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## **An Act Regarding the Water Quality Certification of Graham Lake on the Union River**

**Emergency preamble.** Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** Graham Lake in the City of Ellsworth is an impoundment lake that is created by a privately owned dam for the purpose of generating electricity; and

**Whereas,** the water level of the lake can fluctuate substantially depending on the dam owner's need to generate electricity and other seasonal factors; and

**Whereas,** there are many recreational users of the lake and waterfront homes with docks that in the past several years have been left dry due to extremely low water levels; and

**Whereas,** the next recreation season is likely to commence well before the expiration of the 90-day period; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

### **Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 38 MRS §464, sub-§9-A, ¶C-1** is enacted to read:

C-1. For the purposes of water quality certification under the Federal Water Pollution Control Act, Public Law 92-500, Section 401, as amended, and licensing of modifications under section 636, Graham Lake, located in the Union River, main stem, is deemed to have met the habitat characteristics and aquatic life criteria in the existing impoundment if that habitat and aquatic life satisfy the aquatic life criteria contained in section 465, subsection 3, paragraph C, except that habitat and aquatic life in the portions of the water body affected by annual drawdowns of up to 4 feet may reflect the effects of such drawdowns, based on a use attainability analysis conducted by the board pursuant to subsection 2-A.

### **Sec. 2. Volitional upstream fish passage for Ellsworth Lake and Graham Lake.**

For the purposes of water quality certification of the multistation hydropower facility at the Ellsworth Hydroelectric Project, Federal Energy Regulatory Commission Project Number 2727, under the Federal Water Pollution Control Act, Public Law 92-500, Section 401, as amended, and licensing of modifications under the Maine Revised Statutes, Title 38, section 636, and any other licensing proceeding affecting the project, the failure to install a volitional upstream fish passage for anadromous fish species at Ellsworth Lake Dam and Graham Lake Dam within 10 years of federal relicensure of the project constitutes a revocation of a water quality certification under the Federal Water Pollution Control Act, Public Law

92-500, Section 401. For purposes of this section, "volitional upstream fish passage" means a fish passage in which a fish swims upstream past an obstruction under the fish's own volition rather than being trapped and hauled around the obstruction by means other than the fish's own volition.

**Sec. 3. Department of Environmental Protection water quality certification of Ellsworth Hydroelectric Project.** The Department of Environmental Protection may not waive water quality certification authority under the Federal Water Pollution Control Act, Public Law 92-500, Section 401, as amended, for any state or federal licensing regarding the Ellsworth Hydroelectric Project, Federal Energy Regulatory Commission Project Number 2727, and shall file any water quality certification issued by the department to the United States Environmental Protection Agency for approval under the Federal Water Pollution Control Act. A failure of the Department of Environmental Protection to file timely a water quality certification with the United States Environmental Protection Agency under this section is deemed to be a denial of water quality certification by the department for state and federal licensing purposes.

**Emergency clause.** In view of the emergency cited in the preamble, this legislation takes effect when approved.

## SUMMARY

This bill provides that for the purposes of water quality certification under the Federal Water Pollution Control Act:

1. Graham Lake located in the Union River in the City of Ellsworth may be subject to drawdowns of lake levels of up to 4 feet and still be deemed to meet state water classification standards;
2. The Department of Environmental Protection may not waive water quality certification under the Federal Water Pollution Control Act for the Federal Energy Regulatory Commission license for the Ellsworth Hydroelectric Project and failure of the department to file timely a water quality certification is deemed to be a denial of water quality certification; and
3. The Ellsworth Hydroelectric Project is subject to an involuntary water quality decertification if the project does not provide for a volitional upstream fish passage over both the Graham Lake Dam and Ellsworth Lake Dam within 10 years of the project's relicensure.