



February 24, 2026

Dear Senator Tepler, Representative Doudera, and Members of the Environment and Natural Resources Committee,

My name is Nathaniel Launer, and I am an attorney practicing environmental law, former environmental scientist that worked to address water quality issues in New York, and former Wildlife Biologist that studied Common loon and Bald eagle populations in the Rangeley Lakes region of Maine.

I am providing the following memorandum of fact and law as public testimony in support of Legislative Document No. 2187 with an amendment to reclassify the Androscoggin River from Worumbo Dam to Gulf Island Pond Dam to a Class B water.

I urge you to support such an amendment for the benefit of the environment, the economy, and the local communities in Maine. I have seen and felt the benefits of the pristine, natural waters at the headwaters of the Androscoggin River. I believe that every effort should be taken to protect these waters and these benefits it provides as the river continues to flow downeast.

INTRODUCTION

The Maine Legislature is considering action on Legislative Document No. 2187 (“**LD2187**”) that would reclassify certain waters of the state. An amendment should be made to LD2187 that includes reclassification of the Androscoggin River from Worumbo Dam in Lisbon Falls to Gulf Island Pond Dam in Auburn (“**upper lower Androscoggin River**”) to Class B. The upper lower Androscoggin River exceeds water quality standards for Class B waters and must be protected under the federal Clean Water Act and State of Maine law.

DISCUSSION

Under the federal Clean Water Act (CWA) and State of Maine law, water quality standards are composed of narrative and quantitative criteria. Under the CWA, the State of Maine anti-degradation policy requires 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.”¹ Therefore, if actual data show that the upper lower Androscoggin River exceed the standards for the next highest classification, then it must be reclassified to this higher classification. The upper lower Androscoggin River does, in fact, exceed the standards for Class B waters and, therefore, this section must be reclassified to Class B.

A. Field data demonstrate the upper lower Androscoggin River exceed standards for Class B waters.

Currently, the Androscoggin River “[f]rom its confluence with the Ellis River to Worumbo Dam in Lisbon Falls” is classified as a Class C water.² Actual field data show the upper lower Androscoggin River, however, achieves and exceeds dissolved oxygen, *E.coli*, and proposed pH standards for Class B waters.

The State of Maine dissolved oxygen standard for Class B waters currently is:

The 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 1-day minimum dissolved oxygen concentration may not be less than 8.0 parts per million in identified fish spawning areas.³

The recent data collected by the Friends of Merrymeeting Bay (“FOMB”), following Department of Environmental Protection (“DEP”) protocols, from the upper lower Androscoggin River between June and September of 2025 show the river section consistently exceeds the dissolved oxygen standard for Class B waters.⁴ The DEP response not recommending reclassification of the upper lower Androscoggin River state that, based on “discrete data collected by the VRMP at three monitoring sites from 2020 to 2024,” the section “occasionally does not meet current Class B criteria at all sites.”⁵ Importantly, however, the DEP noted that “these discrete and continuous data . . . would meet the Department’s revised Class B DO criteria proposed under a separate TR

¹ 38 M.R.S. § 464.4F.4 (emphasis added); 40 C.F.R. § 131.10(i) (“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.”).

² 38 M.R.S. § 467.1.A(2).

³ 38 M.R.S. § 465.3.B

⁴ See *Summary 2026 Androscoggin River Upgrade*, FRIENDS OF MERRYMEETING BAY CYBRARY (Jan. 13, 2026) <https://cybrary.fomb.org/chemical.cfm>; see also Exhibit 4, *Friends of Merry Meeting Bay Testimony in Support of LD 2187 with an Amendment to Reclassify the Lower Androscoggin River from Worumbo Dam to Gulf Island Pond Dam from Cass C to Class B*, FRIENDS OF MERRYMEETING BAY (Feb. 25, 2026) (available online at <https://cybrary.fomb.org/chemical.cfm>).

⁵ FINAL RECOMMENDATIONS, MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION 2025 TRIENNIAL REVIEW OF WATER QUALITY STANDARDS at 75 (2025).

proposal.”⁶ The separate proposal is incorporated into LD2187.⁷ Therefore, concurrent with the enactment of LD2187 the upper Lower Androscoggin River will, apparently by the DEP’s own assessment, exceed the dissolved oxygen standard for Class B waters.

The State of Maine *E.coli* standard for Class B waters is:

Between May 15th and October 31st, the number of *Escherichia coli* in these waters may not exceed a geometric mean of 64 CFU or MPN per 100 milliliters over a 90-day interval or 236 CFU or MPN per 100 milliliters in more than 10% of the samples in any 90-day interval.⁸

The recent data collected by FOMB, following DEP protocols, indicate the upper lower Androscoggin River consistently exceeded this *E.coli* standard for Class B waters.⁹

The State of Maine currently does not have a pH standard for Class B waters. The proposed pH standard for Class B waters is:

Except as provided in section 464, subsection 4, paragraph C, the pH of Class B waters must fall within the 6.5 to 9.0 range.¹⁰

The recent data collected by FOMB, following DEP protocols, show the river section exceeded this pH standard for Class B waters, with pH values falling within a narrower 6.86 to 7.6 range.¹¹

B. The actual uses of the upper lower Androscoggin River are consistent with the designated uses of Class B waters.

The designated uses of Class B and Class C waters are substantially the same, differing only in whether the habitat supported by the section is characterized as unimpaired:

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

⁶ *Id.*

⁷ L.D. 2187, 132nd Leg. 2nd Reg. Sess. (Me. 2025-2026).

⁸ 38 M.R.S. § 465.3.B.

⁹ *Summary 2026 Androscoggin River Upgrade, supra*, at footnote 4.

¹⁰ L.D. 2187, 132nd Leg. 2nd Reg. Sess. (Me. 2025-2026).

¹¹ *FOMB Helo Sampling Upper Lower Andro 2024-2025 with pH*, FRIENDS OF MERRYMEETING BAY CYBRARY, <https://cybrary.fomb.org/chemical.cfm> (last visited February 23, 2026); see also Exhibit 1, *Friends of Merry Meeting Bay Testimony in Support of LD 2187 with an Amendment to Reclassify the Lower Androscoggin River from Worumbo Dam to Gulf Island Pond Dam from Class C to Class B*, FRIENDS OF MERRYMEETING BAY (Feb. 25, 2026) (available online at <https://cybrary.fomb.org/chemical.cfm>).

aquatic life. *The habitat must be characterized as unimpaired.*¹²

The term “unimpaired” means “without a diminished capacity to support aquatic life.”¹³ The upper lower Androscoggin River has and does support unimpaired aquatic life. Biological monitoring of the free flowing sections of the upper lower Androscoggin River demonstrate that this section achieves Class B aquatic life standards.¹⁴

In determining what uses must be protected and maintained, actually designated uses for Class B and Class C waters may be considered, as well as:

- (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.¹⁵

The upper lower Androscoggin River provides exceptional and unique habitat. Additionally, the upper lower Androscoggin River feeds the lower river section from Worumbo Dam in Lisbon Falls to a line formed by the extension of the Bath-Brunswick boundary across Merrymeeting Bay in a northwesterly direction. The lower river section, in turn, feeds tidal wetlands that have been recognized by the U.S. Fish and Wildlife Service as “highest value habitat,” including for multiple rare intertidal plants and endangered, threatened and species of special concern (e.g.,

¹² 38 M.R.S. § 465.3.A (emphasis added); *compare*:

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.

38 M.R.S. § 465.4.A.

¹³ 38 M.R.S. § 466.11.

¹⁴ Paul C. Leeper, *2021 Aquatic Life Determination Macroinvertebrate Sampling Study of the Androscoggin River, Lewiston to Brunswick*, MOODY MOUNTAIN ENVIRONMENTAL (May 4, 2022) (available on Friends of Merrymeeting Bay Cybrary at <https://cybrary.fomb.org/chemical.cfm>).

¹⁵ 38 M.R.S. § 464.4.F.

creeper, tidewater mucket, yellow lamp mussels, dry land sedge, etc.). The lower section sustains silver maple floodplain and birch-oak rocky communities. The lower section also provides spawning and nursery habitat for estuarine and marine life including the endangered short nose sturgeon and Atlantic salmon, threatened Atlantic sturgeon, and other significant diadromous fish including alewives, blueback herring, sea lamprey, American eel striped bass, rainbow smelt, and American shad. It also provides sites for multiple bald eagle nests and several Peregrine falcon nests.¹⁶ These are among the reasons why, in addition to documented exceedances of water quality standards, the lower section below Worumbo Dam was reclassified to a Class B water in 2022.

Therefore, there is overwhelming evidence for reclassifying the river section to protect the exception and unique habitat it provides.

Additionally, the restoration and maintenance of high water quality in the upper lower Androscoggin River provides a critical economic benefit to Maine.¹⁷ The upper lower Androscoggin River is well loved for recreation including fishing, hiking, and paddling.¹⁸ As a result, there is overwhelming support for reclassifying the river section to protect these economic and recreational assets.¹⁹

C. The DEP’s recommendation not to reclassify the upper lower Androscoggin is not permissible under federal regulation and state law, and fundamentally at odds with the purpose of antidegradation policy.

Under the CWA and the State of Maine antidegradation policy, there are no other factors to consider when determining whether waters should be reclassified. The DEP’s longstanding interpretation of antidegradation, however, considers the waste discharge permitting.²⁰ This “interpretation” is not permissible under federal regulation and state law,²¹ and fundamentally at odds with the purpose of antidegradation policy.²²

The DEP, for example, does not recommend reclassifying the upper lower Androscoggin River because this section “cannot meet Class B criteria at all times during critical conditions of high

¹⁶ See Exhibits 9 to 18, *Androscoggin River Upgrade Proposal 2020*, GROW L/A * FRIENDS OF MERRYMEETING BAY (March 31, 2020) (available at <https://cybrary.fomb.org/chemical.cfm>).

¹⁷ See *id.*, Exhibits 8, 15, 16, and 17.

¹⁸ See *id.*, Exhibits 18-22.

¹⁹ See *id.*, Exhibit 6, 7 (compiled letters of support), and 8.

²⁰ FINAL RECOMMENDATIONS, MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION 2025 TRIENNIAL REVIEW OF WATER QUALITY STANDARDS at 75 (2025).

²¹ 40 C.F.R. § 131.10 (“In no case shall a State adopt waste transport or waste assimilation as a designated use for any waters of the United States.”); 38 M.R.S. § 464.4.F (d) (“Use of the water body to receive or transport waste water discharges is not considered an existing use for purposes of this antidegradation policy”).

²² The primary objective of the Clean Water Act is to “*restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.*” 33 U.S.C. § 1251(a) (emphasis added).

water temperature, low flow, and *maximum licensed discharge levels*.”²³ The DEP, specifically, explains that if this section is reclassified to Class B, the DEP will be “required to lower existing discharge limits on certain discharges.”²⁴ The use of the upper lower Androscoggin to “receive or transport waste water discharges,” however, cannot be considered under federal regulation or state law.²⁵ The DEP, additionally, has done little to explain how allowing lower water quality is “necessary” to accommodate important economic and social development in the area surrounding the upper lower Androscoggin River, especially considering the significant benefits improved water quality provides.²⁶ In refusing to lower existing discharge limits the DEP, furthermore, is failing to achieve “the highest statutory and regulatory requirements” for these certain discharges.²⁷

CONCLUSION

The upper lower Androscoggin River achieves and exceeds the water quality standards and designated uses of Class B waters. The refusal to lower industrial discharge limits is an insufficient reason not to protect the improvements in water quality and the significant benefits these improvements provide to the environment, economy, and local communities in Maine. The upper lower Androscoggin should be reclassified to Class B.

I support LD2187 with an amendment to reclassify the lower Androscoggin River from Worumbo Dam to Gulf Island Pond Dam from Class C to Class B.

Sincerely,



Nathaniel Launer
Greenfire Law, PC

²³ FINAL RECOMMENDATIONS, MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION 2025 TRIENNIAL REVIEW OF WATER QUALITY STANDARDS at 77 (2025) (emphasis added).

²⁴ *Id.*

²⁵ 38 M.R.S. § 464.4.F (d) (“Use of the water body to receive or transport waste water discharges is not considered an existing use for purposes of this antidegradation policy”).

²⁶ 40 CFR § 131.12(a)(2) (allowing lower water quality only when “*necessary* to accommodate important economic or social development in the area in which the waters are located”) (emphasis added).

²⁷ *Id.* (requiring states to achieve “the *highest* statutory and regulatory requirements for all new and *existing* point sources” when allowing lower water quality to accommodate for important economic and social development in the area) (emphasis added).