

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN RE PETITIONS FOR REVOCATION, MODIFICATION OR SUSPENSION OF PERMITS
AND WATER QUALITY CERTIFICATIONS FOR THE LOCKWOOD, HYDRO-
KENNEBEC, SHAWMUT AND WESTON HYDRO PROJECTS

Merimil Limited Partnership)	
Lockwood Hydro Project)	
#L-20218-33-C-N)	
)	
Hydro Kennebec Limited Partnership)	
Hydro-Kennebec Project	)	PRE-FILED DIRECT TESTIMONY OF
#L-11244-35-A-N	)	F. ALLEN WILEY ON BEHALF OF
	)	FPL ENERGY MAINE HYDRO, LLC
FPL Energy Maine Hydro, LLC	)	AND MERIMIL LIMITED
Shawmut Hydro Project	)	PARTNERSHIP (LOCKWOOD,
#L-19751-33-A-M	)	SHAWMUT AND WESTON PROJECTS)
	)	- PART II
FPL Energy Maine Hydro, LLC)	
Weston Hydro Project)	
#L-17472-33-C-M)	



PRE-FILED DIRECT TESTIMONY AND EXHIBITS OF

F. ALLEN WILEY

PART II

- Overview of the Lower Kennebec River Comprehensive Hydropower Settlement Accord; and
- Overview of the 1998 Kennebec Hydro Developers Group Agreement.

January 17, 2007

**PRE-FILED DIRECT TESTIMONY AND EXHIBITS OF
F. ALLEN WILEY
PART II
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MAINE BOARD OF ENVIRONMENTAL PROTECTION

KENNEBEC RIVER PETITIONS

PRE-FILED DIRECT TESTIMONY AND EXHIBITS OF

F. ALLEN WILEY

PART II

PURPOSE AND SCOPE OF TESTIMONY

The purpose of Part II of my testimony is to 1) provide the Board an overview of the Lower Kennebec River Comprehensive Hydropower Settlement Accord (“Settlement Accord” or “Accord”); 2) provide the Board an overview of the 1998 Kennebec Hydro Developers Group Agreement (“1998 KHDG Agreement”); and 3) provide the Board with some insight of the implications of attempting to modify the terms and conditions of the KHDG Agreement. Each of these items is pertinent to the Board as it considers the petitions to revoke, modify or suspend the water quality certifications for the Lockwood, Shawmut and Weston projects.

SUMMARY OF TESTIMONY

- 1) The settlement that resulted in the signing of the Settlement Accord and its attendant 1998 KHDG Agreement was instrumental in resolving the long-running, contentious debate over the future of the Edwards Dam.
- 2) The Settlement Accord and its integrated settlement agreements allowed the removal of the Edwards Dam to proceed in an expeditious and cooperative manner and for fish passage measures to be implemented at upstream dams in a rational, sequential and scientific manner.
- 3) KHDG dam owners have invested considerable time, effort and monies to support the State’s restoration efforts on the lower Kennebec River.

- 4) The State's fish restoration efforts in the Kennebec River Basin have been substantially enhanced by the cooperative efforts among the dam owners, State and federal resource agencies, Kennebec Coalition and other parties to the Settlement Accord.
- 5) The 1998 KHDG Agreement may be subject to termination if FERC or the DEP alter or prohibit execution of terms considered essential to any party in the Agreement. Under such circumstance, the State may be required to refund virtually all of the \$4 million contributed to date by KHDG members and may not be entitled to \$720,000 of contributions planned between 2007 and 2010.
- 6) The petitions to revoke, modify or suspend the water quality certifications for the Lockwood, Shawmut or Weston projects should be dismissed since:
 - the petitioners have failed to demonstrate that the certified activities pose a threat to human health or the environment;
 - the petitioners have failed to demonstrate that the certifications failed to include any standard or limitation legally required on the date of issuance;
 - the petitioners have failed to demonstrate that there has been a change in any condition or circumstance that requires revocation, suspension or a temporary or permanent modification of the terms of the certifications; and
 - the petitioners have failed to demonstrate the licensees have violated any law administered by the Department.

OVERVIEW OF THE SETTLEMENT ACCORD

o Background

In 1837, the Kennebec River Dam Company first built a dam on the lower Kennebec River in Augusta at a site that eventually became known as the Edwards Dam site. The dam was used to provide mechanical power to industrial interests at the site. In 1913, hydroelectric turbines were installed at the site and the dam was used to produce electricity.

For over 160 years, the various owners of the Edwards Dam had been embroiled in controversy with the State due to the lack of adequate fish passage at the site. This was of particular importance since the Edwards Dam was the lowermost dam on the Kennebec River and it impeded the ability of migratory fish to swim to habitat upstream of Augusta.

In 1986, the Department of Marine Resources (DMR) established a fisheries restoration plan for anadromous fish in the Lower Kennebec River. This plan was premised on the installation of fish passage at the Edwards Dam by the late-1980s such that by 1999-2001, fish passage could be required at certain upstream dams. The owners of seven dams on the Kennebec and Sebasticook Rivers upstream of the Edwards Dam entered into an agreement with the State resource agencies to provide \$1.86 million to help fund the State's restoration efforts. The dam owners also agreed to install anadromous fish passage facilities at their dams by certain dates, all of which were contingent upon upstream fish passage being installed at the Edwards Dam, consistent with the State's restoration plans. This agreement was known as the 1987

Kennebec Hydro Developers Group Agreement (the 1987 KHDG Agreement).¹ As explained later, this 1987 agreement was replaced by a second fisheries restoration agreement in 1998 known as the 1998 KHDG Agreement.

The owners of the Edwards Dam opted not to sign the KHDG Agreement in 1987. Instead, in 1988, they chose to install an experimental fish pump to assist DMR in its trap and truck program for alewives.

In 1989, the Kennebec Coalition was formed to advocate for dam removal in the federal re-licensing process that was underway for the Edwards Dam. The FERC license for the Edwards Dam was scheduled to expire in 1993, and Edwards formally applied for a new license in 1991. As part of its application, Edwards proposed to expand its generating capability at the dam from 4 megawatts to 11.5 megawatts and to install fish passage at the site. In 1991, Governor McKernan called for the removal of the dam and the Maine Legislature passed a Resolve calling for the dam's removal.

In 1992, the City of Augusta became a co-licensee with Edwards under the project's FERC license. In 1993, FERC convened settlement negotiations among interested parties involved in the Edwards re-licensing proceeding to try to resolve issues surrounding the project.

Negotiations among Edwards, State and federal resource agencies, the Kennebec Coalition, and upstream dam owners lasted for approximately eight months. However, those negotiations ended without resolution.

¹ This agreement is sometimes referred to as the 1986 KHDG Agreement due to the fact that certain parties signed the agreement in December 1986, while others signed it in January 1987. For the purposes of this discussion, we will refer to the agreement as the 1987 KHDG Agreement.

In 1996, FERC issued a preliminary environmental assessment for the project that recommended the installation of fish passage at the Edwards project. In November 1997, FERC reversed itself and issued an order denying a new FERC license for Edwards and instead, required the license to be surrendered and the dam to be removed. Edwards and the City of Augusta requested rehearing of the FERC order in December 1997. Other parties that intervened and sought rehearing of the Commission's order included the National Hydropower Association, the American Public Power Association, the Edison Electric Institute, the American Forest and Paper Association, and the City of Tacoma, Washington. In January 1998, FERC granted rehearing for further consideration.

During this time, a dispute also arose regarding fish passage requirements at the Fort Halifax project on the Sebasticook River. Under the 1987 KHDG Agreement, upstream anadromous fish passage had been envisioned to be installed at Fort Halifax in 1999; however, because of delays of fish passage at Edwards, the timing of the installation had come into question. Appeal proceedings were initiated before FERC in December 1997 to resolve this dispute.

In an effort to try to broker a resolution to the impasse surrounding Edwards Dam and the State's fisheries restoration efforts, the State Planning Office, State and federal resource agencies, and the Kennebec Coalition initiated intense negotiations with various stakeholders over a period of approximately six months. This effort culminated in the resolution of outstanding issues surrounding the Edwards Dam and the State's fish restoration efforts on the lower Kennebec River in what is known as *The Lower Kennebec River Comprehensive Hydropower Settlement*

Accord. The Settlement Accord was signed on May 26, 1998 and submitted to FERC for approval. Signatories included:

- Maine State Planning Office;
- Maine Department of Marine Resources;
- Maine Department of Inland Fisheries and Wildlife;
- United States Fish and Wildlife Service;
- National Marine Fisheries Service;
- Kennebec Coalition;
 - American Rivers;
 - Atlantic Salmon Federation;
 - Kennebec Valley Chapter of Trout Unlimited;
 - Natural Resources Council of Maine;
 - Trout Unlimited;
- National Fish and Wildlife Foundation;
- Edwards Manufacturing (Edwards Dam);
- City of Augusta (Edwards Dam); and
- KHDG Members;
 - CMP (Shawmut, Weston and Fort Halifax dams);
 - Merimil Limited Partnership (Lockwood);
 - UAH-Hydro Kennebec L.P. (Hydro Kennebec Dam);
 - Benton Falls Associates (Benton Falls Dam);
 - Ridgewood Maine Hydro Partners, L.P. (Burnham Dam).

In addition, Bath Iron Works (BIW) entered into a separate stand-alone agreement that was part of the comprehensive settlement of the Accord, but BIW was not a signatory to the Accord itself.

A number of the dams covered under the Settlement Accord have since changed hands, including FPLE's acquisition of CMP's interests in the Lockwood, Shawmut and Weston projects. FPLE has taken on all obligations of CMP in regards to the Accord and various agreements that make up the Accord.

- *Summary of the Settlement Accord Provisions*

In summary, the Accord and its underlying agreements provided for 1) the owners of the Edwards Dam to donate the dam to the State of Maine so that the State could proceed with the removal of Edwards Dam in an expedited and cooperative fashion; 2) resolution of the fish passage obligations of the upstream dam owners in exchange for \$4.75 million from KHGD members to help fund the Edwards Dam removal and other fish restoration activities for the Kennebec River basin; and 3) a contribution of \$2.5 million from BIW to help fund the removal of Edwards Dam as mitigation for the anadromous fisheries habitat impacted by BIW's modernization project in Bath, Maine.

EXHIBIT FPLE-3 is a copy of the Executive Summary, Table of Contents and Explanatory Statement of the package of materials that was submitted to FERC for approval on May 26, 1998 as required by FERC regulations (18 C.F.R. §385.602). This exhibit should give the Board members some sense for the scope and magnitude of the settlement.

Also included is EXHIBIT FPLE-4, which is a copy of the Settlement Accord, but not including its 13 separate exhibits. These additional exhibits include other agreements that make up the comprehensive settlement. However, given their voluminous nature, only the relevant exhibits to the Accord are included as exhibits to my testimony. It is my understanding that a complete copy of the Accord is part of the Department's record and is available for Board members to review should they wish to do so.

- *Actions/Expenditures to Date*

FERC approved the comprehensive settlement, the transfer of the Edwards license to the State, and the 1998 KHDG Agreement on September 16, 1998. (See EXHIBIT FPLE-5.)

As noted in FERC's order approving the settlement:

"...We congratulate the parties on their successful efforts to resolve the long-running, contentious debate over the future of the Edwards Project. The Settlement will allow removal of the Edwards Dam, in a manner that is acceptable to the Edwards project licensees, federal and state agencies, and the members of the Kennebec Coalition, and will substantially enhance fish restoration efforts in the Kennebec River Basin. In addition, the settlement resolves disputes regarding the provisions of fish passage at the upstream projects, with concomitant environmental benefits." (p. 10)

"...the settlement provides for the phased construction of facilities and modifications of project operations to ensure fish passage..." (p. 10)

"...Contrary to previous occasions, where uncertainty regarding the future of the Edwards Project complicated efforts to develop firm plans, the settlement offers the opportunity to proceed with reasonable certainty..." (p. 11)

“...the fish passage provisions of the settlement are consistent with the EA’s [Environmental Assessment’s] conclusion that fish passage facilities should be required only when fish are present at the projects...” (p. 11)

“...The licenses for the ...Shawmut, Weston...Lockwood...projects will be amended to replace any existing fish passage requirements with those included in the settlement...” (p. 12)

Since FERC’s approval of the settlement in 1998:

- 1) the prior owner of the Edwards Dam transferred ownership of the dam and its FERC license to the State of Maine;
- 2) the State of Maine removed the Edwards Dam in 1999, opening up 17 miles of free flowing habitat in the lower Kennebec River to anadromous and catadromous fisheries in concert with the State’s restoration plans;
- 3) \$2.5 million has been paid by BIW to help fund the removal of Edwards Dam;
- 4) through December 31, 2006, KHDG members, including FPLE and Merimil, have contributed over \$4 million to the State to help fund the removal of Edwards Dam and to further the State’s restoration efforts on the lower Kennebec River – this is in addition to the \$1.86 million KHDG members previously contributed to the restoration efforts pursuant to the 1987 KHDG Agreement and does not include an additional \$720,000 that will be contributed by KHDG members between 2007-2010 (assuming that the KHDG Agreement isn’t otherwise terminated);
- 5) restoration funds have been used by the State to provide alewives access to critical habitat in the Kennebec River basin by removing the Guilford Dam, and by installing fishways at

the outlet of Sebasticook Lake, the outlet of Plymouth Lake, and below the outlet of Pleasant Pond;

- 6) restoration funds have been used to continue the State's trap and truck program to transport anadromous fish to habitat destinations above KHDG dams;
- 7) restoration funds have been used to significantly expand the State's shad hatchery efforts;
- 8) an upstream fish pump, trap and sorting facility has been installed at the Fort Halifax Project allowing the State to far exceed its alewife escapement targets for the lower Kennebec River basin (with the exception of 2006);
- 9) regulatory approvals have been obtained to allow for the partial removal of the Fort Halifax Dam to further enhance the restoration efforts on the Sebasticook River²;
- 10) upstream anadromous fish lifts have been installed at the Benton Falls and Burnham projects on the Sebasticook River at a cost of approximately \$1 million for each project;
- 11) a \$2.7 million upstream anadromous fish lift has been installed at the Lockwood project;
- 12) upstream eel ways have been installed at all of the KHDG projects³;
- 13) interim downstream anadromous fish and eel passage measures have been installed and/or implemented at all of the KHDG projects;
- 14) studies have been conducted and additional studies are ongoing at KHDG projects by DMR and dam owners in order to determine fish passage effectiveness at the various KHDG sites; and
- 15) a renewed spirit of cooperation has been established among stakeholders interested in fisheries restoration for the Lower Kennebec River.

² Final resolution of passage at Fort Halifax is pending appeal by Save Our Sebasticook in the Maine Supreme Court.

³ The Lockwood eel passage facility was scheduled to be installed in 2006 but was delayed due to high water.

OVERVIEW OF THE 1998 KHDG AGREEMENT

○ *Summary of the 1998 KHDG Agreement Provisions*

The 1998 KHDG Agreement is attached herein as EXHIBIT FPLE-6.⁴ The 1998 KHDG Agreement is intended to accomplish the following purposes:

“...to achieve a comprehensive settlement governing fish restoration, for numerous anadromous and catadromous species, that will rapidly assist the restoration of these species in the Kennebec River after termination on December 31, 1998 of the existing agreement between the State of Maine and the Kennebec Hydro Developers Group [a.k.a. the 1987 KHDG Agreement]; to avoid extensive litigation over fish passage methodologies, timetables and funding; to assist in achieving the removal of the Edwards dam; and to fund the next phase of a restoration program for these species on the Kennebec River.” (p.2) [emphasis added]

Among other things, the 1998 KHDG Agreement outlines procedural obligations of the parties; consultation, fish passage effectiveness study and reporting provisions; site-specific requirements for upstream and downstream passage provisions for anadromous species and eels; and funding obligations for fisheries restoration. Unlike the prior 1987 KHDG Agreement, the 1998 KHDG Agreement also incorporated eel passage measures at each project in addition to anadromous passage measures.

In general, the 1998 KHDG Agreement requires a great deal of collaboration between the dam owners and the resource agencies, particularly with DMR, to determine appropriate measures to be taken at each site. To the extent disputes arise among the parties, they are to be handled through the FERC process:

⁴ The 1998 KHDG Agreement is appended to the Accord as Exhibit B. The 1998 KHDG Agreement covers the Fort Halifax, Benton Falls, and Burnham projects located on the Sebasticook River as well as the Lockwood, Hydro Kennebec, Shawmut, and Weston projects located on the Kennebec River. The petitioners have included only the projects on the Kennebec River in their petitions in this proceeding.

“Any disputes will be handled through the FERC process.” (See Term of Agreement (p.4-5); Consultation process (p.5); Effectiveness studies (p.5); and Biological Assessment Process for Lockwood, UAH-Hydro Kennebec, Shawmut and Weston (p.8))

As noted in EXHIBIT FPLE-7, the Kennebec Coalition and State and federal agencies were fully supportive of incorporating the terms of the 1998 KHDG Agreement into the FERC licenses for the KHDG projects:

“With this filing, the Kennebec Coalition, the NMFS, the USFWS and the State of Maine express support for the KHDG members’ Application for Incorporation of Settlement terms conditioned on two events: (1) that the Edwards license is transferred...and 2) that FERC rule on KHDG members’ Application...in a manner consistent with the Comprehensive Settlement and KHDG Agreement...” (p.2)

The language in the DEP water quality certifications and the FERC licenses either simply refer to the 1998 KHDG Agreement or mimic the language from the Agreement. Thus, to the extent there are any disputes surrounding the implementation of the Agreement, such disputes should be resolved through the FERC process.

- ***Specific Requirements at Lockwood, Shawmut and Weston***

- *Upstream Anadromous Fish Passage*

Among other things, the 1998 KHDG Agreement established schedules for installing permanent upstream anadromous fish passage facilities at four hydroelectric projects located upstream from the Edwards Dam on the lower Kennebec River from the Lockwood Dam in Waterville to the Weston Dam in Skowhegan. These schedules were developed by the parties to the Agreement in a rational, sequential and scientific manner based primarily on the anticipated growth in the

population of American shad but also in consideration of other species. In the interim period, a new upstream anadromous fish lift, trap, sort and truck facility at Lockwood would collect fish for transport to upstream habitat above the Lockwood, Hydro-Kennebec, Shawmut and Weston projects as determined by fishery agency personnel.

In 2006, pursuant to the 1998 KHDG Agreement, FPLE installed, operated and began studying the effectiveness of the new \$2.7 million “interim” fish lift, trap, sort and truck facility at Lockwood.⁵ Per the Agreement, the new Lockwood “interim” fish lift is a trap and transport facility only and is not required to pass fish directly into the headpond. An additional flume that will transport fish directly to the headpond will be added to the “interim” lift when certain trigger numbers of returning fish are achieved.⁶ (See EXHIBIT FPLE-6, pages 8-9.) These facilities will then constitute the “permanent” fish passage facilities for the Lockwood project.

Specifically, at Lockwood, the requirement is to install the additional flume when 8,000 American shad are captured at the Lockwood fish lift or a biological assessment trigger is initiated for Atlantic salmon, alewife or blueback herring. At Shawmut, the requirement is to install permanent upstream passage when 15,000 American shad are captured at the downstream Hydro-Kennebec facility or a biological assessment trigger is initiated for Atlantic salmon, alewife or blueback herring. At Weston, the requirement is to install permanent upstream passage when 35,000 American shad are captured at the downstream Shawmut facility or a biological assessment trigger is initiated for Atlantic salmon, alewife or blueback herring. (See EXHIBIT FPLE-6, pages 12 and 14.)

⁵ While not subject to this proceeding, a description of upstream anadromous fish passage at Lockwood is included to provide clarity for the Board.

⁶ The additional flume is projected to cost approximately \$500,000.

The Agreement's biological assessment trigger calls for consultation between resource agencies and dam owners to adopt an alternative approach to trigger fishway construction if the growth of Atlantic salmon or river herring runs warrants a change in the construction timetables. Everyone agreed that in no case will permanent upstream passage facilities be required at Lockwood, Shawmut and Weston before 2010, 2012, and 2014, respectively. (See EXHIBIT FPLE-6, pages 9, 12 and 14.)

- *Downstream Anadromous Fish Passage*

The 1998 KHDG Agreement calls for "permanent" downstream anadromous fish passage facilities to be installed coincident with the installation of permanent upstream anadromous fish passage facilities. As noted previously, these permanent downstream facilities are scheduled to be installed no sooner than 2010, 2012, and 2014 for the Lockwood, Shawmut, and Weston projects, respectively. In the meantime, the Agreement calls for "interim" downstream passage measures to be provided by using existing facilities until such permanent facilities are installed. Construction of new diversionary structures to achieve downstream passage, such as those suggested by petitioners, is specifically not required under the Agreement. "Interim" passage facilities may become "permanent" passage facilities if they are demonstrated to be effective.

The Agreement calls for the project owners to consult with state and federal fishery resource agencies to develop plans for interim downstream passage measures to avoid significant injuries or mortalities on downstream migrating fish. The Agreement also calls for conducting fish

passage effectiveness studies in consultation with these resource agencies prior to the date by which permanent downstream passage facilities are to be operational.

- *Eel Passage*

The 1998 KHDG Agreement has a stand-alone section that collectively addresses eel passage for the seven projects covered under the Agreement. The Agreement specifies a collaborative process for the dam owners to work with DMR to determine appropriate eel passage measures for each project. Provisions are also provided for the dam owners and DMR to consult with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) on a three-year research project on eel passage measures. This research project was to be supervised and funded by DMR. Ultimately, if consensus is not reached on appropriate eel passage measures for the projects, then the Agreement provides an opportunity for the parties to petition FERC to seek to insert appropriate terms and conditions into the FERC license.

- *Actions/Expenditures to Date*

Mr. Richter's testimony contains information explaining the implementation of these various provisions and how FPLE's and MLP's actions have been consistent with the terms of the 1998 KHDG Agreement, DEP water quality certifications and FERC licenses for the Lockwood, Shawmut and Weston projects.

As noted previously, considerable efforts and monies have already been expended in reliance on the 1998 KHDG Agreement by the KHDG members in their support of the State's restoration efforts. For just the Lockwood, Shawmut and Weston projects, these efforts include:

- 1) through December 31, 2006, these three projects have contributed approximately \$2.5 million to the State to help fund the removal of Edwards Dam and to further the State's restoration efforts on the Lower Kennebec River – this is in addition to the \$1.2 million these three projects previously contributed to the restoration efforts pursuant to the 1987 KHDG Agreement and does not include an additional \$440,000 that will be contributed by these projects between 2007-2010 (assuming that the KHDG Agreement isn't otherwise terminated);
- 2) a \$2.7 million upstream anadromous fish lift has been installed at the Lockwood project;
- 3) upstream eel ways have been installed at all three projects⁷;
- 4) interim downstream anadromous fish and eel passage measures have been installed and/or implemented at all three projects; and
- 5) studies have been conducted and additional studies are ongoing at these projects by DMR and FPLE in order to determine fish passage effectiveness at these sites.

○ *Impact of Attempting to Modify the Terms and Conditions of the KHDG Agreement*

Over the past 20 years, FPLE (and/or its predecessor CMP) has entered into dozens of formal and informal agreements with State and federal resource agencies, municipalities, environmental groups, land trusts, dam owners, rafting groups, chambers of commerce, trade associations, and other interested parties for its two dozen hydroelectric projects and eight water storage reservoirs located throughout the State. In addition to the 1998 Accord and KHDG Agreement, among the more notable agreements are:

⁷ The Lockwood eel passage facility was scheduled to be installed in 2006 but was delayed due to high water.

- Indian Pond Settlement Agreement (2001)
- Upper Androscoggin River Storage Projects Settlement Agreement (1998)
- Gulf Island Pond Oxygenation Project Partnership (1991)
- Lewiston Falls Project Agreement (1984)
- Saco River Fish Passage Agreement (1994)
- Saco River Instream Flow Agreement (1997)
- Water Release Agreement with Cities of Biddeford and Saco (1991)
- Programmatic Agreement to Protect Archaeological Resources at ten Hydroelectric Projects (1993).

I have personally been involved with negotiating or administering the terms and conditions of virtually all of these agreements. I can say from experience that the agreements have been entered into and managed in the spirit of cooperation and compromise while trying to balance the interests of all parties involved. Most, if not all, have been entered into on a voluntary basis and have been incorporated into our licenses and permits to the extent appropriate. Fortunately, this Board and other regulatory bodies that we are governed by have exhibited a great respect over the years for the efforts that have been put into negotiating these types of agreements and have wisely refrained from trying to re-negotiate terms and conditions when items have come before them. We appreciate that restraint, for to do otherwise would seriously chill the desire of settling parties to enter into such agreements in the future.

In this particular instance, the parties to the 1998 KHDG Agreement spelled out specific consequences should terms of the Agreement be altered by regulatory authorities. For instance,

if FERC or the DEP alter or prohibit execution of terms considered essential to parties in the Agreement or if approvals are not received in a timely manner, then the Agreement can be declared null and void by any party and the State will be required to reimburse KHDG members for all but \$140,000 of contributions made to date into the restoration fund. Specifically, the Agreement states:

“In the event that FERC or Maine DEP choose to alter or prohibit execution of any term and condition contained in this Agreement considered essential to any party (including all dates for performance) or have not issued final, non-appealable, FERC licenses and DEP water quality certifications (amended or new) for all KHDG projects by June 1, 1999...then unless all parties agree to amend this Agreement to incorporate any changes made by FERC or Maine DEP... this Agreement becomes null and void and all payments made by KHDG...will be returned to KHDG, except for \$140,000...” (p. 4)

These provisions were incorporated into the Agreement in an effort to provide all parties some semblance of regulatory certainty in what could have best been characterized as an extremely uncertain process in 1998. Consequently, we urge the Board to consider all aspects of the Accord as it evaluates the merits of the petitions filed in this proceeding.

CONCLUSION

- 1) The settlement that resulted in the signing of the Settlement Accord and its attendant 1998 KHDG Agreement was instrumental in resolving the long-running, contentious debate over the future of the Edwards Dam.
- 2) The Settlement Accord and its integrated settlement agreements allowed the removal of the Edwards Dam to proceed in an expeditious and cooperative manner and for fish passage measures to be implemented at upstream dams in a rational, sequential and scientific manner.

- 3) KHDG dam owners have invested considerable time, effort and monies to support the State's restoration efforts on the lower Kennebec River.
- 4) The State's fish restoration efforts in the Kennebec River Basin have been substantially enhanced by the cooperative efforts among the dam owners, State and federal resource agencies, Kennebec Coalition and other parties to the Settlement Accord.
- 5) The 1998 KHDG Agreement may be subject to termination if FERC or the DEP alter or prohibit execution of terms considered essential to any party in the Agreement. Under such circumstance, the State may be required to refund virtually all of the \$4 million contributed to date by KHDG members and may not be entitled to \$720,000 of contributions planned between 2007 and 2010.
- 6) The petitions to revoke, modify or suspend the water quality certifications for the Lockwood, Shawmut or Weston projects should be dismissed since:
 - the petitioners have failed to demonstrate that the certified activities pose a threat to human health or the environment;
 - the petitioners have failed to demonstrate that the certifications failed to include any standard or limitation legally required on the date of issuance;
 - the petitioners have failed to demonstrate that there has been a change in any condition or circumstance that requires revocation, suspension or a temporary or permanent modification of the terms of the certifications; and
 - the petitioners have failed to demonstrate the licensees have violated any law administered by the Department.

Dated: 1/17/07

F. Allen Wiley
F. Allen Wiley

STATE OF MAINE
COUNTY OF KENNEBEC

Personally appeared before me the above-named F. Allen Wiley and made oath that the foregoing is true and accurate to the best of his knowledge and belief.

Dated: 1/17/2007

Donna A. Severance
Notary Public
My Commission Expires:

**DONNA A. SEVERANCE
NOTARY PUBLIC, STATE OF MAINE
MY COMMISSION EXPIRES AUGUST 16, 2011**

EXHIBIT FPLE-3

Executive Summary, Table of Contents and Explanatory Statement of Lower Kennebec River
Comprehensive Hydropower Settlement Accord FERC Filing

***LOWER KENNEBEC RIVER
COMPREHENSIVE
HYDROPOWER
SETTLEMENT ACCORD***

And Related Filings

May 26, 1998

EXECUTIVE SUMMARY

If FERC approves this Comprehensive Settlement and related filings, this Comprehensive Settlement will accomplish the following: (1) a charitable donation of the Edwards Dam from Edwards Manufacturing Company to the State of Maine; (2) the removal of the Edwards Dam on the Kennebec River by the State of Maine in 1999; (3) contribution of \$7.25 million towards Edwards Dam removal and related activities, and towards other Kennebec River anadromous and catadromous fish restoration efforts, by Bath Iron Works Corporation and Kennebec Hydro Developers Group members; and (4) amendment of certain fish passage obligations at seven dams on the Kennebec and Sebasticook Rivers owned by Kennebec Hydro Developers Group members upstream of the Edwards Dam.

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LOWER KENNEBEC RIVER COMPREHENSIVE HYDROPOWER SETTLEMENT ACCORD AND RELATED FILINGS

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- III. Action Sought From FERC
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REQUEST FOR PUBLIC COMMENT

CONCLUSION

EXHIBIT 1 Proposed Timeline for Settlement-Related Actions

EXHIBIT 2 Lower Kennebec River Comprehensive Hydropower Settlement Accord

Lower Kennebec River Comprehensive Hydropower Settlement Accord

PARTIES

COMMITMENTS

- I. Edwards Dam License Transfer
- II. Amendment of Fish Passage Obligations at Upstream Dams
- III. Removal of Edwards Dam
- IV. Dam Removal Financing
- V. Contingencies
- VI. Effect of this Comprehensive Settlement
- VII. Commitment to Expedition

LIST OF EXHIBITS

- A. Settlement Agreement Among Edwards Manufacturing Co., Inc., the City of Augusta and the State of Maine Concerning the Edwards Dam in Augusta, Maine
- B. Agreement Between Members of the Kennebec Hydro Developers Group, the Kennebec Coalition, the National Marine Fisheries Service, the State of Maine, and the US Fish and Wildlife Service
- C. The Edwards Dam Removal Fund Agreement Among Bath Iron Works Corporation, National Fish and Wildlife Foundation, and the State of Maine
- D. The Kennebec River Restoration Fund Agreement Among Members of the Kennebec Hydro Developers Group, National Fish and Wildlife Foundation, US Fish and Wildlife Service, the National Marine Fisheries Service, the Kennebec

- Coalition and the State of Maine
- E. Application for Approval of Transfer of License (Edwards)
 - F. Joint Motion by Licensees, State and Federal Agencies, and the Kennebec Coalition for Continued Stay of Action (Edwards)
 - G. Notice of Withdrawal of Request for Rehearing and All Other Pending Motions (Edwards)
 - H. Joint Comments of the Kennebec Coalition and Federal Agencies in Support of the Application of Licensees and the State of Maine to Transfer the Edwards Dam License
 - I. Joint Motion Requesting a Technical Conference to Address Removal of Edwards Dam
 - J. Application for Incorporation of Settlement Terms into Existing and Proposed Licenses (KHDG)
 - K. Joint Motion by Licensees, State and Federal Agencies, and the Kennebec Coalition for Continued Stay of Action (KHDG)
 - L. Notice of Withdrawal of Request for Rehearing and All Other Pending Motions (KHDG)
 - M. Joint Comments of the Kennebec Coalition, Federal Agencies and the State of Maine in Support of the KHDG Members' Application for Incorporation of Settlement Terms into Existing and Proposed Licenses

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

EDWARDS MANUFACTURING COMPANY, INC. and CITY OF AUGUSTA, MAINE	) ) ) )	Project No. 2389
BENTON FALLS ASSOCIATES	) )	Project No. 5073
CENTRAL MAINE POWER COMPANY	) )	Project No. 2552
CENTRAL MAINE POWER COMPANY	) )	Project No. 2322
CENTRAL MAINE POWER COMPANY	) )	Project No. 2325
MERIMIL LIMITED PARTNERSHIP	) )	Project No. 2574
RIDGEWOOD MAINE HYDRO PARTNERS	) )	Project No. 11472
UAH-HYDRO KENNEBEC LIMITED PARTNERSHIPS	) )	Project No. 2611

**SUBMITTAL OF COMPREHENSIVE SETTLEMENT AND
EXPLANATORY STATEMENT PURSUANT TO FERC RULE 602
AND REQUEST FOR EXPEDITED CONSIDERATION**

Pursuant to Rule 602 of the Federal Energy Regulatory Commission (“FERC”), 18 CFR Sec. 385.602, the undersigned Parties submit to FERC the enclosed *Lower Kennebec River Comprehensive Hydropower Settlement Accord* (“the Comprehensive Settlement”) (attached as Exhibit 2), which was executed by the undersigned Parties on May 26, 1998.¹ This Comprehensive Settlement is intended to resolve all issues before FERC in the Edwards Dam relicensing proceeding, FERC Project No. 2389, and all fish passage issues before FERC related to the Kennebec Hydro Developers Group (“KHDG”) licenses or proposed licenses, FERC Project Nos. 2552, 2322, 2325, 2574, 2611, 5073, and 11472.²

¹This complete filing, including all related agreements and pleadings (with the exception of certain maps and exhibits), is also provided to the Commission in electronic form on disk.

²The records in the Edwards Dam FERC licensing proceeding and the fish passage proceedings for KHDG member licenses are incorporated herein by reference.

As represented in their respective underlying agreements, the undersigned Parties have entered into this Comprehensive Settlement with the intent of causing: (1) a charitable donation of the Edwards Dam to the State of Maine; (2) the removal of the Edwards Dam on the Kennebec River in Maine in 1999 in the most expeditious and cooperative fashion; (3) the restoration of numerous species of anadromous and catadromous fish to the Kennebec River; (4) the alteration of certain fish passage obligations at seven hydropower facilities on the Kennebec River upstream of the Edwards Dam; and (5) the elimination of the need for further administrative proceedings and litigation in both the Edwards and Kennebec Hydro Developers Group members' licenses.

The undersigned Parties agree that the Comprehensive Settlement is fair and reasonable and in the public interest. The Parties respectfully request that FERC approve this Comprehensive Settlement and the accompanying pleadings being filed today with FERC. Because timely, coordinated FERC action is required for implementation of this Comprehensive Settlement, and because without such action the Comprehensive Settlement will become null and void, the Parties respectfully request that FERC give expedited consideration to the terms of this Comprehensive Settlement and the pleadings filed today with FERC that seek to implement it.

EXPLANATORY STATEMENT PURSUANT TO 18 C.F.R. §385.602(c)

I. Parties

The Parties submitting this Comprehensive Settlement to FERC ("the Parties") are:

- A. *The City of Augusta, Maine* ("the City"), a co-licensee of the Edwards Hydroelectric Project, FERC Project No. 2389;
- B. *Edwards Manufacturing Company* ("Edwards"), owner of the Edwards Dam hydroelectric facility and a co-licensee of the Edwards Hydroelectric Project, FERC Project No. 2389;
- C. *The Kennebec Coalition*, an association comprised of the following member organizations, all of whom are or were intervenors in the FERC Edwards Dam proceeding, the KHDG members' Request to Amend License Conditions, dated April 1997, and the relicensing proceedings for Central Maine Power Company's Ft. Halifax and Weston Projects:
 - o American Rivers, Inc;
 - o The Atlantic Salmon Federation;
 - o Kennebec Valley Chapter of Trout Unlimited;
 - o The Natural Resources Council of Maine; and
 - o Trout Unlimited;

- D. Each member of the association known as the *Kennebec Hydro Developers Group* (“KHDG”), specifically:
- Central Maine Power Company, owner of the following hydroelectric projects: Fort Halifax, FERC Project No. 2552; Shawmut, FERC Project No. 2322; and Weston, FERC Project No. 2325;
 - Merimil Limited Partnership, owner of the Lockwood hydropower project, FERC Project No. 2574;
 - UAH-Hydro Kennebec Limited Partnership, co-licensee/agent of the Hydro-Kennebec hydropower project, FERC Project No. 2611;
 - Ridgewood Maine Hydro Partners, L.P., owner of Burnham hydropower project, FERC Project No. 11472;
 - Benton Falls Associates, owner of Benton Falls hydropower project, FERC Project No. 5073;
- E. *The State of Maine* (“the State”), acting by and through the Governor of the State of Maine, the Maine Department of Inland Fisheries and Wildlife, the Maine Department of Marine Resources, and the Maine State Planning Office, a state of the United States of America. The State is an intervenor in the FERC Edwards Dam proceeding, the KHDG members’ Request to Amend License Conditions, dated April 1997, the original license proceeding for Ridgewood Maine Hydro Partners’ Burnham Project, and the relicensing proceedings for Central Maine Power’s Ft. Halifax and Weston Projects;
- F. *The US Department of Commerce, through the National Oceanic and Atmospheric Administration, National Marine Fisheries Service* (“NMFS”), which is or was an intervenor in the Edwards Dam FERC proceeding, the KHDG members’ Request to Amend License Conditions, dated April 1997, and the relicensing proceedings for Central Maine Power’s Ft. Halifax and Weston projects; and
- G. *The US Department of Interior, through the US Fish and Wildlife Service* (“USFWS”), which is or was an intervenor in the Edwards Dam FERC proceeding, the KHDG members’ Request to Amend License Conditions, dated April 1997, and the relicensing proceedings for Central Maine Power’s Ft. Halifax and Weston projects.

II. Background and Summary of Terms of Comprehensive Settlement

If FERC approves this Comprehensive Settlement and related filings, this Comprehensive Settlement will accomplish, by agreement of all Parties, the following: (1) transfer of the Edwards Dam from Edwards and the City of Augusta to the State of Maine, and removal of the

dam by the State; (2) contribution of \$7.25 million towards Edwards Dam removal and related activities, and towards other Kennebec River anadromous and catadromous fish restoration efforts, by Bath Iron Works Corporation and KHDG members; and (3) amendment of certain fish passage obligations at seven dams on the Kennebec and Sebasticook Rivers owned by KHDG members upstream of the Edwards Dam. Specifically:

A. Settlement of the Edwards Dam Proceeding

The Kennebec Coalition, the NMFS, the State of Maine, and the USFWS have been seeking, as parties in the Edwards Dam relicensing proceeding, the removal of the Edwards Dam in order to restore numerous anadromous and catadromous fish species to the Kennebec River. As represented in their respective underlying agreements, these parties to the pending FERC proceedings, plus Licensees the City and Edwards (“Licensees”) desired to enter into a settlement of all outstanding disputes regarding the operation, licensing, relicensing, decommissioning and removal of the Edwards Dam project, in order to effect a charitable donation of the Edwards Dam by Edwards to the State of Maine and to avoid further administrative proceedings and litigation.

On May 15, 1998, the State of Maine and the Licensees finalized execution of a *Settlement Agreement Among Edwards Manufacturing Co., Inc., the City of Augusta and the State of Maine Concerning the Edwards Dam in Augusta, Maine* (“*Edwards Dam Agreement*”) (attached to the Comprehensive Settlement as Exhibit A), in which Edwards and the City agree to transfer their Edwards Dam license to the State, effective January 1, 1999, and the State agrees to take over ownership of the Edwards Dam site and to remove the dam subject to several contingencies, including, but not limited to, the transfer of the FERC license for the Edwards Dam. As part of this license transfer, all licensing rights and responsibilities granted and imposed by FERC for FERC Project No. 2389 will be transferred to the State.

Under Section VII.A. of the *Edwards Dam Agreement*, the State commits to seek permitting approval for removal of the Edwards Dam. Upon receipt of FERC approval of the application for license transfer, the State will seek removal, in 1999, in a manner consistent with that described in the May, 1997 Report to FERC by the Oak Ridge National Laboratory and relied upon in FERC’s *Final Environmental Impact Statement, Kennebec River Basin, Maine* (July, 1997). Upon receipt of these regulatory authorizations and fulfillment of related contingencies in the *Edwards Dam Agreement*, the State will remove the dam.

All other parties that were actively involved in the Edwards Dam relicensing proceeding - the Kennebec Coalition, the NMFS, and the USFWS -- support the *Edwards Dam Agreement*. They are co-signatories to the Comprehensive Settlement.

B. Settlement of Fish Passage Issues at KHDG Projects

The members of KHDG operate seven hydropower projects on the Kennebec and Sebasticook Rivers pursuant to legal obligations that currently require permanent fish passage

structures to be installed at these facilities in 1999 - 2001. The time frame for fish passage at many of the KHDG dams that was contemplated in 1987 (when these obligations were first agreed upon) was based on the assumption that there would be by the late 1980s permanent fish passage at Edwards Dam. The significant delay in deciding whether to remove Edwards Dam has delayed fish restoration for several of the targeted species in the Kennebec River, and thus has justified reconsideration of the KHDG fish passage deadlines.

The Kennebec Coalition, the NMFS, the State of Maine, and the USFWS believe that the most effective way to continue and accelerate the fish restoration program in the Kennebec River is both to remove the Edwards Dam as soon as possible and thereby allow certain fish species to present themselves at the upriver dams, and to fund certain activities related to the restoration of alewife, shad, and salmon. The Kennebec Coalition, the NMFS, the State of Maine, and the USFWS believe that certain extensions in the dates for construction of the KHDG fish passage structures are justified as part of a comprehensive settlement that addresses these and other anadromous and catadromous fish restoration objectives.³

On May 26, 1998, all parties that have been actively involved in proceedings before FERC regarding the need for, design of, and timing of fish passage facilities at KHDG members' hydropower projects signed an *Agreement Between Members of the Kennebec Hydro Developers Group, the Kennebec Coalition, the National Marine Fisheries Service, the State of Maine, and the US Fish and Wildlife Service* ("KHDG Agreement") (attached to the Comprehensive Settlement as Exhibit B). These parties are all co-signatories to the Comprehensive Settlement.

In addition to resolving disputes regarding the need for, design of, and timing of fish passage facilities at the KHDG members' dams, the *KHDG Agreement* provides \$4,750,000 from KHDG members for anadromous fisheries restoration in the Kennebec River, including funding for restoration of alewife, shad, blueback herring, and salmon, certain eel studies, and costs incurred by the State in connection with removing Edwards Dam; and provides for the amendment of certain fish passage obligations at KHDG members' projects. This funding will facilitate removal of the Edwards Dam, finance other significant and necessary fish restoration activities in the river, and facilitate a settlement agreement that incorporates basin-wide considerations for fish restoration. These activities will speed restoration of certain target fish species, which is needed to ensure that KHDG fish passage structures will continue the restoration of the targeted species to their historic habitat. Thus, the funds provided by KHDG members and the other terms of the *KHDG Agreement* providing for both interim and permanent fish passage measures are intended to assist the State in meeting its restoration goals and objectives for the target species.

³ These conclusions are explained more fully in the KHDG Members' Application for Incorporation of Settlement Terms into Existing and Proposed Licenses, and the Joint Comments of the Kennebec Coalition, Federal Agencies and the State of Maine in Support of the KHDG Members' Application for Incorporation of Settlement Terms into Existing and Proposed Licenses (attached to the Comprehensive Settlement as Exhibits J and M, respectively).

C. *Additional Funding Arrangements Through Involvement of Other Entities Not Parties in FERC Proceedings*

The Bath Iron Works Corporation (“BIW”), a corporation organized and existing under the laws of the State of Maine, has applied for State of Maine and federal environmental permits as part of a major shipyard modernization project that requires BIW to fill or partially fill fifteen acres of the Kennebec River in Bath, Maine. In order to mitigate and compensate for the loss of anadromous fisheries habitat from that fill, on May 26, 1998 BIW signed *The Edwards Dam Removal Fund Agreement Among Bath Iron Works Corporation, National Fish and Wildlife Foundation, and the State of Maine* (“BIW Agreement”) (attached to the Comprehensive Settlement as Exhibit C). This Agreement commits BIW to provide a total of \$2.5 million to a fund administered by the National Fish and Wildlife Foundation to pay for Edwards Dam removal once BIW receives permits for its modernization project from the US Army Corps of Engineers and the Maine Department of Environmental Protection. The funds from BIW are necessary to accomplish removal of Edwards Dam. The removal of Edwards Dam will restore river habitat important to fish species such as shortnose sturgeon. The Kennebec Coalition, the NMFS, the State of Maine, and the USFWS believe that this improved habitat more than compensates for the river habitat that will be lost as a result of BIW’s expansion.

The National Fish and Wildlife Foundation (“NFWF”), a federally chartered not-for-profit corporation governed by the laws of the District of Columbia, wishes to assist the Parties in removing the Edwards Dam and restoring the anadromous and catadromous fish species in the Kennebec River. On May 26, 1998, NFWF, the State of Maine and other Parties signed the *BIW Agreement*, and *The Kennebec River Restoration Fund Agreement Among Members of the Kennebec Hydro Developers Group, National Fish and Wildlife Foundation, the US Fish and Wildlife Service, the National Marine Fisheries Service, the Kennebec Coalition and the State of Maine* (attached to the Comprehensive Settlement as Exhibits C and D, respectively), in which NFWF agrees to administer the funds deposited in special accounts with NFWF by KHDG members and BIW, with these funds being used for anadromous fisheries restoration in the Kennebec River, including funding for restoration of alewife, shad, blueback herring, and salmon, certain eel studies, and costs incurred by the State in connection with removing Edwards Dam. NFWF further agrees to administer other funds that may be secured for Kennebec River fish restoration activities. NFWF’s role will ensure that funds are available when the State needs them for its committed activities.

In summary, pursuant to this Comprehensive Settlement, at least \$7.25 million will be deposited with NFWF by BIW and KHDG members to be used to finance removal of the Edwards Dam and related activities and other fish restoration efforts in the Kennebec River, with priority placed on dam removal.

III. Action Sought From FERC

The actions outlined in the Comprehensive Settlement are necessarily intertwined. All Parties recognize that fulfillment of these shared goals is dependent upon realization of the separate underlying settlement agreements among various Parties, and upon regulatory approval from FERC and other federal, state and local permitting agencies approving the activities anticipated in those agreements. Therefore the Parties agree to cooperate to secure expeditiously, and in no way hamper or interfere with, the issuance of the approvals addressed in the Comprehensive Settlement.

Implementation of this Comprehensive Settlement depends on several actions being taken by FERC. One fundamental action that the Parties are requesting through this document is that FERC approve this Comprehensive Settlement pursuant to FERC Rule 602. Certain additional events must occur sequentially for the goals of the Comprehensive Settlement to be met and for the terms of the Comprehensive Settlement and related agreements to remain in force. Many of these events relate to needed actions that are within the control of FERC, and require FERC approval and FERC oversight. To initiate these actions, nine filings are being made today with FERC concurrent with the filing of this Comprehensive Settlement: Five related to the Edwards Dam license transfer and four related to the seven hydropower projects owned by KHDG members. These are:

A. Regarding the Edwards Dam license transfer:

- (1) Edwards, the City of Augusta and the State of Maine are applying to transfer the Edwards Dam license to the State of Maine;
- (2) The Kennebec Coalition, the NMFS, and the USFWS are filing comments in support of this application;
- (3) Edwards, the City of Augusta, the Kennebec Coalition, the NMFS, the State of Maine, and the USFWS are moving to stay all decisions and obligations in the Edwards license proceeding pending FERC's action on the Edwards Dam license transfer application;
- (4) Edwards and the City of Augusta are filing a notice withdrawing their requests for rehearing and all other pending motions regarding licensing of the Edwards Dam effective upon the transfer of the license to the State; and
- (5) Edwards, the City of Augusta, the Kennebec Coalition, the NMFS, the State of Maine, and the USFWS are requesting that FERC hold a technical conference on dam removal.

B. *Regarding the KHDG license amendments:*

(1) The KHDG members are filing a joint application to incorporate the applicable terms of the *KHDG Agreement* into the existing or proposed licenses of the KHDG members;

(2) The Kennebec Coalition, the NMFS, the State of Maine and the USFWS are filing comments in support of this application;

(3) The Kennebec Coalition, KHDG members, the NMFS, the State of Maine, and the USFWS are moving to stay, pending FERC's decision on this application, current fish passage obligations in the licenses for the Ft. Halifax, Benton Falls, Lockwood, UAH-Hydro Kennebec, Shawmut and Weston licenses and any action on the fish passage aspects of Central Maine Power Company's Rehearing Request dated December 26, 1997 of FERC's Order Issuing New License for the Ft. Halifax Project; and

(4) KHDG members are filing a notice withdrawing all pending motions and appeals regarding KHDG fish passage obligations effective upon FERC's issuance of amended or proposed licenses for the seven hydropower projects owned by KHDG members.

The Parties respectfully request that FERC approve, on an expedited basis, four of these nine filings: The Edwards Dam license transfer application, the application relating to fish passage obligations of the KHDG projects, and the two stay motions. As discussed above, the Parties also request that FERC approve the Comprehensive Settlement. The Parties believe that FERC action must be taken in the order and on the schedule described below if the terms of the Comprehensive Settlement are to be met.⁴

Specifically, the Parties respectfully request:

First, that FERC rule on the two motions to stay on or before June 24, 1998. This ruling will serve to hold in abeyance all related actions pending FERC's decisions on the other motions. We respectfully request that FERC rule on these pleadings within thirty (30) days in order to allow due consideration of all other pleadings filed with this Comprehensive Settlement.

Second, that FERC approve the Comprehensive Settlement pursuant to FERC Rule 602 on or before September 1, 1998. This approval will ensure consolidated implementation of all related FERC actions. The requested September ruling deadline is based on the

⁴In order to illustrate the Parties' desired time schedule for FERC action on this Comprehensive Settlement, a proposed timeline for settlement-related actions is attached to this document as Exhibit 1.

need for prompt FERC action on the Edwards Dam license transfer application and the application regarding the KHDG members' licenses, discussed below. To ensure that FERC does not pre-judge the Edwards Dam license transfer application or the application regarding the KHDG members' licenses by approving the Comprehensive Settlement in advance, the Parties respectfully request that FERC rule on the Comprehensive Settlement, the Edwards Dam license transfer application and the application regarding the KHDG members' licenses at the same time.

Third, that FERC rule on the transfer of the Edwards Dam license from the Licensees to the State of Maine on or before September 1, 1998. For the license transfer to take effect, several events must occur either prior to FERC's approval of the license transfer application, or after FERC approval but before the license transfer takes effect on or immediately after January 1, 1999. These contingencies are discussed further in Section V of the Comprehensive Settlement and its Exhibit A. For the Comprehensive Settlement to accomplish the purposes intended by the Parties, it is critically necessary that FERC rule on this transfer application within a few months and significantly before January 1, 1999.

Fourth, that FERC rule on the KHDG members' application relating to fish passage obligations at the seven KHDG projects on or before September 1, 1998. Based on contingencies in the *Edwards Dam Agreement* and the *KHDG Agreement*, FERC's ruling on the application by the KHDG members must be made either contemporaneous with or soon after FERC's ruling on the Edwards Dam license transfer application, but before the Edwards Dam transfer takes effect on or immediately after January 1, 1999. Also on September 1, 1998, the Parties respectfully request that FERC rescind the Compliance Letter regarding KHDG member licenses issued March 26, 1998 by the Director of the Office of Hydropower Licensing. In the event that FERC does not approve the Edwards Dam license transfer application or the application regarding the KHDG members' licenses under conditions that are consistent with the terms of the *Edwards Dam Agreement* and the *KHDG Agreement* prior to June 1, 1999, then the *KHDG Agreement* becomes null and void, at which time it is anticipated that FERC would be required to resolve again the issues regarding the need for, design of, and timing of fish passage facilities at the KHDG members' projects.

The Parties are also requesting that any FERC orders and/or license terms issued pursuant to this Comprehensive Settlement should be worded, where possible, with language identical to or consistent with this Comprehensive Settlement and underlying agreements. If FERC issues a final order inconsistent with terms in the Comprehensive Settlement, contingency provisions of the Comprehensive Settlement and underlying agreements may make the underlying agreements and this Comprehensive Settlement null and void.

In addition to the actions discussed above, certain of the Parties will also be seeking action by FERC in reviewing and approving a dam removal plan that enables the Edwards Dam

to be removed in the summer of 1999. Those Parties are seeking to hold within thirty (30) days a technical conference with FERC to discuss steps necessary for FERC approval of a dam removal plan, as requested in the pleading attached to the Comprehensive Settlement as Exhibit I. The State of Maine will then be filing documents with FERC and other permitting agencies to obtain approval of a dam removal plan. Those Parties are committed to support the method of dam removal already extensively evaluated in studies by FERC and other parties to the Edwards Dam proceeding, described in the May, 1997 Report to FERC by the Oak Ridge National Laboratory, and relied upon by FERC staff in its recommendation for dam removal made in the *Final Environmental Impact Statement, Kennebec River Basin, Maine* (July, 1997). The State of Maine, supported by the Parties, will be seeking FERC approval of a license surrender application based on that plan.

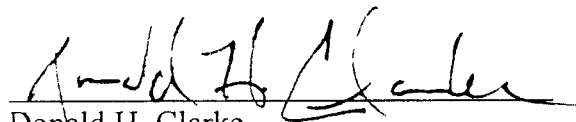
REQUEST FOR PUBLIC COMMENT

The Parties recognize that at least one of the FERC filings associated with this Comprehensive Settlement requires FERC to provide an opportunity for public comment, and that FERC may in its discretion provide such public comment opportunity for other FERC filings associated with this Comprehensive Settlement. To ensure coordinated public review of this Comprehensive Settlement, the Parties request that the Commission as soon as possible provide notice of a single thirty (30) day opportunity for public comment on the application to transfer the Edwards Dam license and the application regarding the KHDG members' licenses. To accommodate the Parties' request for expeditious release of these notices of public comment, draft notices are attached to these two applications.

CONCLUSION

The undersigned Parties respectfully request that the Commission: (1) provide a single thirty (30) day public comment opportunity on the Application for Approval of Transfer of License regarding the Edwards Project and the Application for Incorporation of Settlement Terms into Existing or Proposed Licenses of the KHDG members, attached to the Comprehensive Settlement as Exhibits E and J, respectively; (2) approve this Comprehensive Settlement; and (3) rule on the associated filings in an expedited and coordinated fashion.

Respectfully submitted this 26th day of May, 1998.



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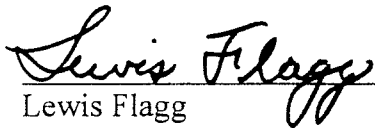
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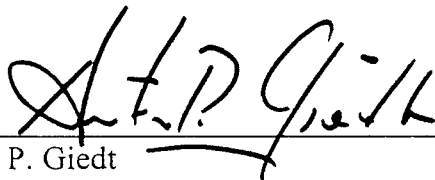
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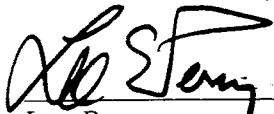
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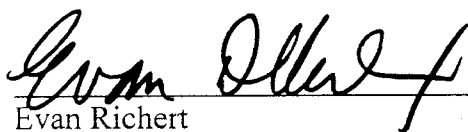
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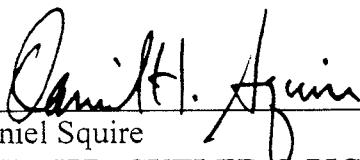
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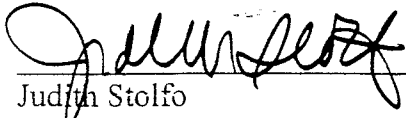
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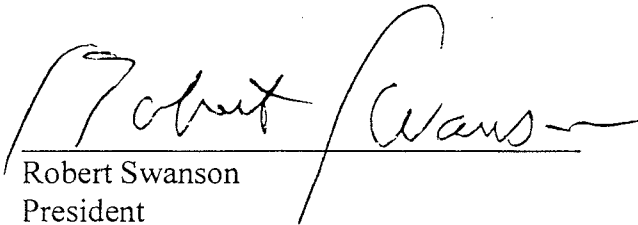
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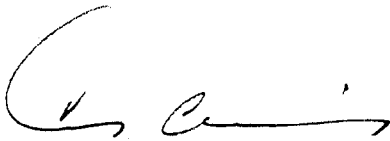
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EXHIBIT FPLE-4

Lower Kennebec River Comprehensive Hydropower Settlement Accord

LOWER KENNEBEC RIVER COMPREHENSIVE HYDROPOWER SETTLEMENT ACCORD

In consideration of the commitments made by the parties in the *Settlement Agreement Among Edwards Manufacturing Co., Inc., the City of Augusta and the State of Maine Concerning the Edwards Dam in Augusta, Maine*, the *Agreement Between Members of the Kennebec Hydro Developers Group, the Kennebec Coalition, the National Marine Fisheries Service, the State of Maine, and the US Fish and Wildlife Service*, the *Edwards Dam Removal Fund Agreement Among Bath Iron Works Corporation, National Fish and Wildlife Foundation, and the State of Maine*, and the *Kennebec River Restoration Fund Agreement Among Members of the Kennebec Hydro Developers Group, National Fish and Wildlife Foundation, the US Fish and Wildlife Service, the National Marine Fisheries Service, the Kennebec Coalition and the State of Maine* (all attached hereto), and the commitments further made by the Parties in this *Lower Kennebec River Comprehensive Hydropower Settlement Accord* ("Comprehensive Settlement"), the undersigned Parties agree as follows:

PARTIES

- I. The Parties to this Comprehensive Settlement ("Parties") are:
 - A. *The City of Augusta* ("the City"), the municipal government for the City of Augusta, Maine, chartered by the State of Maine, and a co-licensee of the Edwards Hydroelectric Project (FERC No. 2389);
 - B. *Edwards Manufacturing Company* ("Edwards"), a corporation organized under the laws of the State of Maine, owner of the Edwards Dam hydroelectric facility, and a co-licensee of the Edwards Hydroelectric Project (FERC No. 2389);
 - C. *The Kennebec Coalition*, an association comprised of the following member organizations, all of whom are or were intervenors in the Federal Energy Regulatory Commission ("FERC") Edwards Dam proceeding, the KHDG members' Request to Amend License Conditions, dated April 1997, and the relicensing proceedings for Central Maine Power Company's Ft. Halifax and Weston Projects:

1. *American Rivers*, a not-for-profit corporation organized under the laws of the District of Columbia;
 2. *The Atlantic Salmon Federation*, a not-for-profit corporation organized under the laws of the State of New York;
 3. *Kennebec Valley Chapter of Trout Unlimited*, a State of Maine member chapter of Trout Unlimited;
 4. *The Natural Resources Council of Maine*, a not-for-profit corporation organized under the laws of the State of Maine; and
 5. *Trout Unlimited*, a not-for-profit corporation organized under the laws of the State of Michigan;
- D. *The Kennebec Hydro Developers Group* (“KHDG”), an association comprised of the following members:
1. *Central Maine Power Company*, a corporation organized under the laws of the State of Maine, and owner of the Fort Halifax, Shawmut and Weston hydropower projects (FERC Nos. 2552, 2322, and 2325) that are affected by this Comprehensive Settlement;
 2. *Merimil Limited Partnership*, a partnership organized under the laws of the State of Delaware, and owner of the Lockwood hydropower project (FERC No. 2574) that is affected by this Comprehensive Settlement;
 3. *UAH-Hydro Kennebec Limited Partnership*, a partnership organized under the laws of the State of Maine, and co-owner/agent of the Hydro-Kennebec hydropower project (FERC No. 2611) that is affected by this Comprehensive Settlement;
 4. *Ridgewood Maine Hydro Partners, L.P.*, a partnership organized under the laws of the State of Delaware, and owner of the Burnham hydroelectric project (FERC No. 11472) that is affected by this Comprehensive Settlement; and
 5. *Benton Falls Associates*, a limited partnership and owner of the Benton Falls hydroelectric project (FERC No. 5073) that is affected by this Comprehensive Settlement;
- E. *The National Fish and Wildlife Foundation* (“NFWF”), a charitable, not-for-profit corporation established by the National Fish and Wildlife Foundation Establishment Act, P.L. 98-244, as amended (16 U.S.C. section 3701 *et seq.*);
- F. *The State of Maine* (“the State”), acting by and through the Governor of the State of Maine, the Maine Department of Inland Fisheries and Wildlife, the Maine Department of Marine Resources, and the Maine State Planning Office, a state of the United States of America. The State is or was an intervenor in the FERC Edwards Dam proceeding, the KHDG members’ Request to Amend License Conditions, dated April 1997, the original license proceeding for Ridgewood

Maine Hydro Partners' Burnham Project, and the relicensing proceedings for Central Maine Power's Ft. Halifax and Weston Projects;

- G. *The US Department of Commerce, through the National Oceanic and Atmospheric Administration, National Marine Fisheries Service ("NMFS"), which is or was an intervenor in the Edwards Dam FERC proceeding, the KHDG members' Request to Amend License Conditions, dated April 1997, and the relicensing proceedings for Central Maine Power's Ft. Halifax and Weston projects; and*
- H. *The US Department of Interior, through the US Fish and Wildlife Service ("USFWS"), which is or was an intervenor in the Edwards Dam FERC proceeding, the KHDG members' Request to Amend License Conditions, dated April 1997, and the relicensing proceedings for Central Maine Power's Ft. Halifax and Weston projects.*

COMMITMENTS

The Parties to this Comprehensive Settlement make the following commitments:

I. Edwards Dam License Transfer

- A. All Parties agree to support the transfer from Licensees Edwards Manufacturing Company and the City of Augusta ("Licensees") to the State of Maine, effective January 1, 1999, of all licensing rights and responsibilities granted and imposed by FERC for the Edwards Dam license (FERC No. 2389), consistent with the terms stated in the *Settlement Agreement Among Edwards Manufacturing Co., Inc., the City of Augusta and the State of Maine Concerning the Edwards Dam in Augusta, Maine ("Edwards Dam Agreement")*, signed May 15, 1998. This Agreement is attached hereto as Exhibit A. The State agrees only to accept the gift of the Edwards Dam and related properties, and transfer of the license, if all licensing rights and responsibilities granted and imposed by FERC for FERC license No. 2389 in effect on the execution date of the *Edwards Dam Agreement* are transferred to the State. All other Parties agree not to object to this provision.
- B. To achieve license transfer, the following pleadings shall be filed with FERC by the Parties named below:
 - 1. Joint application to transfer the Edwards Dam license No. 2389 to the State of Maine, filed by Edwards, the City of Augusta and the State of Maine. This Application is attached hereto as Exhibit E.

2. Joint comments in support of the joint application of Edwards, the City of Augusta and the State of Maine to transfer the Edwards Dam license, filed by the Kennebec Coalition, the NMFS, and the USFWS. These Comments are attached hereto as Exhibit H.
 3. Joint motion to stay all decisions and obligations in the Edwards license proceeding pending FERC's action on the Edwards Dam license transfer application, filed by Edwards, the City of Augusta, the Kennebec Coalition, the NMFS, the State of Maine, and the USFWS. This motion is attached hereto as Exhibit F.
- C. Edwards and the City of Augusta agree to file with FERC a notice withdrawing their request for rehearing and all other pending motions regarding the Edwards Dam effective upon the transfer of the Edwards Dam license to the State consistent with the terms stated in the *Edwards Dam Agreement*. This Notice is attached hereto as Exhibit G.
- D. The State, Edwards and the City agree to file with FERC a motion for stay of the five year dam inspection requirement of the existing FERC license. If the motion is granted, the State will conduct a dam safety inspection of the Edwards Dam within ninety (90) days of the FERC order, pursuant to 37-B M.R.S.A. Secs. 1051, 1055. The State will file a copy of this inspection report with FERC within thirty (30) days of the completion of this inspection.
- E. Edwards, the City of Augusta, the Kennebec Coalition, the NMFS, the State of Maine, and the USFWS agree to file with FERC a request for a Technical Conference within thirty (30) days regarding Edwards Dam removal, as requested in the Motion attached as exhibit I.

II. Amendment of Fish Passage Obligations at Upstream Dams

- A. The KHDG members, the Kennebec Coalition, the NMFS, the State of Maine and the USFWS agree to seek and support an amendment of fish passage obligations in the existing or proposed licenses of the KHDG members' hydropower projects (FERC Nos. 2552, 2322, 2325, 2574, 2611, 5073, and 11472) in exchange for partial funding of anadromous fisheries restoration in the Kennebec River, including funding for restoration of alewife, shad, blueback herring, and salmon, certain eel studies, and costs incurred by the State in connection with removing Edwards Dam; and for certain other specified activities, consistent with the terms stated in the *Agreement Between Members of the Kennebec Hydro Developers Group, the Kennebec Coalition, the National Marine Fisheries Service, the State of Maine, and the US Fish and Wildlife Service* ("KHDG Agreement"), signed May 26, 1998. This Agreement is attached hereto as Exhibit B.

- B. To achieve license conditions implementing the terms of the *KHDG Agreement*, the following pleadings shall be filed with FERC by the Parties named below:
1. Application for Incorporation of Settlement Terms into Existing and Proposed Licenses, signed by KHDG members to amend the current license conditions regarding fish passage obligations in the Ft. Halifax, Benton Falls, Lockwood, UAH-Hydro Kennebec, Shawmut and Weston licenses and to recommend license conditions regarding fish passage obligations for the original license for the Burnham Project. This Application is attached hereto as Exhibit J.
 2. Joint Comments in Support of the aforementioned KHDG Members' Application for Incorporation of Settlement Terms into Existing and Proposed Licenses, signed by the Kennebec Coalition, the NMFS, the State of Maine and the USFWS. These Comments are attached hereto as Exhibit M.
 3. Joint Motion for Continued Stay of Action, pending FERC's decision on the aforementioned KHDG members' application to incorporate applicable terms of the *KHDG Agreement* into existing and proposed KHDG licenses, of existing KHDG fish passage obligations and of FERC action related to fish passage aspects of Central Maine Power Company's Request for Rehearing dated December 26, 1998 regarding the Commission's Order Issuing New License for the Ft. Halifax Project, signed by the Kennebec Coalition, KHDG members, the NMFS, the State of Maine, and the USFWS. This Motion is attached hereto as Exhibit K.
- C. KHDG members agree to file with FERC a notice withdrawing all pending motions and appeals regarding KHDG fish passage obligations effective upon FERC's issuance of orders for the KHDG projects that are consistent with the *KHDG Agreement*. This Notice is attached hereto as Exhibit L.

III. Removal of Edwards Dam

- A. Consistent with the terms of the *Edwards Dam Agreement*, the State of Maine agrees to take all reasonable steps to seek permitting approval for removal of the Edwards Dam. Upon receipt of all necessary permits, and consistent with the terms of the *Edwards Dam Agreement*, the State of Maine agrees to remove in an expedited fashion the Edwards Dam in compliance with all licensing rights and responsibilities granted and imposed by FERC for FERC Project No. 2389.
- B. The City of Augusta, the Kennebec Coalition, the NMFS, and the USFWS all agree to use their best efforts and take all reasonable steps necessary and

appropriate to ensure the State of Maine's dam removal permit applications are processed and approved on an expedited basis, and otherwise fully assist and cooperate with, and in no way hinder, the State of Maine in its efforts to accomplish dam removal in as expeditious a manner as possible. All other Parties to this Comprehensive Settlement agree to cooperate reasonably, and in no way hamper or interfere, with other Parties' efforts to facilitate these proceedings. KHDG members agree to publicly and actively support removal of Edwards Dam, as recommended in the *Final Environmental Impact Statement, Kennebec River Basin, Maine* (July, 1997) prepared by FERC in the Edwards Dam proceeding ("*Kennebec River FEIS*"), including stating such support in filings to FERC and other governmental agencies with responsibility for granting regulatory removal.

- C. The Kennebec Coalition and the State of Maine agree to support before FERC, the US Army Corps of Engineers, the City of Augusta, the Maine Department of Environmental Protection, and any other governmental agency a method of dam removal consistent with that described in the May, 1997 Report to FERC by the Oak Ridge National Laboratory and relied upon in the *Kennebec River FEIS*. To the extent it is consistent with their obligations and determinations under applicable law, including the Endangered Species Act, the NMFS and the USFWS agree to support before FERC, the US Army Corps of Engineers, the City of Augusta, the Maine Department of Environmental Protection, and any other governmental agency a method of dam removal consistent with that described in the May, 1997 Report to FERC by the Oak Ridge National Laboratory and relied upon in the *Kennebec River FEIS*. All other Parties to this Comprehensive Settlement agree either to offer similar support or not to object to this method of dam removal.

IV. Dam Removal Financing

- A. Commencing on January 15, 1999, the KHDG members agree to provide \$4,750,000 in installments, the amount and timing of which are governed by the *KHDG Agreement*, into a separate account established by the National Fish and Wildlife Foundation for anadromous fisheries restoration in the Kennebec River, including funding for restoration of alewife, shad, blueback herring, and salmon, certain eel studies, and costs incurred by the State in connection with removing Edwards Dam, with priority placed on dam removal.
- B. In accordance with permits for its shipyard modernization project from the US Army Corps of Engineers and the Maine Department of Environmental Protection, Bath Iron Works ("BIW"), a corporation organized under the laws of the State of Maine, will be providing a total of \$2.5 million into a separate account established by NFWF to pay for Edwards Dam removal, consistent with the terms of *The Edwards Dam Removal Fund Agreement Among Bath Iron*

Works Corporation, National Fish and Wildlife Foundation, and the State of Maine ("BIW Agreement"). This Agreement is attached hereto as Exhibit C. The funds from BIW are necessary to accomplish removal of Edwards Dam, and are therefore being used to mitigate anadromous fisheries habitat impacted by the BIW modernization project.

- C. NFWF agrees to administer the funds deposited in special accounts with NFWF by KHDG members and BIW, consistent with the terms of *The Kennebec River Restoration Fund Agreement Among Members of the Kennebec Hydro Developers Group, National Fish and Wildlife Foundation, the US Fish and Wildlife Service, the National Marine Fisheries Service, the Kennebec Coalition and the State of Maine*, and the *BIW Agreement*. These Agreements are attached hereto as Exhibits D and C, respectively. These funds shall be used for anadromous fisheries restoration in the Kennebec River, including funding for restoration of alewife, shad, blueback herring, and salmon, certain eel studies, and costs incurred by the State in connection with removing Edwards Dam. NFWF shall also administer other funds that may be secured for Kennebec River fish restoration activities.

V. Contingencies

- A. The Parties agree that the following events must occur before the transfer of the Edwards Dam license to the State of Maine becomes effective:
1. FERC's approval, with terms consistent with the *Edwards Dam Agreement*, of the Licensees' and State's application to transfer all licensing rights and responsibilities granted and imposed by FERC for the Edwards Dam license (FERC No. 2389).
 2. FERC's receipt of a written notice from the State of Maine that BIW has deposited \$2.5 million in the Edwards Dam Removal Fund, or that the State has in its sole discretion waived this precondition.
 3. FERC's receipt of a written notice from the State of Maine that the State has received confirmation that the title to the real property or interests therein to be conveyed by Edwards to the State, including easements, have insurable title, or that the State has in its sole discretion waived this precondition.
 4. FERC's approval of the KHDG members' application to incorporate applicable terms of the *KHDG Agreement* into the Ft. Halifax, Benton Falls, Lockwood, UAH-Hydro Kennebec, Shawmut licenses and into the original license for the Burnham Project consistent with the *KHDG Agreement*, unless this condition is waived by the State of Maine.

5. FERC's receipt of a written notice from the State of Maine that the State has determined pursuant to Section IX.B.5 of the *Edwards Dam Agreement* that there is adequate funding available to meet the State's obligations under that Agreement, or that the State has in its sole discretion waived this precondition.
 6. FERC's receipt of a written notice from the State of Maine that the State has received from Licensees all environmental and property disclosures outlined in Section VIII of the *Edwards Dam Agreement*, or that the State has in its sole discretion waived this precondition.
 7. FERC's receipt of a written notice from the State of Maine that the transfer of property set forth in Section IV of the *Edwards Dam Agreement* has been completed, or that the State has in its sole discretion waived this precondition.
 8. The transfer cannot occur prior to January 1, 1999.
- B. The Parties agree that the *KHDG Agreement* regarding amendment of fish passage obligations will become null and void upon the occurrence of any of the events outlined in Section III.C. of that Agreement, unless otherwise agreed to in writing by the parties to that Agreement.

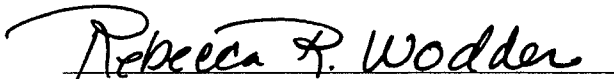
VI. Effect of this Comprehensive Settlement

- A. This Comprehensive Settlement constitutes a negotiated settlement of all issues in the Edwards Dam relicensing proceeding (FERC No. 2389), and of all fish passage issues regarding the KHDG members' hydropower projects (FERC Nos. 2552, 2322, 2325, 2574, 2611, 5073, and 11472). Each provision of this Comprehensive Settlement represents consideration for all other provisions and is a necessary part of the entire Comprehensive Settlement.
- B. All Parties agree that this Comprehensive Settlement is fair and reasonable and in the public interest.
- C. In the event that FERC chooses to alter or prohibit execution of any term or condition contained in this Comprehensive Settlement that is considered essential by any affected Party, then unless all affected Parties agree to amend this Comprehensive Settlement, this Comprehensive Settlement shall become null and void.


VII. Commitment to Expedition

- A. All Parties agree that to meet the Parties' shared goal of removing Edwards Dam in 1999, all actions outlined in the Comprehensive Settlement must be undertaken in a prompt and timely fashion.
- B. All Parties agree to encourage, or to cooperate reasonably, and in no way directly or indirectly hamper, expedited processing of motions and applications before FERC, the Maine Department of Environmental Protection, the US Army Corps of Engineers, the City of Augusta, or other government agencies.
- C. All Parties agree to take action to oppose, or to cooperate reasonably with other Parties' actions in opposing, any efforts to try to stop, delay or alter the implementation of the terms of the Comprehensive Settlement.
- D. Notwithstanding Section VII.A. above, if any Party seeks to delay the implementation of obligations imposed by FERC pursuant to the provisions of this Comprehensive Settlement or the underlying settlement agreements and related motions of the Parties, it must demonstrate to FERC that all reasonable efforts were made to reach consensus with all other Parties; that all reasonable efforts were made to avoid or minimize the delay; and that the delay does not fundamentally alter the terms of this Comprehensive Settlement.

SIGNED this 26th day of May, 1998, by:



American Rivers, Inc.
By: Rebecca Wodder
Its: President



Atlantic Salmon Federation
By: John Albright
Its: Vice President, Conservation Programs


Benton Falls Associates

By: Scott Thomas

Its: Vice President, US Operations

Hydra-Co Enterprises

General Partner, Benton Falls Associations



Central Maine Power Company

By: David T. Flanagan

Its: President and Chief Executive Officer



City of Augusta

By: John Bridge

Its: Mayor



City of Augusta

By: William Bridgeo


Its: City Manager



Edwards Manufacturing Co., Inc

By: Herbert A. Miller

Its: President



Kennebec Valley Chapter of Trout Unlimited

By: Bruce Bowman

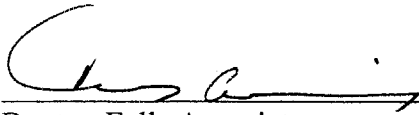
Its: President

City of Augusta

By: William Bridgeo

Date:

Its: City Manager



Benton Falls Associates

By: Thomas A. McNish

Date: May 26, 1998

Its: Secretary and Treasurer

Hydra-Co Enterprises

General Partner, Benton Falls Associations

Central Maine Power Company

By: David T. Flanagan

Date:

Its: President and Chief Executive Officer

Kennebec Valley Chapter of Trout Unlimited

By: Bruce Bowman

Date:

Its: President

Edwards Manufacturing Co., Inc

By: Mark Isaacson

Date:

Its: Vice-President

National Fish and Wildlife Foundation

By: Amos S. Eno

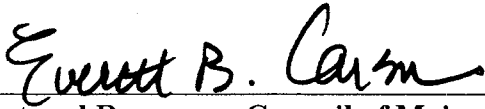
Date:

Its: Executive Director



National Fish and Wildlife Foundation

By: Amos S. Eno
Its: Executive Director



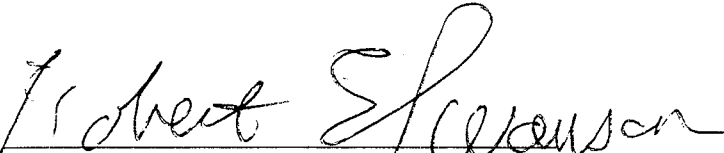
Natural Resources Council of Maine

By: Everett B. Carson
Its: Executive Director



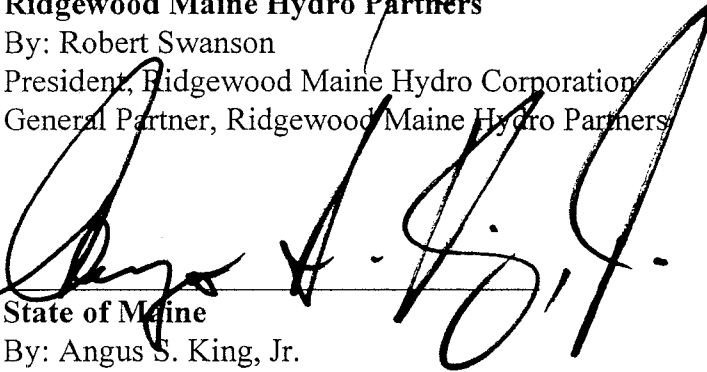
Merimil Limited Partnership

By: Gerald C. Poulin
President, Kennebec Hydro Resources
General Partner, Merimil Limited Partnership



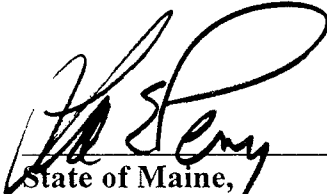
Ridgewood Maine Hydro Partners

By: Robert Swanson
President, Ridgewood Maine Hydro Corporation
General Partner, Ridgewood Maine Hydro Partners



State of Maine

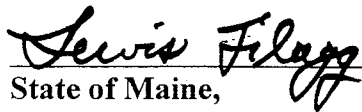
By: Angus S. King, Jr.
Its: Governor



State of Maine,

Department of Inland Fisheries and Wildlife

By: Lee Perry
Its: Commissioner



State of Maine,
Department of Marine Resources

By: Lewis Flagg

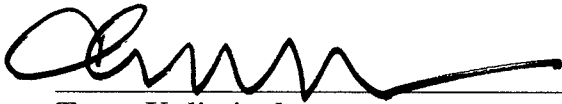
Its: Commissioner (Acting)



State of Maine, State Planning Office

By: Evan D. Richert

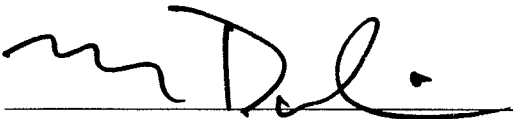
Its: Director



Trout Unlimited

By: Charles Gauvin

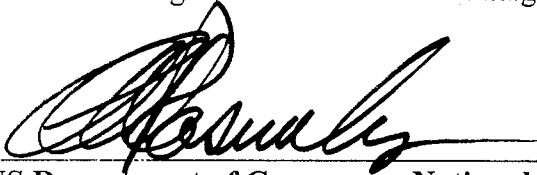
Its: Chief Executive Officer and President



UAH-Hydro Kennebec Limited Partnership

By: Mark Dworkin

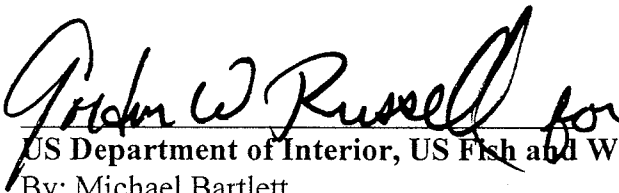
General Manager, United American Energy



US Department of Commerce, National Oceanic
and Atmospheric Administration, National
Marine Fisheries Service

By: Andrew A. Rosenberg, PhD

Its: Regional Administrator



US Department of Interior, US Fish and Wildlife Service

By: Michael Bartlett

Its: Supervisor, New England Field Office

**LOWER KENNEBEC RIVER
COMPREHENSIVE HYDROPOWER
SETTLEMENT ACCORD**

LIST OF EXHIBITS

- A. *Settlement Agreement Among Edwards Manufacturing Co., Inc., the City of Augusta and the State of Maine Concerning the Edwards Dam in Augusta, Maine, signed May 15, 1998.*
- B. *Agreement Between Members of the Kennebec Hydro Developers Group, the Kennebec Coalition, the National Marine Fisheries Service, the State of Maine, and the US Fish and Wildlife Service, signed May 26, 1998.*
- C. *The Edwards Dam Removal Fund Agreement Among Bath Iron Works Corporation, National Fish and Wildlife Foundation, and the State of Maine, signed May 26, 1998.*
- D. *The Kennebec River Restoration Fund Agreement Among Members of the Kennebec Hydro Developers Group, National Fish and Wildlife Foundation, the US Fish and Wildlife Service, the National Marine Fisheries Service, the Kennebec Coalition and the State of Maine, signed May 26, 1998.*
- E. Application for Approval of Transfer of License, signed by Edwards, the City of Augusta and the State of Maine to transfer the Edwards Dam license No. 2389 to the State of Maine.
- F. Joint Motion by Licensees, State and Federal Agencies, and the Kennebec Coalition for Continued Stay of Action, signed by Edwards, the City of Augusta, the Kennebec Coalition, the NMFS, the State of Maine, and the USFWS to stay all decisions and obligations in the Edwards license proceeding pending FERC's action on the Edwards Dam license transfer application.
- G. Notice of Withdrawal of Request for Rehearing and All Other Pending Motions, signed by Edwards and the City of Augusta withdrawing their request for rehearing and all other motions pending before FERC regarding Edwards Dam effective upon transfer of the Edwards license to the State of Maine.
- H. Joint Comments of the Kennebec Coalition and Federal Agencies in Support of the Application of Licensees and the State of Maine to Transfer the Edwards Dam License No. 2389, signed by the Kennebec Coalition, the NMFS and the USFWS.

- I. Joint Motion Requesting a Technical Conference to Address Removal of Edwards Dam, signed by Edwards, the City of Augusta, the Kennebec Coalition, the NMFS, the State of Maine, and the USFWS.
- J. Application for Incorporation of Settlement Terms into Existing and Proposed Licenses, signed by KHDG members to amend existing licenses, or to incorporate into original licenses, fish passage obligations that are consistent with the *KHDG Agreement*.
- K. Joint Motion by Licensees, State and Federal Agencies, and the Kennebec Coalition for Continued Stay of Action, signed by KHDG members, the Kennebec Coalition, the NMFS, the State and the USFWS, seeking a stay pending FERC's decision on the aforementioned application attached hereto as Exhibit J of existing KHDG fish passage obligations and FERC action on Central Maine Power Company's Request for Rehearing dated December 26, 1997 regarding the Commission's Order Issuing New License for the Ft. Halifax Project.
- L. Notice of Withdrawal of Request for Rehearing and any Other Pending Motions, signed by Central Maine Power Company.
- M. Joint Comments of the Kennebec Coalition, Federal Agencies and the State of Maine in Support of the KHDG Members' Application for Incorporation of Settlement Terms into Existing and Proposed Licenses, signed by the Kennebec Coalition, the NMFS, the State of Maine, and the USFWS supporting license amendments consistent with the *KHDG Agreement*.

EXHIBIT FPLE-5

FERC Order Approving Settlement

UNITED STATES OF AMERICA
 FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James J. Hoecker, Chairman;
 Vicky A. Bailey, William L. Massey,
 Linda Breathitt, and Curt Hébert, Jr.

Edwards Manufacturing Company, Inc. City of Augusta, Maine	)	Project No. 2389-030, -031
)	
Central Maine Power Company	)	Project Nos. 2552-032, -033; 2322-025, -026; and 2325-028, -029
)	
Benton Falls Associates	)	Project No. 5073-054, -055
)	
Merimil Limited Partnership	)	Project No. 2574-024, -025
)	
UAH-Hydro Kennebec Limited Partnerships	)	Project No. 2611-033, -034
)	
Ridgewood Maine Hydro Partners	)	Project No. 11472-003

ORDER APPROVING SETTLEMENT, TRANSFERRING LICENSE, AND
 AMENDING FISH PASSAGE REQUIREMENTS

(Issued September 16, 1998)

On May 28, 1998, an offer of settlement was filed by parties involved in the relicensing proceedings regarding the Edwards Hydroelectric Project No. 2389, located on the Kennebec River in Augusta, Maine; and in various Commission proceedings regarding fish passage at seven dams located upstream of the Edwards Project, on the Kennebec and Sebasticook Rivers. 1/ In essence,

1/ The parties filing the settlement, who will be referred to herein as "the settling parties," are: Edwards Manufacturing Company and the City of Augusta, Maine (the licensees for the Edwards Project), the U.S. Fish and Wildlife Service (FWS), the National Marine Fisheries Service (NMFS), the State of Maine, Central Maine Power Company (licensee for the Fort Halifax Project No. 2552, Shawmut Project No. 2322, and Weston Project No. 2325), Merimil Limited Partnership (licensee for the Lockwood Project No. 2574), UAH-Hydro Kennebec Limited Partnership (licensee for the Hydro Kennebec Project No. 2611), Benton Falls Associates (licensee for the Benton Falls Project
 (continued...)

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the settlement would provide for the transfer of the license for the Edwards Project to the State of Maine, which would then, in connection with surrendering the project license, remove the dam; and the resolution of disputes regarding fish passage at the upstream projects. To these ends, the parties filing the settlement asked the Commission to (1) approve the settlement, (2) approve the transfer of the license for the Edwards Project to the State of Maine, and (3) amend the fish passage provisions of the licenses for the upstream projects. 2/

For the reasons discussed below, we approve the settlement, grant the application for license transfer, amend the licenses of the upstream projects, and take other appropriate actions, as detailed herein.

BACKGROUND

A. The Edwards Project

The Edwards Project's principal features are a 917-foot-long, 25-foot-high dam; an 850-foot-long spillway and a 67-foot-long bulkhead spillway; a 1,143-acre impoundment; an 80-foot-long, 24-foot-wide gatehouse; a 450-foot-long power canal; and three powerhouse buildings containing a total of nine turbines, for a total installed capacity of 3.5 megawatts. 3/

The Edwards Project was licensed in 1964, with a license term expiring on December 31, 1993. 4/ On December 31, 1991, Edwards Manufacturing Company (Edwards Company) filed an application for a new license for the continued operation and

-
- 1/ (...continued)
No. 5073), Ridgewood Maine Hydro Partners, L.P. (applicant for a license for the existing, unlicensed Burnham Project No. 11472), and a group of intervenors, collectively called the Kennebec Coalition, comprised of American Rivers, Inc., Atlantic Salmon Federation, Kennebec Valley Chapter of Trout Unlimited, Natural Resources Council of Maine, and Trout Unlimited.
- 2/ The parties also asked the Commission to stay certain ongoing obligations of the licensees for the Edwards Project and the upstream projects pending consideration of the settlement, and not to act on various petitions for rehearing while these matters were under consideration. The Commission issued an order granting stays and holding proceedings in abeyance on June 10, 1998. 83 FERC ¶ 61,269.
- 3/ See 81 FERC ¶ 61,255 at p. 62,200.
- 4/ 32 FPC 598.

maintenance of the project. In 1992, the City of Augusta, Maine became a co-licensee. 5/

On November 25, 1997, the Commission issued an order denying the application for new license and requiring the licensees to file a plan for decommissioning the project, including removing the dam. 6/ The Commission concluded that, while relicensing the project would maintain a reliable source of power, and would displace nonrenewable, fossil-fueled generation, very important negative impacts of the project could not be adequately mitigated through the imposition of environmental conditions. 7/

On December 29, 1997, the Edwards Company and the City of Augusta filed a timely request for rehearing of the November 25, 1997 order. Also, the American Forest & Paper Association, the American Public Power Association, the National Hydropower Association and Edison Electric Institute (jointly), and the City of Tacoma, Washington, filed requests to intervene and for rehearing. 8/

B. The Upstream Projects

The licenses for the upstream projects all contain requirements regarding the implementation of fish passage measures, including associated deadlines. 9/ On April 23, 1997, the owners of the upstream projects, collectively known as the Kennebec Hydro Developers Group (KHDG), filed a request that the Commission amend the licenses for the upstream projects to provide that the installation of fish passage facilities at those projects be delayed until permanent fish passage was available at the Edwards Project and the restoration of salmon, shad, and alewives in the Kennebec Basin had proved successful.

On June 5, 1997, the licensees for the Edwards Project filed a motion seeking to consolidate the KHDG request with the Edwards

5/ See 61 FERC ¶ 62,162.

6/ 81 FERC ¶ 61,255.

7/ Id. at p. 62,210.

8/ On January 14, 1998, the Commission granted the motions to intervene. 82 FERC ¶ 61,012. These parties are referred to herein as the "Non-Settling Parties."

9/ With regard to the Burnham Hydropower Project No. 11472, which is currently in the licensing process, Commission staff issued a November 1, 1996 environmental assessment recommending fish passage measures consistent with those required at the other upstream projects.

Project relicensing. By order dated September 26, 1997, the Commission denied KHDG's motion without prejudice, because considering it would have delayed well-advanced relicensing proceedings, and because delaying the installation of fish passage facilities would disrupt the comprehensive approach the Commission has taken to fisheries restoration in the Kennebec River Basin. 10/ Since the Commission was denying KHDG's motion, it also denied the Edwards licensees' motion to consolidate. 11/

On November 24, 1997, Central Maine Power, as licensee for the Fort Halifax Project No. 2252, and Merimil Limited Partnership, as licensee for the Lockwood Project No. 2574, filed preliminary drawings of fish passage facilities. On March 26, 1998, the Director, Office of Hydropower Licensing (Director), issued a letter to these licensees, stating that they had failed to engage in required consultation with fish and wildlife resource agencies regarding the drawings, and requiring them to file, within 45 days, evidence that they had done so.

C. The Settlement

On May 28, 1998, the Settling Parties filed with the Commission the Lower Kennebec River Comprehensive Accord. The settlement contemplates that the Edwards Company will donate Edwards Dam to the State of Maine, which will then remove the dam and surrender the license. In addition, KHDG and Bath Iron Works, a corporation located in Maine, will contribute \$7.25 million towards the cost of dam removal and other fish restoration activities in the Kennebec River Basin. Finally, fish passage obligations at the seven upstream projects will be amended. The filing contains a number of agreements and other documents, some of which the Commission is asked to act upon, and others of which were submitted for informational purposes. The details of the filing are as follows.

The settlement establishes the framework for resolution of disputes regarding the Edwards Project and fish passage issues at the upstream projects. The settlement provides that the parties will support the transfer of the Edwards Project to Maine, consistent with the terms of an agreement among the Edwards Company, the City of Augusta, and Maine. 12/ The

10/ Id.

11/ Id. at p. 62,274.

12/ That agreement is appended to the settlement. We are not asked to take any action with regard to it, however.

settlement also provides for various filings and motions to be made with the Commission. 13/

The settlement also details the process by which Maine will seek authority to remove Edwards Dam. The parties contemplate that in September 1998 Maine will submit an application to surrender the Edwards Project license, including a plan for dam removal; that in April 1999 the Commission will approve that application, contingent on dam removal; and that by August 1999 the dam will be removed. Further, KHDG will provide \$4.75 million toward fish restoration and dam removal, 14/ and addition, Bath Iron Works will provide an additional \$2.5 million toward dam removal. 15/

In their application for license transfer, the Edwards Company, the City of Augusta, and Maine ask the Commission to approve the transfer of the Edwards Project to Maine, but ask that the transfer become effective only upon the occurrence of seven events. Five of the events involve Commission receipt of notices from Maine confirming that: (1) funding for dam removal is adequate, (2) project property interests are subject to insurable title, (3) there is adequate funding of other agreed-upon obligations, (4) Maine has received from Edwards and Augusta all environmental and property disclosures, and (5) transfer of project property has occurred. The remaining two conditions are (6) that the Commission amend the licenses for the upstream projects (which we do below), and (7) that the transfer not occur prior to January 1, 1999. With the exception of the January 1,

-
- 13/ These comprise the transfer application and comments in support of the application, the motion for stay of obligations in the Edwards license proceeding (which, as discussed above, has been granted), a notice by the Edwards Company and the City of Augusta withdrawing their request for rehearing of the November 25, 1997 order (effective upon Commission approval of the transfer application, and the satisfaction of the conditions contained in that application), a motion for stay of the five-year dam inspection of the Edwards Dam (which has also been granted), and a request for a technical conference regarding dam removal (which has been granted and held).
- 14/ The details of this undertaking are in an agreement between KHDG, the Kennebec Coalition, NMFS, FWS, and Maine, which is appended to the settlement agreement but is not before us.
- 15/ As with the KHDG funding, Bath Iron Works' undertakings are spelled out in an agreement that is appended to the settlement, but regarding which the Commission is not asked to take action.

1999 threshold date for the transfer, all of these events are subject to waiver by Maine, in its sole discretion.

The settlement also provides that the parties will make or support applications to amend the fish passage obligations in the licenses for the upstream projects, so as to require the licensees to do the following:

Fort Halifax Project No. 2552

- Study and implement upstream and downstream passage for American eels.
- Install fish lift by 2003.
- Install, by May 1, 2000, 16/ a temporary fish pump and trap and transport facility, if necessary to meet restoration goals for alewife and river herring established by the Maine Department of Marine Resources (DMR).
- Install, operate, and maintain facilities to capture shad for the DMR hatchery.
- Install permanent upstream fish passage by May 1, 2003.

Shawmut Project No. 2322

- Study and implement upstream and downstream passage for American eels.
- Permanent upstream passage shall not be required to be operational prior to May 1, 2012. Make upstream passage operational two years after the earlier of the following: 15,000 American shad pass in any single season in the permanent passage facility at the Hydro Kennebec Project, or resource agencies determine upstream passage is necessary for Atlantic salmon, alewife, or blueback herring.
- Begin interim downstream passage on the effective date of the fish passage agreement (May 26, 1998). Consult with state and federal agencies to develop and test a plan for interim fish passage facilities and operational measures to minimize fishery impacts.
- Make permanent downstream facilities operational on the date permanent upstream passage is in operation.

16/ No later than May 1 of the first migration season following removal of Edwards Dam.

Weston Project No. 2325

- Study and implement upstream and downstream passage for American eels.
- Permanent upstream passage shall not be required to be operational prior to May 1, 2014. Make upstream passage operational two years after the earlier of the following: 35,000 American shad pass in any single season in the permanent passage facility at the Shawmut Project, or resource agencies determine upstream passage is necessary for Atlantic salmon, alewife, or blueback herring.
- Begin interim downstream passage on the effective date of the fish passage agreement. Consult with state and federal agencies to develop and test a plan for interim fish passage facilities and operational measures to minimize fishery impacts.
- Make permanent downstream facilities operational on the date permanent upstream passage is in operation.

Benton Falls, Project No. 5073

- Study and implement upstream and downstream passage for American eels.
- Construct permanent upstream passage facilities one year following passage of alewife at the Fort Halifax Project and effective alewife passage at all of the following: Newport Dam, the outlet of Sebasticook Lake, outlet of Plymouth Lake, and below the outlet of Pleasant Pond on Stetson Stream.
- Permanent upstream passage shall not be required to be operational before May 2002.

Lockwood Project No. 2574

- Study and implement upstream and downstream passage for American eels.
- Install an interim trap, lift, and transfer facility for American shad, river herring, and Atlantic salmon at the project powerhouse. These facilities shall be operational by May 1, 2006.
- Make permanent upstream passage operational two years following the earlier of either of the following: 8,000 American shad are captured in any single season at the interim trap at the project, or resource agencies determine

upstream passage is necessary for Atlantic salmon, alewife, or blueback herring.

- Consult with state and federal agencies to develop an approved plan for interim downstream passage facilities and/or operational measures to minimize impacts to downstream migrating fish.
- If the licensee seeks to achieve downstream fish passage of outmigrating alewife, Atlantic Salmon, or shad by means of passage through the turbines, it will demonstrate, through studies designed and conducted in consultation with the resources agencies, that passage will not result in significant injury or mortality.
- Conduct studies prior to the date permanent downstream passage facilities are to be operational to determine the effectiveness of various downstream passage techniques in preparation for the design and installation of permanent facilities.
- Make permanent downstream facilities operational when permanent upstream passage is operational.

Hydro-Kennebec Project No. 2611

- Study and implement upstream and downstream passage for American eels.
- Consult with state and federal agencies to develop an approved plan for interim downstream passage facilities and/or operational measures to minimize impacts to downstream migrating fish.
- If the licensee seeks to achieve downstream fish passage of outmigrating alewife, Atlantic Salmon, or shad by means of passage through the turbines, it will demonstrate, through studies designed and conducted in consultation with the resources agencies, that passage will not result in significant injury or mortality. The results of any such study would not be required prior to May 1, 2006.
- Conduct studies prior to the date permanent downstream passage facilities are to be operational to determine the effectiveness of various downstream passage techniques in preparation for the design and installation of permanent facilities.
- Make permanent downstream facilities operational when permanent upstream passage is operational.

The parties also agreed to support a motion for a stay of current fish passage obligations (which we have already granted), pending Commission action of the requests for amendment of the upstream licenses, and that the KHDG members will withdraw pending requests for rehearing regarding their fish passage obligations, effective upon the issuance of final, non-appealable order approving the license amendments and the license transfer.

D. Notices and Comments

The Commission issued notices on June 10, 1998, requesting comments on the offer of settlement, the proposed transfer of license for Project No. 2389, the amendment of fish passage requirements for Project Nos. 2552, 2322, 2325, 2574, 2611, and 5073, and the amendment of the pending license application for Project No. 11472.

The Commission Settlement Staff and the Atlantic Salmon Authority, an agency of the State of Maine, filed initial comments supporting the settlement. ^{17/} The Non-Settling Parties filed comments that do not address the general thrust of the settlement, but rather are limited to a request that the Commission vacate its November 25, 1997 order and then dismiss the Non-Settling Parties' request for rehearing of that order. Certain of the Settling Parties filed responsive comments arguing that the November 25, 1997 order was an essential component of the settlement and should not be vacated. ^{18/} These arguments are addressed in a separate order issued today.

DISCUSSION

A. The Settlement

We approve the settlement agreement. We congratulate the parties on their successful efforts to resolve the long-running, contentious debate over the future of the Edwards Project. The settlement will allow removal of the Edwards Dam, in a manner that is acceptable to the Edwards Project licensees, federal and state agencies, and the members of the Kennebec Coalition, and will substantially enhance fish restoration efforts in the Kennebec River Basin. In addition, the settlement resolves

^{17/} FWS, NMFS, Maine, and the Kennebec Coalition filed supporting comments as part of the settlement package.

^{18/} The responsive comments were filed by NMFS, FWS, Maine, and the Kennebec Coalition. The Edwards licensees and KHDG did not file responsive comments.

disputes regarding the provision of fish passage at the upstream projects, with concomitant environmental benefits. 19/

B. The Transfer of the Edwards License

As discussed above, the proposed transfer is a key element of the settlement. We find that Maine is qualified to hold the license and to operate the project under the license terms. 20/ Specifically, subject to the conditions in the settlement, Maine has agreed to accept all the terms and conditions of the license and to be bound by the license as if it were the original licensee. 21/ Based on the foregoing, we find that the proposed transfer is in the public interest and consistent with the Commission's regulations, and we therefore grant the transfer application.

Consistent with the transfer application and the settlement, we will make the transfer effective only upon satisfaction of all of the seven conditions discussed above. Moreover, while the Commission's approval of a license transfer is generally made contingent upon the filing, within 60 days, of documents showing the conveyance of project property to, and acceptance of the license by, the transferee, such a deadline is inconsistent with the listed conditions and will be modified to accommodate the settlement.

C. Amendment of Upstream Fish Passage Requirements

As described above, the settlement provides for the phased construction of facilities and modifications of project operations to ensure fish passage. The license amendments proposed by the licensees of the upstream projects would implement that agreement.

19/ Our approval of the settlement does not by itself impose any obligations on the parties. The settlement requires the parties to take various actions, such as making specified filings before the Commission and other agencies, and transferring property and cash, that are beyond our authority to require or to enforce. Nonetheless, we support the concept of the settlement, and trust that the parties will fulfill their obligations thereunder. Elsewhere in this order, we take those actions requested by the parties that are within our jurisdiction (approving the transfer of the Edwards license and amending the licenses for the upstream projects).

20/ See 18 C.F.R. Part 9 (1998) (Commission's license transfer regulations).

21/ See FPA Section 8, 16 U.S.C. § 801.

The Commission has previously dealt with the issue of fish passage at these projects, in an effort to promote restoration of the Kennebec fishery. 22/ Contrary to previous occasions, where uncertainty regarding the future of the Edwards Project complicated efforts to develop firm plans, the settlement offers the opportunity to proceed with reasonable certainty.

In 1991, the Commission staff prepared an environmental assessment that discussed several alternatives for installation of fish passage facilities upstream of Edwards Dam. The EA concluded that fish passage facilities will be necessary and appropriate when fish are present, and recommended an installation timetable, based on the best available information regarding fish passage at Edwards Dam. The Kennebec River Basin Environmental Impact Statement (EIS), issued in July 1997, affirmed the need for fish passage in the basin. 23/

The settlement contemplates that fish passage facilities will be installed at the upstream projects later than was recommended by staff in the EA. However, the agreement is premised on the removal of Edwards dam in 1999 (a fact not known when the EA was prepared) and the fish passage provisions of the settlement are consistent with the EA's conclusion that fish passage facilities should be required only when fish are present at the projects.

The EA and the EIS provide an adequate basis for the analysis of environmental impacts attending implementation of the settlement. We conclude that the delay in installing the fish passage facilities at the upstream projects will not by itself have a significant environmental impact. 24/ Whether additional environmental analysis is required for Commission review of measures contemplated in the settlement must await the filing of detailed descriptions of these measures.

The settlement requires the licensees of the upstream projects to file annual reports with the Commission. To keep the Commission apprised of pending activities under the settlement, this order requires the licensees to include with the report of

22/ See, e.g., 61 FERC ¶ 61,095 (1992) and 80 FERC ¶61,377 (1997).

23/ The EIS dealt with the Edwards Project, the Fort Halifax Project, the Weston project, and other projects in the Kennebec Basin that are not involved in the settlement here.

24/ None of the comments filed regarding the settlement suggests the contrary.

the previous year's activities any proposed changes in project facilities or operation for fish passage.

The agreement of the parties to implement the measures will help to ensure that adequate fish protection in the Kennebec and Sebasticook River basins is implemented in a timely manner. The licenses for the Fort Halifax, Shawmut, Weston, Benton Falls, Lockwood, and Hydro-Kennebec projects will be amended to replace any existing fish passage requirements with those included in the settlement.

The applicant for the Burnham Project asks that its application be amended to include the fish passage recommendations in the settlement. The application will be amended accordingly. 25/

The Commission orders:

(A) The Offer of Settlement Filed May 18, 1998, in these proceedings is approved.

(B) Transfer of the annual license for the Edwards Dam Hydroelectric Project No. 2389 from Edwards Manufacturing Company and the City of Augusta, Maine, to the State of Maine is approved. The transfer will become effective, upon issuance of Commission order, after the occurrence of the following events:

- (1) The Commission's receipt of written notice from the State of Maine that the Bath Iron Works Corporation has deposited \$2.5 million for Edwards Dam removal in the appropriate trust fund at the National Fish and Wildlife Foundation, or that the State in its sole discretion has waived this precondition; [25/]
- (2) The Commission's approval of the Kennebec Hydro Developers Group ("KHDG") license amendment application containing conditions consistent with the Agreement Between Members of the Kennebec Hydro Developers Group, the Kennebec Coalition, the National Marine Fisheries Service, the State

25/ The settling parties ask the Commission to rescind a March 26, 1998 Director's letter requiring two of the upstream licensees to consult with resource agencies prior to submitting drawings of fish passage facilities, pursuant to the schedule that then existed. Because our approval of the amendments to the licenses for the upstream projects results in a completely new schedule, we rescind the letter as moot.

26/ Maine must file any such waiver with the Commission.

of Maine, and the US Fish and Wildlife Service
("1998 KHDG Agreement") (signed May 26, 1998)
relating to the rescheduling of certain fish
passage obligations at KHDG hydro facilities,
unless this condition is waived by the State of
Maine;

- (3) The Commission's receipt of written notice from the State of Maine that the State has received confirmation that the title to the real property interests therein to be conveyed by Edwards to the State, including easements, has insurable title, or that the State has waived this precondition;
- (4) The Commission's receipt of written notice from the State of Maine that the State has determined pursuant to Section IX.B.5 of the Settlement Agreement among Edwards Manufacturing Co., Inc., the City of Augusta and the State of Maine Concerning the Edwards Dam in Augusta, Maine ("Edwards Dam Agreement") (signed May 15, 1998) that there is adequate funding available to meet the State's obligations under the Edwards Dam Agreement, or that the State has waived this precondition;
- (5) The Commission's receipt of written notice from the State of Maine that the State has received from Transferors [Edwards Manufacturing Co., Inc., and the City of Augusta, Maine] all environmental and property disclosures outlined in Section VII of the Edwards Dam Agreement, or that the State has waived this precondition;
- (6) The Commission's receipt of written notice from the State of Maine that the transfer of property set forth in Section IV of the Edwards Dam Agreement has been completed, or that the State has waived this precondition;
- (7) The transfer cannot occur prior to January 1, 1999.

Effectiveness of the transfer is further contingent upon:
(1) transfer of title of the properties under license and delivery of all license instruments to the State of Maine, which shall be subject to the terms and conditions of the license as though it were the original licensee; and (2) the State of Maine acknowledging acceptance of this order and its terms and conditions by signing and returning the attached acceptance sheets. Within 60 days from the date that the last of the seven events listed in this paragraph occurs, the State of Maine shall

submit certified copies of all instruments of conveyance and the signed acceptance sheet.

(C) Edwards Manufacturing Company and the City of Augusta, Maine, shall pay all annual charges that accrue up to the effective date of the transfer.

SHAWMUT
ARTICLES
36, 37

(D) The licenses for Project Nos. 2552, 5073, 2574, 2611, 2322, and 2325 are amended to include the fish passage requirements set forth in the 1998 KHDG Agreement, and the current license conditions superseded by those requirements are deleted.

*
SHAWMUT
ARTICLE
38


(E) Reports filed with the Commission as a requirement of the 1998 KHDG agreement shall be filed, for Commission approval, by ~~February 15~~ of each year. The reports shall include any proposed changes in project facilities or operation for fish passage. MARCH 31

(F) The March 26, 1998 letter to Central Maine Power Company and Merimil Limited Partnership from the Director, Office of Hydropower Licensing, is rescinded as moot.

(G) This order is final unless a request for rehearing is filed within 30 days from the date of its issuance, as provided in Section 313 of the Federal Power Act.

By the Commission. Commissioner Bailey dissented in part with a separate statement attached.

(S E A L) Commissioner Hébert concurred with a separate statement attached.


Linwood A. Watson, Jr.,
Acting Secretary.

* SUBMITTAL DATE REVISED PER ORDER DATED MARCH 21, 2000.

Edwards Manufacturing Company, Inc.) Project No. 2389-030, -031
City of Augusta, Maine)

Issued September 16, 1998

BAILEY, Commissioner, dissenting in part.

I respectfully dissent in part from this order approving the Edwards settlement agreement. Not surprisingly, I would have preferred to vacate our November 25, 1997 decision requiring dam removal by the licensee.

I do commend the settling parties for their efforts to resolve this very contentious proceeding. Indeed, I have publicly noted the serious social, economic, and environmental issues that underlie so many of our pending hydro cases. And I recognize that these settling parties have negotiated this agreement in full recognition of that larger backdrop. So I can understand why, in the give and take of the process, it is important to some to retain the November order. I do trust, however, that those parties will likewise understand that, while I would give them virtually all parts of their agreement, I cannot vote to leave in place an order that I believe we had no authority under the Federal Power Act to issue.

Consistent with the parties' wishes as contained in the settlement, I would have continued the obligations outlined in the November order, including FERC oversight, but would have done so by specifying those procedures in this order approving the settlement. Thus, I would have retained all of the rights and responsibilities that are a condition of the settlement, but without the need to retain the earlier November order.

As I have indicated on several occasions in the past, the fact that the Commission expects to require dam removal in only rare circumstances will make no difference when financing is at state. Wall Street will have to assume that decommissioning is an option at the licensee's expense, and this will place a risk premium on every project. For these, as well as the statutory arguments I have made in the past, I remain unwilling to assume lightly any authority to order dam removal. Thus, I would approve the Edwards settlement, but modify to vacate the November 1997 order.

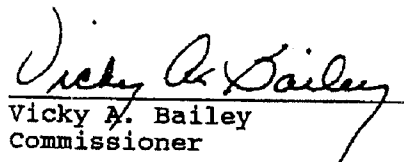

Vicky A. Bailey
Commissioner

EXHIBIT FPLE-6

1998 KHDG Agreement

**AGREEMENT BETWEEN
MEMBERS OF THE KENNEBEC HYDRO DEVELOPERS GROUP,
THE KENNEBEC COALITION,
THE NATIONAL MARINE FISHERIES SERVICE,
THE STATE OF MAINE
AND
THE U.S. FISH AND WILDLIFE SERVICE**

I. Parties.

This Agreement (hereinafter "Agreement") is by and between:

A. each member of the association known as the Kennebec Hydro Developers Group ("KHDG"), to wit:

1. Central Maine Power Company, owner of the following hydroelectric facilities that are the subject of this Agreement: Fort Halifax (Federal Energy Regulatory Commission ("FERC") Project No. 2552); Shawmut (FERC Project No. 2322); and Weston (FERC Project No. 2325);
2. Kennebec Hydro Resources, Inc., on behalf of Merimil Limited Partnership, owner of the following hydropower facility that is the subject of this Agreement: Lockwood (FERC Project No. 2574) ;
3. UAH-Hydro Kennebec Limited Partnership, owner/agent of the following hydropower facility that is the subject of this Agreement: Hydro-Kennebec (FERC Project No.2611);
4. Ridgewood Maine Hydro Partners, L.P., owner of the following hydropower facility that is the subject of this Agreement: Burnham (FERC Project No. 11472);
5. Benton Falls Associates, owner of the following hydropower facility that is the subject of this Agreement: Benton Falls (FERC Project No. 5073);

B. each member of the association known as the Kennebec Coalition, to wit: American Rivers, Inc; the Atlantic Salmon Federation; Kennebec Valley Chapter of Trout Unlimited; the Natural Resources Council of Maine; and Trout Unlimited;

C. the National Marine Fisheries Service, U.S. Department of Commerce;

D. the following agencies of the State of Maine:

Maine Department of Inland Fisheries and Wildlife; Maine Department of Marine Resources; and the Maine State Planning Office; and

E. the United States Fish and Wildlife Service, U.S. Department of the Interior.

In this Agreement, reference to "the resource agencies" hereinafter is understood to mean the following parties: the Maine Department of Inland Fisheries and Wildlife, Maine Department of Marine Resources, Maine Atlantic Salmon Authority, National Marine Fisheries Service and United States Fish and Wildlife Service.

II. Purposes.

This Agreement is intended to accomplish the following purposes: to achieve a comprehensive settlement governing fisheries restoration, for numerous anadromous and catadromous species, that will rapidly assist in the restoration of these species in the Kennebec River after the termination on December 31, 1998 of the existing agreement between the State of Maine and the Kennebec Hydro Developers Group; to avoid extensive litigation over fish passage methodologies, timetables and funding; to assist in achieving the removal of the Edwards dam; and to fund the next phase of a restoration program for these species on the Kennebec River.

III. Elements that apply to all parts of this agreement:

A. Effective Date.

This Agreement will become effective upon:

1. signature by all parties of it; and
2. signature by all parties to this Agreement, and signature of Edwards Manufacturing Company, the City of Augusta, Maine, and the National Fish and Wildlife Foundation of appropriate settlement documents to be submitted to FERC pursuant to 18 C.F.R. §385.602.

B. Required Filings with Regulatory Agencies

The parties agree that, immediately after this Agreement and the Lower Kennebec River Comprehensive Hydropower Settlement Accord become effective, they will make joint, formal filings to FERC requesting that FERC:

1. incorporate all applicable terms of this Agreement into existing or proposed FERC licenses for hydropower facilities owned by KHDG

members;

2. only issue amended or new licenses for the KHDG facilities incorporating all applicable terms of this Agreement if, and at the same time as, FERC approves the transfer of the FERC license for the Edwards Dam from Edwards Manufacturing Company and the City of Augusta to the State of Maine;
3. defer action on the motion by Central Maine Power Company for rehearing of the Fort Halifax license, issued by FERC in November 1997, pending FERC's decision on both the transfer of the FERC license for the Edwards Dam to the State of Maine and FERC's incorporation of the applicable terms of this Agreement into existing or proposed FERC licenses for hydropower facilities owned by KHDG members;
4. allow Central Maine Power Company to withdraw its motion for rehearing of the Fort Halifax license in the event that FERC incorporates all of the applicable terms of this Agreement into existing or proposed FERC licenses for hydropower facilities owned by KHDG members; and
5. stay action on fish passage installation obligations at the Fort Halifax, Benton Falls, Lockwood and UAH-Hydro Kennebec facilities pending its decision on transfer of the FERC license for the Edwards Dam and incorporation of applicable terms of this Agreement into existing or proposed KHDG licenses.

The parties also agree that, immediately after the two aforementioned agreements become effective, they will make joint, formal filings to the Maine DEP requesting that the Maine DEP immediately incorporate all applicable terms of the final settlement Agreement into existing or proposed water quality certifications for the hydropower facilities owned by KHDG members.

KHDG members shall withdraw all motions and appeals upon the issuance of final non-appealable orders from FERC and the Maine DEP incorporating the terms of this Agreement into KHDG licenses.

C. Failure to Achieve Timely Approvals.

1. In the event that FERC or Maine DEP choose to alter or prohibit execution of any term and condition contained in this Agreement considered essential to any party (including all dates for performance) or have not issued final, non-appealable, FERC licenses and DEP water quality certifications (amended or new) for all KHDG projects by June 1, 1999; or

2. in the event that FERC does not approve the transfer of the FERC license for the Edwards Dam from Edwards Manufacturing Company and the City of Augusta to the State of Maine, or has not ruled on said transfer request by June 1, 1999, or FERC approves amendments or new licenses for the KHDG facilities prior to approving the transfer of the Edwards license,

then unless all parties agree to amend this Agreement to incorporate any changes made by FERC or the Maine DEP or agree to extend the final approval and transfer dates beyond June 1, 1999 or agree to waive the need for FERC approval of the transfer of the FERC license for the Edwards Dam, then this Agreement becomes null and void and all payments made by KHDG pursuant to paragraph III of this Agreement will be returned to KHDG, except for \$140,000.00, to be used by the State to pay for trapping and trucking of alewife during 1999.

Notwithstanding the foregoing, in the event that either FERC or Maine DEP has not issued a final, non-appealable license or water quality certification for the Burnham Project by June 1, 1999, this Agreement shall not become null and void so long as: FERC and Maine DEP have issued final, non-appealable licenses and water quality certifications to all the other KHDG projects incorporating the applicable terms of this Agreement; Maine DEP has issued a letter to the owner of the Burnham Project guaranteeing that any water quality certificate issued for the Project will incorporate the applicable terms of this Agreement and will not impose conditions regarding fish passage that are inconsistent with the applicable terms of this Agreement; and the Kennebec Coalition and the resource agencies have issued letters to Maine DEP and FERC supporting the incorporation of the applicable terms of this Agreement into the license and water quality certificate for the Burnham Project.

If this Agreement shall become null and void due to one of the aforementioned events, the parties agree that KHDG may submit, and the other parties to this Agreement will support, a motion to FERC seeking to extend the compliance dates for installation of permanent upstream fish passage in the Lockwood, Fort Halifax, UAH-Hydro Kennebec and Benton Falls licenses for the same period of time that lapsed between the date of filing of the joint motion to amend licenses and the date whereby this Agreement became null and void. In the event that KHDG seeks to extend the compliance dates for installation of permanent upstream fish passage for a period of time beyond the lapsed time, the other parties to this Agreement reserve the right to oppose extension of these compliance dates for any period beyond the aforementioned lapsed time.

D. Term of Agreement

If by December 2014 the biological triggers for permanent upstream passage

facilities discussed herein have not been met at one or more of the dams covered by this agreement, the parties will meet to assess the progress in restoring species covered by this agreement (alewife, American shad, blueback herring, Atlantic salmon, and American eel), and will attempt to reach consensus on future fish passage measures. Any disputes will be handled through the FERC process.

E. Consultation process

The functional and final design of any interim or permanent upstream or downstream fish passage or collection facility discussed herein must be approved in writing by the resource agencies prior to filing that design with the Federal Energy Regulatory Commission and Maine Department of Environmental Protection. Any disputes will be handled through the FERC process.

F. Effectiveness studies

KHDG dam owners will conduct effectiveness studies of all newly constructed interim and permanent upstream and downstream fish passage facilities at project sites. Study plans for these effectiveness studies will be filed with FERC and Maine DEP no later than the date on which passage at a particular project becomes operational, and will be subject to a consultation process with, and written approval from the resource agencies. In the event that effectiveness studies show that passage at individual projects is less than the targeted passage efficiency goals, KHDG dam owners will make a good faith effort to achieve these goals through modification of facilities and/or operations, following consultation with the resource agencies. In the event that studies show that, subsequent to said modifications, passage at individual projects continues to be less than the targeted efficiency goals, resource agencies may seek continued funding for trap and truck or other programs, or other mitigation from KHDG dam owners. Any disputes will be handled through the FERC process.

G. For American eel at all projects:

1. KHDG dam owners and DMR, in consultation with NMFS and USFWS, and subject to approval by FERC, shall undertake a three-year research project designed to determine: (a) the appropriate placement of upstream passage for American eel at each of the seven KHDG facilities based upon field observations of where eel are passing or attempting to pass upstream at each facility; and (b) appropriate permanent downstream fish passage measures, based upon radio telemetry and other tracking mechanisms, and field observation. Consultation between KHDG and the resource agencies to design and coordinate the research project shall begin no later than June 1, 1998. Performance of the studies shall begin during the 1998 migration

season if possible, but in no case later than the 1999 migration season. The studies shall be in effect for three complete migration seasons, and shall be completed, including data compilation and analysis, by December 31, 2001.

2. The studies shall be supervised by DMR, based upon objectives and methods agreed to by KHDG and the resource agencies, and subject to approval by FERC. The studies shall cost no more than \$427,000, and shall be paid for by DMR.
3. Based on the results of these studies and beginning no later than January 1, 2002 and ending no later than June 30, 2002, KHDG dam owners and the resource agencies shall engage in consultation to attempt to reach agreement on the appropriate location of upstream eel passage at each facility, and the appropriate permanent downstream passage measures to apply to each facility.
 - a. Upstream passage. KHDG dam owners agree that, if agreement is reached on the location of upstream eel passage at each facility, KHDG dam owners will install said passage at each facility during 2002. The cost to KHDG dam owners of materials for each upstream eel passage facility shall not exceed \$10,000 and the total cost of materials to KHDG dam owners per dam shall not exceed \$20,000, in the event that construction of more than one upstream passage facility is required per dam. The parties shall jointly request FERC to amend licenses and insert the agreed-upon terms and conditions for upstream eel passage.
 - b. Downstream passage. If agreement is reached at consultation on the appropriate downstream passage measures, the parties shall jointly request FERC to amend licenses and insert the agreed-upon terms and conditions for downstream eel passage.

If consensus is not reached on either upstream passage location or downstream passage measures by June 30, 2002, any party shall be free to petition FERC to amend any license to insert appropriate terms and conditions.

4. In the event that, during the course of the eel tracking studies, it is revealed that certain interim downstream measures are needed to avoid significant downstream turbine injury and/or mortality (immediate or delayed) at a particular site, KHDG dam owners will consult with the resource agencies and agree to undertake cost-effective measures designed to minimize

mortality at that site.

5. In the event that DMR does not receive the necessary appropriation or legislative spending authorization required to fund the studies discussed in paragraph III.G.1. & 2. above, the provisions in this Agreement governing American eel, found in paragraphs III.G.1 through III.G. 4, are null and void, but all other provisions of this Agreement remain in full force and effect. In the event that paragraphs III.G.1 through III.G.4 become null and void, any party may petition FERC to amend any license regarding upstream and downstream passage of eel.

H. Reporting.

Continuous progress assessments will be undertaken through annual reports which will be filed with FERC by KHDG dam owners, consistent with current practice by KHDG dam owners.

I. Support on Edwards removal.

KHDG dam owners agree to publicly and actively support removal of Edwards dam, as recommended in the Kennebec River Basin Maine FEIS, including stating such support in filings to FERC and other governmental agencies with responsibility for granting regulatory approval of the removal. Other activities in support of removal of the Edwards dam will be undertaken if mutually agreed upon by parties.

J. Successors, Assignees or Purchasers; notification

KHDG dam owners agree that the terms and conditions contained in this Agreement shall bind and inure to the benefit of all entities that might become successors, assignees or purchasers of any licensee. Each KHDG dam owner agrees to provide notice of the existence of this Agreement, and a copy thereof, to any prospective buyer of its hydropower facility.

K. Termination of all prior agreements

The parties agree that this Agreement supercedes and terminates all prior agreements, whether written or oral, including specifically the *Agreement Between the State of Maine and Kennebec Hydro Developers Group*, dated January 22, 1987, relating to the subject matter herein. In the event that this Agreement becomes null and void pursuant to Paragraph III.C. of this Agreement, then the aforementioned *Agreement Between the State of Maine and Kennebec Hydro Developers Group* shall remain in effect pursuant to its terms and conditions, with

the exception that the obligation for installation of permanent upstream fish passage facilities at Lockwood, Fort Halifax, UAH-Hydro Kennebec and Benton Falls shall be extended as provided in Paragraph III.C. of this Agreement.

IV. Terms and conditions for specific projects:

A. BIOLOGICAL ASSESSMENT PROCESS FOR LOCKWOOD, UAH-HYDRO KENNEBEC, SHAWMUT AND WESTON

The schedule described herein for installing permanent upstream fishways at Lockwood, UAH-Hydro Kennebec, Shawmut and Weston projects is based primarily on the anticipated growth in the population of American shad in the Kennebec River. However, the State of Maine's goal is to restore anadromous species (with the exception of lamprey) to their historic range. This means restoring other anadromous species above Lockwood, UAH-Hydro Kennebec, Shawmut and Weston including Atlantic salmon, alewife, and blueback herring. The resource agencies will continue to assess the status and growth of the population of shad and other anadromous fish populations in the Kennebec River, as is being done on the Saco River and elsewhere in Maine. Should the growth of salmon or river herring runs make it necessary to adopt an alternative approach for triggering fishway installation (i.e., one not based on the project specific, biologically-based trigger number for shad), the resource agencies will meet with the licensee(s) to attempt to reach consensus on the need, timing and design of permanent upstream fish passage facilities at the Lockwood, Hydro-Kennebec, Shawmut, and Weston projects. Disputes will be handled through the FERC process.

B. LOCKWOOD AND UAH-HYDRO KENNEBEC

1. Interim upstream fish lift.

At the Lockwood facility, licensee shall install an interim trap, lift, and transfer facility for American shad, river herring, and Atlantic salmon at the powerhouse, to be operational by May 1, 2006. Licensee recognizes and acknowledges that the success of the resource agencies' and Kennebec Coalition's efforts to restore shad, and to begin the restoration of Atlantic salmon to the Kennebec River Basin and achieve established fisheries management goals is dependent upon: (a) the State's ability to collect sufficient quantities of healthy shad brood stock from the Sebasticook River at the Fort Halifax dam, and from the Kennebec River at the Lockwood dam to use in DMR's Waldoboro hatchery and for stocking in upstream waters; and (b) the resource agencies' and other interested

organizations' ability to collect available brood stock of Atlantic salmon from the Sebasticook River at the Fort Halifax dam, and from the Kennebec River at the Lockwood dam, to initiate a Kennebec River salmon hatchery operation. Licensee further recognizes and acknowledges that, assuming the prior removal of the Edwards dam, installation of an interim fish lift at the Lockwood dam in 2006 is needed, and Licensee will not seek to eliminate or defer this installation requirement before FERC or other regulatory bodies.

A part of the interim passage design and construction would include mechanisms (e.g., video monitoring) to allow operators and resource agencies to assess the effectiveness of the interim facility in trapping all species that seek passage. The interim lift shall be designed to empty into a trap and truck collection facility with adequate capacity for "holding" large quantities of fish, and not designed to discharge into the canal area.

In the event that the Edwards Dam has not been removed by May 1, 2006, any party to this Agreement retains the right to petition FERC to establish a new date for installation of an interim trap, lift, and transfer facility at Lockwood for American shad, Atlantic salmon and river herring. It is understood that this ability to petition for a new date in the event that Edwards has not been removed applies only to the installation of interim fish passage at Lockwood, and permanent fish passage at Fort Halifax, as specified at paragraph IV.E.1.d.2. herein.

2. Permanent upstream passage.

Permanent upstream passage at Lockwood and UAH-Hydro Kennebec shall be operational 2 years following the earlier to occur of either of the following biological triggers. In no event shall permanent upstream fish passage be required to be operational before May 1, 2010.

- a. 8000 American shad in any single season captured at the interim trap, lift, and sort facility at Lockwood; or
- b. a biological assessment trigger initiated for Atlantic salmon, alewife or blueback herring, as described in IV-A above.

3. Downstream passage at Lockwood

- a. Interim passage beginning upon the effective date of this Agreement:

(1) Generally. Licensee will continue and where needed improve

existing interim operational measures (e.g. controlled spills, temporary turbine shutdowns, sluiceways), to diminish entrainment, allow downstream passage of out-migrating alewife, Atlantic salmon, blueback herring and American shad, and eliminate significant injury or mortality (immediate or delayed) to out-migrating species. Licensee agrees to consult with state and federal agencies to develop an approved plan for interim downstream passage facilities and/or operational measures to minimize impacts on downstream migrating fish, with evaluation based on qualitative observations.

(2) Passage through turbines. Licensee and the resource agencies agree that fish passage by means of sluiceways and/or controlled spills are the first and preferred approach to interim downstream fish passage at Lockwood. In the event that fish passage using these methods is not successful¹, and to the extent that licensee desires to achieve or continue interim downstream passage of out-migrating alewife, and/or juvenile Atlantic salmon or shad by means of passage through turbine(s), licensee must demonstrate, through site-specific qualitative studies designed and conducted in consultation with the resource agencies, that passage through turbine(s) will not result in significant injury and/or mortality (immediate or delayed). If, after three years of such studies, the resource agencies, based on good cause shown, do not believe that the qualitative studies conclusively demonstrate that turbine passage is not resulting in significant injury and/or mortality, and licensee desires to achieve interim downstream passage of these species through turbine(s), licensee must demonstrate through site-specific quantitative studies that turbine passage will not result in significant injury and/or mortality (immediate or delayed). The quantitative studies shall be designed and conducted in consultation with the resource agencies.

In the event that adult shad and/or adult Atlantic salmon begin to inhabit the impoundment above the Lockwood project, and to the extent that licensee desires to achieve interim downstream passage of out-migrating adult Atlantic salmon and/or adult shad by means of passage through turbine(s), licensee must first demonstrate, through site-specific quantitative studies designed and conducted in consultation with the resource agencies, that passage through

¹ Construction of new diversionary structures to achieve success is not required by this Agreement.

turbine (s) will not result in significant injury and/or mortality (immediate or delayed). In no event shall licensee be required to make this quantitative demonstration for adult shad and adult Atlantic salmon before May 1, 2006.

Licensee shall conduct studies (designed in consultation with the resource agencies) prior to the date by which permanent downstream passage facilities are to be operational to determine the effectiveness of various downstream passage techniques in preparation for the design and installation of permanent downstream facilities.

- b. Permanent passage: Permanent downstream facilities will be operational on the date that permanent upstream passage is operational. Licensee will be permitted to install permanent downstream passage at an earlier date if it so chooses.

4. Downstream passage at UAH-Hydro Kennebec

- a. Interim passage beginning upon the effective date of this Agreement:

(1) Generally. Licensee will continue and where needed improve existing interim operational measures (e.g. controlled spills, temporary turbine shutdowns), to diminish entrainment, allow downstream passage of out-migrating alewife, Atlantic salmon, blueback herring and American shad, and eliminate significant injury or mortality (immediate or delayed) to out-migrating species. Licensee agrees to consult with state and federal agencies to develop an approved plan for interim downstream passage facilities and/or operational measures to minimize impacts on downstream migrating fish, with evaluation based on qualitative observations.

(2) Passage through turbines. To the extent that licensee desires to achieve or continue interim downstream passage of out-migrating alewife, and/or juvenile Atlantic salmon or shad by means of passage through turbine(s), licensee must demonstrate, through site-specific qualitative studies designed and conducted in consultation with the resource agencies, that passage through turbine(s) will not result in significant injury and/or mortality (immediate or delayed). In the event that adult shad and/or adult Atlantic salmon begin to inhabit the impoundment above the UAH-

Hydro Kennebec project, and to the extent that licensee desires to achieve interim downstream passage of out-migrating adult Atlantic salmon and/or adult shad by means of passage through turbine(s), licensee must first demonstrate, through site-specific quantitative studies designed and conducted in consultation with the resource agencies, that passage through turbine (s) will not result in significant injury and/or mortality (immediate or delayed). In no event shall licensee be required to make this quantitative demonstration before May 1, 2006.

Licensee shall conduct studies (designed in consultation with the resource agencies) prior to the date by which permanent downstream passage facilities are to be operational to determine the effectiveness of various downstream passage techniques in preparation for the design and installation of permanent downstream facilities.

- b. Permanent passage: Permanent downstream facilities will be operational on the date that permanent upstream passage is operational. Licensee will be permitted to install permanent downstream passage at an earlier date if it so chooses.

5. Applicability of this Agreement to FERC Relicensing of Lockwood.

The resource agencies and the Kennebec Coalition stipulate that the terms and conditions contained herein that are relevant to the relicensing at Lockwood (e.g., type of fish passage, dates for installation) will be the same terms and conditions that will be sought during relicensing, including the water quality certification process. Certain issues not covered in this Agreement (e.g. boat ramps, access, minimum flows) will still need to be resolved during the relicensing process.

C. **SHAWMUT**

- 1. Permanent upstream passage at Shawmut shall be operational 2 years following the earlier to occur of either of the following biological triggers. In no event shall permanent upstream fish passage be required to be operational before May 1, 2012.
 - a. 15,000 American shad passed in any single season in the permanent passage facility at UAH-Hydro Kennebec; or
 - b. a biological assessment trigger initiated for Atlantic salmon,

alewife or blueback herring as described in IV -A above.

2. Downstream passage:

a. Interim passage beginning upon the effective date of this Agreement:

(1) Generally. Licensee will continue and where needed improve existing interim operational measures (e.g. controlled spills, temporary turbine shutdowns, sluiceways), to diminish entrainment, allow downstream passage of out-migrating alewife, Atlantic salmon, blueback herring and American shad, and eliminate significant injury or mortality (immediate or delayed) to out-migrating species. Licensee agrees to consult with state and federal agencies to develop an approved plan for interim downstream passage facilities and/or operational measures to minimize impacts on downstream migrating fish, with evaluation based on qualitative observations.

(2) Passage through turbines. Licensee and the resource agencies agree that fish passage by means of sluiceways and/or controlled spills are the first and preferred approach to interim downstream fish passage at Shawmut. In the event that fish passage using these methods is not successful², and to the extent that licensee desires to achieve or continue interim downstream passage of out-migrating alewife, and/or juvenile Atlantic salmon or shad by means of passage through turbine(s), licensee must demonstrate, through site-specific qualitative studies designed and conducted in consultation with the resource agencies, that passage through turbine(s) will not result in significant injury and/or mortality (immediate or delayed). If, after three years of such studies, the resource agencies, based on good cause shown, do not believe that the qualitative studies conclusively demonstrate that turbine passage is not resulting in significant injury and/or mortality, and licensee desires to achieve interim downstream passage of these species through turbine(s), licensee must demonstrate through site-specific quantitative studies that turbine passage will not result in significant injury and/or mortality (immediate or delayed). The quantitative studies shall be designed and conducted in consultation with the resource agencies.

² Construction of new diversionary structures to achieve success is not required by this Agreement.

In the event that adult shad and/or adult Atlantic salmon begin to inhabit the impoundment above the Shawmut project, and to the extent that licensee desires to achieve interim downstream passage of out-migrating adult Atlantic salmon and/or adult shad by means of passage through turbine(s), licensee must first demonstrate, through site-specific quantitative studies designed and conducted in consultation with the resource agencies, that passage through turbine (s) will not result in significant injury and/or mortality (immediate or delayed). In no event shall licensee be required to make this quantitative demonstration for adult shad and adult Atlantic salmon before May 1, 2006.

Licensee shall conduct studies (designed in consultation with the resource agencies) prior to the date by which permanent downstream passage facilities are to be operational to determine the effectiveness of various downstream passage techniques in preparation for the design and installation of permanent downstream facilities.

- b. Permanent passage: Permanent downstream facilities will be operational on the date that permanent upstream passage is operational. Licensees will be permitted to install permanent downstream passage at an earlier date if it so chooses.

D. WESTON

- 1. Permanent upstream passage at Weston shall be required to be operational 2 years following the earlier to occur of either of the following biological triggers. In no event shall permanent upstream fish passage be required to be operational before May 1, 2014.
 - a. 35,000 American shad captured in any single season in the permanent upstream facility at Shawmut; or
 - b. a biological assessment trigger initiated for Atlantic salmon, alewife or blueback herring as described in IV-A above.
- 2. Downstream passage:
 - a. Interim passage beginning upon the effective date of this Agreement:

(1) Generally. Licensee will continue and where needed improve existing interim operational measures (e.g. controlled spills, temporary turbine shutdowns, sluiceways), to diminish entrainment, allow downstream passage of out-migrating alewife, Atlantic salmon, blueback herring and American shad, and eliminate significant injury or mortality (immediate or delayed) to out-migrating species. Licensee agrees to consult with state and federal agencies to develop an approved plan for interim downstream passage facilities and/or operational measures to minimize impacts on downstream migrating fish, with evaluation based on qualitative observations.

(2) Passage through turbines. Licensee and the resource agencies agree that fish passage by means of sluiceways and/or controlled spills are the first and preferred approach to interim downstream fish passage at Weston. In the event that fish passage using these methods is not successful³, and to the extent that licensee desires to achieve or continue interim downstream passage of out-migrating alewife, and/or juvenile Atlantic salmon or shad by means of passage through turbine(s), licensee must demonstrate, through site-specific qualitative studies designed and conducted in consultation with the resource agencies, that passage through turbine(s) will not result in significant injury and/or mortality (immediate or delayed). If, after three years of such studies, the resource agencies, based on good cause shown, do not believe that the qualitative studies conclusively demonstrate that turbine passage is not resulting in significant injury and/or mortality, and licensee desires to achieve interim downstream passage of these species through turbine(s), licensee must demonstrate through site-specific quantitative studies that turbine passage will not result in significant injury and/or mortality (immediate or delayed). The quantitative studies shall be designed and conducted in consultation with the resource agencies.

In the event that adult shad and/or adult Atlantic salmon begin to inhabit the impoundment above the Weston project, and to the extent that licensee desires to achieve interim downstream passage of out-migrating adult Atlantic salmon and/or adult shad by means of passage through turbine(s), licensee must first demonstrate, through site-specific quantitative studies designed and conducted

³ Construction of new diversionary structures to achieve success is not required by this Agreement.

in consultation with the resource agencies, that passage through turbine (s) will not result in significant injury and/or mortality (immediate or delayed). In no event shall licensee be required to make this quantitative demonstration for adult shad and adult Atlantic salmon before May 1, 2006.

Licensee shall conduct studies (designed in consultation with the resource agencies) prior to the date by which permanent downstream passage facilities are to be operational to determine the effectiveness of various downstream passage techniques in preparation for the design and installation of permanent downstream facilities.

- b. Permanent passage: Permanent downstream facilities will be operational on the date that permanent upstream passage is operational. Licensee will be permitted to install permanent downstream passage at an earlier date if it so chooses.

E. SEBASTICOOK RIVER DAMS

1. FORT HALIFAX

- a. Purpose in establishing new dates for installation of permanent fish passage.

Licensee recognizes and acknowledges that the success of the resource agencies' and Kennebec Coalition's efforts to restore shad to the Kennebec River Basin and achieve established fisheries management goals is dependent upon the State's ability to collect sufficient quantities of healthy shad brood stock from the Sebasticook River and the Kennebec River below the Lockwood dam, to use in DMR's Waldoboro hatchery and for stocking in upstream waters. Licensee further recognizes and acknowledges that, assuming the continued operation of the Fort Halifax dam and the prior removal of the Edwards dam, permanent fish lift capable of passing, unharmed, sufficient quantities of alewife, shad, and Atlantic salmon to meet stated fisheries management goals shall be operational at Fort Halifax in 2003. Licensee further recognizes and acknowledges that resources agencies and the Kennebec Coalition are

agreeing to allow licensee to delay installation of such a lift until 2003⁴ in order to allow licensee sufficient time to decide if continued operation of the Fort Halifax dam is economically viable, and that the schedule of time for such decisionmaking allowed under this Agreement is sufficient for this decisionmaking.

b. Temporary Fish Pump for Alewife.

By no later than May 1st of the first migration season following the removal of the Edwards Dam, anticipated to be removed in 1999, licensee shall install and have fully operational a temporary fish pump and trap and transport facility, effective in safely capturing upstream migrating alewife in quantities sufficient to meet DMR's restoration goals for alewife. If at any time the temporary fish pump at Fort Halifax is not successfully passing alewife in quantities sufficient to meet these restoration goals, licensee agrees to undertake emergency interim measures (e.g., seining) to capture alewife and otherwise take immediate corrective actions.

In the event that the Edwards Dam is not removed in 1999 and river herring continue to be trapped at Edwards, the temporary fish pump at Fort Halifax shall be installed and operational prior to the first spring migration season for river herring following the removal of the Edwards Dam.

c. Temporary Capture of Shad

By no later than May 1st of the first migration season following the removal of the Edwards Dam, anticipated to be removed in 1999, licensee shall install, have fully operational and maintain and operate below the Fort Halifax dam all measures except for construction of permanent upstream passage facilities, necessary to capture shad unharmed⁵ in sufficient quantities to satisfy the needs of DMR for hatchery spawning of shad at its Waldoboro shad hatchery, so long as populations of shad have been sighted in the waters below the Fort Halifax dam.

d. Permanent Upstream Fish Passage

(1). Installation of Permanent Passage. Unless licensee has

⁴ Assuming licensee does not choose to remove or partially remove the dam.

⁵ KHDG and the resource agencies will evaluate whether measures such as installation of floating weir(s), angling, dip netting, seining, and gill netting are capable of capturing shad unharmed.

surrendered its FERC license at Fort Halifax and FERC has ordered the dam to be decommissioned by summer 2003, licensee shall, by May 1, 2003, remove the temporary fish pump and all temporary shad collection mechanisms, and install and have fully operational a lift facility capable of successfully trapping and trucking and passing upstream American shad and river herring in quantities sufficient to meet established fishery management goals, and Atlantic salmon in quantities sufficient to meet the Atlantic Salmon Commission's goals. Licensee will not seek to eliminate or defer beyond 2003 the requirement to provide permanent fish passage (whether by permanent fish lift, removal, or partial removal) before FERC or other regulatory bodies, except as provided in paragraph IV.E.1.d (2) below.

(2). Reopener if Edwards Dam Not Removed. In the event that the Edwards Dam has not been removed by 2001, any party to this Agreement retains the right to petition FERC to establish a new date for installation of permanent upstream fish passage at Fort Halifax for American shad, Atlantic salmon and river herring. It is understood that this ability to petition for a new date in the event that Edwards has not been removed applies only to the installation of permanent fish passage at Fort Halifax and interim fish passage at Lockwood, and as specified herein at paragraph IV.B.1.

2. **BENTON FALLS**

Permanent upstream passage capable of passing sufficient quantities of alewife, shad and Atlantic salmon to meet stated fisheries management goals shall be constructed one year following the occurrence of all of the following events: (1) passage upstream at Fort Halifax (by temporary or permanent mechanisms, including trapping, sorting and trucking) of alewife; and (2) installation of alewife fish passage, and/or the removal of dams, at all of the following four locations: the Newport Dam; the outlet of Sebasticook Lake; the outlet of Plymouth Lake at the head of Martin Stream in the town of Plymouth; and below the outlet of Pleasant Pond on Stetson Stream in the town of Stetson. In no event shall permanent upstream passage be required to be operational before May 2002.

3. **BURNHAM**

a. Upstream Passage. Permanent upstream passage capable of passing sufficient quantities of alewife, shad and Atlantic salmon to meet stated fisheries management goals shall be constructed one year following the occurrence of all of the following events: (1) passage upstream at Fort Halifax (by temporary or permanent mechanisms, including trapping, sorting and trucking) of alewife; and (2) installation of alewife fish passage, and/or the removal of dams, at all of the following four locations: the Newport Dam; the outlet of Seabasticook Lake; the outlet of Plymouth Lake at the head of Martin Stream in the town of Plymouth; and below the outlet of Pleasant Pond on Stetson Stream in the town of Stetson. In no event shall permanent upstream passage be required to be operational before May 2002.

b. Downstream Passage. Permanent downstream fish passage at the Burnham project shall be operational the second year following issuance of a FERC license. Beginning on the effective date of this Agreement in 1998 and continuing until the installation of permanent downstream passage, licensee shall install or otherwise undertake additional interim downstream passage measures needed to eliminate significant downstream injury or mortality (immediate or delayed) of river herring during downstream migration, upon direction by DMR based upon observation of downstream mortality. These interim measures are similar to interim measures undertaken at the dams at Damariscotta Mills and Pumpkin Hill.

V. Funds for Fisheries Restoration of the Kennebec.

KHDG dam owners will pay \$4,750,000 to the State of Maine, c/o the National Fish and Wildlife Foundation ("NFWF"), pursuant to an agreement entered into between NFWF and the State of Maine, at scheduled payment intervals listed below. KHDG dam owners' payments to the State will be used only for anadromous fisheries restoration in the Kennebec, including funding for restoration of alewife, shad, blueback herring, and salmon; the eel studies described herein; and costs incurred by the State in connection with removing the Edwards Dam.

The schedule of payments by KHDG dam owners to the NFWF is: \$2,375,000.00, received by NFWF on or before January 15, 1999; \$935,000.00, received by NFWF on or before January 15, 2000; and \$180,000.00 per year, received by NFWF on or before January 15, for each of the years beginning January 15, 2003 and continuing up to and including January 15, 2010.


KHDG dam owners that are signatories to this Agreement are jointly and severally liable for all payments listed herein.

VI. Enforceability

The parties to this Agreement acknowledge that there may be no adequate remedy at law for any breach of the terms of this Agreement and, therefore, that any party shall be entitled to obtain specific performance of any other party's breach hereof, in addition to and without waiver of any other available remedy should such relief be determined to be appropriate.

SEEN AND AGREED TO THE DAY OF , 1998, by:

Central Maine Power Company

By: 

Its: *President*

Dated: *26 May 98*

Kennebec Hydro Resources, Inc.

on behalf of:

Merimil Limited Partnership

By: 

Its: *President*

Dated: *26 MAY 98*

UAH-Hydro Kennebec Limited Partnership

By: 

Its: *General Manager*

Dated: *MAY 26, 1998*

Ridgewood Maine Hydro Partners, L.P.

By _____

Its

Dated:

Benton Falls Associates

By _____

Its

Dated:

American Rivers, Inc.

By _____

Its

Dated

The Atlantic Salmon Federation

By John W. Clough

Its V.P. Conservation Programs

Dated May 26, 1998

Kennebec Valley Chapter of Trout Unlimited

By Bruce W. Bunn

Its President

Dated May 18, 1998

Ridgewood Maine Hydro Partners, L.P.

By: [Handwritten Signature]

Its:
Dated:

Benton Falls Associates

By: _____

Its:
Dated:

American Rivers, Inc.

By: Rebecca P. Wodden

Its: PRESIDENT
Dated MAY 18, 1998

The Atlantic Salmon Federation

By: _____

Its:
Dated

Kennebec Valley Chapter of Trout Unlimited

By: _____

Its:
Dated

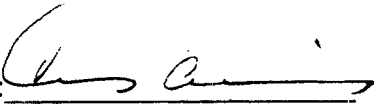
Ridgewood Maine Hydro Partners, L.P.

By: _____

Its:

Dated:

Benton Falls Associates

By:  _____

Thomas A. McNish

Its: Secretary and Treasurer

Dated: May 26, 1998

American Rivers, Inc.

By: _____

Its:

Dated

The Atlantic Salmon Federation

By: _____

Its:

Dated

Kennebec Valley Chapter of Trout Unlimited

By: _____

Its:

Dated

Natural Resources Council of Maine

By: *Paul H. B. Carr*

Its: *Exec. Dir.*

Dated *May 26 1998*

Trout Unlimited

By: *[Signature]*

Its: *President/CEO*

Dated *5/26/98*

National Marine Fisheries Service, U.S. Department of Commerce

By: *[Signature]*

Its:

Dated: *5/26/98*

State Planning Office, State of Maine

By: *[Signature]*

Its: *Director*

Dated: *5/26/98*

Maine Department of Inland Fisheries and Wildlife

By: *[Signature]*

Its: *Commissioner*

Dated: *5/26/98*

Maine Department of Marine Resources

By: *Lewis M. Filagy*

Its: *COMMISSIONER*

Dated: *5/26/98*

United States Fish and Wildlife Service, U.S. Department of the Interior

By: *[Signature]*
for Michael J. Bartlett

Its: *New England Field Office Supervisor*

Date: *5/26/98*

EXHIBIT FPLE-7

Joint Comments of the Kennebec Coalition *et al* in Support of Incorporating the Accord
Provisions into the KHDG FERC Licenses

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Central Maine Power Company	)	Project Nos. 2322, 2325
Merimil Limited Partnership	)	2552, 2574, 5073, 2611
Benton Falls Associates	)	and 11472
UAH Hydro Kennebec Limited Partnership)	
Ridgewood Maine Hydro Partners, L.P.)	

**JOINT COMMENTS OF THE KENNEBEC COALITION,
FEDERAL AGENCIES AND THE STATE OF MAINE
IN SUPPORT OF THE KHDG MEMBERS' APPLICATION
FOR INCORPORATION OF SETTLEMENT TERMS INTO
EXISTING AND PROPOSED LICENSES**

The Kennebec Coalition,¹ the National Marine Fisheries Service ("NMFS"), the U.S. Fish and Wildlife Service ("USFWS") and the State of Maine submit these comments in support of the "Application for Incorporation of Settlement Terms" filed today for the above-captioned projects by the members of the Kennebec Hydro Developers Group ("KHDG").

The Kennebec Coalition, the NMFS, the USFWS and the State of Maine have been seeking, as parties in the Edwards Dam relicensing proceeding (FERC Project No. 2389), the removal of the Edwards Dam in order to restore numerous anadromous and catadromous fish species to the Kennebec River. On November 25, 1997, the Commission issued in that proceeding an "Order Denying New License and Requiring Dam Removal" that denied Licensees' request for a new license and required Licensees to remove the Edwards Dam. The undersigned parties have also been parties to proceedings regarding timing of fish passage obligations in the above-captioned projects owned by KHDG members.

The KHDG members, Edwards Manufacturing Company, the City of Augusta, the Kennebec Coalition, the NMFS, the State of Maine, the USFWS and other parties have reached a settlement regarding fish passage issues in the above-captioned proceedings as well as licensing and dam removal issues in the Edwards Dam relicensing proceeding. This settlement is reflected in the *Lower Kennebec River Comprehensive Hydropower Settlement Accord* ("Comprehensive Settlement"), signed May 26, 1998, and the agreements cited therein, which was filed today in the above-captioned proceedings. The Kennebec Coalition, the NMFS, the State of Maine and the USFWS participated in the development of this settlement and are signatories to the Comprehensive Settlement.

¹ The Kennebec Coalition consists of American Rivers, The Atlantic Salmon Federation, the Natural Resources Council of Maine, and Trout Unlimited and its Kennebec Valley Chapter.

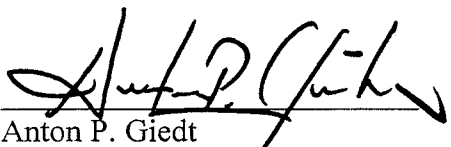
The Comprehensive Settlement provides, among other things, that: (1) KHDG members will provide \$4.75 million for partial funding of anadromous fisheries restoration in the Kennebec River, including funding for restoration of alewife, shad, blueback herring, and salmon, certain eel studies, and costs incurred by the State in connection with removing Edwards Dam; (2) KHGD members will seek, and other parties will support, a rescheduling of fish passage obligations in existing and proposed KHDG licenses; (3) Edwards Manufacturing Company and the City of Augusta will seek Commission approval to transfer Edwards Dam license No. 2389 to the State of Maine, and (4) the State of Maine will remove Edwards Dam.

This Comprehensive Settlement is based, in part, on the *Agreement Between Members of the Kennebec Hydro Developers Group, the Kennebec Coalition, the National Marine Fisheries Service, the State of Maine, and the US Fish and Wildlife Service*, signed May 26, 1998 and attached to the Comprehensive Settlement ("*KHDG Agreement*"). The *KHDG Agreement* sets forth the agreed upon terms with respect to the above-captioned KHDG projects that will best serve the goals of the Comprehensive Settlement.

The undersigned parties believe that reconsideration of the fish passage obligations, requirements and responsibilities at the above-captioned KHDG projects is justified to accomplish both the goals of Edwards Dam removal and effective anadromous fish restoration in the Kennebec River. Justification for this conclusion is included in the *KHDG Agreement*, the Comprehensive Settlement and associated Explanatory Statement, and the Application for Incorporation of Settlement Terms, all filed today in the above-captioned matters and incorporated by reference herein.

With this filing, the Kennebec Coalition, the NMFS, the USFWS and the State of Maine express support for the KHDG members' Application for Incorporation of Settlement Terms conditioned on two events: (1) that the Edwards project license is transferred with all licensing rights and responsibilities granted and imposed by FERC for FERC license No. 2389 in effect on the execution date of the *Settlement Agreement Among Edwards Manufacturing Co., Inc., the City of Augusta and the State of Maine Concerning the Edwards Dam in Augusta, Maine*, signed May 15, 1998; and (2) that FERC rule on the KHDG members' Application for Incorporation of Settlement Terms in a manner consistent with the Comprehensive Settlement and *KHDG Agreement*. Based on these two conditions, the undersigned parties urge the Commission to act in an expedited fashion to approve the KHDG members' Application for Incorporation of Settlement Terms.

Respectfully submitted this 26th day of May, 1998,



Anton P. Giedt

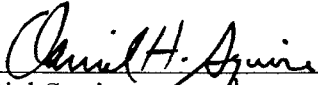
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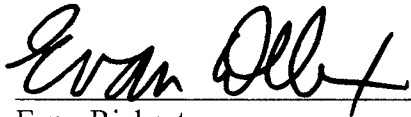
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For the State of Maine

CERTIFICATE OF SERVICE

I hereby certify that this 27th day of May, 1998, a copy of the foregoing "Joint Comments of the Kennebec Coalition, Federal Agencies and the State of Maine in Support of the KHDG members' Application for Incorporation of Settlement Terms" was served by first class mail upon each person on the Official Service List, as identified below.

Sarah A. Verville