitation vs. CSO Discharge

Exhibit 5

Section 3 CSO Improvements - Nineteen Years of Progress
(2000-2018)

Tighe&Bond

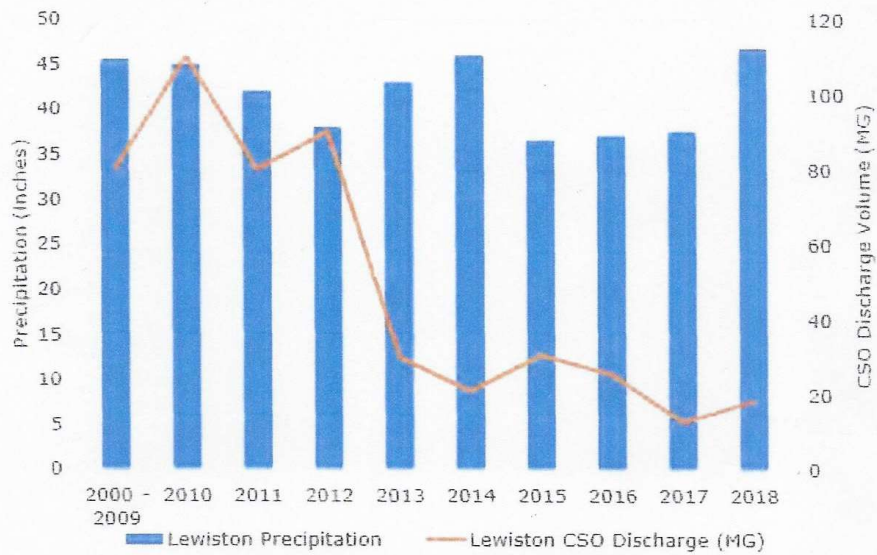
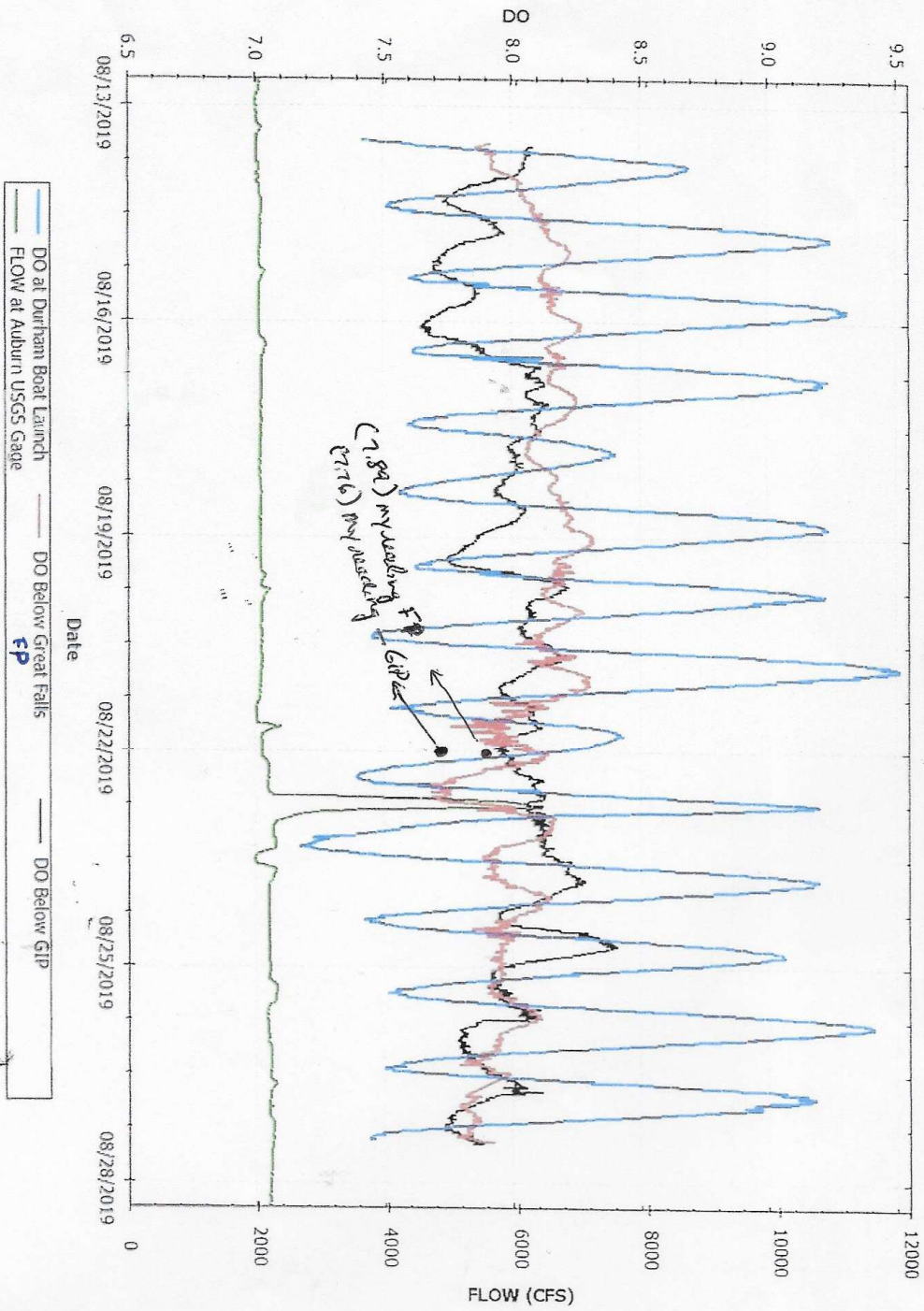


FIGURE 3-13
City of Lewiston 2000-2018 Precipitation vs. CSO Discharge

DEP's Continuous Dissolved Oxygen Data from Androscogin River



Upgrade the Lower Androscoggin from Class C to Class B
Fact Sheet

**A Legal Opinion: Excerpt from Conservation Law Foundation BEP Comments 10/2/2008
The Lower Androscoggin River**

“The Department’s refusal to recommend an upgrade violates the legal standard in the Clean Water Act that a state shall revise its standards to reflect uses and water quality actually being attained. 40 C.F.R. §131.10(i). See also id. §131.6(d); 38 M.R.S.A. §464(4)(F). Thus, the Committee’s [or Board’s] analysis must be based on existing water quality-not hypothetical modeling with point sources operating at maximum licensed discharge. Indeed, the Committee [or Board] is specifically prohibited from considering maximum licensed loads because both state and federal regulations prohibit consideration of waste discharge or transport as a designated use. 40 C.F.R. §131.10(a); 38 M.R.S.A. §464(4)(F)(1)(d).

CLF strongly disagrees with the Department’s recommendation and rationale for not upgrading this river segment. The Department has stated that proponents must provide water quality data and modeling showing “the likelihood of attainment of Class B water quality criteria at maximum licensed loads.” See Reclassification Memorandum at 29. This makes no logical, legal or economic sense. First, no one operates at maximum licensed loads; rather a large buffer is generally built into all permits to avoid violations. Thus, DEP is requesting an impossible and unnecessary showing.

Second, the Department’s recommendation violates the legal standard in the Clean Water Act that a state shall revise its standards to reflect uses and water quality actually being attained. 40 C.F.R. §131.10(i). See also id. § 131.6(d); 38 M.R.S.A. § 464(4)(F). Thus, the Board’s analysis must be based on existing water quality - not hypothetical modeling with point sources operating at maximum licensed discharge. Indeed, the Board is specifically prohibited from considering maximum licensed loads because both state and federal regulations prohibit consideration of waste discharge or transport as a designated use. 40 C.F.R. § 131.10(a); 38 M.R.S.A. § 464(4)(F)(1)(d).

Third, as many of the dischargers in this watershed have already recognized, water quality upgrades are generally good for surrounding communities. As has been shown over and over again, clean water is an economic boon. Examples abound throughout New England, including the recent revival of Boston Harbor, the Portland Waterfront, the Auburn Riverfront, and the resurgence of Merrymeeting Bay and the Kennebec River. The Androscoggin River deserves the same.

CLF believes that the data, including both dissolved oxygen levels and recreational uses, shows that existing uses in the lower Androscoggin have improved over time and that the river currently attains the higher bacteria and dissolved oxygen standards set forth in the Class B designation. As noted by the Department, it has no reason to question the data; indeed, it has relied upon data supplied by the proponent in prior reclassifications. Therefore, barring a showing that the data is invalid, the Board must recommend upgrading this section.”



Comments before the

Maine Board of Environmental Protection

By Kaitlyn Bernard, Natural Resources Policy Advisor

October 20, 2021

RE: Maine Department of Environmental Protection 2021 Triennial Review of Water Quality Standards

The Nature Conservancy (TNC) is a nonprofit conservation organization dedicated to conserving the lands and waters on which all life depends. Guided by science, we create innovative, on-the-ground solutions to our world's toughest challenges so that nature and people can thrive together. Working in more than 70 countries, we use a collaborative approach that engages local communities, governments, the private sector, and other partners.

The Nature Conservancy has been leading conservation in Maine for more than 60 years and is the 12th largest landowner in the state, owning and managing roughly 275,000 acres. We also work across Maine to restore rivers and streams, partner with fishermen in the Gulf of Maine to rebuild groundfish populations, and develop innovative solutions to address our changing climate.

TNC appreciates the opportunity to comment on the Maine Department of Environmental Protection 2021 Triennial Review of Water Quality Standards. Reclassification is an essential tool for adjusting the State's water quality management goals to reflect improving conditions on the ground and the value of Maine's waters for people and wildlife. We appreciate the efforts by staff and the Department to solicit input and carefully evaluate recommendations over the last several months.

We understand there is regulatory uncertainty between Maine DEP and the federal EPA regarding stormwater discharge standards. We appreciate the efforts of DEP staff to work through this issue, and we understand that some of the initial reclassification recommendations are on hold until that issue is resolved. Efforts to resolve this issue are currently under consideration for the 130th Legislature's short session, and we will review the bill as it moves through the legislative process.

In the meantime, we offer comments on the Department's proposals and recommendations before you. As noted in the Department Recommendations, The Nature Conservancy submitted

four specific proposals. We offer comments on those proposals and one additional proposal by DEP.

TNC supports and appreciates the Department's recommendation to upgrade the following water bodies:

- Tributaries to East & West Branches Penobscot River in KWWNM, T4 R8 WELS and Other Townships. Upgrading from Class A to Class AA would make management of all waters within the National Monument consistent and recognize their high values.
- Southwest Branch St. John River, T9 R17 WELS, T10 R16 WELS and Big Ten TWP.. This segment falls fully within TNC's ownership and conservation management and is thus fully protected. This section was inadvertently designated as Class A even though it was always intended as Class AA.
- Tributaries to Donnell Pond, T9 SD BPP, T10 SD BPP, Franklin and Sullivan. This upgrade from Class B to Class A would make management of all waters within the Donnell Pond Public Reserved Land unit consistent. The tributary waters draining into Donnell Pond were inadvertently left in Class B and this upgrade would protect their natural qualities and the quality of Donnell Pond.

TNC recommends that the BEP address the West Branch Penobscot River and tributaries together and recommend an upgrade rather than splitting the proposal into two parts.

We appreciate the recommendation to upgrade the section of the West Branch Penobscot River and Tributaries above Ambajejus Lake (T2 R10 WELS and Other Townships) from Class A to Class AA.

Despite the ongoing discussions between the DEP and EPA regarding stormwater discharge standards, TNC believes it is still appropriate to upgrade the section including Nahmakanta Stream and Tributaries (West Branch Penobscot River sub-watershed) T1 R11 WESL and Other Townships from Class A to Class AA. We recommend that the Board take this action.

AA waters are defined as those that are "outstanding natural resources and which should be preserved because of their ecological, social, scenic, and recreational importance", especially where those waters already attain the standards of Class AA. The Nahmakanta Stream and its Tributaries meet this definition.

We understand the Department is seeking to balance their efforts to resolve the stormwater discharge issues with EPA, but this recommended upgrade is unlikely to create challenges with that process. The Namakanta watershed is unlikely to ever require a stormwater permit, since it largely falls within state, federal, and TNC conservation lands. The 13 percent of the watershed outside of conservation ownership is in the headwaters of the watershed and not suitable for any development that would generate stormwater management concerns. This watershed includes the Appalachian Trail Corridor (100-mile wilderness), is home to native brook trout and state listed arctic charr, hosts a small sporting camp business and is accessible to the public for recreation. This recommended upgrade could go ahead without impact to the DEP / EPA resolution effort.

TNC recommends that the BEP upgrade the South Branch Sandy River and Tributaries, and Cottle Brook and Tributaries, Phillips and TWP 6 North of Weld from Class A to Class AA.

Again, we understand the DEP's suggestion to hold on several recommended upgrades due to the uncertainty and hopefully coming resolution with EPA. However, this upgrade proposal should move forward because the Sandy River watershed is a vital state resource for Atlantic salmon. The upgrade includes areas that are critical for salmon spawning and nursery streams and these upgrades were originally proposed by DMR and DEP salmon biologists. TNC and other conservation organizations, along with the State, have invested significant resources to the recovery of this watershed and protection by reclassification to AA is consistent with the State's salmon management plan for the Kennebec watershed. Importantly, this segment currently attains the higher AA standards and is not at risk now or in the future from stormwater management concerns.

TNC recommends that the BEP upgrade the Presumpscot River from Saccarappa falls to Head of Tide at Presumpscot Falls, Westbrook, Portland and Falmouth from Class C to Class B.

As outlined in the DEP Recommendations, water quality in this section of the Presumpscot River has improved greatly over time. Data suggests that this section meets Class B standards almost all of the time and an upgrade would protect the current water quality and benefit the estuary, Casco Bay, and Gulf of Maine. TNC partners with many of the organizations supporting this upgrade and we urge BEP to consider the many benefits of codifying this segment in a higher class. The Presumpscot River is undergoing significant migratory fish and habitat restoration work. Building on that momentum by upgrading to Class B will benefit the river and the region.

Thank you again for the opportunity to participate in this review process and to provide comments both in writing and at the October 7th, 2021 public hearing.



City of Auburn, Maine

Office of the City Manager

60 Court Street | Auburn, Maine 04210

www.auburnmaine.gov | 207.333.6601

EMAIL TO: Meidel, Susanne K <Susanne.K.Meidel@maine.gov>

April 28, 2020

Chairman Mark Draper
Maine Board of Environmental Protection
17 State House Station
Augusta, ME 04333

Dear Mr. Draper and members of the Board,

The Androscoggin River is a National Success Story! It was one of the top ten polluted rivers in the country 50 years ago on the first Earth Day Celebration and remains Class C. Data shows that it currently meets Class B and reclassification to B won't allow it to slip backwards,

As you know, Maine's Water Quality Classification System is **goal-based**. When proposing an upgrade in classification, recommend waters that either presently attain or with reasonable application of improved treatment or Best Management Practices (BMPs), could reasonably be expected to attain, the standards and criteria of a higher proposed class.

The Maine legislature has passed the following bills to require industry and municipalities to meet these standards. Data shows that the Androscoggin has been meeting Class B standards since 2010, largely due to Senator John Nutting's Color, Odor, Foam Bill, 1990, Dioxin Bill passed 1996, and Phosphorus Bill passed in 2006; sewer system upgrades by the cities of Lewiston and Auburn and others, providing storm overflow protection; and the Gulf Island Pond Oxygenation Project

This letter is written in support of Friends of Merrymeeting Bay (FOMB), Grow L+A River Working Group, Trout Unlimited (TU) and cities on the Androscoggin and more, for the proposal to reclassify, from Class C to Class B, the lower Androscoggin River from its mouth in Merrymeeting Bay to Gulf Island Dam. Since 1999, FOMB has consistently recorded water quality data along this section of river demonstrating actual Class B standards are being met nearly all of the time. FOMB trained volunteers operating under EPA and or DEP quality assurance plans have in the past collected data used to support a similar upgrade on the lower Kennebec River from Augusta to the Bay.

The water quality of the Androscoggin sections proposed for an upgrade, exceed the current classification and meet those of Class B. This request to upgrade from C to B is supported by the State antidegradation policy as quoted below:

38 M.R.S.A. § 464 (F) (4)

*"When the **actual quality** of any classified water exceeds the minimum standards of the next highest classification, **that higher water quality must be maintained and protected**. The board **shall recommend** to the Legislature that water be reclassified in the next higher classification."*



City of Auburn, Maine

Office of the City Manager

60 Court Street | Auburn, Maine 04210

www.auburnmaine.gov | 207.333.6601

Clean rivers enhance the local economy and vitality of the communities surrounding them. A clean, healthy river attracts people, new businesses, and increases property value. An upgrade of the Androscoggin will not have an adverse impact on current industrial uses along the river since Class B conditions have been met for years in the course of “business as usual.” While higher (than current actual) discharge limits exist for a number of licensees, these artificially high numbers can not be used to create a ceiling on water quality improvements that prevents reclassification to higher levels already obtained. Our goal is to lose not one job in the paper mills and adjust their licenses for maximum effluents to meet Class B modeling with the DEP and to allow them to continue manufacturing as we all improve the River.

Considering the past upgrades supported by FOMB data, their meticulous sampling and current supportive data, the City of Auburn believes the Board should endorse the Androscoggin proposal, recommending an upgrade of this section from C to B to the legislature. It is a public right to have access to clean water ways for the surrounding communities, people, and creatures. If the water quality of this river meets a higher classification we should be working hard to preserve its integrity as state and federal laws intend and dictate. Upgrading the Androscoggin to lock in improved water quality conditions is also consistent with our most recent comprehensive plan.

Senator Muskie used the Androscoggin as his poster child for the Clean Water Act. Years later, it receives less State support compared to Maine’s other large rivers when it comes to clean-up efforts. The Board has an opportunity to change this and we ask you to do so. The Androscoggin’s time has come and the future of recreation in the corridor, including the Riverlands State Park depends on it.

Thank you for your time and consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Levesque".

Jason Levesque
Mayor of Auburn

A handwritten signature in blue ink, appearing to read "Peter J. Crichton".

Peter Crichton
Auburn City Manager

October 22, 2021

Susanne Meidel
Maine Department of Environmental Protection
Bureau of Water Quality
17 State House Station
Augusta, ME 04333-0017
Susanne.K.Meidel@maine.gov

**RE: BROOKFIELD RENEWABLE COMMENTS ON THE 2021 TRIENNIAL REVIEW
OF WATER QUALITY STANDARDS**

Brookfield Renewable¹ appreciates the opportunity to provide additional comments on the Department of Environmental Protection's (DEP) 2021 Triennial Review of Water Quality Standards. Consistent with Brookfield Renewable's prior submittal, we limit our comments to the proposal to upgrade the Androscoggin River below Gulf Island Dam from Class C to Class B.

The question of whether the lower Androscoggin River should be upgraded from Class C to Class B has been reviewed several times over the last decade, including through legislative proposals and as part of the DEP's 2018 statewide re-classification process. Each time the same conclusion has been reached: the data does not support the Class B designation as there would be "no feasible approach to ensure attainment of Class B dissolved oxygen criteria in the lower Androscoggin River."² While Brookfield Renewable supports efforts to improve the health and safety of Maine's waterways, including the Androscoggin River, implementing an upgrade based on aspirations and without necessary data to support the change is counter to the DEP's established practices. Accordingly, Brookfield Renewable supports DEP's conclusion that "Given statutory requirements and the findings of existing Department studies and models, the

¹ Throughout Maine Brookfield Renewable owns and operates 46 hydropower stations totaling 622MW of installed capacity – including several hydropower facilities located on the upper and lower Androscoggin River, as well as 219MW of windpower and a 20MW battery storage facility. Brookfield Renewable has over 100 employees in Maine and supports 275 indirect jobs across the State and pays more than \$20 million in property taxes in Maine annually, which provides critical funds for local schools, fire departments and public services.

² Letter from Maine Department of Environment Protection to Senator Nate Libby and Senator Ned Claxton, dated October 25, 2019.

Department does not foresee the ability to ensure attainment of Class B standards under critical conditions³ and we agree with the DEP's final recommendation that the segment of the river not be reclassified.

Sincerely,



Steve Zuretti
Senior Director, Government Affairs and Policy
Brookfield Renewable
steven.zuretti@brookfieldrenewable.com
323-400-9715

³ Maine Department of Environmental Protection 2021 Triennial Review of Water Quality Standards at pg. 59.

**Testimony for the Board of Environmental Protection's
Public Hearing on the 2021 Triennial Review of Maine's Water Quality Standards
7 October 2021`**

Good morning. My name is Peter Stuckey. Thank you for the opportunity to speak with you this morning. I am a member of the Friends of the Presumpscot River Board of Directors. I am a strong supporter of our proposal to raise the lower Presumpscot River Water Quality Classification from C to B. If you are unable to do that, I urge you to consider the alternatives outlined in the FOPR written testimony presented this morning.

In 1974, my wife, Michelle, and I bought our "starter home" right on the Presumpscot River, just inside the Martin's Point Bridge, on the Portland side. We're still here. We love the river, and we really appreciate the improvements to the water quality we've witnessed over the past 47 years.

In 1974, there was no public sewer system in our neighborhood. For us, all of our sewer and wastewater connected to a 3-house system built years earlier by a plumber who had lived next door and, depending on the tide, emptied directly into the river or onto the mud flats behind our neighbor's house.

Big chunks of toxic waste would regularly float down from Westbrook and routinely get left behind on the expansive mud flats by receding tides. On hot summer days, the stench was awful and you could sometimes see the toxic gases. Neighbors told stories about paint turning colors, blistering, and peeling off of houses on our street.

We had a friend who owned land along the river coming into Portland. Some of that land was taken by eminent domain to build 295. In researching his land's value, he discovered that the flats in the river basin could potentially produce an annual clam harvest worth a quarter of a million dollars (in the 1950s).

Michelle and I raised our family on our river. We've had hundreds of picnics, cookouts and firepits in our back yard over the years. In the beginning, the river's beauty was look, but don't touch. Then we got small boats. Then we started catching stripers. Then occasionally we'd take a quick swim on an incoming tide. Now we paddleboard and fish, sometimes right from shore. Boats are moored in the channel. More line the shores. Lots of boats come into the river to fish. A tour boat makes regular trips from Portland Harbor up the river to the base of the lower falls. Kayakers and paddleboarders move along the shore, and up and down the river, exercising and exploring. We even see an occasional water skier.

Most importantly, we regularly enjoy watching the return of a healthy wildlife population. The recent and steady increase in anadromous fish moving up river as dams have been removed and fish passage is being restored, bodes well for the whole watershed. The number of raptors nesting along the shore is increasing. We routinely watch bald eagles and ospreys soaring overhead, fishing and just playing on the winds. Herons, including blue, white, and an occasional black-crowned, snowy egrets, great and small, and terns join the gulls and cormorants fishing on the flats and nesting in the trees along the shore. Last year, a family of foxes took up residence in our little neighborhood. The strippers have been here, and the incredible sturgeons regularly leap out of the water, sometimes excitingly close to our shore.

Over the past 50 years, the Presumpscot River has benefitted tremendously from a strong and growing commitment to cleaning up and protecting our environment. Jump started by Senator Muskie's federal Clean Water Act in 1972, the collective efforts of individuals, community advocacy groups and coalitions, municipalities, and State agencies have resulted in steady, improvements in our watershed. Please help us secure the progress we've made, and the future we all aspire to. Please raise the Lower Presumpscot to Class B now. Thank you.

Peter Stuckey
20 Vaill Street
Portland, ME 04103
stuckey42@gmail.com

Meidel, Susanne K

From: Fiona Hopper <fiona.winston.hopper@gmail.com>
Sent: Monday, October 25, 2021 12:08 PM
To: Meidel, Susanne K
Subject: Triennial Review of Water Quality Standards

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

To Whom It May Concern:

I am writing to express my support for the reclassification of the lower Presumpscot in southern Maine. I work as the Social Studies Teacher Leader and Wabanaki Studies Coordinator for the Portland Public Schools and we are in the process of developing and implementing a curriculum centered on protecting and regenerating the lower Presumpscot. Therefore, I have a particular interest in seeing the lower Presumpscot reclassified from C to B because that reclassification will not only more accurately reflect the improved water quality of that portion of the river, but will also ensure that water quality continues to improve and make the river healthier for Portland Public Schools' students and families.

In reviewing the most recent water quality data from the lower Presumpscot from 2019, it seems that water quality, in fact, exceeds the threshold of 7 ppm of dissolved oxygen required for a level B classification. The removal of the Saccarappa Dam in 2019 has improved the water quality of the lower Presumpscot tremendously because that part of the river has been restored to its more natural state. The improved water quality is beneficial to the flora and fauna of the lower Presumpscot, as reflected in the forty-seven species of bird a birder friend of mine identified on a paddle down the lower Presumpscot in 2020. On that same paddle, we also saw muskrat along the river and seals in the estuary. The lower Presumpscot is a gift to the most densely populated area of the state and every effort should be taken to support its transition from industrial dumping ground to thriving ecosystem.

The lower Presumpscot shapes the Portland peninsula and in order for students here to understand where they live and how they, too, are part of this ecosystem we must all do our part to protect the watershed. On behalf of future generations of children, I urge you to reclassify the lower Presumpscot to safeguard this rich habitat and protect the water everyone in this ecosystem depends on.

Sincerely,

Fiona Hopper
102 Lincoln Street
Portland, ME 04103
fiona.winston.hopper@gmail.com



Attn. Ms. Susanne Meidel
Maine Department of Environmental Protection (DEP)
Comments on Triennial Review of Water Quality Standards
Via Electronic Mail

October 25, 2021

Dear Chairman Draper and members of the Board of Environmental Protection (BEP):

I am the staff scientist for the Natural Resources Council of Maine (NRCM), and I am submitting testimony on DEP's proposed water quality change proposals from its Triennial Review. NRCM is Maine's largest environmental advocacy organization with more than 25,000 members and supporters. NRCM supports DEP's proposed upgrades in the package, but we are perplexed by DEP's decision to remove eight recommendations for upgrades of very high-quality streams from A to AA from the package. DEP staff initially proposed seven of these upgrades, and The Nature Conservancy proposed one of them. DEP's justification for dropping these eight upgrades it initially embraced appears to be based on a dispute it has with the U.S. Environmental Protection Agency (EPA). For example, DEP stated the following to justify its no longer recommending the proposal to upgrade Orbeton Stream and its tributaries (all of which are tributaries to the Sandy River and critical habitat for endangered Atlantic salmon):

As noted in the April 2021 recommendations document, certain aspects of regulation of stormwater discharges to Class AA waters are currently under discussion with EPA. After further considering the regulatory uncertainty created by these ongoing discussions, the Department is recommending that most proposed upgrades to Class AA waters, including Orbeton Stream and tributaries, not proceed until this issue is resolved. Once the issue is resolved, the upgrade proposals to Class AA that the Department now recommends putting on hold could be reconsidered in subsequent reclassification proceedings with a full understanding of the regulatory requirements.

NRCM believes this justification for failure to propose an upgrade is both absurd and illegal. It is absurd because Orbeton Stream is spectacular spawning habitat for salmon, and Maine is working as hard as possible to protect Atlantic salmon in the Sandy and Kennebec rivers. DEP not pursuing an upgrade of this waterbody is the State working against itself. It is illegal because statute does not allow DEP to not propose an upgrade because of a dispute with another regulatory agency. Maine law (Title 38 Section 464(F)(4)) is very clear on this issue and states:

When the actual quality of any classified water exceeds the minimum standards of the next highest classification, that higher water quality must be maintained and protected.

The board shall recommend to the Legislature that that water be reclassified in the next higher classification (emphasis added).

Neither DEP nor BEP has the discretion to recommend upgrades not occur because of a bureaucratic dispute. DEP's Triennial Review package indicates that all eight of these currently Class A streams attain Class AA. Therefore, the BEP must recommend their upgrade to Class AA to the Legislature.

NRCM also supports the upgrade of the Presumpscot River. Friends of Casco Bay and Friends of the Presumpscot have both presented compelling cases for this upgrade, and we urge the BEP to follow their recommendations.

Thank you for the opportunity to comment on these important issues.

Sincerely,

A handwritten signature in cursive script, appearing to read "Nick Bennett".

Nick Bennett
Staff Scientist

Comments Regarding the Triennial Review: Androscoggin River

Submitted by: Fergus P. Lea, Jr., PE, Chair, Androscoggin River Watershed Council

October 25, 2021

Since it appears that DO is the reason that the Androscoggin does not meet Class B standards, we note that these comments only apply to Dissolved Oxygen concentrations in the Androscoggin River.

The Androscoggin River is perhaps the most tested river in Maine. There has been water quality testing as part of DEP's process to test rivers on a schedule of approximately every five years. There are two continuous monitors; one is at Center Bridge in Turner, the head of Gulf Island Pond, a backwater created by the Gulf Island Dam in Lewiston-Auburn. The other is located at what is known as the "Deep Hole" in Gulf Island Pond. In the summer of 2019 DEP used continuous reading monitors to measure Dissolved Oxygen in the Durham area for a period of approximately two weeks. Friends of Merrymeeting Bay and the Androscoggin River Watershed Council have both participated in the DEP Volunteer River Monitoring Program. The Friends of Merrymeeting Bay sampled the lower part of the river, and the Androscoggin River Watershed Council concentrated on the upper part of the river for most years of DEP's VRMP program. FOMB have been sampling since before the VRMP began. ARWC has only sampled in the Lewiston-Auburn area for two years.

However, with all of this monitoring, we still do not have a good understanding of the river's characteristics and water quality over its length. The grab samples done for the VRMP may be done from the shore or from a boat or bridge. They provide a snapshot of the water quality on the day they are taken and in the location where they are taken.

What all of this sampling shows is that the river either meets or is very close to Class B from the Durham-Lisbon area through Merrymeeting Bay. The grab samples in the Lewiston-Auburn area show that the river is very close to Class B and has a higher DO than is being measured by the continuous monitors on Gulf Island Pond.

Some analysis of the continuous monitor results over the most recent years shows that the water quality in Gulf Island Pond is also much closer to B than it is to C. The exception to this is in the area known as "the Deep Hole" which is the old river channel – the one that existed prior to construction of Guld Island Dam. The Deep Hole is subject to thermal stratification during periods of low flow, and it is also topographically isolated with bankings on either side that prevent good circulation or mixing of the water in the Deep Hole with the surrounding water. The isolation combined with benthic demand for oxygen from legacy organic matter on the bottom of the pond reduces DO levels to well below the C standard in the depth at which stratification occurs. Water above the bottom, stratified layer is of much better quality and generally above 7.0 mg/l or in the high sixes. The same thermal isolation occurs in other hydropower impoundments and also in many of Maine lakes and is recognized in statute.

DEP has typically relied on an EPA accepted digital model of the river to set its classification. However, the continuous monitors as well as the grab samples show water quality that generally

exceeds the quality predicted by the model. We do not believe that the grab sampling can be totally relied upon for reclassification, but neither do we believe that the model with a number of inherent issues can be solely relied upon to determine classification. It must be recognized that modeling of most environmental phenomena is dependent of the quality of the model and the real world data that is entered into it for calibration. DEP should not rely solely on the model to give results with a high degree of accuracy and precision.

It makes sense to recognize the improved water quality in the Androscoggin River and the fact that it is all well above Class C. We recommend that the DEP more fully analyze the modeling results in concert with results of the continuous monitors and consideration of the VRMP results.

From a review of the continuous monitoring data and some of the VRMP data, we believe that a change in the classification standards is appropriate for the Androscoggin River and possibly other rivers. It is entirely appropriate and important to recognize the much improved and high quality of the Androscoggin River. Our analysis also indicates that the discharges to the river are probably not the controlling factor in reducing Dissolved Oxygen levels below the Class B standard of 7 mg/l. A graph of the DO, constructed over a period of years, at the continuous monitors shows little to no correlation between the level of discharge from the Pixelle mill in Jay and the DO entering or in Gulf Island Pond.

The analysis also leans toward the probability that the oxygenation system in Gulf Island Pond is having little impact. We should accept the "Deep Hole" as a stratified area during low flows and should, at least, conduct some pilot projects in which the bubblers are not activated to determine the impact of the bubblers.

With a number of attempts by stakeholders to upgrade the river to B below Lewiston, the DEP has continued to rely on the river model which indicates DO excursions below the 7.0 mg/l. We question whether the model should be used as the sole judgement on upgrading. There are obviously a number of factors besides discharges impacting water quality and probably these other factors, such as diurnal fluctuations, are the reason the DO drops below 7.0 mg/l. The DEP's stance has been if upgraded, it would be necessary to cut the amount of organic load from the dischargers, both public and private, on the river. Since the correlation between discharge and DO in Gulf Island Pond is weak at best, we question whether such drastic cut backs are necessary. A change in the classification statutes would recognize the good quality of the river and provide for occasional drops in DO.

Perhaps the lower part of the river meets the Class B standard. However, we would suggest that the entire Class C section of the river be considered for a new standard possibly designated as Bx. While the results of the sampling and any change in standards should be open to additional analysis by DEP staff, we suggest that a standard for DO of between 6.0 and 6.5 or 70% saturation, whichever is lower, for a monthly average be considered with instantaneous drops to 5.0 being permitted. This would account for periods of high temperatures, necessary as the climate warms and for any upsets in treatment plant processes which are only natural in biological treatment systems. A review of literature, indicates that fish and aquatic life can do

quite well above 6.0 and occasional drops to 5 do not adversely impact diversity, but, depending on their duration, may impact their thriving.

We would also like to note that the current Class B standard requires 7.0 mg/l DO or a saturation of 75%, whichever is higher. However, at temperatures greater than 20 degrees Centigrade, having 75% saturation would result in a DO of less than 7.

Under the proposed standard, discharge permits would not need to be ratcheted down, but we would better recognize the improved water quality of the Androscoggin River. In addition, the statute should be revised to “accept” the Deep Hole as stratified at low flows and high temperatures. A pilot study to determine the bubblers’ impacts on DO may well show that they are not improving the DO in the Deep Hole nor the upper layers of Gulf Island Pond. It seems that the expense of operating the bubblers is an expense that could be forgone. Perhaps those incurring the expense of operating the bubblers could put some funding toward other environmental improvements in the short term and incur some savings now and more savings in the long-term.



P.O. Box 233, Richmond, ME 04357 www.fomb.org

Date: October 25, 2021

To: Maine Board of Environmental Protection, Mark Draper, Chair
C/o Susanne Meidel, Water Quality Standards Coordinator
Maine Department of Environmental Protection
SHS 17
Augusta, ME 04333
207-441-3612
Susanne.K.Meidel@maine.gov

From: FOMB, Ed Friedman, edfomb@comcast.net 666-3372

E-Filed

Subject: Lower Androscoggin Re-Classification Proposal

River/Sections: Androscoggin from Worumbo Dam to Merrymeeting Bay

Proposed Upgrade: C to B

Basis for Proposal: Actual conditions meet Class B

Documentation: Supporting data from FOMB monitoring program approved by Maine DEP and USEPA, Supplementary aquatic life sample data, MDEP sonde data, Lewiston/Auburn POTW/CSO data, USGS flow data

Data Collection Periods: DO-1999 to present; Coliform Bacteria-2006 to present

Sampling Intervals: Monthly or more: April-October

What's New: Expanded coalition plus additional VRMP data through 2021, DEP low flow sonde data, Lewiston/Auburn CSO data and wastewater report, extensive supporting exhibits, comprehensive aquatic life sampling and two new and comprehensive legal analyses.

Chair Draper, members of the Board & Ms. Meidel:

Multiple Segments for Consideration, but One Definitely Makes the Grade

Please consider these comments supporting our upgrade for the lower Androscoggin River segments between Merrymeeting Bay at the line from Pleasant Point in Topsham to North Bath extending upriver to Worumbo Dam in Lisbon Falls. As our data show, while classified as C, this section has long been actually meeting, Class B standards approximately 98% of the time. We therefore propose it be upgraded from C to B. We focus on this stretch of river because it is here we have the most complete data monitoring of dissolved oxygen (DO), bacteria and now benthic invertebrate sampling.

Excellent data exist for the Friends of Merrymeeting Bay (FOMB) Durham monitoring stations as well but collecting of regular DO samples halted there in 2018 when switching from use of Winkler Titration to only DEP meters at more select sites. Bacteria samples are still collected in Durham. In 2019 DEP deployed two sondes in this reach during low flows. One was in the Durham Boat Launch area and the other below Great Falls. DO levels remained above the Class B threshold of 7mg/l at both sites ([Ex. 03 page 7](#)).

An upgrade from Gulf Island Pond to the Bay, while desirable, may be less justified at this time due to a paucity of data. FOMB also has limited DO data from Auburn Boat Launch collected in 2010 and 2011 ([Ex. 30](#)) with geometric means of 8.8 and 10.1 respectively. Since there are some to extensive data supporting upgrades for the three river segments between Worumbo and Gulf Island Pond, we request the Board consider recommending all these segments for reclassification to B, we are adamant about Worumbo to the Bay.

FOMB has the most complete set of monitoring data for the lower reaches in this proposal. We began our monitoring program in 1999 and continue to this day with at times over twenty sampling sites on the Androscoggin, Kennebec and around Merrymeeting Bay. FOMB joined the VRMP in 2009 to further support and substantiate water classification upgrades.

Ambient Surface Waters Meet Class B Standards Virtually All of the Time & an Upgrade is Required Under the CWA & Maine Statute

Because the actual water quality of the lower Androscoggin sections described here exceeds that of their current classification, our request for a reclassification from C to B is supported by the State antidegradation policy as cited below (emphasis added):

38 M.R.S.A. § 464 (F) (4)

*“When the **actual quality** of any classified water exceeds the minimum standards of the next highest classification, that higher water quality must be maintained and protected. **The board shall recommend** to the Legislature that water be reclassified in the next higher classification.”*

In the past, MDEP has sometimes said they cannot upgrade a river classification because under worse case (permitted) 7Q10 scenarios, proposed Class B (in this case) standards might be violated. At the same time, the Department has also said because receiving waters meet the *current* classification levels, Maine cannot upgrade classifications to meet actual conditions.

This condition, while often supported by industry, quite clearly violates Maine statute and the intents both of the Clean Water Act and NPDES creating an artificial ceiling on water quality improvement. In fact, reclassification and permitting **must** be used together to improve water quality. But, in the opposite way from that in which the DEP has been operating. The Supreme Judicial Court of Maine states in Bangor Hydro Electric v. Bd. Of Env. Prot., 1991 ME, 595 A.2d 438 that the BEP must consider state water reclassification when engaged in the permitting process and that **“classification is goal oriented as required by the federal Clean Water Act”**. Nowhere in statute or case law does it say classification can or must be

constrained by modeling and or critical flows or discharges, point source or non-point source.

The Clean Water Act dictates a state shall revise its standards to reflect uses and water quality actually being attained. [40 C.F.R. § 131.10](#). See also *id.* § 131.6(d); [38 M.R.S.A. § 464\(4\)\(F\)](#). Thus, the Board's analysis must be based on *existing* water quality – not hypothetical modeling, with point sources operating at maximum licensed discharge. Indeed, the Board is specifically prohibited from considering maximum licensed loads because both state and federal regulations prohibit consideration of waste discharge or transport as a designated use. 40 C.F.R. § 131.10(a); 38 M.R.S.A. § 464(4)(F)(l)(d).

The CWA & Maine Classification Standards are Aspirational in Nature

Moreover, from the DEP Submission Guidelines:

Maine's Water Quality Classification System is goal-based.

When proposing an upgrade in classification, recommend waters that either presently attain or with reasonable application of improved treatment or Best Management Practices (BMPs), could reasonably be expected to attain, the standards and criteria of a higher proposed class.

Widespread Public Support for Clean Water with its Economic, Environmental and Recreation Benefits

It has been nearly 50 years since the passage of the Clean Water Act and the changes that it brought about have been profound. Bates Mill in Lewiston ceased being a textile mill that completely exploited the Androscoggin River by taking its water and power and returning dyes, bleaches and untreated human waste from overboard discharge. The Bates Mill Complex is now the site of Baxter Brewing Co., TD Bank, Androscoggin Savings Bank offices and The Symquest Group, Fishbones Casual Fine Dining Restaurant, and Museum L-A: The Story of Work and Community in Lewiston-Auburn. The other river communities of Durham, Lisbon, Brunswick and Topsham have all embraced the newer, cleaner river in various economic and recreational ways. No one wants to turn back the clock.

The language in various comprehensive plans ([Ex. 6](#)) tell the story:

In Lisbon's words: ***“With the improved water quality of the Androscoggin, the potential for recreational uses of both the water and shorelines has increased.”***

Topham says: ***“The return of millions of river herring to Merrymeeting Bay and improvement of water quality on the Androscoggin River are fantastic successes; we shouldn't stop there.”***

And Auburn adds: **“The state's water quality classification for the river should be increased from a Class C to a Class B by 2012.”**

The Clean Water Act set in motion a process to improve the quality of our waters that is still continuing. The initial phase changed the lower Androscoggin from an open sewer, one of the top ten polluted rivers in the country ([Ex. 23](#)), to the waters that we enjoy today, an asset to our communities for its aesthetics, economic benefits and recreational opportunities, yet the waters remain classified as Class C, Maine's lowest water quality classification. As long as

classification remains lower than actual ambient water quality, deterioration is possible and to be avoided. Submitted data show the Androscoggin has been meeting Class B standards for years in large part due to former Senator John Nutting's leadership in legislative efforts including the Color, Odor, Foam Bill, 1990; Dioxin Bill, 1996; and Phosphorus Bill passed in 2006; sewer system upgrades by the cities of Lewiston and Auburn providing storm overflow protection; and the Gulf Island Pond Oxygenation Project. Our goal for the upgrade is to lock in improved water quality as is the full intent of the Clean Water Act and Main law.

What's new?

1. Expanded coalition ([Exhibit 7](#))
2. Additional VRMP data through 2021 (now in 10/7/21 BEP Presentation attached as **Appendix 1** following Exhibit List)
3. DEP low flow sonde data ([Exhibit 3 page 7](#))
4. Lewiston/Auburn CSO data and wastewater report ([Exhibit 24](#), [Exhibit 25](#))
5. Extensive supporting exhibits (see below)
6. Comprehensive aquatic life sampling (see **Appendix 2**)
7. Two new, comprehensive and critical legal analyses. Rachel Doughty (formerly EPA), Greenfire Law ([Exhibit 4](#)) and Scott Sells (Submitted electronically under separate cover)

Exhibit List-Lower Androscoggin Upgrade Proposal 3/31/20

[Exhibit 1](#) - Submission Required Responses

[Exhibit 2](#) - Suggested Amendment Language

[Exhibit 3](#) - Fact Sheet/Exec Summary

[Exhibit 4](#) - Greenfire Legal Memorandum

[Exhibit 5](#) - CLF Legal Memorandum

[Exhibit 6](#) - Androscoggin Community Comprehensive Plan Excerpts

[Exhibit 7](#) - Androscoggin Upgrade Support Letters, Past & Present

[Exhibit 8](#) - Economic Benefits of Clean Water

[Exhibit 9](#) - USFWS Merrymeeting Bay/Lower Kennebec High Value Habitat Composite Map

[Exhibit 10](#) - Beginning with Habitat High Value Plant & Animal Habitat Map-Bowdoinham

[Exhibit 11](#) - Beginning with Habitat-Kennebec Estuary Focus Area Intro

[Exhibit 12](#) - Beginning with Habitat-Kennebec Estuary Focus Area Map

[Exhibit 13](#) - Creeper Mussel Fact Sheet

[Exhibit 14](#) - Maine Shad Habitat Plan-MDMR

[Exhibit 15](#) - MDMR Androscoggin Fish Restoration Program

[Exhibit 16](#) - MDMR Historical Sea Run Trap Counts 2008-2019

[Exhibit 17](#) - Brookfield Brunswick 2019 Fishway Report

[Exhibit 18](#) - Merrymeeting Bay/FOMB Conservation Lands Map

[Exhibit 19](#) - USFWS Merrymeeting Bay Regional Conservation Planning Map

[Exhibit 20](#) - Brunswick Topsham Land Trust Androscoggin Properties and Map

[Exhibit 21](#) - Androscoggin River Greenway Trail

[Exhibit 22](#) - Androscoggin Land Trust Preserves along or in Lower Androscoggin

[Exhibit 23](#) - Defining a Nuisance Article

[Exhibit 24](#) - Auburn-Lewiston CSO Charts 200-2018

[Exhibit 25](#) - Auburn-Lewiston CWA 20 Year Master Plan Update 2019

[Exhibit 26](#) - E. coli Geomeans 2006-2019

[Exhibit 27](#) - DO Geomeans 2003-2019

[Exhibit 28](#) - FOMB DEP VRMP Reports

[Exhibit 29](#) - FOCB Quality Assurance Plan

[Exhibit 30](#) - FOMB Auburn Boat Launch DO Data 2010-2011

[Exhibit 31](#) - DEP Lower Androscoggin Modeling Report 2011

[Exhibit 32](#) - Appendix D Aquatic Life from Ex. 31 Report, Annotated by FOMB

[Exhibit 33](#) - DEP Kavanaugh Letter 10/25/19

[Exhibit 34](#) - MDEP VRMP Sampling Protocols-2015

[Exhibit 35](#) - Applied Biomonitoring-FOMB Androscoggin Monitoring Report 2010

[Exhibit 36](#) - Applied Biomonitoring-FOMB Androscoggin Monitoring Report 2011

[Exhibit 37](#) - Applied Biomonitoring-FOMB Androscoggin Combined Monitoring Report 2013

[Exhibit 38](#) - FOMB WQ Data 1999-2019

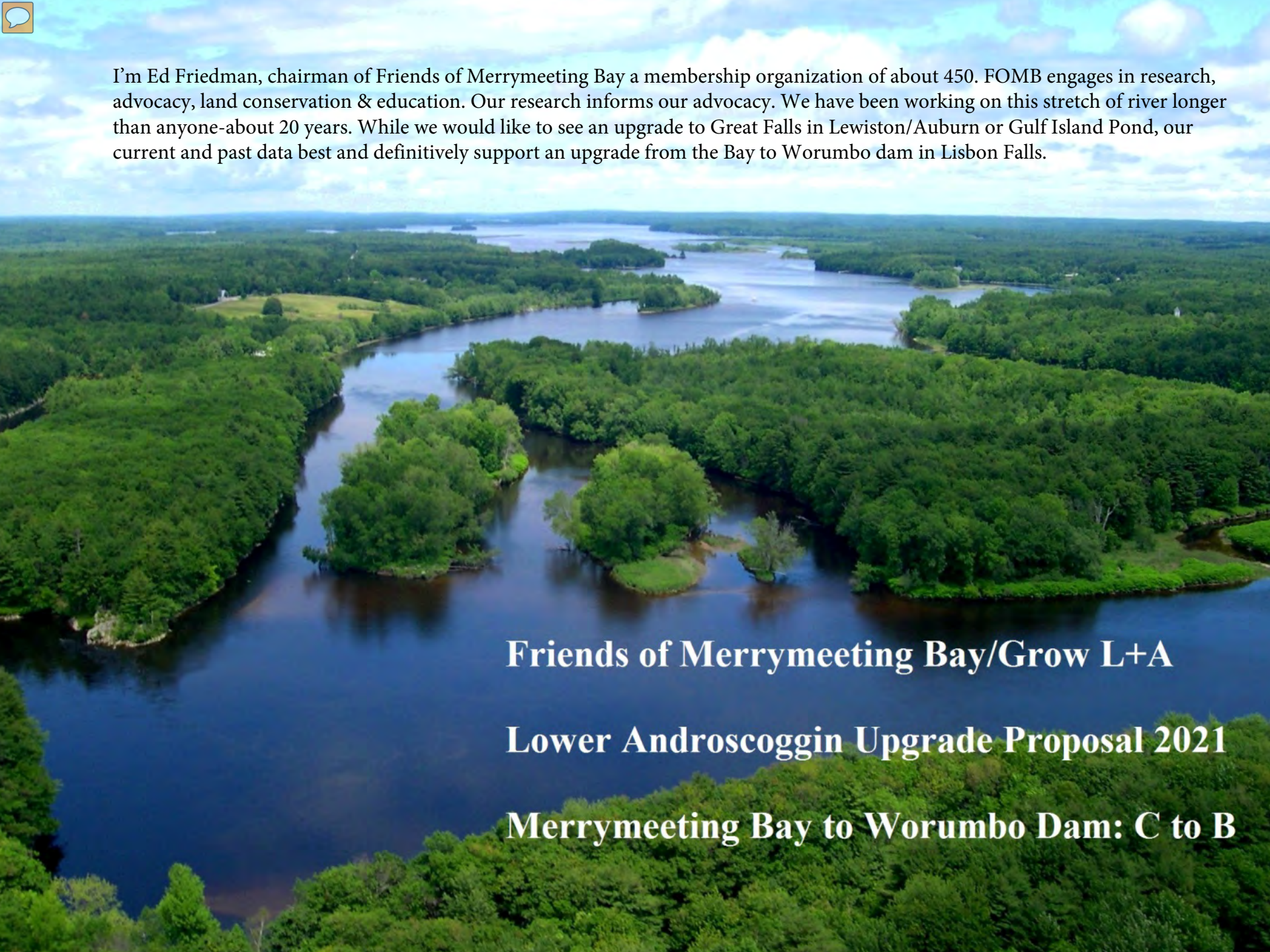
[Exhibit 39](#) - Topsham Hydro Pejepscot Dam 2018 Water Quality Summary from April, 2020 Relicensing Report

[Exhibit 40](#) - Andro Dischargers Actual vs. Licensed 2012-2013

Appendix 1

FOMB BEP Presentation 10/7/21

(click on icons in upper left of slides for narrative text)



I'm Ed Friedman, chairman of Friends of Merrymeeting Bay a membership organization of about 450. FOMB engages in research, advocacy, land conservation & education. Our research informs our advocacy. We have been working on this stretch of river longer than anyone-about 20 years. While we would like to see an upgrade to Great Falls in Lewiston/Auburn or Gulf Island Pond, our current and past data best and definitively support an upgrade from the Bay to Worumbo dam in Lisbon Falls.

Friends of Merrymeeting Bay/Grow L+A

Lower Androscoggin Upgrade Proposal 2021

Merrymeeting Bay to Worumbo Dam: C to B


So what's new in 2021?

1. Continued dissolved oxygen & bacteria monitoring
2. Additional detailed legal analyses & opinions
3. Grow L+A co-sponsorship/new supporters
4. Significant Lewiston / Auburn CSO improvements since 2010
5. Comprehensive & current benthic invertebrate aquatic life sampling

Great job Lewiston/Auburn, Brunswick wastewater plants!
Pay particular attention to Exhibits 4 [Greenfire Law] and 5 [Conservation Law Foundation] for legal memorandums as well as the testimony of Mr. Sells.



Benthic sampling rock baskets and bags



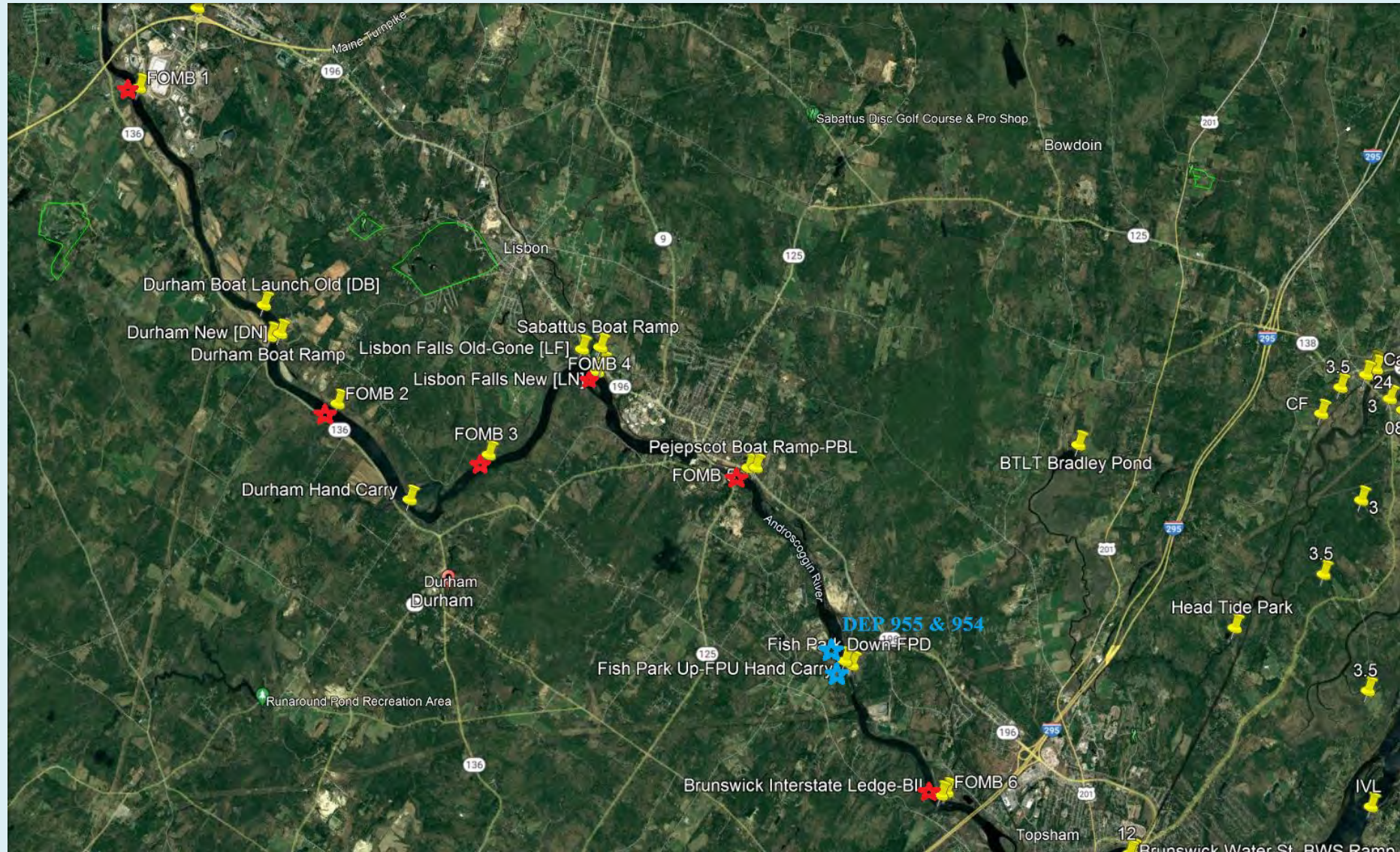
Our data all collected under EPA and or DEP approved and certified Quality Assurance Plans. Actual water quality requires an upgrade recommendation.

FOMB has the most complete set of monitoring data for the reaches in this lower Androscoggin River upgrade proposal. We began our monitoring program in 1999 and continue to this day with at times over twenty sampling sites on the Androscoggin, Kennebec and around Merrymeeting Bay. After years working in conjunction with Friends of Casco Bay under their EPA Quality Assurance Plan, FOMB joined the DEP Volunteer River Monitoring Program (VRMP) in 2009 to further support and substantiate water classification upgrades.

Because lower Androscoggin surface waters meet Class B standards virtually all of the time, an upgrade is required under the CWA & Maine statute.



Study area-I-95 in Auburn is white line at upper left, I-295 at Brunswick/Topsham at lower right. Red stars FOMB 2001 benthic invertebrate sample sites, blue are DEP sites.



- **Androscoggin River Upgrade Proposal 2020**

[Andro Upgrade Proposal Intro 5-1-21.pdf](#)

[Exhibit 01 Submission Responses.pdf](#)

[Exhibit 02 Suggested Amendment Language](#)

[Exhibit 03 Andro Upgrade Fact Sheet-Exec Summary 3-31-20.pdf](#)

[Exhibit 04 Greenfire Law Memo re Reclassification 3-31-20.pdf](#)

[Exhibit 05 2009-10-02 CLF BEP Comments abridged.pdf](#)

[Exhibit 06 Andro Comp Plan Excerpts.pdf](#)

[Exhibit 07 Androscoggin Reclassification Support letters.pdf](#)

[Exhibit 08 Economic Benefit Articles.pdf](#)

[Exhibit 09 USFWS Merrymeeting Bay-Lower Kennebec Composite HVH.pdf](#)

[Exhibit 10 MNAP BWH High Value Plant & Habitats Bowdoinham.pdf](#)

[Exhibit 11 MNAP BWH Kennebec EstuaryFocus Area Intro.pdf](#)

[Exhibit 12 MNAP BWH Kennebec-Estuary-Focus-Area.pdf](#)

[Exhibit 13 MUSSELP Mussel of the Month.pdf](#)

[Exhibit 14 Maine Shad Habitat Plan V2.pdf](#)

[Exhibit 15 MDMR Androscoggin Fish Restoration Program.pdf](#)

[Exhibit 16 DMR Historical Sea Run Partial Trap Counts 2008-2019.pdf](#)

[Exhibit 17 Brookfield Brunswick 2019 Fishway Report.pdf](#)

[Exhibit 18 MMB Cons Lands EF 3-1-20.pdf](#)

[Exhibit 19 USFWS Merrymeeting Bay Regional Conservation Planning Map 1-22-13.pdf](#)

[Exhibit 20 BTLT Androscoggin Properties.pdf](#)

[Exhibit 21 Androscoggin River Greenway Trail.pdf](#)

[Exhibit 22 Androscoggin Land Trust Preserves along or in Lower Androscoggin.pdf](#)

[Exhibit 23 Defining a Nuisance.pdf"](#)

[Exhibit 24 Auburn Lewiston CSO Charts 200-2018.pdf](#)

[Exhibit 25 LA 20 Year CWA Master Plan Update 2019.pdf](#)

[Exhibit 26 E coli geo means 2006-2019-page-001.pdf](#)

[Exhibit 27 DO Geomeans 2003-2019.pdf](#)

[Exhibit 28 FOMB VRMP Exhibits.pdf](#)

[Exhibit 29 FOCB QAPP revision 3 final.pdf](#)

[Exhibit 30 FOMB Auburn Boat Launch DO data 2010-2011.pdf](#)

[Exhibit 31 DEP lowerandromodelreport final march 2011.pdf](#)

[Exhibit 32 Androscoggin 2010 DEP Bug Summary-Annotated.pdf](#)

[Exhibit 33 2019-10-25 Kavanaugh letter to Sen. Libby Sen. Claxton Lower Androscoggin.pdf](#)

[Exhibit 34 VRMP Sampling Protocols 2015.pdf](#)

[Exhibit 35 Applied Biomonitoring-FOMB Andro 2009 Repor Complete 2-8-2010-1.pdf](#)

[Exhibit 36 Applied Biomonitoring-FOMB Andro 2010 Report Complete 1-28-2011.pdf](#)

[Exhibit 37 Applied Biomonitoring-FOMB Andro 2011-2012 Report Complete 3-29-2013.pdf](#)

[Exhibit 38 FOMB WQ Data 1999-2019.xls](#)

[Exhibit 39 Pejepsco April 2020 Summary and Report.pdf](#)

[Exhibit 40 Andro Dischargers Actual vs. Licensed 2012-2013.pdf](#)

Extensive exhibits submitted in support of upgrade-found on the FOMB Cybrary/Chemical web page. Third plus sign down on page.
www.fomb.org

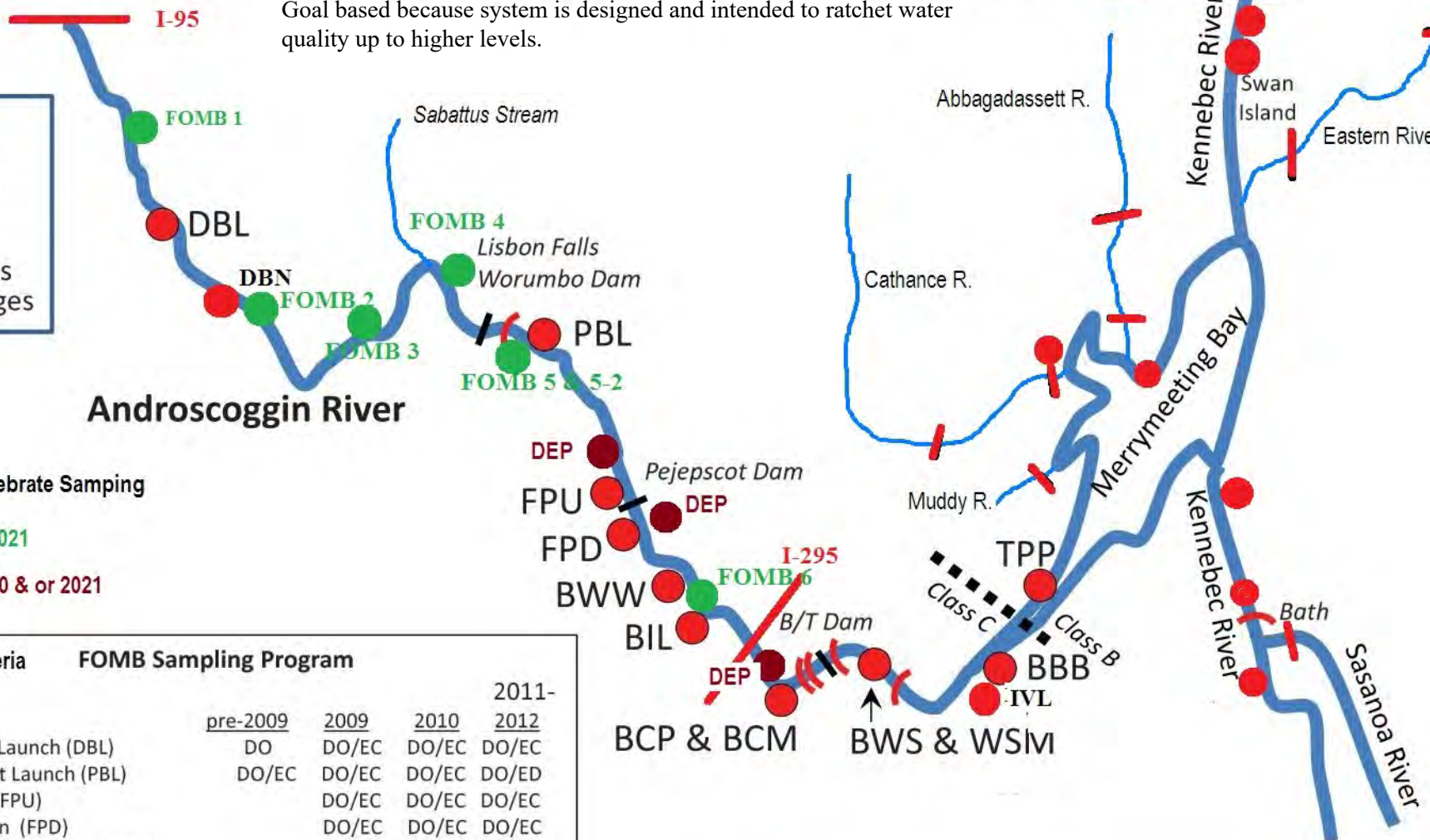
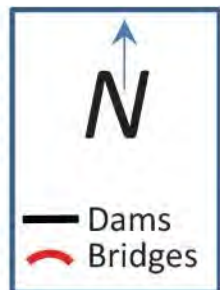
Board has non discretionary duty to act. Unless water quality is codified by classification there is no reasonable way to ensure antidegradation. In current example lower Andro need only meet the class C 5ppm dissolved oxygen standard yet in actuality for the last 20 years it surpasses the Class B standard of 7ppm. Discharges could increase and DO levels decrease back to 5ppm and river would still meet Class C classification.

38 M.R.S.A. § 464 (F) (4)

*“When the **actual quality** of any classified water exceeds the minimum standards of the next highest classification, that higher water quality must be maintained and protected. The board shall recommend to the Legislature that water be reclassified in the next higher classification.”*

Lower Androskoggin River – FOMB Sample Sites

Goal based because system is designed and intended to ratchet water quality up to higher levels.



Aquatic Invertebrate Sampling

- FOMB 2021
- DEP 2010 & or 2021

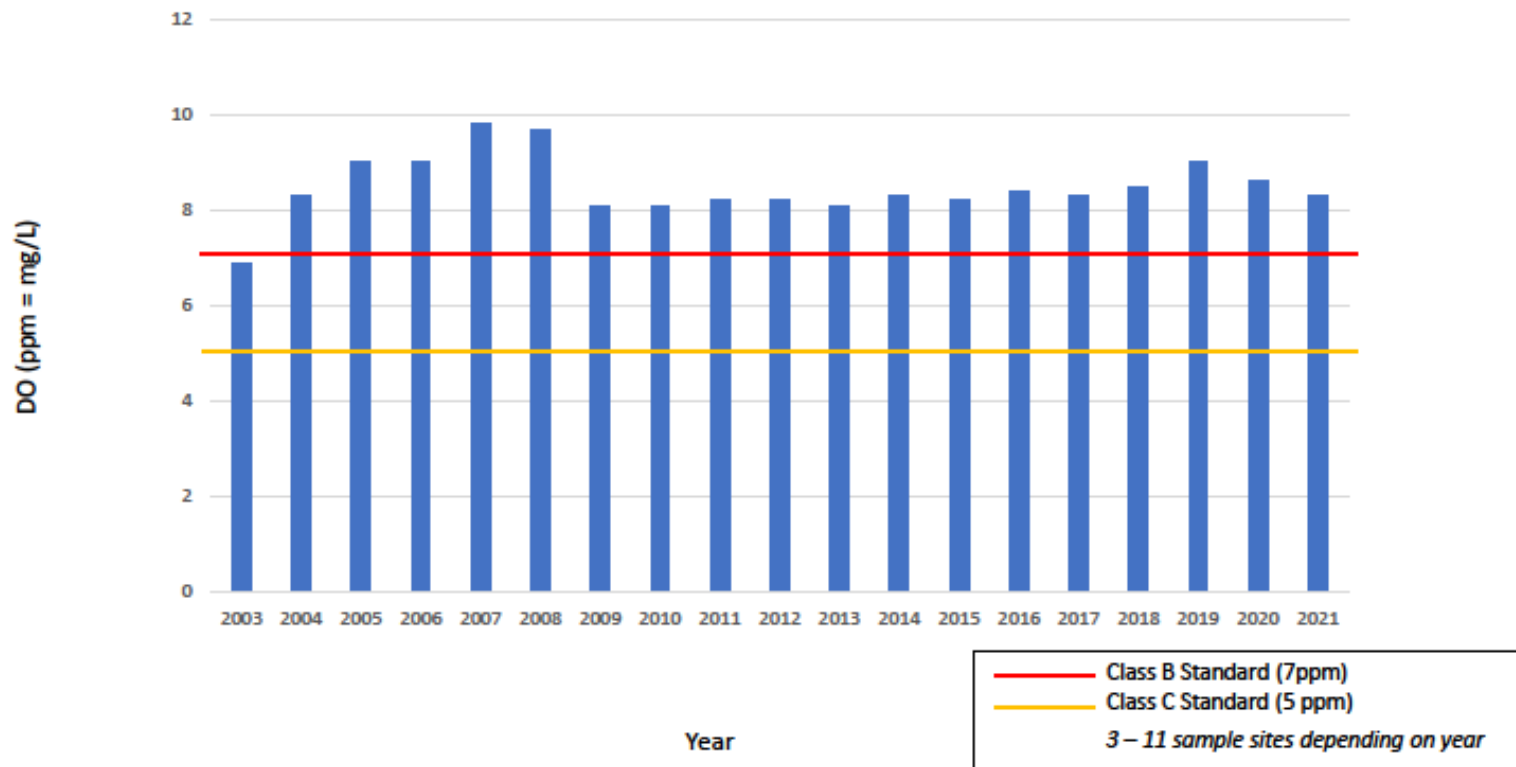
DO & Bacteria	FOMB Sampling Program			
	pre-2009	2009	2010	2011-2012
Durham Boat Launch (DBL)	DO	DO/EC	DO/EC	DO/EC
Pejepscot Boat Launch (PBL)	DO/EC	DO/EC	DO/EC	DO/ED
Fish Park Up (FPU)		DO/EC	DO/EC	DO/EC
Fish Park Down (FPD)		DO/EC	DO/EC	DO/EC
Brunswick Water Works (BWW)		EC	na	na
Brunswick Interstate Ledges (BIL)		DO/EC	DO/EC	DO/EC
Brunswick Canoe Portage (BCP)		DO/EC	DO/EC	DO/EC
Brunswick Canoe Mooring (BCM)		DO/EC	DO/EC	na
Brunswick Water St. Boat Launch (BWS)	EC	DO/EC	DO/EC	DO/EC
Water Street Mooring (WSM)		DO/EC	DO/EC	na
Brunswick Bay Bridge (BBB)	EC	DO/EC	DO/EC	DO/EC
Topsham Pleasant Pt. (TPP)	DO	DO	DO	DO

Upstream Monitoring	pre-2009	2009	2010-2012
	Gulf Island Pond Above	DO	
Gulf Island Pond Below (Bates Boathouse)	DO		
Auburn Boat Launch		DO	DO

2006 - 2021
Yearly E.coli Geometric Means for Lower Androscoggin River
vs. Class B & C Standards



2003 - 2021
Yearly Dissolved Oxygen (DO) Geometric Means for Androscoggin River
vs. Class B & C Standards





RAPID BIOASSESSMENT SURVEY

Data Sheet

(modified EPA Protocol I)

Location- Andy	Site- 6	Date Placed	8/5/21	Date Collected	9/3/21
Field Sample Method	Baskets-Dive			Count Method	
Absent/Not Observed		Present	Common	Abundant	Dominant

Qualitative Macroinvertebrate Sample List

Turbellaria (flatworms)		Anisoptera (dragonflies)	C	Other Ephemeroptera (mayflies)	
Hirudinea (leeches)	P	Zygoptera (damselflies)		Heptageniidae (mayflies)	P
Oligochaeta (aquatic worms)		Coleoptera (beetles)		Siphonuridae (mayflies)	
Isopoda (sow bugs)		Sialidae (alderflies)		Other Trichoptera (caddisflies)	
Amphipoda (scuds)		Diptera (true flies)		Hydropsychidae (caddisflies)	P
Decapoda (crayfish)		Chironomidae (midges)	P	Polycentropodidae (caddisflies)	C
Gastropoda (snails)	P	Other Plecoptera (stoneflies)		Brachycentridae (caddisflies)	P
Bivalvia (mussels)		Perlidae (stoneflies)	C	Other	

Est. Total Abundance	100		
% Insecta	90	% EPT*	80
% Snails		% Worms	--
* E=mayflies, P= stoneflies, T= caddisflies			
Best Professional Judgement- Attains ME. Aquatic Life Class B?			
			YES

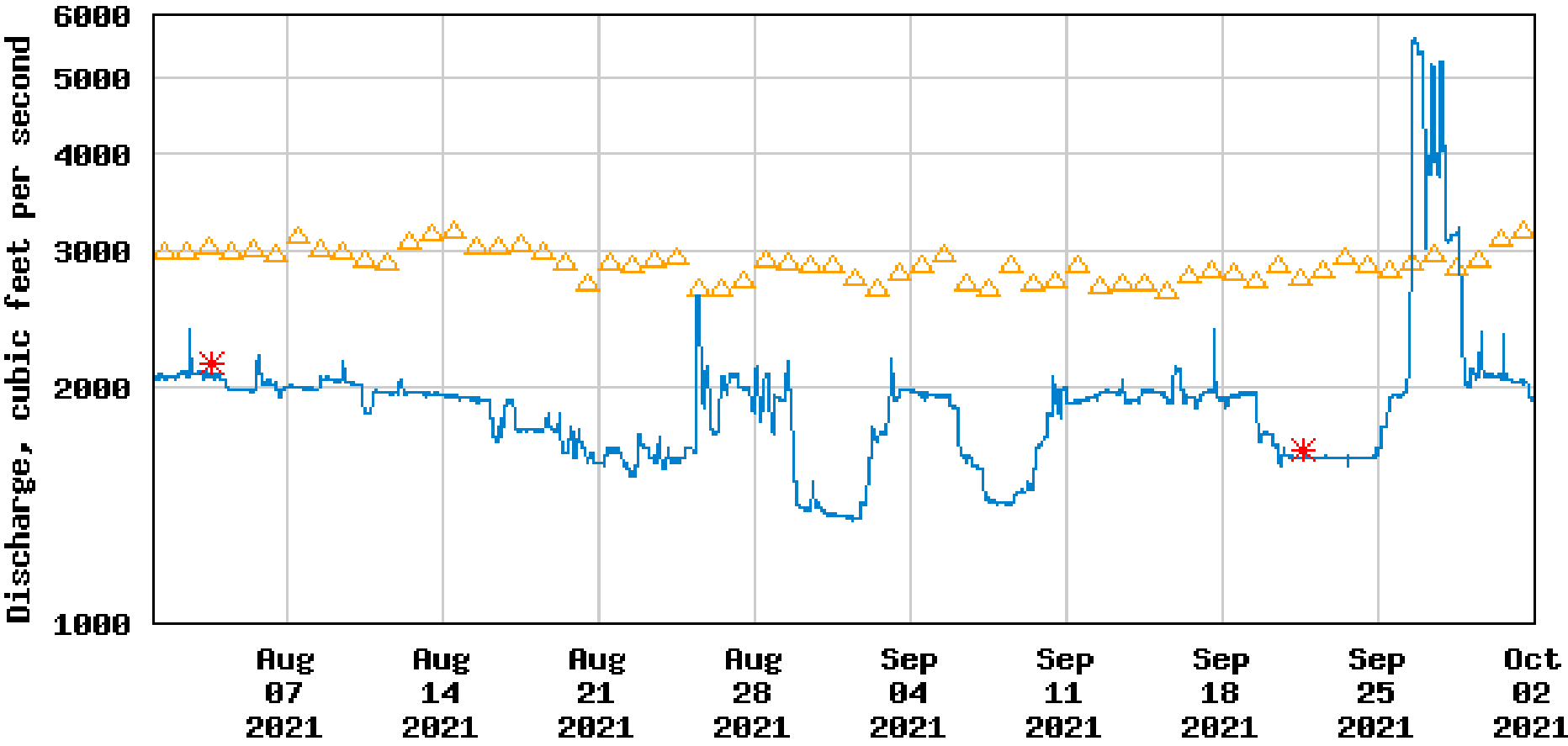
Generally low abundance, good richness, good #s of stoneflies and brachycentrid caddisflies drives model up.

Sample of data form for assessment of aquatic invertebrates. This example shows sample meeting Class B based on rapid assessment [looking at bugs in a tray] and will get fleshed out considerably more when samples are reviewed under microscope in late fall-early winter. All according to DEP protocols. Classification based on DO, E. coli and bugs.

Some discussion of critical flows-licensing totally different statute than classification. This graph shows low flows this season- well below median and classification still easily meets Class B standard.



USGS 01059000 Androscoggin River near Auburn, Maine



----- Provisional Data Subject to Revision -----

- △ Median daily statistic (92 years)
- * Measured discharge
- Discharge

Auburn & Lewiston CSO Charts 200-2018

Section 3 CSO Improvements - Nineteen Years of Progress (2000-2018)

Tighe & Bond



FIGURE 3-6
Auburn Sewer District 2000-2018 Precipitation vs. CSO Discharge

Section 3 CSO Improvements - Nineteen Years of Progress (2000-2018)

Tighe & Bond



FIGURE 3-13
City of Lewiston 2000-2018 Precipitation vs. CSO Discharge

Blue bars yearly precipitation amounts. Redlines decline in CSO overflows. Auburn top, Lewiston bottom. Great job! Thank you.

Androscoggin Dischargers: Actual Discharges vs Licensed Limitations 1/2012-2/2013 - Source: DEP

	Monthly Avg. Actual/License		Daily Max. Actual/Lic.		Monthly Avg. Concentration, A/L mg/l		Daily Max. Concentration, A/L		Monthly Avg A/L	
	% of Limit	%Lic. Buffer			mg/litre					
Brunswick POTW										
Flow (MGD)	2/3.85	52% 48%	2.9 actual		No Data (ND)		ND			
BOD (lbs/day)	295/963	31% 69%	364/1605	23% 77%	13/30	43% 57%	18/50	36%		
TSS (lbs/day)	309/963	32% 68%	485/1605	30% 70%	17/30	57% 43%	23/50	46%		
E. coli (/100ml)										
Lisbon POTW										
Flow (MGD)	.62/2.03	30% 70%	ND		ND		ND			
BOD (lbs/day)	26/507	5% 95%	53/845	6% 94%	5/30	17% 83%	10/50	20% 80%		
TSS (lbs/day)	20/507	4% 96%	41/845	5% 95%	4/30	13% 87%	8/50	16% 84%	6/126	5% 95%
E. coli (/100ml)	ND		ND		ND		ND			
LAWPCA POTW										
Flow (MGD)	11 actual		21 actual		ND		ND			
BOD (lbs/day)	1307/3553	37% 63%	4579actual		14/30	47% 53%	41/50	82% 18%		
TSS (lbs/day)	ND		ND		ND		ND			
E. coli (/100ml)	ND		ND		ND		ND		19/126	15% 85%
Livermore Falls										
Flow (MGD)	.53/2.0	27% 73%	1 actual		ND		ND			
BOD (lbs/day)	40/500	8% 92%	82/834	10% 90%	10/30	33% 67%	15/50	30% 70%		
TSS (lbs/day)	ND		ND		ND		ND			
E. coli (/100ml)	ND		ND		ND		ND		15/126	12% 88%
Verso Pipe #001A										
					% of Limit %Lic. Buffer		% of Limit %Lic. Buffer			
Flow (MGD)	36 actual		41/51		ND		ND			
BOD (lbs/day)	2429/4400summer*, 7400winter**		3633/8000S^, 13,875W^^		ND	*55% 45%, **33% 66%	ND	^45% 55%, ^^26% 74%		
TSS (lbs/day)	6796/12,000S*, 25,000W**		8521/22,300S^, 44,600W^^		ND	*57% 43%, **27% 73%	ND	^38% 62%, ^^19% 81%		
Tot. Phos. (lbs/day)	84/130	64% 36%	113 actual		.27 actual		.35 actual			
Ortho Phos. (lbs/day)	15/28	54% 46%	29.3 actual		ND		ND			
Ads. Org. Halo (AOX)	739/1495	49% 51%	801/2282	35% 65%	ND		ND			

Example of how unrealistic discharge licenses are with huge buffers built in. These are the standards DEP erroneously applies to classification. Easier to read in Exhibit 40 and this is only page 1 of 2. Different colors only to differentiate different facilities. For example-first line under Brunswick POTW shows 2 million gallons of actual discharge flow/month but permit allows for 3.85 during this particular year [2012]. Actual discharge represents only 52% of license limit which translates to a 48% buffer in license. Critical flow licensing assumes all dischargers discharging at full capacity during 7 day low flows that might occur once in 10 years. While quite protective, not very realistic and relevant only for licensing, not classification.

Lower Androscoggin Classification Upgrade Supporters

Municipal Letters In Support of Upgrading the Lower Androscoggin (2008, 2010, 2013, 2017 & or 2020)

Town & Cities: Brunswick, Topsham, Durham, Lewiston, Auburn

Sewer Districts: Auburn Sewerage District (neither for nor against but supporting a cleaner river), Brunswick

Organizations Writing or Speaking in Support of Upgrading the Lower Androscoggin (present & past).

Alewife Harvesters of Maine, Androscoggin River Alliance, Androscoggin Land Trust, Atlantic Salmon Federation, Brunswick Topsham Land Trust, Conservation Law Foundation, Downeast Salmon Federation, Friends of Casco Bay, Friends of Merrymeeting Bay, Friends of Sebago Lake, Grow L+A, Lewiston-Auburn Metropolitan Chamber of Commerce, Maine Audubon, Maine Medical Association, Maine Municipal Association, Maine Rivers, Native Fish Coalition, Natural Resources Council of Maine, Trout Unlimited-Maine Council

Supporters include municipalities and groups like L/A Chamber and MMA as well as environmental organizations. No nefarious reason for lack of outreach to towns on upper river, it's just that they have virtually no influence on classification water standards quality below Gulf Island Pond. Mr. Kavanaugh has repeatedly asserted there is no way that water downstream of a that classified at a lower level can have a higher classification than that above. This is simply untrue. River water is continually getting reoxygenated given the opportunity, via turbines, rapids and riffles, fluctuating levels and just absorption/contact with the atmosphere. Bacteria levels can of course decline with distance from the source and with dilution.

Why Upgrade?

1. The Legislature declares it is the State's objective to restore and maintain the chemical, physical and biological integrity of the State's waters... (§464.1.)
2. Anti-degradation language prohibits backsliding in water quality. (§464 (F)(4))
3. An upgrade locks in water quality improvements.
4. A cleaner river has well-documented economic and quality of life benefits.
5. Sixty percent of our wildlife species inhabit river corridors and benefit as do we.
6. It is the law!



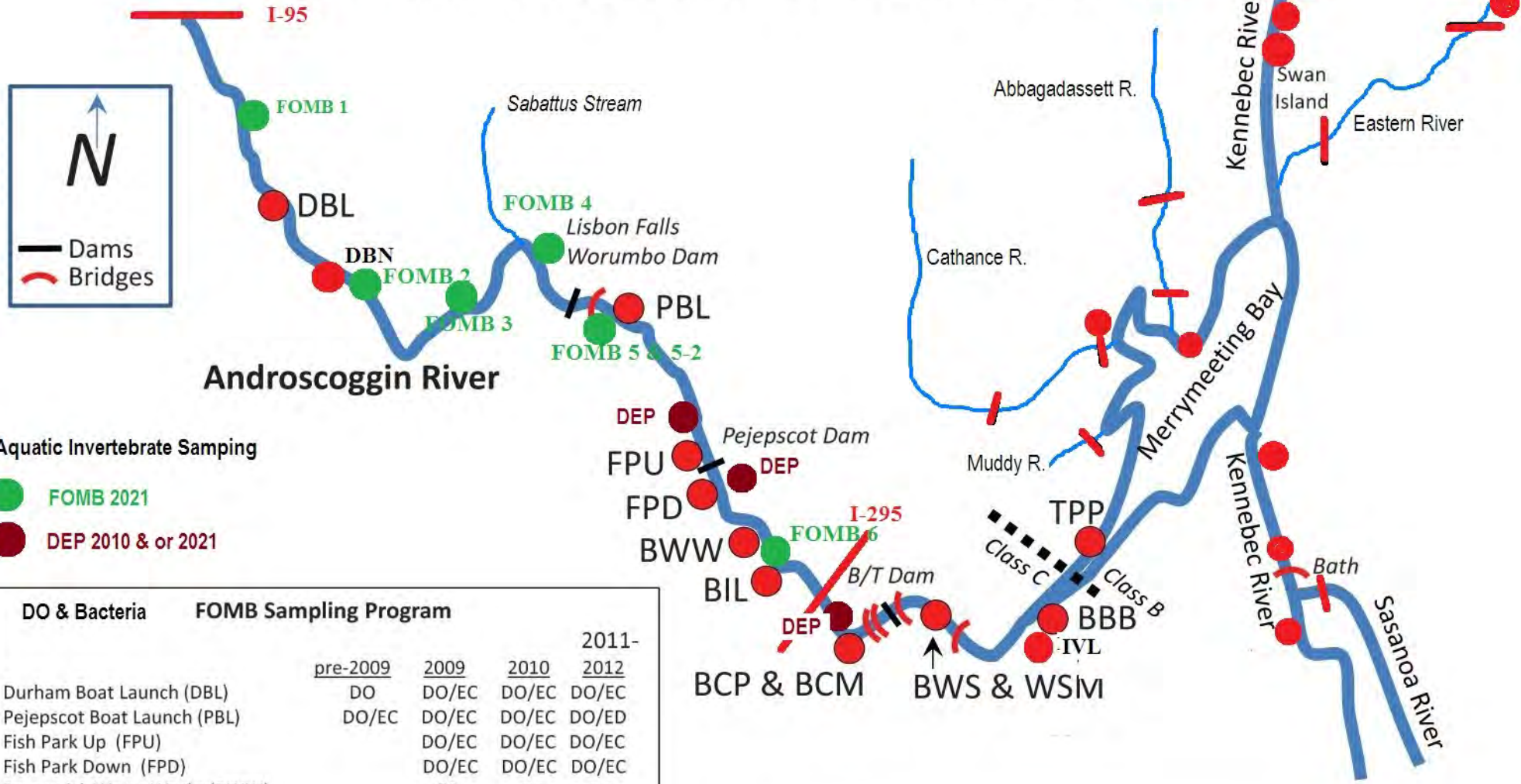
Thanks for the opportunity to speak and I encourage you to investigate all the proposal exhibits on our web site.



Thank You!
www.fomb.org

Appendix 2
FOMB Aquatic Life Sampling 2021
Site information and Rapid Bioassessment results

Lower Androskoggin River – FOMB Sample Sites



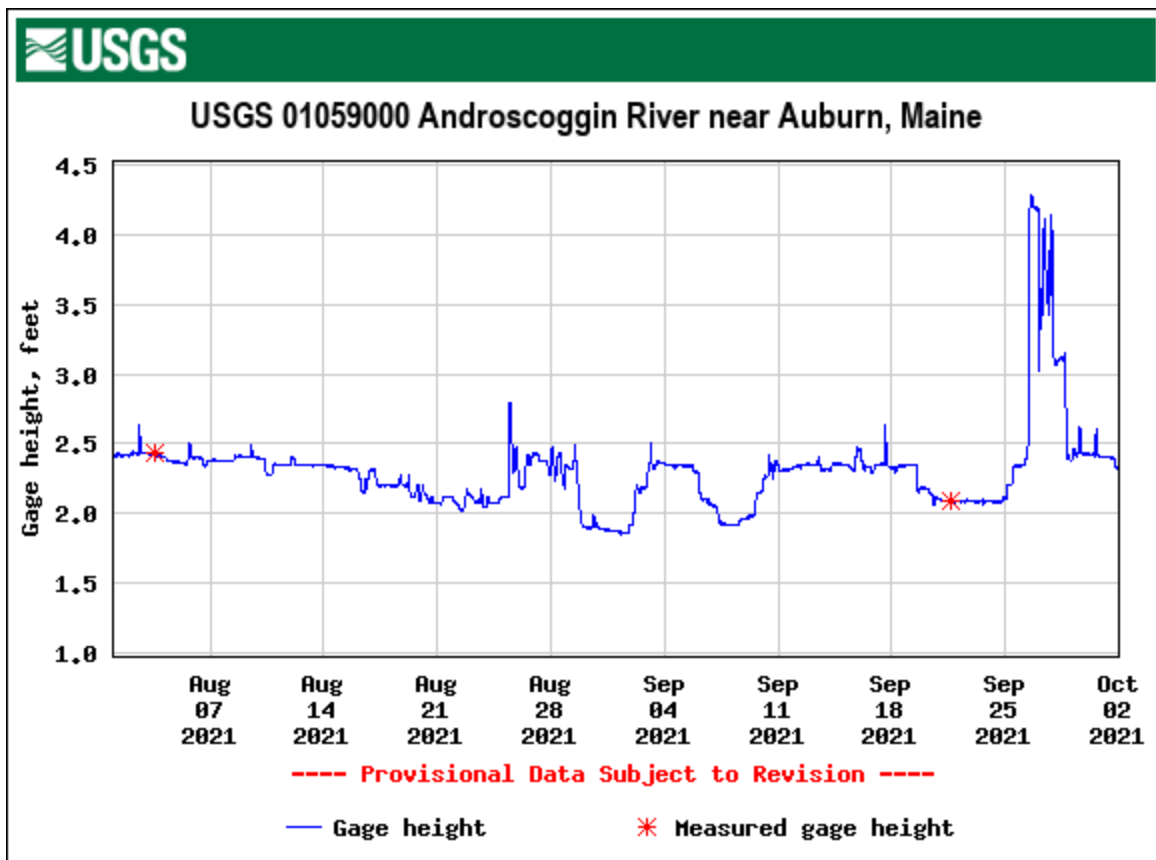
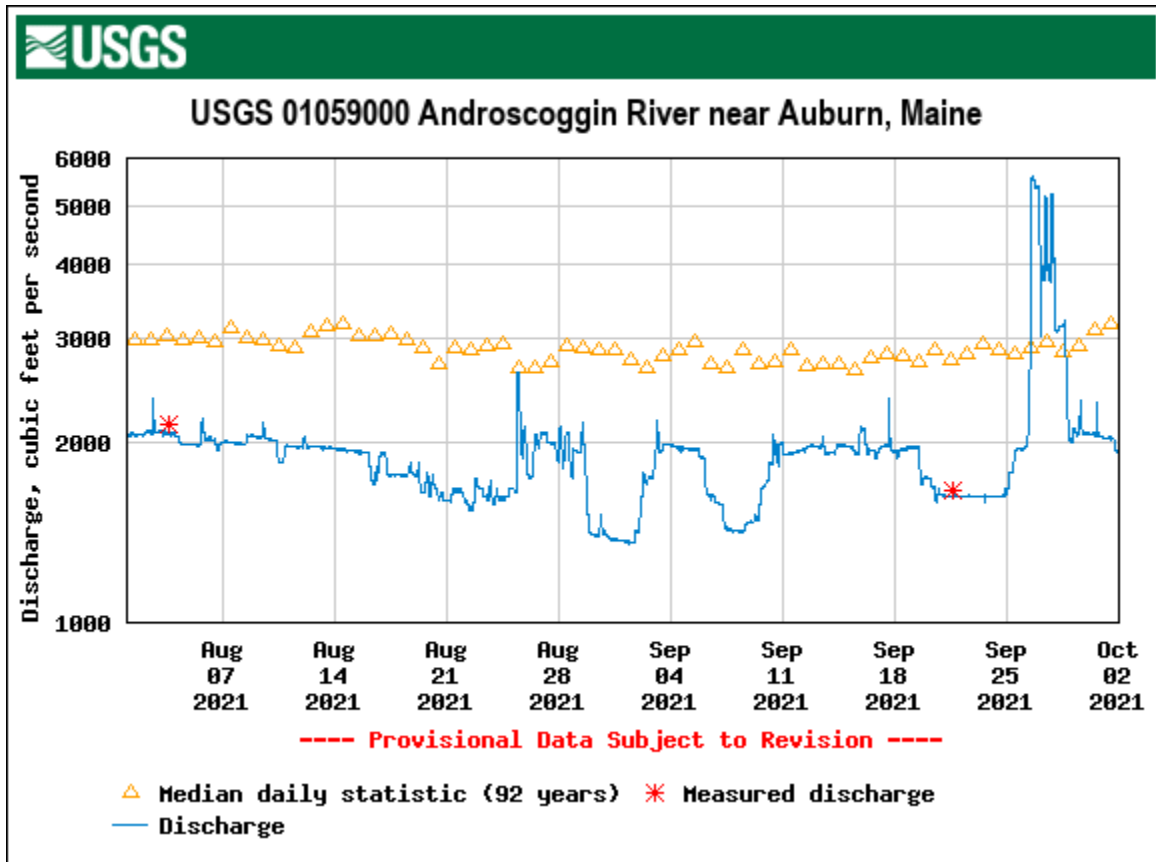
Aquatic Invertebrate Sampling

- FOMB 2021
- DEP 2010 & or 2021

DO & Bacteria	FOMB Sampling Program			
	pre-2009	2009	2010	2011-2012
Durham Boat Launch (DBL)	DO	DO/EC	DO/EC	DO/EC
Pejepscot Boat Launch (PBL)	DO/EC	DO/EC	DO/EC	DO/ED
Fish Park Up (FPU)		DO/EC	DO/EC	DO/EC
Fish Park Down (FPD)		DO/EC	DO/EC	DO/EC
Brunswick Water Works (BWW)		EC	na	na
Brunswick Interstate Ledges (BIL)		DO/EC	DO/EC	DO/EC
Brunswick Canoe Portage (BCP)		DO/EC	DO/EC	DO/EC
Brunswick Canoe Mooring (BCM)		DO/EC	DO/EC	na
Brunswick Water St. Boat Launch (BWS)	EC	DO/EC	DO/EC	DO/EC
Water Street Mooring (WSM)		DO/EC	DO/EC	na
Brunswick Bay Bridge (BBB)	EC	DO/EC	DO/EC	DO/EC
Topsham Pleasant Pt. (TPP)	DO	DO	DO	DO

Upstream Monitoring	pre-2009	2009	2010-2012
	Gulf Island Pond Above	DO	
Gulf Island Pond Below (Bates Boathouse)	DO		
Auburn Boat Launch		DO	DO

2021 Androscoggin Flows during FOMB Aquatic Invertebrate Sampling 8/4-9/4 & 9/4-9/29/2021



FOMB Andro Bug Site Information 2021

Deployments: Sites 1, 2, 3, 4 on 8/4/21; Sites 5, 6 on 8/5/21. Retrievals 1R-4R on 8/31; 5R & 6R on 9/3/21. Site 5 baskets had been disturbed and after harvesting, we redeployed them to pick up 9/30.

Site Time Coordinates (Garmin 48) DO WT Depth Vel Substrate* Wx Notes

1	12:10	44 03.471 / 070 12.019	9.5	23.3	1.8'	1.94fps	10B, 55C, 25G, 10S	cirrus	<u>As far upstream as we could go from Durham Boat Launch [DBL].</u> Shallow rips. Bag
1R	12:15		8.4	24.8	1.3'	1.48fps	SC 100ms	clear	net spinning caddis C or Non attain?
2	13:50	44 00.116 / 070 09.076	11.0	24.8	1.7'	.7fps	5C, 15G, 80S	-cirrus	<u>200'NE of sandbar vicinity of DBN.</u> Bag
2R	10:15		10.0	24.9	1.5'	N/A	SC 100ms	clear	Velocity not taken, lots of mussels, small fish low water, lots of bars C?
3	14:30	43 59.573 / 070 05.160	10.6	24.3	1.0'	.9fps	80B, 10G, 10S	clr	Boulder <u>rips midway up E/W reach above Sabattus Stream.</u> Bag
3R	15:00		9.4	25.5	1.2'	.76fps	SC 90ms	sct	cumulus B?
4	15:20	44 00.524 / 070 05.160	9.4	23.6	10.3'	.28fps	100S	cirrus	20' line to 3 baskets. 300 yds below RR bridge, <u>200 yds east of eagle nest pines on island.</u> Upper Worumbo impoundment. Dive. Basket
4R	16:20		8.9	24.9	10.5'	.16fps	SC 90ms	crayfish,	hardly any bugs
5	13:50	43 59.432 / 070 02.995	8.7	23.6	11.3'	.5fps	50G, 40C, 10S	-Rain.	Mid Channel <u>100yds above PBL boat ramp.</u> 2 otters seen in water by shore before launching
5R	9:35		7.9	22.0	11.5'	.6fps	SC 100ms	OVC-spitting-	pretty barren rocks-small crayfish, mayfly
6	15:45	43 55.980 / 070 00.067	8.3	23.3	10.4'	1.0fps	40C, 10B, 50B	Bedrock	OVC 500' Mist <u>50' East of BIL ledges.</u> Need key to access. Brunswick Park ranger Ben @ 844-1008 [off M&T], Parks Dept Manager Tom F @ 725-6656 Watch out for boom piles in river!
6R	12:00		7.9	23.2	10.2'	1.1fps	SC 100ms	BKN,	some sun. Sparse stones, several stoneflies

* % C-Cobble, G-Gravel, S-Sand, B-Boulders

5 Redeployed overboard at 10:30. 9/3/21 Waypoint 0023. Line connecting first two cages to third with buoy line came undone. Look for cages 1 & 2 downstream of 3.

RAPID BIOASSESSMENT SURVEY

Data Sheet

(modified EPA Protocol I)

Location- Andy	Site- 1	Date Placed	8/4/21	Date Collected	8/31/21
Field Sample Method	Bags-Wade			Count Method	
Absent/Not Observed	Present	Common	Abundant	Dominant	

Qualitative Macroinvertebrate Sample List					
Turbellaria (flatworms)		Anisoptera (dragonflies)	P	Other Ephemeroptera (mayflies)	P
Hirudinea (leeches)		Zygoptera (damselflies)		Heptageniidae (mayflies)	P
Oligochaeta (aquatic worms)		Coleoptera (beetles)	P	Siphonuridae (mayflies)	C
Isopoda (sow bugs)		Sialidae (alderflies)		Other Trichoptera (caddisflies)	
Amphipoda (scuds)		Diptera (true flies)		Hydropsychidae (caddisflies)	C
Decapoda (crayfish)		Chironomidae (midges)	P	Polycentropodidae (caddisflies)	A
Gastropoda (snails)	C	Other Plecoptera (stoneflies)		Brachycentridae (caddisflies)	
Bivalvia (mussels)		Perlidae (stoneflies)	P	Other	

Est. Total Abundance	500		
% Insecta	90	% EPT*	80
% Snails		% Worms	--
* E=mayflies, P= stoneflies, T= caddisflies			
Best Professional Judgement- Attains ME. Aquatic Life Class B?			<u>Maybe B</u>

Presence of stoneflies and good proportion of mayflies drives model up. However, hyperdominance of net-spinning caddis, and snails drives model down.

RAPID BIOASSESSMENT SURVEY
Data Sheet
(modified EPA Protocol I)

Location- Andy	Site- 2	Date Placed	8/4/21	Date Collected	8/31/21
Field Sample Method	Bags-Wade			Count Method	
Absent/Not Observed	Present	Common	Abundant	Dominant	

Qualitative Macroinvertebrate Sample List					
Turbellaria (flatworms)		Anisoptera (dragonflies)		Other Ephemeroptera (mayflies)	P
Hirudinea (leeches)	P	Zygoptera (damselflies)	P	Heptageniidae (mayflies)	C
Oligochaeta (aquatic worms)		Coleoptera (beetles)		Siphonuridae (mayflies)	P
Isopoda (sow bugs)		Sialidae (alderflies)		Other Trichoptera (caddisflies)	P
Amphipoda (scuds)		Diptera (true flies)		Hydropsychidae (caddisflies)	P
Decapoda (crayfish)	P	Chironomidae (midges)	C	Polycentropodidae (caddisflies)	C
Gastropoda (snails)	C	Other Plecoptera (stoneflies)		Brachycentridae (caddisflies)	
Bivalvia (mussels)		Perlidae (stoneflies)	P	Other	

Est. Total Abundance	200		
% Insecta	85	% EPT*	60
% Snails		% Worms	--
* E=mayflies, P= stoneflies, T= caddisflies			
Best Professional Judgement- Attains ME. Aquatic Life Class B?			
			<u>Maybe B</u>

Presence of stoneflies, good richness, and good proportion of mayflies drives model up.
Dominance of net-spinning caddis, snails, and proportion of midges drives model down.

RAPID BIOASSESSMENT SURVEY

Data Sheet

(modified EPA Protocol I)

Location- Andy	Site- 3	Date Placed	8/4/21	Date Collected	8/31/21
Field Sample Method	Bags-Wade			Count Method	
Absent/Not Observed	Present	Common	Abundant	Dominant	

Qualitative Macrobenthos Sample List					
Turbellaria (flatworms)		Anisoptera (dragonflies)		Other Ephemeroptera (mayflies)	
Hirudinea (leeches)		Zygoptera (damselflies)		Heptageniidae (mayflies)	
Oligochaeta (aquatic worms)		Coleoptera (beetles)		Siphonuridae (mayflies)	C
Isopoda (sow bugs)		Sialidae (alderflies)		Other Trichoptera (caddisflies)	
Amphipoda (scuds)		Diptera (true flies)		Hydropsychidae (caddisflies)	P
Decapoda (crayfish)		Chironomidae (midges)	C	Polycentropodidae (caddisflies)	C
Gastropoda (snails)		Other Plecoptera (stoneflies)		Brachycentridae (caddisflies)	
Bivalvia (mussels)		Perlidae (stoneflies)	P	Other	

Est. Total Abundance	<100		
% Insecta	90+	% EPT*	80+
% Snails		% Worms	--
* E=mayflies, P= stoneflies, T= caddisflies			
Best Professional Judgement- Attains ME. Aquatic Life Class B?			<u>Maybe B</u>

Presence of stoneflies and good proportion of mayflies drives model up. Lack of richness, lack of Heptageniid mayflies, dominance of polycentropid caddisflies drives model down.

RAPID BIOASSESSMENT SURVEY

Data Sheet

(modified EPA Protocol I)

Location- Andy	Site- 4	Date Placed	8/4/21	Date Collected	8/31/21
Field Sample Method	Baskets-Dive			Count Method	
Absent/Not Observed	Present	Common	Abundant	Dominant	

Qualitative Macrobenthos Sample List					
Turbellaria (flatworms)		Anisoptera (dragonflies)	P	Other Ephemeroptera (mayflies)	P
Hirudinea (leeches)	P	Zygoptera (damselflies)		Heptageniidae (mayflies)	P
Oligochaeta (aquatic worms)		Coleoptera (beetles)		Siphonuridae (mayflies)	
Isopoda (sow bugs)		Sialidae (alderflies)		Other Trichoptera (caddisflies)	
Amphipoda (scuds)	C	Diptera (true flies)		Hydropsychidae (caddisflies)	
Decapoda (crayfish)	P	Chironomidae (midges)	C	Polycentropodidae (caddisflies)	C
Gastropoda (snails)	P	Other Plecoptera (stoneflies)		Brachycentridae (caddisflies)	P
Bivalvia (mussels)	P	Perlidae (stoneflies)		Other	

Est. Total Abundance	100+		
% Insecta	80	% EPT*	30
% Snails		% Worms	--
* E=mayflies, P= stoneflies, T= caddisflies			
Best Professional Judgement- Attains ME. Aquatic Life Class B?			??

Brachycentrid caddisflies, Heptageniid mayflies and other mayflies drives model up. Scuds, snails and lack of stoneflies drives model down. If just a few stoneflies are found then this can be B.

RAPID BIOASSESSMENT SURVEY

Data Sheet

(modified EPA Protocol I)

Location- Andy	Site- 5	Date Placed	8/5/21	Date Collected	9/3/21
Field Sample Method	Baskets-Dive			Count Method	
Absent/Not Observed	Present	Common	Abundant	Dominant	

Qualitative Macroinvertebrate Sample List					
Turbellaria (flatworms)		Anisoptera (dragonflies)		Other Ephemeroptera (mayflies)	
Hirudinea (leeches)		Zygoptera (damselflies)		Heptageniidae (mayflies)	P
Oligochaeta (aquatic worms)		Coleoptera (beetles)		Siphonuridae (mayflies)	
Isopoda (sow bugs)		Sialidae (alderflies)		Other Trichoptera (caddisflies)	
Amphipoda (scuds)		Diptera (true flies)		Hydropsychidae (caddisflies)	P
Decapoda (crayfish)		Chironomidae (midges)	P	Polycentropodidae (caddisflies)	P
Gastropoda (snails)	P	Other Plecoptera (stoneflies)		Brachycentridae (caddisflies)	
Bivalvia (mussels)		Perlidae (stoneflies)	P	Other	

Est. Total Abundance	50-75		
% Insecta	95	% EPT*	70
% Snails		% Worms	--
* E=mayflies, P= stoneflies, T= caddisflies			
Best Professional Judgement- Attains ME. Aquatic Life Class B?			<u>YES</u>

Generally low abundance, presence of stoneflies, and little dominance of net-spinning caddisflies drives model up.

RAPID BIOASSESSMENT SURVEY

Data Sheet

(modified EPA Protocol I)

Location- Andy	Site- 5-2	Date Placed	9/4/21	Date Collected	9/29/21
Field Sample Method	Baskets-Dive			Count Method	
Absent/Not Observed	Present	Common	Abundant	Dominant	

Qualitative Macroinvertebrate Sample List					
Turbellaria (flatworms)		Anisoptera (dragonflies)		Other Ephemeroptera (mayflies)	
Hirudinea (leeches)	P	Zygoptera (damselflies)		Heptageniidae (mayflies)	P
Oligochaeta (aquatic worms)		Coleoptera (beetles)		Siphonuridae (mayflies)	
Isopoda (sow bugs)		Sialidae (alderflies)		Other Trichoptera (caddisflies)	
Amphipoda (scuds)		Diptera (true flies)		Hydropsychidae (caddisflies)	P
Decapoda (crayfish)	P	Chironomidae (midges)	P	Polycentropodidae (caddisflies)	C
Gastropoda (snails)	P	Other Plecoptera (stoneflies)		Brachycentridae (caddisflies)	
Bivalvia (mussels)		Perlidae (stoneflies)	P	Other	

Est. Total Abundance	50-75		
% Insecta	95	% EPT*	70
% Snails		% Worms	--
* E=mayflies, P= stoneflies, T= caddisflies			
Best Professional Judgement- Attains ME. Aquatic Life Class B?			YES

Generally low abundance, presence of stoneflies, and little dominance of net-spinning caddisflies drives model up.

RAPID BIOASSESSMENT SURVEY

Data Sheet

(modified EPA Protocol I)

Location- Andy	Site- 6	Date Placed	8/5/21	Date Collected	9/3/21
Field Sample Method	Baskets-Dive			Count Method	
Absent/Not Observed	Present	Common	Abundant	Dominant	

Qualitative Macrobenthos Sample List					
Turbellaria (flatworms)		Anisoptera (dragonflies)	C	Other Ephemeroptera (mayflies)	
Hirudinea (leeches)	P	Zygoptera (damselflies)		Heptageniidae (mayflies)	P
Oligochaeta (aquatic worms)		Coleoptera (beetles)		Siphonuridae (mayflies)	
Isopoda (sow bugs)		Sialidae (alderflies)		Other Trichoptera (caddisflies)	
Amphipoda (scuds)		Diptera (true flies)		Hydropsychidae (caddisflies)	P
Decapoda (crayfish)		Chironomidae (midges)	P	Polycentropodidae (caddisflies)	C
Gastropoda (snails)	P	Other Plecoptera (stoneflies)		Brachycentridae (caddisflies)	P
Bivalvia (mussels)		Perlidae (stoneflies)	C	Other	

Est. Total Abundance	100		
% Insecta	90	% EPT*	80
% Snails		% Worms	--
* E=mayflies, P= stoneflies, T= caddisflies			
Best Professional Judgement- Attains ME. Aquatic Life Class B?			<u>YES</u>

Generally low abundance, good richness, good #s of stoneflies and brachycentrid caddisflies drives model up.

Resume- Paul C. Leeper

Owner- Moody Mountain Environmental

Environmental Biology Firm specializing in permitting and research

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Searsmont ME 04973
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EDUCATION

B.S. Biology (Aquatic Ecology), Allegheny College, PA. 1979

CERTIFICATIONS

EMPLOYMENT

2002- Present	Moody Mountain Environmental- Owner	USFWS SCUBA
1980 – 2002	Eco-Analysts, Inc., Vice-President/ Partner	

NABS Benthic Taxonomist
Habitat Evaluation Procedures (HEP) by USFWS
Instream Flow Incremental Methodologies (IFIM) by USFWS
SCUBA

Paul started Moody Mountain Environmental, the environmental research and permitting firm located in Searsmont, Maine, in 2002. His goal is to give clients quality research and environmental permitting services in a client-friendly, cost-effective process. He uses a clear project goal oriented approach in all aquatic, marine, and wetland permitting. Prior to founding his own company, Paul worked at ECO-ANALYSTS, INC. as Vice-President and partner.

Paul specializes in aquatic, marine and wetland community analyses. He has provided expert testimony numerous times before Maine's Board of Environmental Protection (BEP) and Land Use Regulatory Commission (LURC) as well as before a Massachusetts Administrative Law Judge. He has served on Maine's Environmental Priorities Committee and Maine's DEP Biocriteria Technical Advisory Committee. He was the Aquatic Expert Consultant for the Saco River Flow Negotiations for Central Maine Power Company.

He has designed and directed numerous biomonitoring and aquatic macroinvertebrate community analyses for FERC relicensing of hydropower projects, wastewater discharges, natural resource permits, and spill responses. Among these are analyses on the Hiram, West Buxton, Bonny Eagle and Skelton projects on the Saco. Recently he has worked on the Ellsworth Project on the Union River and the Brassua Project. He is experienced in microbial source tracking and threatened and endangered mussel identification/relocation.

Paul has also been active in wetland investigations, permitting, and mitigation for many years. He has been a Wetlands Expert Consultant before BEP and LURC for the Department of Conservation Mere Point Boat Ramp Development and the Burnt Jacket Rezoning on Moosehead Lake. He has investigated numerous mapped Significant Wildlife Habitats and successfully petitioned MDIFW and DEP to remap areas based on conditions on the ground. He is experienced in vernal pool identification, the legislation and rules. He has directed numerous wetland permit projects involving delineations and wetland restoration and construction for developers and industrial clients.

Marine work includes cruise ship sampling, wetland intertidal and subtidal studies, permitting, and monitoring for piers, dredging, undersea cable installations, marinas, aquaculture leases, and discharges in New Hampshire and Maine. This work includes eelgrass (*Zostera marina*) transplanting in dredge areas and plankton studies in support of a marine hydropower project.

Resume- Paul C. Leeper

Aquatic Invertebrate Community Analyses: Has designed and directed numerous biocriteria community analyses in support of FERC hydropower licensing, Maine Natural Resources Protection Act permits, wastewater discharge licenses, and spill responses. Selected projects include:

FERC Relicensing

Androscoggin River (Riley, Jay, Otis, Livermore Projects)
Little Androscoggin (Hackett Mills & Upper & Lower Barker Projects)
Kennebec River (Harris, Wyman & Williams Projects)
Saco River (Hiram, West Buxton, Bonny Eagle & Skelton Projects)
Moxie Stream (Moxie Project)
Magalloway River (Aziscohos Project)
Dead River (Flagstaff Project)
Little Ossipee River (Ledgemere Project)
Ossipee River (Kezar Falls Project)
Union River (Ellsworth Project)
Cobbosee Stream (American Tissue Project)
Mooselookmeguntic (Upper and Middle Projects)
Penobscot River (West Enfield Project)
Passadumkeag River (Lowell Tannery Project)
Flagstaff Lake Littoral Characterization
Graham Lake Littoral Characterization
Musquacook Lake Littoral Characterization
Mooselookmeguntic Lake Littoral Characterization

Upper and Lower Richardson Littoral Characterization

Wastewater Licenses

Presumpscot (S.D. Warren Mill)
St. Croix (GP Kraft Mill)

NRPA Permits

Bald Mountain (Boliden Resources, Inc.)
Carabassett Valley (Sugarloaf/USA)

Spill Responses

Martin Stream (DeCoster Egg Farms)
Bond Brook Tributary (PCB spill)
Riggs Brook (PCB Superfund site)
Mill Stream (landfill leachate spill)
Brunswick Naval Air Station (stormwater antifreeze spill)

October 25, 2021

Maine Board of Environmental Protection
Attention: Susanne Meidel,
Director of Environmental Assessment
Bureau of Water Quality
Maine Department of Environmental Protection
17 State House Station
Augusta, ME 04333-0017

SUBMITTED ELECTRONICALLY

RE: Comments on 2021 Triennial Review of Water Quality Standards, Re-classification of the Lower Androscoggin River Segment, Worumbo Dam to Merrymeeting Bay from Class C to Class B.

Dear Ms. Meidel,

These comments are submitted on behalf of Friends of Merrymeeting Bay ("FOMB") for inclusion into the administrative record in this matter and in response to the Board of Environmental Protection ("BEP") review of recommendations submitted by the Department of Environmental Protection (the "Department") recommending denial of reclassification for the Lower Androscoggin River from Class C to Class B. FOMB's comments here are not intended to supplant the full, detailed analysis FOMB has provided in its proposal to the Department and the BEP on March 31, 2021¹ and the testimony given by Ed Friedman and Scott Sells on behalf of FOMB at the recent BEP hearing on October 7, 2021, but to supplement and update that information. Accordingly, the FOMB Proposal and testimony are fully incorporated into these comments by this reference. Further, separate comments by Ed Friedman that are being submitted on this date that update certain data and FOMB Proposal Exhibits referred to herein are also incorporated by this reference.

I. "It's the law" – why the Board is required to re-classify in this case.

1. FOMB has demonstrated that the Lower Androscoggin meets Class B standards, accordingly the Board is required to recommend to the legislature that the segment be re-classified.

At the outset it must be noted that the Department is not disputing the Lower Androscoggin is actually meeting Class B standards. It is also not disputing the integrity or sufficiency of the field

¹ See: Grow L/A, Friends of Merrymeeting Bay, Lower Androscoggin Reclassification Proposal dated March 31, 2020 to Suzanne Meidel, Water Quality Standards Coordinator, Maine Department of Environmental Protection ("FOMB Proposal").

data collected by FOMB under the U.S. Environmental Protection Agency or the Department's protocols in any way. The Department even concedes that the riverine segment "usually, but not always," attains Class B standards.² The same "usually, but not always" observation can be said for any riverine segment under any classification. An unusually hot day or unpermitted discharge can easily accomplish this. This is also a somewhat questionable observation since there is simply no existing technology in place to continuously monitor river segments and the statutory and regulatory scheme does not establish an "all of the time" standard.

Setting aside for the moment the impracticality of requiring a river segment to attain its classification twenty-four hours a day, seven days a week in order to achieve re-classification³ there is an even more egregious flaw in this "most of the time" observation, particularly where modeled results are being used to justify the denial of re-classification. Taken to the extreme, there would never be any re-classifications under the statute as modeling parameters could continue to be adjusted to be inconsistent with the reality of actual field data. FOMB submits that this is not what the statute requires or intends.

2. The underlying reason why re-classification to a higher class is necessary.

The reason for re-classification here is pretty straightforward, for Androscoggin fisheries and wildlife to re-establish and thrive in the watershed the water quality classification system under federal and state law has to work the way it is intended to work and not be subverted by pollutant dischargers, or misinformed or incorrect agency judgement. At the end of the day the objective is cleaner water – that is the basic outcome the law intends. This benefits recreational users as well and the economic benefits of clean water are well documented. It is actual reclassification to ambient conditions that is the mechanism for locking in improvements in water quality and preventing subsequent degradation.

As set forth in more detail below, under Maine law, when a riverine segment meets the water quality standards for a higher classification, re-classification is non-discretionary. Here the Department states that "[m]any years of monitoring data for DO and E. coli show a steady overall compliance with Class B standards..."⁴ but that "[o]ther data reports spanning additional years were pooled across sites, thus precluding analysis of water quality standards."⁵ This qualification is misleading at best. While that observation may be true for graphed data supplied by FOMB showing mean averages, earlier reports and proposals submitted to the Department

² Maine DEP 2021 Triennial Review of Water Quality Standards, Department Recommendations at page 57. https://www.maine.gov/dep/water/wqs/TR_04232021_WQS-ChangeProposals_ForPublic.pdf (the "Department Triennial Review Recommendations").

³ For example, if the Department was to undertake rulemaking and require 24 hour compliance as a re-classification requirement, and it was somehow measurable, each stream segment classified in the state of Maine, regardless of its current classification, would risk being out of compliance the moment it was found not meeting its classification standards and would presumably have to be downgraded. That is an outcome FOMB suggests is in no-one's interests and is contrary to the anti-degradation intent of the Clean Water Act and Maine's Water Quality laws.

⁴ Department Triennial Review Recommendations at 57 note 11.

⁵ Department Triennial Review Recommendations at 57.

have supplied complete graphed data for each specific site.⁶ That is actual data for a specific site that can be analysed. Additionally, complete raw data for each sampling site have always been supplied and are supplied in the current FOMB proposal.⁷ These individual, *and un-pooled* site data, updated in a variety of formats, are also supplied and a part of the DEP Volunteer River Monitoring Program annual reports which are exhibits in the current proposal.⁸

There is therefore no preclusion that prevents individual site data from being analyzed, and while the Department might take issue with the geometric mean (“Geomean”) graphs FOMB has supplied which are based on actual field data, it must also consider that this protocol, or the averaging of data to determine compliance – is also typically used in the very NPDES program it administers and has referred to in this case. FOPR submits that here, where actual field data is demonstrating attainment, that the actual data are sufficient and uncontroverted and the Board must reclassify the Lower Androscoggin to Class B.

Accordingly, there are therefore really only two legal issues for the Board to consider – what the law says it must do, and whether there is any statutory interpretation that provides for any exceptions, circumstances or judgement on the part of the Department that would prevent it from complying with the plain language of the law.

Here, these issues must be resolved in the context of the legal standard in the Clean Water Act and Maine statutes that requires a state to revise its water quality standards and classifications to reflect uses and water quality *actually* being attained.⁹ There is also Maine statutory language that explicitly states what the Department must consider in reclassification, specifically:

1. Whether the actual data demonstrates the river segment in question meets Class B narrative and quantitative water quality criteria; and
2. Whether the actual designated uses are consistent with Class B designation, and
3. Whether re-classification is consistent with Maine’s anti-degradation statute.

The Department’s analysis and recommendation is inconsistent with this standard and ignores the specific criteria in favor of other external factors that are inappropriate and arbitrary when Class B standards are being maintained by actual data and the actual uses of the river are consistent with Class B designation.

⁶ See: FOMB Proposal Exhibits 35, 36, and 37.

⁷ See: FOMB Proposal Exhibit 38.

⁸ See: FOMB Proposal Exhibit 28.

⁹ See: 40 C.F.R. § 131.10(i) designated use requirement: “Where existing water quality standards *specify designated uses* less than those which are presently being attained, *the State shall revise its standards to reflect the uses actually being attained.*” (emphasis supplied), and § 131.6(d) (anti-degradation required); and 38 M.R.S. § 464(4)(F)(4) “When the *actual* water quality of any classified water exceeds the minimum standards of the next highest classification, that higher water quality must be maintained and protected.” (emphasis supplied).

3. The Plain language of the statute is clear - the legal standard is mandatory and not discretionary.

First, the plain language of the law itself is not ambiguous in any way. The Clean Water Act and Maine’s anti-degradation policy require that “[w]hen *the actual* quality of any classified water exceeds the minimum standards of the next highest classification, that higher water quality *must* be maintained and protected. The board *shall* recommend to the Legislature that that water be reclassified in the next higher classification.”¹⁰ The use of the terms “must” and “shall” have commonly accepted meanings and are, in any normal context, non-discretionary and obligatory. The term “actual” is similarly commonly known as referring to “real” and not “theoretical”.¹¹ Reclassification guidelines soliciting proposals for the Triennial Review go further noting: “Maine’s Water Quality Classification System is *goal-based*. When proposing an upgrade in classification, *recommend waters that either presently attain, or with reasonable application of improved treatment or Best Management Practices (BMPs) could reasonably be expected to attain, the standards and criteria of a higher proposed class.*”¹²

a. The Department’s own method of statutory interpretation results in an outcome consistent with the language of the statute – re-classification to Class B.

i. The Department’s method of statutory interpretation and the language of 38 § 464 (4). In June 3 of 2021 of this year the Board received testimony from Kevin Martin, Compliance and Procedures Specialist for the Department in another matter involving the Department’s interpretation of statutory language.¹³ During that testimony, he specifically spoke of how the department interpreted statutory language and the interplay of classification statutes and the legislature.

This is highly relevant here as there appear to be competing statutory arguments – the Department appears to assert or conclude that the statute is *not* mandatory, or if it is, there are other laws or exceptions that must be considered; and FOMB and others assert that the

¹⁰ 38 M.R.S. § 464(4)(F)(4); see also 40 C.F.R. § 131.20 (a) “If such new information indicates that the uses specified in section 101(a)(2) of the Act are attainable, the State shall revise its standards accordingly....”

¹¹ The word “shall” in the context of a statute is defined in Black’s Law Dictionary as “In common or ordinary parlance, and in its ordinary signification, the term ‘shall’ is a word of command and ... must be given a compulsory meaning.” Black’s Law Dictionary 1233 (5th ed.1979) and as a generally imperative or mandatory term. The term “must” is universally accepted as an obligatory term and “actual” as is specifically defined by Black’s Law Dictionary to mean “real; substantial; existing presently in act having a valid objective existence *as opposed to that which is merely theoretical or possible.*” (emphasis supplied).

¹² Maine Department of Environmental Protection, 2017 “Submission Guidelines - Proposals to Change the Water Quality Classification of Maine Waters” at 1.

¹³ Mr. Martin provided testimony at the June 3rd, 2021 Board of Environmental Protection meeting, all references and direct quotations from him were obtained from a recording of the meeting available from the Board of Environmental Protection.

circumstances warrant an exercise of the mandatory duty imposed on the Board based on the plain language of the law.

ii. The explicit language. During his testimony, Mr. Martin testified that the Department first looks to the text of the statute, the “explicit language” and the use or non-use of explicit language in frequently used phrases throughout the statute to divine legislative intent.

Here, using that approach, the Department should be looking at the terms “must,” “shall” and “actual” in the statute to determine whether there is any use or non-use that would suggest specific exemptions or differing circumstances that could be considered where the *only* condition is explicitly stated uses those terms.

That choice of wording is explicit and exclusive, “actual” water quality is used by the legislature – not modeled or hypothetical or imagined water quality tied to other considerations. Thus here, under Mr. Martin’s guidelines - there is no evidence of any legislative intent that there is any discretion on the part of the Department to use hypothetical modeling or anything else besides actual data showing actual water quality to comply with the statute. Importantly – the Department doesn’t even assert that there is any such legislative intent – only its own “guidance” that it is somehow allowed to divine the legislative intent of 38 M.R.S.A §464 from other water quality statutes. That is not the law here.

iii. Other considerations. Mr. Martin further testified that absent specific provisions there *may* be an argument that indicates a legislative intent to consider other circumstances. Clearly since the Department itself has not asserted ambiguity, this must be what the Department is relying on with its own interpretation of the statute – they appear to ask “Is this what the legislature means when they say “*actual* water quality” and that higher water quality “*must* be maintained and protected” and that the Board “*shall recommend* to the legislature the water be re-classified”? That is, after all the plain language used by the legislature in the statute.

However, here there is no ambiguity or omission. There is no need to go elsewhere to determine what the legislature has done when it uses words like “actual,” “shall,” and “must” their plain meaning and intent are clear. The only circumstance when it is appropriate to consider other laws or divine some other legislative intent is if there is ambiguity or omission in the statute. Here there is none and there are clear words indicating a specific legislative intent.

iv. An important limitation. Nevertheless, the Department frequently, and by its own admission, not only looks at the plain language but also “the circumstances surrounding individual cases.” But it does so with an important caveat. As Mr. Martin further testified to the Board “the department is tasked with interpreting these classification statutes and identifying what the legislature intended when it wrote them. It is *important that the department not interpret these statutes in such a manner that creates inconsistencies or absurdities.*” (emphasis supplied).

v. The result here. Therefore, under the Department’s own stated method of statutory interpretation the Department itself imposes an important limitation to looking beyond the plain language – no inconsistencies or absurdities. Unfortunately, here the Department has used the

premise of looking elsewhere, specifically the NPDES discharge permit program and other environmental statutes, to find a basis to recommend denial. As set forth more fully below this unfortunately has led the Board into the “inconsistent and absurd” territory it is now faced with. On one hand the plain, mandatory language of the statute, on the other, the Department’s justification, not only in some cases outside the written mandates of the law, but those that will lead to the very inconsistencies and absurdities it professes must be avoided.

b. The actual field data show the river segment meets Class B numeric criteria. For example, FOMB has supplied undisputed data that has been collected over and over showing that for the overwhelming majority of time the segment of the Lower Androscoggin meets Class B standards. This includes Class B compliance with specific numeric water quality criteria. These data show that the specific Class B dissolved oxygen (“DO”) standards¹⁴ are met here.¹⁵ Similarly E. Coli requirements for Class B waters¹⁶ also are met here.¹⁷ *These data are undisputed.*

c. The Class B designated use criteria are also met. Again, there is explicit, plain language that states what the designated uses are and what the Department (and the Board) can consider. The explicit classification criteria are as follows:

The Class C, current classification,¹⁸ and the Class B, proposed classification¹⁹ designated uses differ only in whether the habitat supported in the reach is characterized as unimpaired. “Unimpaired” means “without a diminished capacity to support aquatic life.”²⁰ The Lower Androscoggin has and does support unimpaired aquatic life and is not listed as impaired for any relevant parameter. *Again, the Department does not dispute this.*

¹⁴ 38 M.R.S. § 465(3)(B) states “[t]he dissolved oxygen content of Class B waters may not be less than 7 parts per million or 75% of saturation, whichever is higher, except that for the period from October 1st to May 14th, in order to ensure spawning and egg incubation of indigenous fish species, the 7-day mean dissolved oxygen concentration may not be less than 9.5 parts per million and the one-day minimum dissolved oxygen concentration may not be less than 8.0 parts per million in identified fish spawning areas.”

¹⁵ See: FOMB Proposal Exhibit 27.

¹⁶ 38 M.R.S. § 465(3)(B) states that “[b]etween April 15th and October 31st, the number of Escherichia coli bacteria in these waters may not exceed a geometric mean of 64 CFU per 100 milliliters over a 90-day interval or 236 CFU per 100 milliliters in more than 10% of the samples in any 90-day interval.

¹⁷ See: FOMB Proposal Exhibit 26.

¹⁸ 38 M.R.S. § 465(4)(A) states “Class C waters must be of such quality that they are suitable for the designated uses of drinking water supply after treatment; fishing; agriculture; recreation in and on the water; industrial process and cooling water supply; hydroelectric power generation, except as prohibited under Title 12, section 403; navigation; and as a habitat for fish and other aquatic life.”

¹⁹ 38 M.R.S. § 465(3)(A) states “Class B waters must be of such quality that they are suitable for the designated uses of drinking water supply after treatment; fishing; agriculture; recreation in and on the water; industrial process and cooling water supply; hydroelectric power generation, except as prohibited under Title 12, section 403; navigation; and as habitat for fish and other aquatic life. *The habitat must be characterized as unimpaired.*” (emphasis supplied).

²⁰ 38 M.R.S. § 466(11).

d. The Class B aquatic life standard is also met. Extensive sampling for benthic invertebrates was undertaken during 2021 at FOMB expense. Results from initial and then rapid bioassessments indicate Class B attainment from Brunswick up through Lisbon Falls and possibly further upstream. Detailed microscopy analyses are expected to be completed during late fall and early winter. These results will compliment: (1) DEP's 2010 limited sampling (which found Class C in two impoundments-subject to the impoundment exemptions discussed below and Class B in the free-flowing river); and (2) the 2018 Gomez & Sullivan sampling results below Pejepscot dam (which found Class A macroinvertebrates). DEP has sampled at two sites (one free flowing and one impoundment) in 2021 with the results unknown at this time.

e. The anti-degradation factors are also met here. Further, in determining what uses need to be protected and maintained, the Department may consider, on a case-by-case basis, certain antidegradation factors. Maine statute specifically provides that:

In making its determination of uses to be protected and maintained, the department shall consider designated uses for that water body and:

- (a) Aquatic, estuarine and marine life present in the water body;
- (b) Wildlife that utilize the water body;
- (c) Habitat, including significant wetlands, within a water body supporting existing populations of wildlife or aquatic, estuarine or marine life, or plant life that is maintained by the water body;
- (d) The use of the water body for recreation in or on the water, fishing, water supply, or commercial activity that depends directly on the preservation of an existing level of water quality; [. . .] and
- (e) Any other evidence that, for divisions (a), (b) and (c), demonstrates their ecological significance because of their role or importance in the functioning of the ecosystem or their rarity and, for division (d), demonstrates its historical or social significance.²¹

Here again, the Lower Androscoggin segment meets even these criteria *and the Department does not dispute that it does*. So even if the Department manages to avoid the reality of Class B numeric standards being met by actual field data, there is *no dispute that the designated uses are also consistent with Class B designated uses. This fact, and the department's own statutory interpretation method completely ends any possible further analysis the Department should conduct under the law*. There is absolutely no other indication of legislative intent to indicate it should consider anything other than the actual water quality. That is what is required to conform with the goals of classification standards as explicitly stated by the legislature, nothing more.

f. The unreasonable outcomes when inappropriate considerations are used. The Department did not stop where its own analysis and method dictated it should. Instead, it layered hypothetical modeling results as a surrounding circumstance, even when actual data was and continues to be available. The purpose of the Clean Water Act is to prevent or eliminate water pollution, not to accommodate it by preventing reclassification towards more protective standards. This is particularly so where the basis for denial is a rare or exceptional occurrence

²¹ 38 M.R.S. § 465(4)(F).

such as modeled or imagined maximum pollutant loading. FOMB submits that it is patently unreasonable to use theoretical or hypothetical data that is inconsistent with the reality of actual facts and data to justify deviating from clear and explicit legal requirements. It also leads to an absurd and capricious result – willfully ignoring actual data and reality – and that is exactly the kind of inconsistency and absurd result that the Department itself professes it cannot do.

Legal inconsistencies notwithstanding, the practical effect of this also means that those who have to obtain a permit to degrade water quality, i.e. pollute the river, somehow override the legislative intent to maintain and protect the higher water quality. That is also patently absurd, as set forth below, the Federal Clean Water Act (under which those point source discharge permits were issued) and Maine’s anti-degradation statutes in no way intend for point source or non-point source pollution discharges to provide an exemption from water quality classification mandates.

4. The rationale given by the Department to recommend *against* re-classification is inappropriate and, in some cases, unlawful.

Simply put, the Department’s “interpretation” of the statute is that certain other additional factors must be taken into account or considered. In summary these factors include:

- Under modeled “critical” once-in-a-decade low flow, high temperature conditions, the lower Androscoggin might fail to meet Class B standard,
- Waste discharge permits might have to be altered and might not be allowed at all under Class B designation because of the requirement to consider modeled once-in-a-decade low flow, high temperature conditions,
- Impoundments on the river segment create low dissolved oxygen concentrations, and
- Upstream pollution (point and non-point source discharges) that somehow can prevent lower reaches from being reclassified.

Importantly, none of these factors are appropriate when confronted with a segment of water that actually meets water quality standards and designated uses. Again, there is nothing – *nothing* - in the statute that allows for this and the overwhelming legal basis for both the Federal Clean Water Act and Maine’s Anti-degradation statute explicitly say so.

a. Hypothetical modeling for a once in a decade extreme event does not comply with the statute – even a de facto UAA cannot be used here. Pollution assimilation modeling, the same modeling used for NPDES permitting, cannot be used to avoid re-classification where there is actual data available. The models used and relied upon by the Department are used to minimize harm to aquatic resources when the department permits a pollutant discharge – *not* to determine whether a designated use is present in a particular riverine segment. This is an improper conflation of two very different statutes with two very different purposes and not unsurprisingly leads to inconsistent and absurd results.

- Discharge permit standards emphasize worst case scenarios to protect and build in a margin of safety for discharge permit purposes, unlike re-classification statutes their

purpose is to limit the discharge of pollutants, not to deny reclassification of a riverine segment.

- There is no indication they are or were ever intended to thwart federal and state anti-degradation laws.

Given the extensive reliance on NPDES discharge analysis and criteria the Department appears to be, for all intents and purposes, conducting an internal Use Attainability Analysis (“UAA”) for the purposes of accommodating an improper, non-designated use – the permitted discharge of pollutants to Maine waters. This too is inappropriate, since:

- Even a de facto UAA, a very similar analysis to what the Department appears to be trying to use for the purposes of reclassification, cannot be used for that purpose. A UAA would require among other things findings, specific demonstrations by the Department, and a hearing and is only appropriate in two circumstances:
 1. Whether a designated use is not included in the CWA, or
 2. if removing a designated use.
- Neither circumstance is present here and the Department is not proposing a use or removing one. Instead, it appears to attempt *a UAA type of analysis to avoid its non-discretionary obligations to recommend re-classification*. Even if this method were appropriate there is no underlying actual data used in the Department’s analysis.

Anti-degradation policy is clear under federal and state law – the intentional movement towards improved water quality ensures that water quality is continually improved and that the improvements are maintained, not degraded or held hostage by imagined modeling scenarios.

The Department has also stated that proponents of re-classification must provide water quality data and modeling showing the likelihood of attainment of Class B water quality criteria at maximum licensed loads since the Department “does not foresee the ability to ensure attainment of Class B standards under critical conditions.”²² This is also an absurd requirement - no one operates at maximum licensed loads; rather a large, discretionary buffer is generally built into all discharge permits to avoid violations that may occur under theoretical and extreme conditions. This is a permit requirement to prevent pollutant discharge, not a re-classification requirement involving the collection of actual field data. *Unless all maximum licensed loads are actually discharged simultaneously under critical flow conditions²³ (defined as “7Q10”), there is no way to collect actual data to demonstrate compliance under these conditions.* Thus, DEP is

²² See: The Department’s Triennial Review Recommendations at 59.

²³ To determine if a discharge to waters of the State of Maine could cause or contribute to non-attainment of water quality standards, the Department, relies on its existing statutory authority derived from 38 M.R.S. § 464(4)(D) which states: “Except as otherwise provided in this paragraph, for the purpose of computing whether a discharge will violate the classification of any river or stream, the assimilative capacity of the river or stream must be computed using the minimum 7-day low flow that can be expected to occur with a frequency of once in 10 years.” Thus, in writing a permit the Department typically uses in its reasonable potential analysis a “7Q10” standard, which is the lowest 7-day average that occurs (on average) once every 10 years as the maximum flow of the discharge allowed by permit. There is however, discretion built into the statute for certain toxic substances and nutrients discussed infra at note 26.

requesting an impossible and unnecessary showing, *exactly the kind of absurd result it purports to find as unacceptable.*

b. The existence of waste discharge permits that may need to be altered or not allowed under Class B designation due to modeled results is not a requirement for re-classification. This is a critical flaw in the Department’s reclassification denial. The Department’s analysis must be based on *existing* water quality-not hypothetical modeling with point sources operating at maximum licensed discharge. Further, the Department expressly must *not* take into account industrial discharge capacity needs in determining uses for a water segment reclassification. Indeed, the Board is specifically prohibited from considering maximum licensed loads because both state and federal regulations prohibit consideration of waste discharge or transport as a designated use.

For example, under Maine law the “[u]se of water body to receive or transport waste discharges is not considered for an existing use for the purposes of this anti-degradation policy.”²⁴ Similarly, under federal law: “[i]n no case shall a state adopt waste transport or waste assimilation as a designated use for any waters of the United States.”²⁵

Here, the Department improperly used consideration of the waste assimilative capacity of the river, specifically waste NPDES permitting limits as expressed in point source discharge permits, as part of its re-classification review. *This is expressly prohibited under federal and state statute and regulation.*

c. The fact there exists impoundment conditions that may create low DO conditions or Class C aquatic life presence is not a justification for denying re-classification.

A part of the Department’s analysis of DO deficiency also relied on naturally occurring conditions that exist due to thermal stratification occurring in natural and man-made impoundments. For natural impoundments this is incorrect, Maine statute specifically state “these waters shall not be considered for failing to attain their classification because of their natural conditions.”²⁶ Even in the limited context of hydroelectric dam re-licensing there is no requirement that the numeric water quality standards (specifically DO) be maintained throughout the water column, and in fact that the statute specifically anticipates variations in DO with depth and the resulting compliance or non-compliance impacts due to thermal stratification.²⁷ Further, Maine statute dictates that existing impoundments classified as *C must be improved to the Class B equivalent.*²⁸ In contrast, there is no indication, statutory or otherwise that natural or man-made

²⁴ 38 § M.R.S. § 465(4)(F)(1)(d).

²⁵ 40 CFR § 131.1 (a).

²⁶ 38 § M.R.S. § 464(4)(C) states: “Where natural conditions, including, but not limited to, marshes, bogs and abnormal concentrations of wildlife cause the dissolved oxygen or other water quality criteria to fall below the minimum standards specified in sections 465, 465-A and 465-B, those waters shall not be considered to be failing to attain their classification because of those natural conditions.”

²⁷ See: 38 M.R.S. §464 (13) specifying where DO can and cannot be sample due to depth, inhibited mixing or topographic features.

²⁸ 38 M.R.S. §464(10)(C) states that for Class C impoundments “the changes described in paragraph B, subparagraphs (1) and (2) must be implemented and the resulting improvement in habitat and aquatic life

impoundments, which create unique water quality environments, should serve as the basis for denial of re-classification.

Here again the Department seems to be relying on factors expressly prohibited under, or at the very least inconsistent with the plain language of the statute.

d. Finally, upstream pollution, such as nutrient loading, has no bearing whatsoever on denying reclassification of a specific segment under the Clean Water Act – it would result in exactly the opposite outcome intended.

The State of Maine administers its water quality program under the federal Clean Water Act, and as such the provisions and guidance under the CWA must also be adhered to. Under federal Law the state's responsibilities are explicit: "*The state's designation of those upstream sources should not negatively impact downstream waters.*"²⁹ (emphasis supplied). Therefore, the Department cannot, under any circumstance, use negative impacts of upstream designations as justification for denying re-classification when the standards are met. That would be exactly the kind of "negative impact" the CWA explicitly forbids.

This is further confirmed in EPA Agency Guidance which states: "[n]o waste load allocation can be developed or NPDES permit issued that would result in standards being violated. With respect to antidegradation, that means existing uses must be protected, water quality may not be lowered in [Outstanding Natural Resource Waters], and *in the case of waters whose quality exceeds that necessary for the section 101(a)(2) goals of the Act, an activity cannot result in a lowering of water quality unless the applicable public participation, intergovernmental review, and baseline control requirements of the antidegradation policy have been met.*" (emphasis supplied).

FOMB is unaware that the Department has undertaken any such intergovernmental review, or reviewed whether baseline control requirements of Maine's anti-degradation policy have been met here. It appears that the Department has done just the opposite – used the NPDES discharge requirements and upstream water quality as the basis to deny re-classification to a higher, improved water quality classification downstream. It's clear from both the federal statute and guidance that the intent of the NPDES permit program is not intended to prevent water quality standards from being met or prevent improvement to water quality - here not to allow upstream pollutants to negatively impact the improvement of downstream waters and by extension their potential reclassification to a higher class. Put simply, if the Department, as part of *its* guidance is going to consider other laws in re-classification under a mandatory statute, it must comply with the language and guidance of those other laws to make sure it does not result in an inconsistent or absurd outcome.

e. Accordingly, using the Department's own method of statutory interpretation, and the explicit language of federal and state statute, regulation and guidance – there is no reasonable legal interpretation that would justify denial. There is no dispute over whether the

must be achieved and maintained." Paragraph B governs the non-attainment of Class A and B standards and the reasonable changes that must be implemented to achieve such standards.

²⁹ 40 C.F.R Sec. 131 (b).

Class B standards or the designated uses are being met here. However, the external considerations used by the Department in denying reclassification are not in accordance with the federal and state statute, regulation and guidance or the express purposes that underly those laws. Further, there is no assertion by the Department that the legislature intended to provide an exception for the rationale it has provided. It appears, on closer scrutiny to have done just the opposite. Here the Department's and the Board's inquiry is limited to only limited specific circumstances that must be examined – (1) whether the river segment meets the higher classification and (2) whether the designated uses are consistent with Class B designation and antidegradation laws. That's it. The Department has made no showing that the actual data is disputed or that the designated uses are inconsistent with Class B designation. Instead, it offers justification for denial that is inconsistent with the plain language and purpose of the very statutes and programs it itself administers.

5. There is a better, more practical alternative than exposing the Board to statutory liability.

a. The Department has more discretion under the NPDES point source discharge program to ease the transition to a higher classification standard. As stated above,³⁰ rather than conflate the NPDES program with a non-discretionary statute, FOMB suggests the data, here the information reported by the permittees themselves,³¹ confirm that there is room to adjust those permits so as to ease any economic impact reclassification might have over time. This is because (1) these permits typically have a 5-year time frame; (2) the NPDES permits requirements are based on a worse case discharge scenario; and (3) the Department has the discretion under the statute to adjust the discharge requirements over the permit duration to reflect the actual pollutant discharge, with a smaller, more realistic buffers based on actual discharges. While basing permits on a 7Q10 standard is required there is no apparent reason why licensed discharge loads should better reflect actual discharges with a smaller buffer.³² For example, basing discharge permits on a rolling average or maximum actual discharge plus a reasonable buffer would more realistically reflect actual water quality impairment. Simply put, as long as there is a smaller buffer built in there is always room for expansion, but overall within any given permit period discharge permits would be closer aligned with reality. In this way an abrupt permit impact due to re-classification to a higher Class B (or any other class where there

³⁰ See Paragraph 4 (a) above – NPDES discharge permit standards emphasize worst case scenarios to protect and build in a margin of safety for discharge permit purposes, this margin of safety will need to be adjusted so that dischargers can comply with new Class B water quality standards.

³¹ See: NPDES permit data compiled as Exhibit 40 to FOMB Proposal. The data are reported discharges for one year and typical of annual NPDES discharges.

³² Unlike the mandatory language discussed at length in these comments, 38 §464(4)(D) contains the following *discretionary* language: “The department *may* use a different flow rate only for those toxic substances regulated under section 420 and for those nutrients specified in department rules. To use a different flow rate, the department must find that the flow rate is consistent with the risk being addressed.” (emphasis supplied). Thus, unlike reclassification standards, the department has wide latitude to address nutrient discharges and toxic substances addressed under 38 §420 under different discharge parameters over the term of the permit.

is significant impact on NPDES dischargers) could be avoided and the transition phased in over time.

Stated another way, the Department has more discretion under the NPDES permit program it administers than it does where a mandatory statute requires re-classification under its plain language. FOMB asserts that when a segment is deemed to meet a higher water quality classification, the better approach is to re-classify the segment and take the 5 year NPDES permit window to transition upstream dischargers into compliance, revising the margin or buffer dischargers are permitted under over time, thereby easing the economic impact. FOPR also notes that the upstream NPDES discharge permits in question, are operating on expired permits – making this an ideal time to transition to a higher classification. Eventually dischargers will need to meet Class B standards, the data show that, in most cases, there is ample room under existing discharge requirements to phase this in over the life of the permits.

II. Conclusion.

FOMB had submitted multiple upgrade proposals with actual field data and continues to collect data confirming the Lower Androscoggin meets Class B criteria virtually all of the time. This is probably the fourth Triennial process it has participated in, in addition to numerous other formal and informal presentations to the Department and the legislature. By any reasonable standard, FOMB has exhausted its administrative remedies with the Department in seeking to get this riverine segment reclassified based on actual data collected and the plain language of the statute.

Similarly, the Board is now face to face with a mandatory statute it must either adhere to or risk legal exposure in connection with its final agency action. Unfortunately, the law does not permit the kind of justification the Department is attempting, presumably to accommodate upstream pollutant dischargers who are resisting re-classification on the basis of its potential economic impact. Environmental regulatory compliance is a cost of doing business – that has been the case since the Clean Water Act and Maine’s anti-degradation water quality laws were enacted.

Here, however, the Department has (and has had) other options rather than putting the parties and the Board in this position. It can recommend reclassification of the segment to Class B and use the Department’s discretion under the NPDES program, which it administers, to ease the transition for upstream dischargers to come into compliance with Class B standards. This is not to say FOMB is suggesting the Department abandon the requirements of that program either, allow non-compliance under those permits. Instead, it appears the actual data, reported by the very permittees opposed to re-classification, show there is room to adjust and gradually phase their permits into compliance with the higher classification. Particularly now, where these permits have not been renewed.

The river currently attains the higher bacteria, aquatic life and dissolved oxygen standards set forth in the Class B designation. As noted by the Department, it has no reason to question the data; and it has even relied upon data supplied by FOMB in prior reclassifications. There is also no dispute as to whether the designated uses of the segment of the river are somehow inconsistent with Class B designated uses or any antidegradation provisions. There is also no assertion that the legislature intended anything other than this result and it is confirmed using the

statutory analysis of the Department's own expert. Further, the Department has not legally justified its deviation from that statutory language with the reasons it has given.

Therefore, under the circumstances presented here, the actual data obtained and the plain language and purpose of the re-classification statutes, the Board must recommend to the legislature the re-classification of the Lower Androscoggin from Merrymeeting Bay to Worumbo dam from Class C to Class B.

Respectfully submitted this 25th day of October, 2021.



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Counsel to Friends of Merrymeeting Bay

October 25, 2021

Susanne Meidel
Maine Department of Environmental Protection
Bureau of Water Quality
17 State House Station
Augusta, ME 04333

RE: Penobscot Indian Nation Comments to BEP on ME DEP's Triennial Review of Water Quality Standards and Reclassification

The Penobscot Indian Nation (PIN) is submitting the following written comments in support of Maine Department of Environmental Protection's 2021 Triennial Review of Maine's Water Quality Standards and reclassification proposals for the Penobscot River basin.

- 1) Cambolasse Stream (Upgrade C to B) – Annual water quality monitoring conducted by the PIN Water Resources Program shows that class B water quality criteria are met at this stream segment. The closure of the sawmill and business upstream, and a return from an impoundment to a free-flowing stream have led to water quality improvements.
- 2) East and West Branch Penobscot River tributaries in KWWNM (A to AA) – The creation of the KWWNM provides additional protections to these tributaries that flow into AA waters of the East and West Branch Penobscot. These waters are important and high value for cold water fish spawning including wild brook trout and Atlantic salmon
- 3) Medunkeunk Stream tributaries – (B to A). This would help maintain water quality in these tributaries as well as the Class A Medunkeunk Stream.
- 4) Schoodic Stream and Scutaze Stream tributaries – These waters are important for cold water fish spawning for Atlantic salmon.
- 5) West Branch Penobscot River segments and tributaries (A – AA). These waters are very important to the history and culture of the Penobscot Nation with significant ecological, scenic, social, and recreational importance. These waters support high quality native brook trout and landlock salmon habitat. This upgrade would prevent future hydropower development that would degrade these uses.

PIN also supports the initial proposals to upgrade Nahmakanta Stream and Houston Brook and tributaries from A to AA. These waters are important for the restoration and protection of wild brook trout and salmon.

PIN also supports the ME DEP using the EPA promulgated year-round applicable bacteria criteria for B, C, SB and SC waters in Indian lands and encourages Maine to have year-round bacteria criteria for all waters. Use of waters by Tribal citizens is not a seasonal occurrence. Tribal people use water throughout the year for gathering wild foods, ceremonial purposes, and other cultural uses. Bacteria criteria should be protective of these uses and the health of the people that carry out those uses.

PIN also supports the proposed change in the upper and lower pH range from 6.0 – 8.5 to EPA's recommended range of 6.5 to 9.0 to be protective of developing salmon eggs.

PIN also supports the proposal to expand the reportable bacteria units to MPN. The PIN Water Resources Program laboratory uses the US EPA approved IDEXX Coli-lert method that provides MPN per 100 ml results and therefore it is important that we are able to report data with correct units.

Thank you for the opportunity to comment on the 2021 Triennial Review of Water Quality Standards and Stream Reclassification. Feel free to contact me to discuss our comments in more detail.

Sincerely,

Daniel H. Kusnierz
PIN Water Resources Program Manager



May 25, 2021

Susanne Meidel
Maine Department of Environmental Protection
Bureau of Water Quality
17 State House Station
Augusta, ME 04333-0017

Dear Ms. Meidel:

ND Paper is providing these comments in response to the Maine Department of Environmental Protection (MEDEP) request for comments as part of the Triennial Review of Water Quality Standards. ND Paper's comments are in **opposition** to the request by some proponents to upgrade a section of the lower Androscoggin River from Class C to Class B.

We all recognize that the lower Androscoggin River demonstrates significantly improved water quality. An classification upgrade to Class B; however, establishes a directive to the MEDEP to implement controls in order to meet Class B standards at all times and under all conditions. MEDEP has evaluated this directive and concluded that there is no feasible approach to ensure attainment of Class B dissolved oxygen criteria in the lower Androscoggin River. Consequently, the MEDEP did not include this upgrade in its Triennial Review package. ND Paper agrees with this evaluation. An upgrade will not guarantee that the lower Androscoggin River will meet Class B water quality standards, but it will guarantee significant costs on municipalities, industrial facilities, and hydro facilities throughout the entire watershed.

During the 130th Legislature, many comments were submitted to the Joint Standing Committee for Environment and Natural Resources in opposition to LD 676 "An Act to Reclassify Parts of the Androscoggin River to Class B." By way of this letter, ND Paper is attaching the following documents for inclusion in the Triennial Review process:

- 5/3/2021 letter to the Joint Standing Committee on Environment and Natural Resources from Scott Reed, Manager of Environmental and Public Affairs, ND Paper Inc.
- 5/3/2021 letter to the Joint Standing Committee on Environment and Natural Resources from members of the 130th Maine Legislature.
- 5/3/2021 letter to the Joint Standing Committee on Environment and Natural Resources from Senator Jeffrey Timberlake of Senate District 22.
- 5/3/2021 letter to the Joint Standing Committee on Environment and Natural Resources from Patrick Strauch of the Maine Forest Products Council.

- 5/3/2021 letter to the Joint Standing Committee on Environment and Natural Resources from Ben Gilman, Maine State Chamber of Commerce.
- 4/30/2021 letter to the Joint Standing Committee on Environment and Natural Resources from Dean Gilbert of the International Brotherhood of Electrical Workers.
- 5/3/2021 letter to the Joint Standing Committee on Environment and Natural Resources from Kevin Averill, President, United Steel Workers Local 900.

ND paper agrees with the Department that there is no feasible approach to ensure attainment of Class B standards in the lower Androscoggin River We appreciate the Department's consideration of these comments as part of the Triennial Review process.

Sincerely,



Scott Reed, Manager, Environmental and Public Affairs

ND Paper Inc. – Rumford Division

35 Hartford Street, Rumford ME 04276

Office: 207-369-2203 | Cell: 207-446-0355 | email: scott.reed@us.ndpaper.com



ND PAPER RUMFORD DIVISION

35 HARTFORD STREET, RUMFORD, ME 04276



**Testimony of ND Paper before the Joint Standing Committee on Environment and Natural Resources
In Opposition to LD 676 “An Act to Reclassify Part of the Androscoggin River to Class B”
May 3, 2021**

Senator Brenner, Representative Tucker, and members of the Joint Standing Committee on Environment and Natural Resources, my name is Scott Reed. I am the Manager of Environmental and Public Affairs for the ND Paper mills in Rumford and Old Town. My testimony today is in **opposition** to LD 676. This bill will not guarantee that the lower Androscoggin River will meet Class B water quality standards, but it will guarantee significant costs on municipalities, industrial facilities, and hydro facilities throughout the entire watershed.

A few key points regarding LD 676:

- This bill does not only target the lower Androscoggin River, this is a de facto upgrade of the entire river.
- This bill is portrayed as aspirational; however, it has significant consequences without any guarantee of success.
- The Maine Department of Environmental Protection (MEDEP) has concluded that there is no feasible approach to ensure attainment of Class B dissolved oxygen criteria in the lower Androscoggin River. Based on these studies, the Department does not recommend that this section of the Androscoggin River be upgraded to Class B at this time.
- LD 676 is an upgrade of water quality in name-only; however, there are real regulatory consequences. The Maine DEP concluded that as a consequence of the upgrade to Class B, reductions in discharge limits will be required for both municipal and industrial dischargers. These substantial reductions come at a significant cost – without any guarantee of success.
- This bill proports to improve the river’s water quality and economic growth potential for wealthy, urban and coastal communities on the lower Androscoggin; however, this arguable goal comes at the expense of struggling, rural communities upstream.

ND Paper Background

ND Paper is committed to environmental sustainability as a cornerstone of its 100-year vision. Under ND Paper ownership, the Rumford and Old Town mills are being reconfigured to operate at substantially lower manufacturing costs compared to ND’s predecessor companies. To date, ND Paper has invested more than \$250 million in these mills, and its economic impact in Maine includes:

- Direct employment of 684 hourly and salaried workers earning a combined annual payroll of about \$70 million including benefits
- Further indirect and induced job creation equivalent to 2,189 and 1,341 estimated positions, respectively; indirect jobs are those created in the supply chain, while induced jobs are created as a result of mill employee and vendor employee spending.
- Each year, the Rumford Mill spends approximately \$200 million directly in the State of Maine for materials procurement, payroll, and taxes; the Old Town mill will spend an additional \$70 million. In total, this equals \$270 million of direct spend into the Maine economy annually.

The Committee should be aware that the pulp and paper industry serving the printing and writing markets has not recovered from the historic and devastating crash in most grades of paper that began at the start of the pandemic. In the midst of this dire environment, ND Paper continued to invest in its Maine facilities to greatly improve their long-term sustainability and viability; however, there have also been difficult, but necessary decisions due to the impacts of the pandemic.

MEDEP Findings for the Lower Androscoggin

In an October 2019 letter to Senators Libby and Claxton, sponsors of LD 676, the MEDEP provided a thorough review and analysis of the potential upgrade of the lower Androscoggin River. The MEDEP provided the following summary of their findings:

“The existing models provide sufficient information to support the Department’s previous assessment that there is no feasible approach to ensure attainment of Class B dissolved oxygen criteria in the lower Androscoggin River. Based on these studies, the Department does not recommend that this section of the Androscoggin River be upgraded to Class B at this time.”

The MEDEP’s letter also states that during critical water quality conditions of low river flow, high water temperature, and maximum licensed discharge from the Publicly Owned Treatment Works, the model predicts dissolved oxygen concentrations will be below the Class B criterion of 7.0 mg/L in eight of the twelve river segments from the confluence with the Little Androscoggin River in Auburn to the Brunswick-Topsham Dam. Predicted dissolved oxygen concentrations were below the Class B criterion of 7.0 mg/L for all segments from the Worumbo Dam to the Brunswick-Topsham Dam. This model run was based on the least conservative measured dissolved oxygen boundary condition of 7.69 mg/L. When using a modeled dissolved oxygen boundary condition of 7.0 mg/L all twelve segments indicate non-attainment. When using the most appropriate boundary condition of 5.0 mg/L that reflects the current Class C dissolved oxygen criteria of the upper Androscoggin and the Little Androscoggin River that comprise the boundary condition, all twelve segments indicate non-attainment, with five of the segments more than 0.5 mg/L below the Class B criteria. Non-attainment is primarily driven by periphyton respiration during non-daylight hours. (Periphyton are algae that grow attached to submerged objects such as logs, rocks, plants and debris.)

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The MEDEP also evaluated completely removing the discharges from the Lewiston-Auburn Water Pollution Control Authority and the Lisbon Wastewater Treatment Facility. The water quality model predicted dissolved oxygen concentrations would still be below the Class B criterion of 7.0 mg/L in two of the twelve freshwater river segments based on the least conservative measured dissolved oxygen boundary condition of 7.69 mg/L.

Therefore, an upgrade to Class B will immediately put all licensed facilities on the river into non-compliance. MEDEP will be obligated to open all permits and initiate a watershed-wide permitting process. The outcome of this process is uncertain as MEDEP has stated that there is not a feasible approach to attainment of Class B standards at all times.

MEDEP Findings for the Upper Androscoggin

The current water quality classification for the Androscoggin River upstream of Gulf Island Dam in Lewiston is Class C. The MEDEP has stated that as a result of LD 676, the Class C river water passing through the dam must meet Class B as it enters the boundary of the lower Androscoggin river segment. Therefore, LD 676 becomes de facto upgrade of the entire river to Class B.

What are the consequences this de facto upgrade for upstream facilities? MEDEP's water quality modeling determined that the ND Paper Mill in Rumford will require a 54% reduction in weekly BOD license limits as a result of LD 676. Similar reductions will be required at the Gorham, NH mill and the Jay mill. Alternative license limit reductions could possibly be combined with additional oxygen injection in Gulf Island Pond.

ND Paper Cost and Economic Impacts

A statistical analysis demonstrates that the ND Paper Rumford Mill cannot consistently maintain compliance with a 54% reduction of its weekly BOD discharge limit. As shown in Figure 1, this analysis indicates that ND Paper's confidence margin will decrease from the current level of >99%, to a level of 85%. This equates to 8 weeks of projected non-compliance per year or 2 - 3 weeks of non-compliance during the 12 week summer season.

ND Paper's 34 million gallon per day effluent treatment plant currently operates at an average treatment efficiency of 94%. The activated sludge waste treatment process relies on carefully managed microbiology to metabolize the waste byproducts. This system is robust but also has inherent variation due to the dynamic nature of the process (Figure 2).

Figure 1

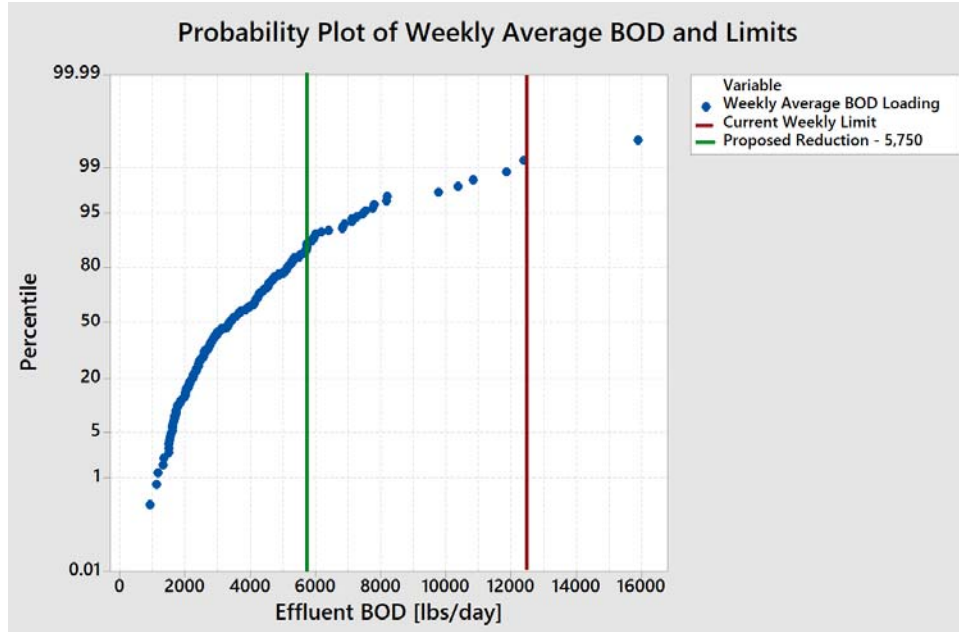
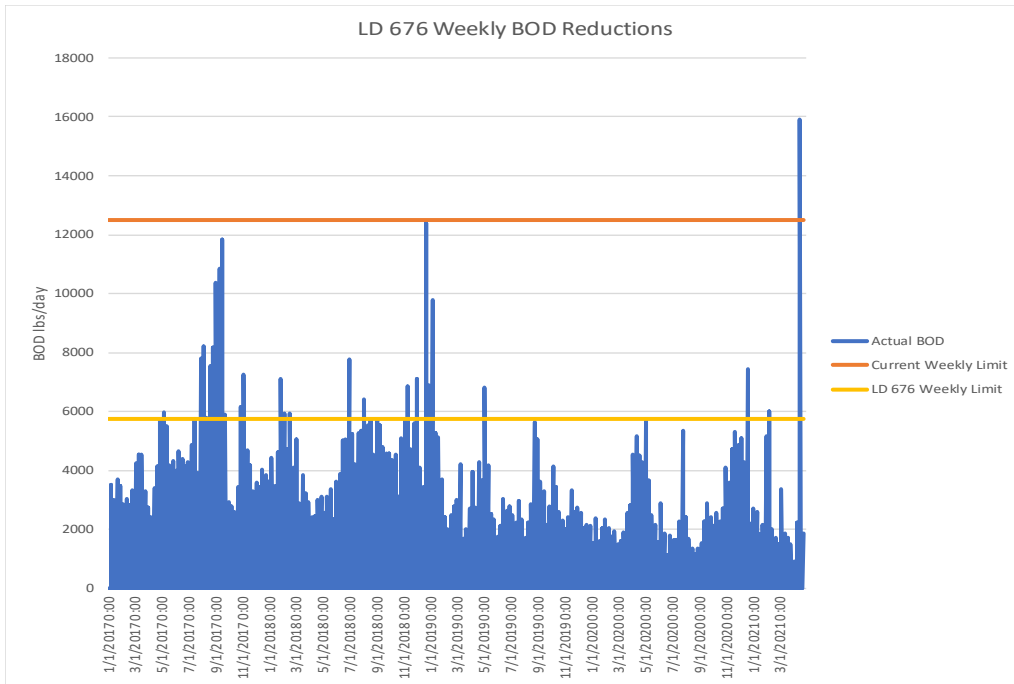


Figure 2



This level of projected non-compliance is not acceptable; therefore, ND Paper would be compelled to take action to ensure sustainable compliance. Given this situation, ND Paper is faced with undesirable options: curtail production or install capital improvements to achieve compliance with lower discharge limits.

Production curtailment to reduce BOD discharge is not a sustainable model for the business. Capital improvements require further study; however, the technology options are expected to require a combination of pre-treatment technology in combination with wastewater treatment plant modifications and/or tertiary treatment. If it is even feasible to achieve a 54% reduction in BOD limits, the capital costs are projected to be in the tens of millions of dollars. These capital options would be further escalated to account for any potential future growth at the mill.

Oxygen Injection at Gulf Island Pond

Upstream of the LD 676 proposed upgrade, the Gulf Island Pond Oxygenation Partnership (GIPOP) currently operates an oxygen injection system. GIPOP is comprised of ND Paper (Rumford), Pixelle (Jay), White Mountain Paper (Gorham, NH), and Brookfield (Gulf Island Dam). The MEDEP also evaluated additional oxygen injection at Gulf Island Pond (GIP), in combination with reduced license limits, as a possible means to increase the dissolved oxygen levels in order to achieve Class B entering the boundary of the lower river segment.

The DEP's initial evaluation calls for an additional 13,000 to 19,000 lbs per day of oxygen injection. This represents an average increase of 35% over current rates. To accomplish this additional injection, the partnership estimates additional capital upgrades of several hundred thousand dollars. There will also be hundreds of thousands of dollars per year in additional operating costs.

The existing injection system was designed for the purpose of increasing the dissolved oxygen levels in the deepest portions of Gulf Island Pond to achieve Class C standards. It was not installed or designed for the purpose of increasing downstream dissolved oxygen levels. In addition to whether this approach would produce the desired dissolved oxygen levels downstream, there are many technical concerns as well. For example, the water column in GIP already reaches maximum dissolved oxygen saturation much of the time, thereby, limiting the ability to physically increase the dissolved oxygen levels in the water, which is expected to meet Class B at the discharge of the dam.

This oxygen injection regime was modeled as a means of meeting Class B standards at the Gulf Island Dam boundary location between Class C and Class B. No level of oxygen injection at this location is expected to achieve Class B standards at all downstream locations.

Oxygen Injection in the Lower Androscoggin

Given the DEP's evaluation that the lower Androscoggin River will not meet Class B water quality standards at all times, and that no level of reduction of discharges will achieve Class B attainment, it stands to reason that oxygen injection could be required at all locations that do not attain the Class B dissolved oxygen standard of 7 mg/L. MEDEP's lower Androscoggin report, indicated that 2 to 12 river

segments will not be in attainment. Compliance with the Clean Water Act could require communities and facilities that cause or contribute to non-attainment in the lower Androscoggin to install oxygen injection systems at each location with low dissolved oxygen.

Conclusion

ND Paper is committed to environmental sustainability as a cornerstone of its 100-year vision. However, this bill will not guarantee that the lower Androscoggin River will meet Class B water quality standards, but it will guarantee significant costs on municipalities, industrial facilities, and hydro facilities throughout the entire watershed.

ND Paper opposes LD 676 and urges the Committee to vote Ought Not to Pass.

Scott Reed, Manager, Environmental and Public Affairs

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Senator Stacy Brenner
Representative Ralph Tucker
Environment & Natural Resources Committee
c/o Legislative Information Office
100 State House Station
Augusta, ME 04333

Dear Senator Brenner, Representative Tucker and members of the Joint Standing Committee on Environment and Natural Resources:

We, the undersigned members of the 130th Maine Legislature are writing to you to express our opposition to L.D. 676, *An Act to Reclassify parts of the Androscoggin River to Class B*. The bill proposes to short-circuit Maine's existing and public triennial water reclassification regulatory process by asking the Legislature to substitute its judgement for the Department of Environmental Protection's technical expertise and experience and adopt an upgrade of the lower Androscoggin River from Class C to Class B without satisfying all of the triennial process and criteria for such an upgrade.

The bill seeks to upgrade the river beginning in Lewiston down to Merrymeeting Bay in Brunswick. As recently as 2019, the Department opposed a previous attempt to do an upgrade via a political end-run around the technical process, stating that it had determined that "there is no feasible approach to ensure attainment of Class B dissolved oxygen criteria in the lower Androscoggin River." The proponents of this political usurpation of an agency responsibility have known for years what the Department requires in order to recommend a river upgrade. Their efforts have not met that standard previously and do not meet it now, which is why they are trying to do so via this bill.

It is our understanding that the Department's study of the issue this year has revealed that the lower Androscoggin River still does not meet Class B standards and reclassifying it now would put all existing dischargers into non-compliance. We are concerned that an arbitrary decision to upgrade will stifle economic development all along the length of the river, including the river above Lewiston – our communities, many of which have been left behind by southern Maine's economic boom. We are also concerned that many proponents have been led to erroneously believe that the bill is aspirational and that there will be no meaningful impacts, when in fact the Department has been clear to anyone who inquires, that it **MUST** and **WILL** regulate all discharges to achieve and maintain the applicable water quality classification. We fear that with the entire river in noncompliance as a result of this bill, no new or expanded discharges will be allowed. Will announced expansions of Maine businesses in towns along the river be cancelled?

The impacts of the upgrade reach far beyond the lower Androscoggin. The bill becomes a de facto upgrade for the entire river. The Department has indicated that if this bill passes, it will require upstream discharges to take significant and expensive steps to ensure compliance with the Class B standard; even though DEP has demonstrated through modeling that there is no level

of reduction from any facility upstream or downstream that will achieve Class B standards at all times.

We also understand that the Department has recently and publicly opened its latest triennial review regulatory process. While DEP has NOT proposed to reclassify the lower Androscoggin River in its latest series of proposals, the proponents of this bill have submitted their proposal and supporting documentation to the Department for consideration. Their acknowledgement of the existing regulatory process should be enough for this committee to reject L.D. 676. We urge the Committee to uphold Maine's existing regulatory processes and vote this bill Ought Not To Pass.

Sincerely,



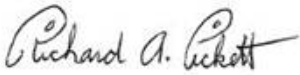
Lisa Keim
State Senator



Russell Black
State Senator



Nathan Wadsworth
State Representative



Richard Pickett
State Representative



Sheila Lyman
State Representative



Daniel Newman
State Representative



Jeffrey Timberlake
State Senator



Thomas Skolfield
State Representative



Josanne Dolloff
State Representative

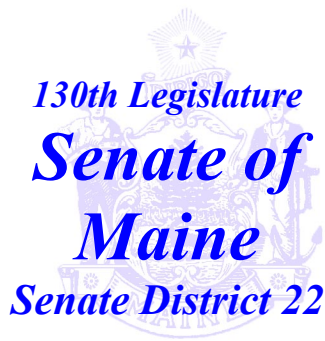


Joshua Morris
State Representative



Randall Hall
State Representative

Cc: Governor Janet Mills
Commissioner Melanie Loyzim



*Senator Jeff Timberlake
Senate Republican Leader
3 State House Station
Augusta, ME 04333-0003
(207) 287-1505*

LD 676, “An Act To Reclassify Part of the Androscoggin River to Class B”

Joint Standing Committee on Environment and Natural Resources May 3, 2021

Senator Brenner, Representative Tucker and Distinguished Members of the Joint Standing Committee on Environment and Natural Resources:

I am Jeff Timberlake and I represent Senate District 22, which includes the Towns of Durham, Greene, Leeds, Lisbon, Litchfield, Sabattus, Turner, Wales, and Wayne. I am offering testimony today in opposition to LD 676, “*An Act To Reclassify Part of the Androscoggin River to Class B.*”

Although I signed on as a cosponsor of this proposal, I have since come to realize a number of ramifications and negative impacts passage of the bill would have on several of the municipalities along the Androscoggin River; so at this time I will not be supporting this bill as written.

Decisions regarding reclassification of the River should be left in the hands of the Department of Environmental Protection (DEP) and the background, knowledge and expertise they possess. Attempts have been made in the past to enact legislation to reclassify; and they, too, have been rejected. The DEP has conducted several studies over the years to determine if sections of the River meet criteria for reclassification and the standards have never been consistently high enough, so to speak, to make the change. A reclassification at this time would have negative consequences to municipalities and commercial facilities along the River.

Should LD 676 be enacted, the financial implications will put a tremendous strain on many communities who will then have to bear the costs of upgrades. I understand there have been discussions regarding the possibility of federal funds being allocated to assist with upgrades and other costs should there be issues with compliance; however, serious consideration needs to be taken because simply upgrading facilities may not be the only answer.

I urge you to follow the lead of the experts on this matter, the Department of Environmental Protection, and vote Ought Not To Pass.

Thank you for your time and consideration.



Maine Forest Products Council

The voice of Maine's forest economy

Companies represented on the MFPC Board

American Forest Mgmt.
Baskahegan Co.
BBC Lands LLC
Bradbury Forest Mgmt.
Columbia Forest Prod.
Cross Insurance
Family Forestry
Farm Credit East
Fontaine Inc.
H.C. Haynes
Huber Resources
Innovative Natural Resource Solutions
J.D. Irving
Katahdin Forest Mgmt.
Key Bank
LandVest Inc.
Limington Lumber
Louisiana Pacific
Maibec Logging
ND Paper
Nicols Brothers
Pingree Associates
Pixelle Specialty Sol.
Pleasant River Lumber
Prentiss & Carlisle
ReEnergy
Richard Wing & Son
Robbins Lumber
Sappi North America
Southern Maine Forestry
Stead Timberlands
TD Bank
Timber Resource Group
Timberstate G.
Wadsworth Woodlands
Wagner Forest Mgt.
Weyerhaeuser

Testimony opposing LD 676 An Act To Reclassify Part of the Androscoggin River to Class B

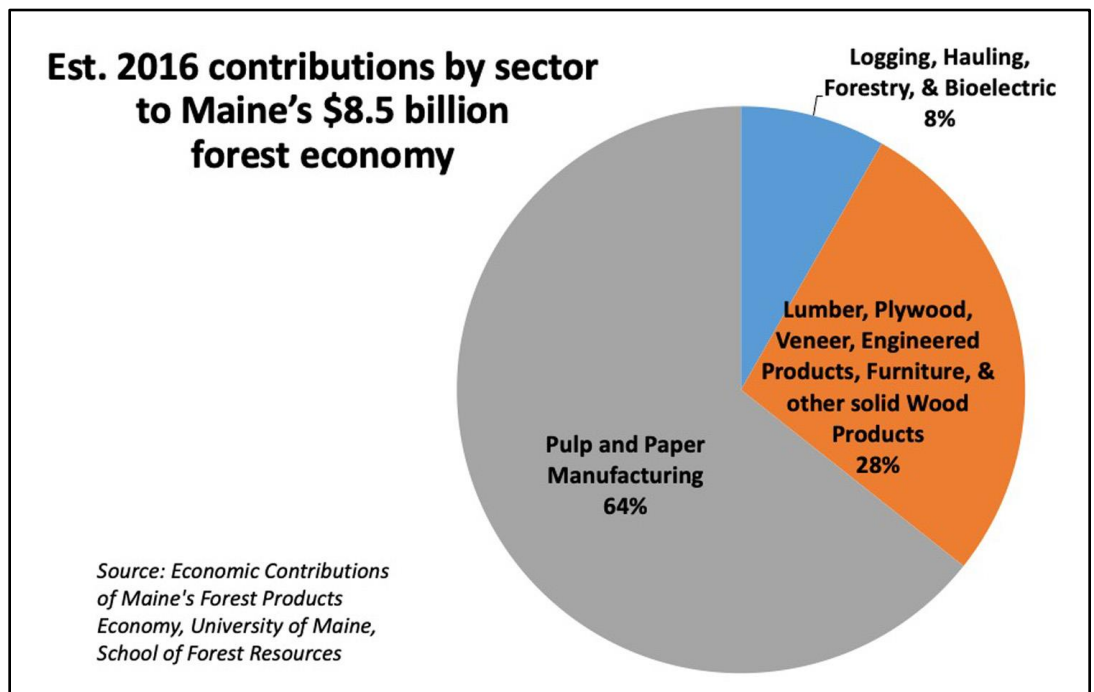
May 3, 2021

Patrick Strauch, Executive Director

Senator Brenner, Representative Tucker and distinguished members of the Environment and Natural Resources Committee, I am Patrick Strauch from Exeter, Maine, and the executive director of the Maine Forest Products Council (MFPC).

BRIEF INDUSTRY OVERVIEW

I represent Maine's forest product industry, which represent more than \$8 billion in economic contribution to the state's economy, and more than 33,000 direct and indirect jobs.



Even with the mill closures since 2014, the paper industry still plays a very significant role in Maine, especially in rural areas.

Six major paper mills remain and two, ND Paper in Rumford and Pixelle in Jay, are on the Androscoggin River.

The Forest Opportunity Roadmap Project has set a goal to advance Maine's economic contribution to \$12 billion dollars in 2025. Prior to COVID we were on our way with over a billion dollars in capital investments a 30% increase in pulpwood consumption by Maine mills in 2019.

The forest industry was classified as an essential industry during the COVID epidemic, and this important economic engine helped Maine families despite dramatic decrease in print paper demand and the eruption of the Pixelle Digester. These factors are still influencing operations at these facilities and we should be cautious that regulatory stability is maintained during this time of recovery.

TECHNICAL CHALLENGES FOR RECLASSIFICATION

These mills are meeting the standards of class C waters on a complicated river ecosystem through extraordinary measures. However, MEDEP has opposed previous upgrade proposals to upgrade the river to class B status because there was no feasible approach to ensure attainment of Class B dissolved oxygen criteria in the lower Androscoggin river.

There are several reasons why the DEP and the Legislature do not reclassify a waterbody unless it meets the new classification:

- It puts any discharger to that waterbody in immediate noncompliance.
- It prohibits any new or increased discharge to that waterbody;
- It usually requires a change to discharge licenses; and
- A change in a license requires costly expenditures for equipment or process changes to meet the new license conditions.

DEP modeling indicates that the elimination of all discharges to the Androscoggin River will still not meet Class B water quality standards in the lower Androscoggin at all locations at all times.

MFPC opposes LD 676 because even the elimination of all discharges to the Androscoggin River will not improve water quality to Class B standards. It will simply increase costs for the mills, which already operate within existing discharge limits.

We urge you to vote **Ought Not To Pass** on LD 676.

Testimony of
Ben Gilman for
The Maine State Chamber of Commerce
In opposition to
L.D. , 676 An Act To Reclassify Part of the Androscoggin River to Class B

May 3, 2021

Senator Brenner, Representative Tucker, members of the Joint Standing Committee on Environment and Natural Resources, my name is Ben Gilman, I am from Gorham and I represent the Maine State Chamber of Commerce, a statewide business organization made up of both large and small businesses, here to provide you with our testimony in opposition to **L.D. , 676 An Act To Reclassify Part of the Androscoggin River to Class B**

L.D. 676, seeks to reclassify the lower portion of the Androscoggin River. Maine's business community supports a clean and healthy environment supported by a robust regulatory framework that ensures we are stewards of our most precious resources. Our environmental policies should be based on science – including our river classifications. The State of Maine has always made a river classification based on science. The Department of Environmental Protection oversees the water classification of Maine's rivers including the lower Androscoggin and at this time, as we have heard today, the department does not believe that there is not a need for reclassification of the lower Androscoggin. The proposed reclassification is not based in scientific results and the business community needs consistency in its river classification regulations based in science. There are many jobs that can be impacted by changes to the river's classification and that is why it is best left up to the regulators within DEP. The Maine State Chamber of Commerce opposes the reclassification of the lower Androscoggin at this time due to the inconsistency it would create in how our river classification system is currently administered.

Thank you for the opportunity to provide you with our testimony.

Dear Senator Brenner, Representative Tucker and members of the Joint Standing Committee on Environment and Natural Resources:

I am Dean Gilbert and I am providing testimony in opposition to L.D. 676, *An Act to Reclassify parts of the Androscoggin River to Class B* on behalf of the I.B.E.W. (International Brotherhood of Electrical Workers) representing hundreds of workers up and down the Androscoggin river. We oppose this bill because it ignores Maine's existing triennial water reclassification regulatory process and asks the Legislature to make a political decision to upgrade the classification of the lower Androscoggin River, whether or not the DEP experts think it qualifies for such an upgrade. The DEP's experience and technical expertise should be the primary evaluation of whether water reclassifications should become law.

The bill ignores DEP's past and present work in assessing the water quality of the lower Androscoggin River. In 2019, the DEP said that "there is no feasible approach to ensure attainment of Class B dissolved oxygen criteria in the lower Androscoggin River." The proponents of LD 676 have known for years what is required to receive a DEP recommendation for a river upgrade. The failure of the lower Androscoggin to repeatedly fail to receive such a recommendation is based on DEP's best science and the Legislature should not ignore that science and replace DEP's judgement with its own.

Some supporters of this bill will say that the bill is aspirational and that there will be no meaningful impacts. The DEP disagrees and points out that they are required to regulate all discharges to achieve and maintain the applicable water quality classification. Reclassifying the lower river by this bill would put the entire lower river, much of the upper river, and all associated dischargers into non-compliance. DEP has informed affected parties that if this bill passes, upstream dischargers will be required to take significant and expensive steps to ensure compliance with the Class B standard – but DEP has also said there is no level of reduction from any facility upstream or downstream that will achieve Class B standards at all times in the lower river. If nearly the entire river is in noncompliance, how can ANY new or expanded discharges be allowed? This bill represents an effort by affluent southern and coastal Mainers to impose unnecessary and unwarranted restrictions on poorer rural Mainers and our communities. We hear a lot of statements about environmental and economic justice. Where is that justice evident in this bill?

We urge the Committee to uphold Maine's existing regulatory processes and vote this bill Ought Not to Pass.

Dear Senator Brenner, Representative Tucker and members of the Joint Standing Committee on Environment and Natural Resources:

I am Kevin Averill a resident of Mexico. I am the president of USW Local 900 at Nine Dragons paper company with 450 union employees that range from paper makers, boiler operators, Hyster operators, maintenance mechanics, and electrical and instrumentation technicians, and other supporting staff. Thanks to the efforts of our members, our mill is just now coming out of the most difficult year in my experience. We are proud of the work that we do and the economic support we provide to our families, our communities, and our local economy. I am providing testimony in opposition to L.D. 676, *An Act to Reclassify parts of the Androscoggin River to Class B* because this bill threatens our mill's recovery, its future, and the future of our members and their families. We oppose this bill because asks the Legislature to decide to upgrade the classification of the lower Androscoggin even though DEP has repeatedly concluded that the lower river does not qualify for such an upgrade. The Legislature should not brush aside DEP's experience, its technical expertise, and the best available science, which is what should be used to determine whether water reclassifications should become law.

Some may say that the bill is aspirational and that there will be no meaningful impacts. The DEP has rejected that argument as they are required to regulate all discharges to achieve and maintain the applicable water quality classification. Reclassifying the lower river by this bill would put the entire lower river, much of the upper river, and all associated dischargers into non-compliance. DEP has informed affected parties that if this bill passes, upstream dischargers will be required to take significant and expensive steps to ensure compliance with the Class B standard – but DEP has also said there is no level of reduction from any facility upstream or downstream that will achieve Class B standards at all times in the lower river.

In 2019, the DEP said that “there is no feasible approach to ensure attainment of Class B dissolved oxygen criteria in the lower Androscoggin River.” The proponents of LD 676 are asking you to ignore DEP's opinion and accept their own. The failure of the lower Androscoggin to repeatedly fail to receive such a recommendation is based on DEP's best science and the Legislature should not substitute its judgement for DEP's.

If nearly the entire river is in noncompliance, how can ANY new or expanded discharges be allowed? This bill represents an effort by affluent southern and coastal Mainers to impose unnecessary and unwarranted restrictions on poorer rural Mainers and our communities. We hear a lot of statements these days about environmental and economic justice; but this bill is a rejection of such ideas.

We urge the Committee to uphold Maine's existing regulatory processes and vote this bill Ought Not to Pass.

Sincerely, Kevin Averill USW Local 900 President