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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



MELANIE LOYZIM
COMMISSIONER

TESTIMONY OF

LAURA PAYE, HYDROPOWER COORDINATOR

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

SPEAKING IN OPPOSITION TO L.D. 1210

AN ACT TO REGARDING RENEWABLE ELECTRICITY GENERATION BY
HYDROPOWER PROJECTS

PRESENTED BY SEN. FARRIN

BEFORE THE JOINT STANDING COMMITTEE

ON

ENVIRONMENT AND NATURAL RESOURCES

DATE OF HEARING:

APRIL 7, 2025

Senator Tepler, Representative Doudera, and members of the Committee, I am Laura Paye, the Hydropower Coordinator for the Bureau of Land Resources in the Maine Department of Environmental Protection, speaking in opposition to L.D. 1210.

The Department opposes L.D. 1210 because the bill conflicts with Maine's water quality standards and with Section 401 of the federal Clean Water Act, 33 U.S.C. §1341. The bill proposes to change the factors evaluated by the Department when issuing a Water Quality Certification under Section 401 of the Clean Water Act. Section 401 requires

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the State to determine whether the operation of a hydropower dam meets State water quality standards, in order for the Federal Energy Regulatory Commission (FERC) to issue a new license.

While the proposal in Section 1 is located in the statutes for Maine's water quality standards in Title 38 Section 464, the proposal conflicts with the standards for classifications in Title 38 Sections 465-465-B. L.D. 1210 appears to place economic considerations above environmental considerations in these decisions, which is inconsistent with the standards for classification of fresh surface waters, lakes and ponds, and estuarine waters located at Title 38 Sections 465-465-B; and inconsistent with the Clean Water Act.

The Department notes that Title 38 Section 464(2-A) enumerates a process located in 40 C.F.R. Part 131.10(g), a Use Attainability Analysis, which provides for a structured scientific assessment that can be pursued if a hydropower project cannot meet a designated use in the water quality standards. A Use Attainability Analysis allows a State to recommend removal of a designated use which is not an existing use, or establish sub-categories of a use if the State can demonstrate that attaining the designated use is not feasible because of six possible factors. The most relevant factors for a hydropower project are: (1) a use is not attainable because it would result in substantial and widespread economic and social impact and (2) dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use. Changes to water quality standards, including removal of designated uses, must be approved by the Maine Legislature and the United States Environmental Protection Agency.

Additionally, the Department may waive its authority to issue a Water Quality Certification for any hydropower project undergoing licensing with FERC.

Thank you for the opportunity to provide testimony on this bill. I would be happy to provide information in response to questions you've already raised today, or to answer any other questions you may have for the Department.