



August 18, 2021

Jim Beyer, Bureau of Land Resources
Maine Department of Environmental Protection
18 Elkins Lane, Harlow Building
106 Hogan Road, Suite 6
Bangor, ME 04401

RE: NRCM Request For Stay

Dear Mr. Beyer:

On behalf of Trout Unlimited (TU), the Maine Council of Trout Unlimited (ME TU), and the Kennebec Chapter of Trout Unlimited (KVTU), I am writing to express TU's strong support for NRCM's Request for Stay of Department Order #L-27625-26-A-N/L-27625-TB-B-N/L-276252C-C-N/L-27625-VP-D-N/L-27625-IW-E-N and transfers, amendments and revisions thereto, submitted 8/11/2021.

In light of the Maine Superior Court decision in *Black vs Cutko*, the Maine Bureau of Parks and Lands (BPL) lacked authority to enter into a lease with Central Maine Power Company to allow the NECEC to cross public lands in Johnson Mountain and West Forks Township. That lease—and a subsequent lease for the same lands—was deemed invalid. Central Maine Power Company therefore lacked Title, Right and Interest (RTI) to apply for a permit, and the permit is therefore invalid.

This is not a new issue. It was raised during the Department's review of the applications for the NECEC project by multiple intervenors, including TU and our partners in Intervenor Group 4, and DEP refused to allow its consideration during the Public Hearing and deferred any challenge of RTI to a legal challenge of the lease itself. That challenge has now been successful.

A stay is clearly appropriate to prevent any further harm to natural resources and public property that will continue to occur if CMP continues construction of a project for which it lacks—and has lacked since 2014—RTI. Construction should be halted immediately, regardless of threats to appeal the Superior Court decision.

Each day that construction continues causes irreparable harm to Trout Unlimited. Among our primary concerns in testimony was the impact of the NECEC's clearing and inadequate

riparian buffers to protect brook trout habitat in Segment One of the NECEC. The resources in the Cold Stream Watershed—particularly crossings of Cold Stream, Tomhegan Stream, the inlet to Little Wilson Hill Pond and the outlet from Wilson Hill Pond—were of central concern to TU and were discussed at length in our testimony. These resources are all in a watershed that has been identified as one of the state’s most intact watersheds for brook trout, and in which more than \$7 million of public funding has been spent for the explicit purpose of protecting brook trout habitat. TU had also advocated during development of BPL’s Management Plan for the Cold Stream Forest and revision of its Management Plan for the Johnson Mountain and West Forks public lots that those three units should have similar management, with a focus on protection of brook trout habitat, particularly maintaining 100’ uncut buffers on all streams in the Cold Stream Watershed.

BPL ignored this input and instead illegally leased lands in the two public lots for the NECEC Project. Only by crossing the two public lots was CMP able to create a viable route from west of Route 201 across the Kennebec River, and thereby obtain permits for a route that included crossings of Cold Stream and Tomhegan Stream. To our knowledge, clearing and other construction activity has not yet started east of Route 201 where the NECEC route crosses Cold Stream, the two public lots, Tomhegan Stream, and other small-but-important brook trout streams. A stay is clearly appropriate to prevent any damage to this critically important watershed that is at the heart of the Black vs. Cutko case.

We would also note that it does not appear the lack of RTI can be resolved quickly in any way. Legal challenges or appeals will take months if not years to work their way through the courts. A relocated NECEC route anywhere near the existing disputed section appears very unlikely given that the order clearly requires Legislative review and approval of any new lease on the Johnson Mountain and West Forks Lots. Other nearby conservation lands nearby that would also require BPL and legislative approval, including the Moosehead Conservation Easement, the state’s Kennebec Gorge lands, the Cold Stream Forest, appear to preclude any minor route change that could be accomplished via even the most generously construed “minor amendment”. CMP must either prevail on a legal appeal of the Superior Court ruling or refile for a new permit for a different project than the one that has been approved. In the meantime, construction must be halted to prevent further damage.

We therefore support NRCM’s request for a stay.

Jeff Reardon
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Manchester, ME 04351
(207) 430-8441
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Sincerely,

A handwritten signature in black ink, appearing to read "Jeff R." followed by a stylized flourish.

Jeff Reardon