

January 28, 2026

Laura Paye
Hydropower Coordinator
Maine Department of Environmental Protection
Bureau of Land Resources
17 State House Station
Augusta, Maine 04333-0017

**RE: Ellsworth Hydroelectric Project (FERC No. 2727)
Response to Maine Department of Marine Resources (MDMR) comments on
Application for Water Quality Certification**

Dear Ms. Paye:

I am writing on behalf of the licensee, Black Bear Hydro Partners, LLC, to outline the public legal processes that we maintain must be followed before MDMR's recommendations could be incorporated into a new water quality certification for the Ellsworth project.

Many of MDMR's "priorities", "goals", "recommendations" and "multi-agency plans" for the Union River can only be developed as part of a comprehensive river management plan under 12 M.R.S. § 407. This statute requires MDMR, alongside several other state agencies, to develop "subject to the Maine Administrative Procedure Act...a comprehensive river resource management plan for each watershed with a hydropower project licensed under the Federal Power Act." *Id.* This is accomplished through major substantive rulemaking, ensuring the Legislature has final say in the matter. "These plans must provide a basis for state agency comments, recommendations and permitting decisions and at a minimum include, as applicable, minimum flows, impoundment level regimes, upstream and downstream fish passage, maintenance of aquatic habitat and habitat productivity, public access and recreational opportunities." *Id.*

Given the Legislature's requirement that state agency comments, recommendations and permitting decisions be informed by a mandatory comprehensive river management plan, MDMR's efforts to develop its own priorities, goals, recommendations, and plans outside of any public process must be disregarded. This is especially true considering that MDMR's primary focus is fish passage and aquatic habitat, both of which are expressly mentioned by Section 407 as things that must be addressed by the comprehensive river management plan. As long as MDMR continues to sidestep the "public notice, comment and hearings" when developing its plans for the Union River, (*id.*) and the Legislature's right to review and sign off on these plans, the MDEP is obligated to disregard its comments. In the event that MDMR decides to follow the required process, Black Bear will gladly participate.

Because MDMR's recommendations here go beyond high-level concerns over fish passage and instead recommend particular fishway designs and operations at Ellsworth, the agency was also required to hold an adjudicatory fishway proceeding under 12 M.R.S. § 12760. MDMR's prescription for a "flume and swim-through fishway" is precisely the type of recommendation that MDMR, in tandem with MDIFW, must develop through this adjudicatory process. *See id.* ("The commissioner and the Commissioner of Marine Resources shall initiate proceedings to consider construction, repair or alteration of fishways in existing dams...whenever the commissioners determine that...[f]ish passage at the dam or obstruction in issue is necessary to protect or enhance rare, threatened or endangered fish species".) Incorporating MDMR's illegally and privately created fishway prescriptions into a water quality

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certification would render the certification itself illegal and so, until MDMR along with MDIFW goes through the necessary process, its fishway prescriptions should also be disregarded by MDEP.

Thank you as always for the hard and detailed work that goes into the water quality certification process. I hope these comments are helpful as MDEP works toward issuing a WQC for the Ellsworth Project.

Sincerely,

A handwritten signature in blue ink, appearing to read "Matt Warner", with a long horizontal flourish extending to the right.

Matt Warner