

April 26, 2021

Joint Committee on Environment and Natural Resources
Cross Building, Room 216
Augusta, ME 04333
ENR@legislature.maine.gov

**Public Testimony of Brookfield Renewable on LD 676 –
*An Act to Reclassify Part of the Androscoggin River to Class B***

Chair Brenner, Chair Tucker and Members of the Joint Committee on Environment and Natural Resources:

Brookfield Renewable¹ respectfully submits these comments in opposition to LD 676, which would re-classify the segment of the Androscoggin River below Gulf Island Dam from Class C to Class B. While Brookfield Renewable supports efforts to improve the health and safety of Maine’s waterways, including the Androscoggin River, we are concerned that this seemingly well-intentioned proposal fails to consider the merits of the existing regulatory framework and processes and could have unintended consequences for communities and businesses along the Androscoggin River.

The question of whether the lower Androscoggin River should be upgraded from Class C to Class B has been reviewed several times over the last decade, including through legislative proposals and as part of the Department of Environmental Protection’s (DEP) required statewide re-classification proceedings in 2018. Each time, the same conclusion has been reached: the data does not support the Class B designation as there would be “no feasible approach to ensure

¹ Throughout Maine Brookfield Renewable owns and operates 46 hydropower stations totaling 622MW of installed capacity – including several hydropower facilities located on the upper and lower Androscoggin River, as well as 219MW of windpower and a 20MW battery storage facility. Brookfield Renewable has over 100 employees in Maine and supports 275 indirect jobs across the State and pays more than \$20 million in property taxes in Maine annually, which provides critical funds for local schools, fire departments and public services.

attainment of Class B dissolved oxygen criteria in the lower Androscoggin River.”² Since the 2018-2019 review, there has been no material changes in the watershed that would provide rationale for the Legislature to unilaterally bypass the DEP’s previous input or to depart from the current DEP statewide reclassification process, which requires review at least every three years.

To understand the appropriateness of the current process, the Legislature should consider that DEP’s 2018 statewide review resulted in recommended upgrades of 10 water bodies, with only 3 water bodies, including the lower Androscoggin River, not included as part of DEP’s upgrade recommendations.³ These results suggest the DEP process is sufficiently robust and data-driven, with recommendations based not on aspiration but on detailed data sampling and modeling to reach attainment conclusions. The Legislature should defer to the conclusions from these recent robust processes.

The Legislature must also consider the potential consequences of upgrading the lower Androscoggin River, including impacts to businesses that support jobs and taxes within the watershed as well as potential infrastructure requirements for municipalities. For example, while it is true that targeted data sampling for the lower Androscoggin River has shown a high degree of compliance with a Class B standard, Water Quality Certification – which hydropower dams must obtain to continue to operate in Maine – requires compliance at all times. In other words, the Class B designation may result in i) risks to future operations of hydropower dams, which support family-sustaining jobs, local taxes and recreation within in the watershed and generate renewable energy necessary to meet Maine’s laudable policy goals and/or ii) costly impacts to economically-sensitive industries upstream from Gulf Island Dam.

It is important to acknowledge that no data is available from the DEP that establishes the reductions from point source discharges that would facilitate attainment of a Class B standard on the lower Androscoggin River at all times. In fact, DEP modeling has previously indicated that

² Letter from Maine Department of Environment Protection to Senator Nate Libby and Senator Ned Claxton, dated October 25, 2019.

³MDEP 2018 Proposed Re-classifications for Maine Waters:
https://www.maine.gov/dep/water/monitoring/classification/reclass/BEP_2018_ReclassProposals_ForBEP_Dec_fin_al.pdf

Class B standards were not always attained, even when removing point source discharges from its model.⁴ Thus, in effect, passage of LD 676 could produce the negative consequences described while failing to support attainment of a Class B standard, or it could require dischargers to increase oxygen levels above levels that would occur even without their discharge.

The hydropower facilities and mills potentially impacted by this proposal were acquired with an understanding of a commitment to data-supported compliance requirements. However, this bill would, without adequate modeling results, circumvent well-established process and substantially shift those parameters in the middle of licenses previously issued by state and federal agencies. The Legislature must avoid this outcome and the related consequences. If the Legislature is ultimately determined to advance a bill to re-classify the lower Androscoggin River it must seek a more balanced approach than LD 676, as currently drafted, provides. An alternative approach could include offering legacy treatment for facilities currently operating or under development and require that future development(s) along the lower Androscoggin River meet Class B discharge and water quality requirements. This approach would address the prospective goals of the proponents while acknowledging the circumstances applicable to existing operators.

Thank you for your consideration of our comments. Please don't hesitate to contact me directly to discuss this issue further.

Sincerely,



Steve Zuretti
Senior Director, Government Affairs and Policy
Brookfield Renewable
steven.zuretti@brookfieldrenewable.com
323-400-9715

⁴ MDEP 2018 Proposed Re-classifications for Maine Waters at p. 9