UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

FRIENDS OF MERRYMEETING BAY, Plaintiff, v. U.S. ENVIRONMENTAL PROTECTION AGENCY, MAINE BOARD OF ENVIRONMENTAL PROTECTION, MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION, and MELANIE LOYZIM in her official capacity as Commissioner of the Maine Department of Environmental Protection, Defendants.	Case No. 2:26-cv-00316-SDN

MOTION FOR LEAVE TO SUBMIT AMICI CURIAE BRIEF BY BROOKFIELD POWER US ASSET MANAGEMENT LLC, THE MAINE FOREST PRODUCTS COUNCIL, AND ND PAPER INC. WITH INCORPORATED MEMORANDUM OF LAW

Brookfield Power US Asset Management ("Brookfield"), the Maine Forest Products Council (the "Council"), and ND Paper Inc. (collectively, "Movants") move for leave to file a joint brief as amici curiae concerning the motions to dismiss filed by the U.S. Environmental Protection Agency ("EPA") and the Maine Department of Environmental Protection ("DEP"), Maine Board of Environmental Protection, and Commissioner Melanie Loyzim (collectively, the "Maine Defendants"). EPA and the Maine Defendants consent to Movant's participation as amici. Counsel for Movants also consulted with counsel for Plaintiff Friends of Merrymeeting Bay ("FOMB"), who stated that FOMB will disclose its position on consent following receipt of this motion. Brookfield, the Council, and ND Paper also wish to reserve the right to seek broader

"amicus plus" status if this case proceeds beyond the motion to dismiss stage, though that request is not part of this motion and would be the subject of a separate timely motion as needed.

INCORPORATED MEMORANDUM OF LAW

"[A]cceptance of amicus briefs is within the sound discretion of the court." *United States v. Maine Dep't of Educ.*, No. 1:25-CV-00173-SDN, 2026 WL 3015678, at *1 (D. Me. Oct. 7, 2026). Courts in this district have considered whether "there is an issue of general public interest, the *amicus* provides supplemental assistance to existing counsel, or the *amicus* insures a 'complete and plenary presentation of difficult issues so the court may reach a proper decision.'" *All. of Auto. Mfrs. v. Gwadowsky*, 297 F. Supp. 2d 305, 307 (D. Me. 2003) (quoting *Alexander v. Hall*, 64 F.R.D. 152, 155 (D.S.C. 1974) (allowing participation in a District Court proceeding as an "a*micus* plus" where the amicus "had strongly supported the legislation, has a unique and special interest in the outcome of this litigation, is in a position to offer the court guidance on the implications of the legislation from an industry viewpoint, and will be able to supply the court with witnesses to supplement the court's knowledge base and inform its judgment"). Those considerations support Movants' participation here.

I. Movants' participation will assist the Court in resolving issues of substantial public importance

This case is of significant public interest and importance because, among other things, it could decide the future of industry and hydropower on the Androscoggin River. Brookfield, the Council, and ND Paper have a unique and special interest in the outcome of this litigation given that their operations (or, in the case of the Council, its members) are regulated by DEP pursuant to its licensing/approval processes. Their

participation will provide the Court with the perspective of regulated entities directly affected by the water quality classification at issue, a perspective distinct from that of the governmental defendants and FOMB. This will assist in a complete presentation of the issues before the Court.

If FOMB gets its way, future relicensings for hydropower projects operated by Brookfield on the Androscoggin River would be in jeopardy (including, most directly, the three that sit in the stretch of the river that FOMB is targeting in this lawsuit). Likewise, industry along the Androscoggin River—including ND Paper's mill in Rumford—would face expensive and perhaps prohibitive permitting requirements and conditions that would be impossible to meet.

Reclassification would also erect barriers threatening the economic vitality of the wood basket in the Androscoggin watershed, an important source of fiber for Maine's forest products industry, which includes landowners, foresters, loggers, truck drivers, facility operators, and the other businesses that support and benefit from the forest products industry in the region. Employment in communities like Rumford very likely would be impacted, as would hydropower production. *Cf.* 38 M.R.S. § 631 ("The Legislature finds and declares that the surface waters of the State constitute a valuable indigenous and renewable energy resource; and that hydropower development utilizing these waters is unique in its benefits and impacts to the natural environment, and makes a significant contribution to the general welfare of the citizens of the State"). The specific interests of Brookfield, the Council, and its member ND Paper are explained below. Their participation as *amici* will, without delaying this case, provide an important perspective of industry that is distinct from the interests of the government defendants and is central to the question of the appropriate water quality classification

of the Androscoggin River.

II. Interests of Brookfield, the Council, and ND Paper

Brookfield, the Council, and ND Paper have concrete interests implicated by the reclassification of the Androscoggin River between Gulf Island Pond Dam and Worumbo Dam from Class C to Class B. Brookfield operates, and its affiliates own, three hydropower projects within this section of river and 10 others upstream. The three projects most directly impacted are the Gulf Island Pond Hydropower Project, which discharges into the section of river that FOMB seeks to have reclassified, and the Deer Rips/Androscoggin No. 3 and Lewiston Falls projects, both sitting within this stretch. For each of these projects, the proposed reclassification of their section of the Androscoggin River from Class C to Class B would make it more difficult if not impossible to obtain water quality certification in the future (i.e., the next time a license amendment is needed or the project comes up for relicensing with FERC). *See* 33 U.S.C. § 401 (requiring a hydropower licensee to obtain water quality certification from the state certifying authority as part of the federal relicensing process or for certain license amendments).

According to the Maine Defendants, the section of the Androscoggin River that FOMB seeks to change to Class B "does not fully meet all Class B water quality criteria for bacteria, aquatic life, and dissolved oxygen" and "cannot meet Class B criteria at all times during critical conditions of high water temperature, low flow, and maximum licensed discharge levels." State Def.'s Br. at 5, ECF No. 28 (quoting 2025 Triennial Review at 77.) Assuming the Maine Defendants are right, reclassification to Class B would make it perhaps impossible for Brookfield to relicense the three aforementioned hydropower projects sitting within this stretch. Its relicensing proposal would have to

improve existing water quality in multiple respects, change flows and reduce discharges, all of which would—if even achievable—result in dramatically higher costs and less renewable power generation. The stakes are too high for Brookfield not to be heard in this case.

Though Class B standards are more stringent across-the-board than Class C under Maine's water quality laws, the stricter dissolved oxygen standards are particularly notable in this case for Brookfield and for ND Paper. *See* 38 M.R.S. § 465(3), (4). This is because Brookfield and ND Paper, along with other partners, already actively manage dissolved oxygen levels to meet Class C levels at the Gulf Island Pond Project through the expensive and sophisticated Gulf Island Pond Oxygenation Project. The oxygenated water in Gulf Island Pond, enhanced by this project, flows directly through Brookfield's dam into the stretch of river that FOMB seeks to have reclassified to Class B. If successful, this lawsuit would as a practical matter further heighten the dissolved oxygen requirements in Gulf Island Pond (because the pond flows directly into what would become Class B waters), rendering this sophisticated and successful oxygenation project perhaps obsolete.

The Maine Forest Products Council and its members likewise have concrete interests implicated by the relief FOMB seeks. Council member ND Paper participates in the Gulf Island Pond Oxygenation Project because the discharge from its upstream paper mill in Rumford contributes to lower dissolved oxygen levels downstream. The conditions of the mill's Maine Pollution Discharge Elimination System Permit and Wastewater Discharge License, and the mill's current operational regime, very likely would be jeopardized by the relief FOMB is asking for. In addition, FOMB's requested relief could affect thousands of acres of productive Maine forest land, and the

individuals, companies, and communities that rely on that forest land, by calling into question whether existing non-point source programs and protections will be adequate in the event such relief is granted and the reclassification occurs.

More broadly, the Council, its members (including ND Paper), and Brookfield have all been involved in advocacy for years regarding various proposals to upgrade the Androscoggin River. In particular, these entities have participated in proceedings before the Maine Board of Environmental Protection relative to the DEP's recent water quality classification Triennial Review[1] process (as well as in several previous such processes) and in proceedings before the Maine Legislature concerning bills that would change the water quality classification of various stretches of the Androscoggin River, including those portions of the river that are the subject of this lawsuit. Given that this lawsuit would, if successful, effectively override the Triennial Review process where Movants have been key participants, they should also be heard here.

III. The question of water quality classification must be decided by balancing concerns of industry and public with environmental concerns

Movants can assist the Court in understanding the statutory and regulatory context of FOMB's claims. Neither the Maine resource agencies, nor the state Legislature, nor this Court can decide the proper classification for any waterway in Maine without balancing many factors—including commerce and industry. Maine law provides:

> the proper management of the State's water resources is of great public interest and concern to the State in promoting the general welfare; in

[1] Section 303(c)(1) and its implementing regulations (40 C.F.R. 131.20) require that states periodically, but at least every three years, hold public hearings for the purpose of reviewing (and, as appropriate, modifying) water quality standards. *See also* 38 M.R.S. § 464(3)(B). This process is known as the Triennial Review.

> preventing disease; in promoting health; in providing habitat for fish, shellfish and wildlife; as a source of recreational opportunity; and *as a resource for commerce and industry*.

38 M.R.S. § 464(1) (emphasis added). This is exactly the balancing that Maine conducted during the last two Triennial Reviews, with input from Brookfield, ND Paper, the Council, and many others. The result of that deliberate process included the classification that FOMB now asks this Court to change. The Court should not consider those claims without input from commerce and the regulated industries, input that Brookfield, the Council, and ND Paper are prepared to provide.

IV. Movants propose a limited and nonduplicative single brief at this stage

Because the Maine Defendants and the EPA have filed motions to dismiss, Brookfield, ND Paper and the Council seek participation as amici limited to the filing of a single joint brief, of no more than 15 pages, by December 11, 2026—the date the government defendants' reply briefs are due. *See* ECF No. 16. The brief will address key legal issues with FOMB's claims but will avoid significant duplication of the arguments already made by the Maine Defendants and EPA. Movants intend to focus on the practical implications of FOMB's proposed upgrade on hydropower and industry in the Androscoggin River watershed, including what the existing classifications mean for their operations and how an upgrade would impact future permitting and regulatory compliance. This perspective is not otherwise represented by the existing parties and will assist the Court in considering—as it must—the impact on commerce and industry. Movants' participation will not require modification of any existing deadlines and will not prejudice any party.

Brookfield and the Council also respectfully request, should this motion be

granted and the proceedings in this matter progress beyond the motion to dismiss stage, that the Court entertain a separate timely motion for limited amici participation in further proceedings on this matter.

CONCLUSION

For these reasons, Brookfield, the Maine Forest Products Council, and ND Paper respectfully request leave to participate as amici curiae for purposes of the pending motions to dismiss and to file a joint brief, not exceeding 15 pages, by December 11, 2026.

Dated at Portland, Maine this 12th day of November 2026.

/s/ Matthew Warner
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