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6/5/22

Via Email

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Kyle,

On June 3rd I emailed you a note to ensure you were aware the Lower Androscoggin River has been upgraded to Class B as this will influence Water Quality Certifications (WQC) in the various FERC relicenses for Brunswick, Pejepscot and Worumbo dams. I enclosed our new Spring FOMB newsletter with an article on the upgrade in case you were not familiar. You responded:

“Thank you. I am aware of the pending change. It will become effective on August 8th. The change will not apply to the Pejepscot WQC, which will be issued next week.”

To which I replied that evening:

“Surely you have the flexibility to make that change Kyle, since I believe the WQC runs with the FERC license in terms of longevity? Obviously makes no sense to have a long-term Class C carve out in the middle of Class B especially with the ongoing effort to treat the river in a more coordinated and holistic way. Unless you can make up for it with Worumbo and Brunswick, but that would probably mean proportionately greater burden [if any] on those two facilities.”

Having not heard back yet I wanted to get this letter out as soon as possible.

When you state above, the WQC will be issued this coming week, presumably this is the final version. Is there a draft WQC as I believe required and if so will you please email me a copy as well as providing an FTP link to documents pertaining to its issuance? We are certainly an interested party as witnessed by our long involvement with water monitoring and upgrade efforts on the lower Androscoggin but have never been copied on any licensing materials by the Department. Please ensure this letter and attachments become part of the official record with regards to the WQC and relicensing.

As you know, this is an unusual situation. The BEP, legislature and Governor have all expressed their intent to see this section of river upgraded to Class B and have made it so through LD 1964, signed into law on March 31, 2022. Yet, passed legislation does not technically go into effect until 90 days after the end of legislative session. As you know, the DEP is generally afforded a great deal of discretion and nearly unlimited flexibility, which in this case can be put to good use, bringing common sense to bear in making Class B a condition of the WQC. It makes absolutely no sense to do otherwise which would be locking in a Class C carve-out for the duration of this FERC license.

Incorporating the “upcoming” Class B into the WQC is not much of a stretch since this is the actual ambient water condition and has been for many years. The Department has been fully aware of these conditions from years of FOMB data but also presumably since April 2020 with the submission by Topsham Hydro/Brookfield of their detailed Updated Draft Study Report by Gomez & Sullivan. And, if not in 2020 than for sure in early 2021 as FOMB included this report as Exhibit 39 in our proposal to upgrade the lower Androscoggin.

Not only are detailed water quality conditions exceeding Class B made clear in the documents specified above but also in the more recently issued FERC Draft Environmental Assessment (DEA) where monitoring data are summarized on page 26, including these statements showing not only do waters above and below the dam surpass Class C standards but they surpass §465 Class B standards “[B. The dissolved oxygen content of Class B waters may not be less than 7 parts per million or 75% of saturation, whichever is higher](#)...: Obviously 82.2% and 94.3% saturations easily exceed Class B minimum of 75%:

Impoundment Sampling

Water temperatures and DO were relatively uniform throughout the water column, which resulted in no summer stratification. Over the study period, water temperatures ranged from 12.0°C in October to 26.9°C in August. DO concentrations ranged from 7.0 mg/L in July to 9.9 mg/L in October and were above the minimum state standard for Class C waters (5.0 mg/L). Similarly, DO percent saturation ranged from 82.2 percent in July to 103.6 percent in September, which exceeds the state standard of 60 percent saturation for Class C waters.

Riverine Sampling

Water temperatures in the project tailwater ranged from 16.8°C in October to 27.3°C in August with an average of 23.5°C. DO concentrations in the tailwater ranged from 7.8 mg/L in August to 9.7 mg/L in October with an average of 8.5 mg/L. Observed concentrations were above the minimum state standard for Class C waters (5.0 mg/L). DO percent saturation ranged from 94.3% to 106.2% with an average of 99.6%. These values were above the minimum state standard of 60 percent saturation for Class C waters.

Only relatively minor changes to the DEA would be necessary to accommodate replacing Class C references with Class B.

We don't know which AAG is working with you on this matter but suggest it is worth a discussion before issuance of the WQC. Even more useful might be a discussion with your contact at Topsham Hydro/Brookfield explaining the situation. It may well be they will have no objection to the classification change since they already surpass Class B conditions unless they will fight to preserve their “right to pollute.” We would be happy to participate on a telephone conference with you and the AAG if this is something that might be useful.

Thank you for your prompt attention and inclusion of our comments and attachments into the record.

Sincerely,



Ed Friedman, Chair
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Enclosures (hyperlinked):

[FOMB Spring 2022 Newsletter \(Andro Upgrade article\)](#)
[Exhibit 39, Gomez & Sullivan Study with comments, FOMB Androscoggin Upgrade Proposal](#)
[FERC DEA for Pejepscot](#)

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