

FERC Committee Report - Steve Heinz

May 15, 2025

Outreach. No specific outreach activity to report in the past month.

Lower Kennebec Dams. Still no announcement regarding purchase of the lower Kennebec Dams.

Rumford Falls Project. The Appellants responded to a MBEP request for a brief on their standing in the matter. MBEP then rejected the brief. In response, the Appellants filed a request for reconsideration of the rejection and in the alternative, an objected to the evidentiary exclusion of the individual statements and affidavits, submitted as definitive and required proof of associational standing. MDEP rejected the request for reconsideration. The date for a hearing has been set as July 17, 2025. The appellants are waiting for MBEP to specify the format of the hearing.

Aziscohos Project. Brookfield has filed an Amended Final License Application (FLA) based on the pre-settlement negotiations with the NGOs including TU. Local fishing interests are generally opposing the content of the FLA contending that securing access to the Magalloway between Aziscohos Dam and the Route 16 Bridge Pool will only put more pressure that reach. Other local issues center on enforcement, regulations and other matters that involve MDIFW, not the FERC relicensing of the project.

Ripogenus and Penobscot Mills Projects. Survey efforts continue lead by Neal Hagstrom. Steve working with local whitewater interests to specify sites and facilities maintained by the State in the area that are in need of work for possible inclusion as mitigation for the new license.

Legal Defense Fund. Email sent to prior donors resulted in some additional donations. This year's effort raised \$14, 805, about half of last year's effort. Active fundraising measures discontinued until December.

Mousam Project. Nothing new to report. Sebago TU working with members of the Mousam – Kennebunk Alliance in support of dam removal incident to license surrender. Issuance of Environmental Analysis (EA) delayed until October 2, 2025.

Worumbo Project (lower Androscoggin). Consultations continue between Eagle Creek, USFWS, and NMFS to develop fishway prescriptions. The parties requested an extension of time for the Ready for Environmental Analysis issuance to August 29, 2025; FERC responded that “we do not intend to delay issuance of the REA notice beyond June 30, 2025” Licensee has now requested: a modified Species Protection Plan (SPP) report due date of June 29, 2025, representing a 90-day EOT. No change since last report.

Royal River Dams. No information that funding for removal of the dams has been terminated. All are hoping that NOAA or ACE will fund the removal.

Lewiston Falls Project. Steve working with Cities and other NGOs involved. Council submitted coordinated Motion to Intervene with Protests on March 26. No change since last report.

Dundee Project. Sebago TU working to develop next steps following dewatering and form coalition to address long and short terms needs in the watershed.

Mallison Falls Project. Another possible license violation reported by Sebago TU's Jim Wescott in March. Could be due to malfunction at Mallison or either of the two dams upstream.

Maine TU Council submitted incident report to FERC, Sebago TU to submit assume reporting responsibilities for future incidents.

Cataract Project. (First dam on the Saco) Sebago TU working with Saco River Restoration Alliance (SSRA): Robb Cotiaux and Erik Heumiller. Initial Study Plan submitted, Sebago TU worked with Saco Salmon Restoration Alliance to produce study plan comments.

Skelton Project. (Next Project above Cataract) Brookfield has applied for Low Impact Hydro Institute Certification that will make it eligible for inclusion in a Green Energy portfolio and be part of Massachusetts Clean Energy Program. Council filed comment opposing LIHI certification. Maine TU Council submitted further comments opposing LIHI Certification based on Brookfield threatening legal action against Sebago TU members who documented eel passage at Hiram Dam last summer.

Hiram Project. Furthest upstream Brookfield dam on the Saco) Mark Woodruff from Saco Salmon Restoration Alliance submitted the eel report with the data Sebago TU's Patty Barber collected at Hiram Dam and Erik Heumiller helped organize, goal: preventing Brookfield from delay installation of improved passage any further. Brookfield responded alleging trespass and threatening legal action. Brookfield threats likely illegal – see attached TU response.

Green Lake Project. FERC has yet again revised the expected date to issue the Environmental Analysis (EA) to May 2025. EA not issued as of this date.

Bills affecting Dams before legislature – Please see Advocacy Committee Report.

Brush Mill Dam (Buckfield on the Nezinscot). MMBTU pursuing this excellent removal opportunity. Town approved going forward with removal. Chapter working to obtain financing. American Rivers has expressed interest and is a possible project partner; a follow-up meeting is planned. The project will be an agenda item for the Androscoggin River Watershed Conference on May 13 in Auburn. Gene McKenna MMBTU POC.

Mayo Mill Dam (Dover Foxcroft). Recent press article followed up on town decision not to remove the ailing dam in critical Atlantic salmon habitat on the Piscataquis. Nothing new to report.

Hackett Mills Project (Little Androscoggin). Small project that is clearly economic. Maine TU Council filed to intervene and protested the relicensing of this uneconomic project.

Salmon Habitat Recovery Unit Meeting (SHRU). Meeting held May 1, Steve Brooke attended. NOAA hierarchy being functionally reduced as senior staff is taking buyout options or retirement. Orland Hatchery is understaffed, volunteers sought to help cover the shortfall. Meeting reviewed accomplishments of last five years. Five Year Plan needs to be updated to deal with existing realities and expected further resource cuts. Draft plan expected by May 15.

Maine FERC Active Project Status Report. Next report is nearly complete and will be distributed before the end of the month.

Attachment

April 18, 2025

Ms. Shannon Ames, Executive Director
Low Impact Hydropower Institute
329 Massachusetts Avenue, Suite 2
Lexington MA 02420



Transmitted via e-mail to comments@lowimpacthydro.org

Subject: Skeleton Project Comments

Dear Ms. Ames:

On behalf of its six chapters with over 1700 members, Maine Council of Trout Unlimited (“TU”) submits these follow-up comments to our original comments submitted on March 26, 2025 regarding the Brookfield White Pine Hydro (“Brookfield”) application for Low Impact Hydro Institute (LIHI) Certification for the Skelton Project distributed March 6, 2025.

Attachment A¹ is recent Brookfield letter emailed those responsible for collecting data regarding eel passage at the Hiram Project that was posted to the Hiram Project FERC Docket (P-2530)² indicating that, contrary to the reports submitted study data submitted incident to that project’s relicensing in 2022, there are many more juvenile American eels attempting to pass upstream at Hiram than the Brookfield study reported. This should bear on the requirements and timing for upstream eel passage under the 2007 Settlement.

One of the arguments TU makes in its Skelton LIHI Application Comments is that:

“Brookfield has clearly failed to act to recognize and support hydropower projects that prioritize environmental, recreational, historical, and cultural resource protection in the Saco River Watershed - only to delay restoration and maximize the value of the resource as an asset in its energy portfolio. If the project is certified, LIHI will not have worked to achieve its goals but only to ‘greenwash’ the obviously and inherently destructive nature of current Saco River hydro operations by designating them as low impact.”

The Brookfield letter clearly further demonstrates Brookfield’s intent and continuing efforts to delay fish passage throughout the Saco River watershed, and what is more, the Brookfield letter is contrary to Maine law regarding an important doctrine called “SLAPP” or Strategic Lawsuits Against Public Participation which has both case law and is codified in Maine’s Uniform Public Expression Protection Act (UPEPA). Maine adopted an anti-SLAPP statute in 1995 (14 M.R.S. § 556), but that statute was narrow—it was limited to the right to petition and had some really strange procedural aspects. The

¹ Brookfield letter dated March 31, 2025, no subject or RE.

² Saco Salmon Restoration Alliance letter dated March 11, 2025, Subject: Subject: Hiram Project (FERC No. 2530) – Juvenile American eel observations

new law, 14 M.R.S. §§ 731-742, greatly expands the scope of the anti-SLAPP protection in Maine, aiming to provide a clear framework for the efficient review and dismissal of SLAPPs.

UPEPA broadly applies to a party's "[e]xercise of the right of freedom of speech or of the press, the right to assemble petition or the right of association, guaranteed by the United States Constitution or by the Constitution of Maine, on a matter of public concern."³ 14 MRSA Section 733(C).

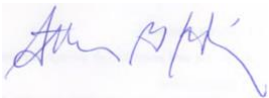
This doctrine and statute protect the public participating in matters of public concern from intimidation lawsuits or claims frequently brought on trespass or nuisance grounds. The Brookfield letter is threatening a trespass claim and enforcement for activities being conducted to determine Brookfield's regulatory compliance. That is classic SLAPP activity that has been found to be unlawful. Brookfield has no legal basis to threaten trespass under such circumstances, and any retribution or harassment should be treated as unlawful.

Brookfield's letter serves to underline its active efforts to delay compliance with the spirit and provisions of the 2007 Settlement that is a major basis for its LIHI Certification Application for the Skelton Project. Please add withdrawal of the Brookfield letter with an apology to those addressed in Brookfield's letter to the list of conditions that TU has requested as conditions of LIHI Certification for the Skelton Project:

"Should LIHI grant certification based on the information that Brookfield has provided, then TU requests that LIHI provide a reasonable degree of scrutiny be applied to the projects on the lower Saco River by requiring quarterly reports on compliance with the above stated criteria, or until issues regarding fish passage at Cataract, Skelton and Bar Mills have been resolved by relicensing of the Cataract Project, achievement of reasonable fish passage goals at the Skelton Project, and removal of, or establishment of a zone of passage at, the Bar Mills Project."

TU appreciates the opportunity to comment further on this application.

Respectfully,



Stephen G. Heinz
Maine TU Council FERC Coordinator

Reply to: heinz@maine.rr.com

Attachment – Brookfield Letter dated March 31, 2025 w/attachment

Email copies to: attorney.general@maine.gov, Laura.Paye@maine.gov, Casey.Clark@maine.gov

³ 14 MRSA Section 733(C).