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January 24, 2012

Patricia Aho, Commissioner  
Maine Department of Environmental Protection  
17 State House Station  
Augusta, ME 04333-0017

Re: Flagstaff Storage Project 02612

Dear Commissioner Aho:

Thank you for your letter of January 17, 2012. I have also received and reviewed the letter of January 3, 2012 from Mr. Mullen to FERC Secretary Kimberly Bose. Based on this correspondence, I would appreciate your clarification on two issues.

First, is it the Department's position today that the original water quality certification (WQC) for this project is legally sufficient? As you know, in 2004 the BEP concluded that it was not, absent either EPA approval of the WQC's impoundment-to-impoundment comparison or a use attainability analysis, a conclusion upheld by the Maine Law Court. This position was spelled out again by the Department upon receipt of FPL Energy's renewed WQC application in a December 7, 2009 letter from Mr. Dana Murch to Mr. Frank Dunlap. A yes or no answer to this question would benefit the BEP, other hydro power project owners and interested stakeholders, EPA and FERC. If the answer is yes, what is the basis for this change in the Department position?

Second, operation of another FPL Energy hydropower project, Brassua Storage Project, raises similar concerns to those previously raised by the Department about the Flagstaff Storage Project, concerns still shared by the EPA and many stakeholders. A WQC application for the Brassua project has been filed, withdrawn and re-filed for a number of years now. Most recently, that application was withdrawn and re-filed on March 24, 2011, requiring a decision by March 24, 2012. Please advise as to whether the Department intends to waive its rights under the Clean Water Act for the Brassua WQC as it did for the Flagstaff Storage Project and the basis for such a waiver.

We thank you for your continuing attention to our concerns.

Very truly yours,

Sean Mahoney  
Vice President and Director  
CLF Maine

cc: Michael Mullen  
Stephen Silva