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September 10, 2026

Tim Peabody, Acting Commissioner
Maine Department of Inland Fisheries and Wildlife
41 State House Station
Augusta, ME 04333-0041

Carl Wilson, Commissioner
Maine Department of Marine Resources
21 State House Station
Augusta, ME 04333-0041

RE: Initiating fishway proceeding for
Cobbosseecontee Stream

Commissioner Wilson, and Acting Commissioner Peabody,

By this letter, and pursuant to the statutory directive to the Commissioners of the Department of Inland Fisheries and Wildlife ("IF&W") and Department of Marine Resources ("DMR") contained in 12 M.R.S. § 12760(4), Conservation Law Foundation ("CLF") and Upstream (collectively, "Petitioners") formally request that within 30 days of the date of this letter you officially "initiate proceedings to consider construction ... of fishways" for two dams on Cobbosseecontee Stream – the Gardiner Paperboard Dam ("GPD") owned by Paper Route, LLC and the New Mills Dam ("NMD") owned by the municipalities of Gardiner, Litchfield and Richmond. Combined with the American Tissue Dam ("ATD"), a federally licensed dam (FERC No. 2809-ME) owned and operated by KEI (Maine) Power Management Inc. ("KEI"), these three dams prevent anadromous fish (e.g., alewives and blueback herring) and catadromous fish (e.g., American eel) from returning to their native habitat. The DMR has previously estimated

that restoration of access to that habitat would result in a substantial recreational and commercial fishery, including the annual return of more than 3 million alewives alone.[1]

Petitioners' request that you initiate a fishway proceeding for the GPD and NMD based on the following information: (1) this letter, the citations referenced herein, and the accompanying attachments; (2) the administrative record compiled and maintained by the Maine Department of Environmental Protection ("DEP") as part of the water quality certification licensing process for KEI's American Tissue Dam ("ATD"), including Federal Energy Regulatory Commission ("FERC") information and documents contained therein, and the licensing documents issued by the Commissioner of DEP, all of which are incorporated herein by reference; (3) the record associated with Watts v. Patrick Keliher, et al., Me. Sup. Ct., AP-13-41 (Dec. 2, 2013); and (4) all other relevant information which may be submitted to you subsequently in regard to this request.[2]

I. Introduction

Cobbosseecontee Stream is located less than 10 miles from our state's capital and fed from 217 square miles of watershed. The watershed itself is comprised of 21 lakes and ponds with a combined water surface of 13,000 acres that stretches from Torsey Lake in Mt. Vernon to the Kennebec River in Gardiner. It is a watershed that should be teeming with alewives, blueback herring, American shad and American eels.[3] But those native species have been

[1] Maine Dep't of Marine Res., *Draft Fisheries Management Plan for the Cobbosseecontee Stream Drainage*, (Dec. 2002) ("2002 Draft FMP"), at 4 and Table 3. (Attachment 1)

[2] Because the documents and other information cited in this letter or incorporated by reference herein collectively constitute a voluminous record, CLF and Upstream chose to include as attachments to this letter only those documents that are cited in this petition and its supporting declarations and are not otherwise readily available from the DEP administrative record files for the state water quality certification proceeding for the ATD, and the electronic docket that FERC maintains of all filings that were made and orders issued in the federal licensing proceedings for the ATD, or standard legal research services. CLF and Upstream stand ready to obtain and reproduce any of these documents for you, if requested to do so.

[3] See, e.g., Declaration of Steve Brooke ("Brooke Decl."), ¶ 4, Exhs. A, F, G and H.

systematically eliminated from their historic and native habitat by the damming of Cobbosseecontee Stream. This petition seeks to add the Cobbosseecontee to the list of Maine coastal rivers – the Penobscot, the Kennebec, the St. Croix, the Sebasticook and the Presumpscot, among others – where access to historic habitat long blocked by dams has been restored for native sea-run fish.

That these fish once thrived in the watershed of Cobbosseecontee Stream is indisputable, as set forth in detail below. Equally indisputable is the fact that for the past 250 years, those sea-run fish have been barred from returning to their native waters in the Cobbosseecontee watershed by dams, including the three at issue here.

These facts have been recognized by government agencies at the local, state and federal level, all of whom support restoring access for these native fish to their traditional habitat in the lower Cobbosseecontee Stream.[4] Over the last two decades, these government agencies, along with private groups, including Upstream and CLF, endeavored to work with the current owners at two of the dams on the lower Cobbosseecontee Stream to redress this situation and provide passage for these sea-run species to their native habitat.[5] Time and again, those efforts have been spurned, ignored, and/or opposed by the dam owners.

Accordingly, pursuant to 12 M.R.S. § 12760(4), Upstream and CLF formally petition you to '[i]nitiate proceedings to consider construction . . . of fishways" at the GPD and NMD. The ATD, located between the GPD and NMD, already has requirements for fish passage in its current FERC license that will be triggered once fish passage has been achieved at the GPD. By ordering fish passage to be installed and operated at the GPD, you would trigger KEI's

[4] Doing so is also consistent with the lower Cobbosseecontee's designation as a Class B waterbody under Maine's water quality standards (38 M.R.S. § 467). In particular, as a Class B water body, the Cobbosseecontee's "habitat must be characterized as unimpaired." Id., at § 465 (3)(A).

[5] *See, e.g.*, Minutes of the Cobbossee Fish Passage Restoration Meeting (Oct. 17, 2019) Brooke Decl., ¶ 15, Exh. L.

obligation to install and operate fish passage at the ATD. Upon successful completion of installation and operation of a fishway at the ATD, an order that fishway be installed and operated at the NMD would restore access to more than 13 miles of native habitat to those keystone fish.

II. Procedural and Regulatory Background

Over the last two decades there have been concerted efforts to restore access for native anadromous and catadromous species to their historic habitat in the Cobbosseecontee Stream watershed. These efforts have focused on the first three dams on Cobbosseecontee Stream – first the GPD, then the ATD and then the NMD.[6] After initial efforts to purchase the GPD in the early 2000's were unsuccessful, another organization, Kennebec Reborn, petitioned the Commissioner of the IF&W to require the GPD's owner to install fish passage under 38 M.R.S. § 12760. That petition was denied because "[s]ubsequent fish passage, or fish passage agreements, do not exist at any of the dams above the [GPD] including the American Tissue Hydropower Project, licensed by the Federal Energy Regulatory Commission (FERC No. 2809-ME)."[7]

During the subsequent relicensing of the ATD, multiple stakeholders including Upstream, the City of Gardiner, the National Marine Fisheries Service ("NMFS"), the U.S. Fish and Wildlife Service ("FWS"), Maine Rivers and the Maine DMR, submitted comments requesting that any renewed license for the ATD require its owner to install and operate upstream and downstream fish passage for anadromous (alewives and blueback herring) and catadromous (American eels) fish two years after upstream passage at the GPD becomes operational. The

[6] *See* Brooke Decl., ¶¶ 5-6, 8, 14-15, 17-21; Declaration of Tina Wood ("Wood Decl."), ¶¶ 6-12; and Declaration of John Graham ("Graham Decl."), ¶¶ 2-9.
[7] *See* Letter from Commissioner Woodcock to Douglas Watts (July 6, 2012). (Attachment 2)

Maine DEP required such upstream and downstream fish passage in approving the ATD's application for water quality certification.[8] FERC subsequently issued a renewed operating license for the ATD which included the requirement for the installation and operation of a fishway no later than two years after installation of one at the GPD as set forth in the Maine water quality certification and in the Section 18 prescriptions of the FWS and NMFS.[9]

Since the ATD's federal operating license was renewed in 2019, Upstream has led efforts to reach agreement with the owners and operators of both the GPD and NMD to install and operate upstream and downstream fish passage at their facilities that would allow fish to regain access to their traditional spawning and rearing waters. Those efforts have included many hours of stakeholder meetings with state and federal agencies, the owners and operators of the GPD, ATD and NMD, the City of Gardiner and other municipal stakeholders, and tens of thousands of dollars to evaluate the potential for fish passage at the GPD and NMD, including a detailed engineering report.[10] Because those efforts have failed to bear fruit, the Petitioners are left with no alternative but to exercise the right granted by the Maine legislature more than a century ago: to petition their government to restore access to the spawning and rearing habitat of these native fish that are of great ecological and economic value for the people of Maine.

III. Cobbosseecontee Stream

Cobbosseecontee Stream, which begins at the outlet of Cobbosseecontee Lake in Manchester, flows for approximately 20 miles in a "U" shape before entering the Kennebec

[8] *American Tissue Hydroelectric Project, Water Quality Certification*, No. L-16416-33-E-N, 31–36 (Nov. 29, 2018) ("ME WQC"). (Attachment 3)
[9] *American Tissue Hydroelectric Project,* 167 FERC ¶ 62,076 (Apr. 30, 2019) (Order Issuing Subsequent License for FERC Project No. 2809-034). (Attachment 4)
[10] *See* Wood Decl., ¶¶ 6-11; Brooke Decl., ¶¶ 6, 8, 12, 14-21.

River at Gardiner.[11] On its way down to the Kennebec River, the stream flows through the communities of Manchester, West Gardiner, Litchfield, Richmond, and Gardiner. Today, Cobbosseecontee Stream is the only major tributary to the lower Kennebec River where fish passage is blocked by dams located within the first mile above the head of tide on the tributary.

Cobbosseecontee Stream was first dammed at its head of tide more than 250 years ago.[12] At one point, there were 8 dams on the stream from the head of tide to just over a mile upstream.[13] Today, three dams remain in that first mile from the confluence with the Kennebec – the GPD, ATD and NMD. Upstream of the third dam lies Pleasant Pond, a natural pond (previously known as Cobbosseecontee Pond) that in recent years has increased in size due to the impoundment of water behind the NMD. Following the NMD, the next fish barrier is the Collins Mills Dam, some 13.5 miles upstream.

A. The Three Dams on Lower Cobbosseecontee Stream

1. Gardiner Paperboard Dam

The first dam that prevents migratory fish from reaching their historic spawning grounds is the GPD. Originally built in the 1840's, the dam is 12 feet tall and was built with hewn granite blocks. The overall length of the GPD is approximately 146 feet. The GPD is located adjacent to

[11] The Kennebec River watershed has active and resurgent migratory fish populations, driven by many habitat restoration projects over the last quarter century, most notably the removal of the Edwards Dam from the Kennebec River in Augusta and the restoration of access to habitat on the Sebasticook River. *See, e.g.*, U.S. Fish & Wildlife Service., *The Little Stream That Could, and Will Again*, https://www.fws.gov/story/little-stream-could-and-will-again (last visited June 2, 2026); Natural Resources Council of Maine, *Edwards Dam and Kennebec River Restoration*, https://www.nrcm.org/programs/waters/kennebec-restoration (last visited June 2, 2026); American Rivers, *Twenty Years of Dam Removal Successes – and What's Up Next*, https://www.americanrivers.org/2019/06/twenty-years-of-dam-removal-successes-and-whats-up-next/ (last visited June 2, 2026).

[12] *See, e.g.*, *American Tissue Hydroelectric Project Environmental Assessment*, FERC Project No. 2809-034, at 98 (June 2018), (available at https://www.ferc.gov/sites/default/files/2020-06/P-2809-EA.pdf); Brooke Decl. ¶ 4, Exh. A. (Stackpole, *History of Winthrop*, 178).

[13] Brooke Decl. ¶ 4, Exh. B (Walter Wells, *The Water-Power of Maine* 288 (Maine Hydrographic Survey 1869), available at https://quod.lib.umich.edu/m/moa/AJQ7531.0001.001).

a defunct mill structure on the east bank of the stream. By 1867, the GPD dam provided power for two sawmills, a carriage spring factory, an axe factory, and a forge.[14] At the end of its useful life, the GPD provided process water for a paper mill until its final closing in 2003.

In 2004, the GPD had been slated for voluntary removal, but due to the death of the then-owner, the tentative agreement for the sale and removal of the GPD fell through.[15] In 2009 a large portion of the mill burned to the ground. The dam and mill site was purchased by Paper Route, LLC in 2010. Since then, the GPD has fallen into disrepair with an ephemeral stream causing erosion both above and below the west end of the dam and with high flows undercutting the east side of the stream beneath a portion of the collapsed mill building. Although the new owner initially expressed interest in installing fish passage at the GPD, repeated offers of assistance by Upstream, the State of Maine, federal fishery agencies and the Penobscot Nation were never accepted.[16] Today, the only "purpose" served by the GPD is to block and kill fish that either attempt to return upriver to native spawning, rearing, and/or feeding habitat or to migrate downstream.

2. American Tissue Dam

The ATD is the second dam on Cobbosseecontee Stream, located just over a quarter of a mile from the GPD. The ATD does have downstream fish passage for alewives and blueback herring and both up and downstream passage for American eel. It is the only dam in the Cobbosseecontee watershed licensed under the Federal Power Act.[17] It generates approximately one (1) megawatt of electricity from a single small generator. Originally constructed in 1900, the ATD is approximately 20 feet in height and 256 feet long. A small powerhouse is located just

[14] Id.
[15] Brooke Decl., ¶ 11.
[16] Id., ¶¶ 12, 17.
[17] 167 FERC ¶ 62,076. (Attachment 4)

over 100 yards below the dam and has a single turbine that operates with water supplied through a buried penstock.

The ATD is owned and operated by KEI which is a subsidiary of Kruger Inc., a privately held Canadian company that operates paper and pulpboard recycling facilities and 42 energy generation plants in North America.[18] There is no upstream fish passage for alewives or blueback herring at the ATD but pursuant to the terms of its 2019 renewed operating license issued by FERC, KEI will be required to install and operate upstream passage for alewives and blueback herring and American eels within two (2) years of the installation and successful operation of fish passage at the GPD.[19] The existing locations for up and downstream passage for American eel and the existing downstream passage for alewives and blueback herring may have to be relocated as upstream passage for alewives and blueback herring is added.

3. New Mills Dam

Originally constructed in 1885, the NMD stands at approximately 12 feet in height and 228 feet long. It creates a large upstream impoundment in Cobbosseecontee Stream that today is called Pleasant Pond. The NMD controls water surface elevations of Pleasant Pond, Horseshoe Pond and portions of the stream up to the rapids below the Collins Mill Dam, which is 13.5 miles upstream. The shorelines of Pleasant Pond, Horseshoe Pond and Cobbosseecontee Stream are in the towns of Gardiner, Richmond, Litchfield, Bowdoin and West Gardiner. Gardiner, Richmond, Litchfield and West Gardiner currently share ownership and management of the NMD.[20] In addition to regulating water surface elevations, the NMD also regulates the flow of

[18] Kruger Inc., *About Us* (last visited June 2, 2026), https://www.kruger.com/about-us/company/).
[19] 167 FERC ¶ 62,076 at 7. (Attachment 4)
[20] *Interlocal Agreement for the Ownership & Management of the New Mills Dam* (1999) (Attachment 5); Brooke Decl., ¶ 9.

the stream for the ATD. There is no fish passage at the NMD. The Maine Emergency Management Agency (MEMA) classifies the NMD as a High Hazard Dam.[21]

B. The Historic Cobbosseecontee Stream Fishery

The Cobbosseecontee watershed is part of a larger ecosystem that includes the Kennebec River watershed and the Gulf of Maine. Historical reports make clear that an extremely abundant fishery once existed in the Cobbosseecontee watershed. Some of the earliest archaeological records in Maine are of indigenous fishing sites, including sites discovered along Cobbosseecontee Stream.[22] Indigenous fishing weirs used to catch sea-run fish like alewife and blueback herring indicate that fish have been a vital resource of the Cobbosseecontee watershed for many centuries.[23] Evidence of large and complex fish processing operations exist throughout the watershed, including long houses for smoking and sites for preserving fish that have been identified on Big Island in Annabessacook Lake. This evidence strongly suggests a large Indigenous community was sustained by sea-run fish that would have traveled some 26 miles from the mouth of the Cobbosseecontee Stream at the Kennebec River.[24]

Starting in the seventeenth and eighteenth centuries, taking sea-run fish was equally important to early colonial settlers in the Cobbosseecontee watershed. Consider for example these excerpts from a History of Gardiner, Pittston and West Gardiner, 1602 – 1857:

> - So plenty was game at this time that it was not at all difficult for the poorest family to obtain animal food. The woods were full of game, large and small, and the rivers teemed with alewives, herring, shad and the delicious Salmon. Jonathan Winslow used to state that he captured sixteen noble salmon one Sunday morning before breakfast.[25]

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[21] Brooke Decl., ¶ 10, Exh. I ("High hazard potential dam means a dam assigned the high hazard potential classification where failure or misoperation will probably cause loss of human life," 37-B M.R.S. § 111(6)(A)).
[22] Brooke Decl., ¶ 4, Exh. C and D. (Dunn & Fowler, *Indian Campsite,* at 1*;* Bourque, *Twelve Thousand Years,* at 44).
[23] Id.
[24] Id., Exh. E. (Email from Kent Ackley, Dec. 31, 2021).
[25] Id., Exh. F. (History of Gardiner, Pittston and West Gardiner, 1602 – 1857, J.W. Hansonm published by William Parlmer, 1852, page 67).

> - Doubtless Cabbassa means sturgeon and thus the land around the stream should be called Cabbassaguntiag, or the place to catch sturgeon, and the tribe was the Cabbassaguntiquoks.[26]
> - It is related that alewives were so plenty there at the time the country was settled that bears and later swine fed on them in the water.[27]
> - In the year 1716…Williamson tells us that Noyes entered largely into the sturgeon fishery, for the English market. The London epicures pronounced the American sturgeon to be equal to those brought from Norway. The best place in the river was around the mouth of Cabbassa. Thousands of barrels were transported to Europe.[28]

One of the earliest written accounts of the fisheries of the Cobbosseecontee Stream is from a manuscript of General Henry A. S. Dearborn, son of General Henry Dearborn of Gardiner:

> Major Seth Gray built the first wharf and General Dearborn established the first ferry in 1786. He was accustomed, as were others, to draw a seine around the mouth of the Cobbossee and incredible numbers of shad, herring, salmon and sturgeon were taken every spring.[29]

Further upstream in Monmouth, Harry H. Cochrane provides even greater detail of the fishery and the impacts of the dams on that fishery in his history of Monmouth and Wales:

> Before dams were built across the streams, salmon, shad, and alewives came up into the Cochnewagan from the Kennebec River by way of the Cobbosee-conte and Annabessacook […] About fifteen years before the settlement of Monmouth, Dr. Sylvester Gardiner, one of the wealthiest and most influential members of the Plymouth Company, commenced to found a town on his Kennebec lands. […] He built a dam across the Cobbosee-contee and erected several mills on its banks. This dam was a source of great annoyance to the inhabitants of Wales Plantation, as by it the salmon and alewives that had supported in the upper tributaries of the Cobbosee-contee were prevented from ascending from the Kennebec.
>
> The settlers in Winthrop early saw the necessity of taking action in relation to providing means to prevent this infringement on their rights. In 1771 they chose a committee to wait on Dr. Gardiner, and request him to open a way through, or around, his dam, for the passage of fish, but to no purpose. Each year the matter was agitated at the town becoming, and, at times, legal action was proposed, and a committee appointed to prosecute at the expense of the town. This continued until about the opening of the new century.
>
> A fish committee was appointed each year in all the towns lying- upon or about waters flowing into the Cobbosee-contee, whose duty it was to endeavor to procure an unobstructed passage for fish into the ponds. I am not aware that this question of rights ever went to the courts, although the law of the Commonwealth would have sustained the settlers in a suit, which is evident from the fact that, in 1806, a petition was before the General Court to have the Cobbosee stream exempted from the fish law of the Commonwealth, which petition the representative to the General Court from the town of Winthrop was instructed to oppose. Dr. Gardiner did not trouble himself to provide a way

[26] Id. at 20.
[27] Id. at 186.
[28] Id. at 37.
[29] Id. at 155.

> for fish to ascend into the ponds, and, although the fish-way committee could enforce a compliance to the demands of the settlers on the local streams, it was to little purpose, as long as the mainstream was closed at its junction with the river.[30]

Other local historians also noted that this abundance lasted only until the stream was dammed: "[t]he first settlers at Winthrop had a plentiful supply of sturgeon and alewives until the migration of the fish was cut short by Dr. Gardiner's dam on the Cobbosseecontee Stream."[31] This first dam dramatically decreased the runs of anadromous fish that the region used to rely on, depriving the community of what had been an important commercial fishery. The community was so impacted by the dam that, on November 17, 1771, they formed a committee to petition the owner to install a fishway in the dam Dr. Gardiner had constructed.[32] The dam's owner refused, and the community spent the next thirty-five years lobbying for fish passage at the dam, petitioning both the government in Massachusetts as well as the dam owner again in 1779, 1794 and 1806.[33]

As more dams were constructed, the Cobbosseecontee faced further decline. These dams largely served industrial uses, including Maine's booming timber and papermaking economies, supplanting all other uses of the stream including any subsistence and commercial fishing. As the first mile and a quarter of Cobbosseecontee Stream became chock full of dams, the native fish were rapidly extirpated. What had once been an abundant fishery for both subsistence fishing and commercial use vanished. Today, the industries the dams were built to serve have long since

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[30] Id., Exh. G at 197-200.
[31] Id., Exh. A at 178-179. (Stackpole, *History of Winthrop*, at 178–179).
[32] Id., Exh. H at 827. (Illustrated History of Kennebec County, State of Maine, 1625 – 1799 – 1857, Editors: Henry D. Kingsbury & Simon Deyo, New York, H.W. Blake and Company, 1892, page 827) (One of the most important matters that came before the people at their early town meetings was the fish grievance. Before the dam was built across Cobbosseecontee at Gardiner, various kinds of fish came every year from the Kennebec and stocked the numerous ponds from which the Cobbosseecontee drew its constant water supply. The loss was most serious and to many a deprivation of the necessities of life. At a town meeting held November 17, 1771 "they chose James Craigg, Jonathan Whiting and Ichabod How a committee to solicit Dr. Gardiner to open a place through or around his milldam to let the fish up for the benefit of the town. The same thing was done several times, each successive committee visiting Doctor Gardiner, with their requests, but his dams remain yet.")
[33] Brooke Decl., Exh. G at 198.

disappeared from the banks of the lower Cobbosseecontee, but the dams that served them remain, blocking what would otherwise be substantial recreational and commercial fisheries.

While the motives may not be the same as Dr. Gardiner's refusal to install and operate fish passage at his dam 250 years ago, the unwillingness of the current owners and operators of the GPD and NMD to restore access for native fish continues to deprive the community, the Kennebec River and the Gulf of Maine of an incredibly valuable natural resource.

C. A Restored Habitat for Native Fish on Cobbosseecontee Stream

The importance of restoring access to the habitat of Cobbosseecontee Stream for sea-run fish was set forth in the 2002 Draft Fishery Management Plan ("FMP") which discusses the history of migratory fish in Cobbosseecontee Stream in detail and what the future could hold if access to their native waters is restored. [34] Though prepared two decades ago, that plan continues to reflect the position of the DMR and Maine's other natural resource agencies with respect to the Cobbosseecontee.[35] As such, it is worth quoting from the 2002 Draft FMP at length:

> Migratory fishes
>
> Historically, the Cobbosseecontee Stream drainage supported runs of alewife, American shad, American eel, Atlantic salmon, blueback herring, rainbow smelt, sturgeon, and striped bass. Construction of a dam in Gardiner, documented as early as 1787, interfered with the upstream movement of alewife, shad, and salmon, and others, and the runs dramatically declined in number. In 1867 the newly appointed Commissioners of Fisheries reported that the Town of Winthrop for several years had appointed a committee to obtain the opening of a fishway in the dam at Gardiner, but they were unsuccessful. By 1867 there were eight dams within one mile of the Kennebec River and 10 dams to the first lake […]
>
> Despite the presence of numerous dams, American eels persisted throughout the drainage because of their unusual ability to leave the water for periods of time and climb rough damp surfaces. The current population is sufficiently robust to support commercial fisheries. During the 1990s, upstream migrating juvenile eels (glass eels) were commercially harvested at the mouth of Cobbosseecontee Stream, and downstream migrating adults were harvested at the outlet of Cobbosseecontee Lake and Annabessacook Lake. The adult eel fishery harvested approximately 3000 eels per year.

[34] Attachment 1.
[35] *See*, e.g., Letter from Commissioner Keliher et al. to Municipal Officials (Apr. 27, 2021) (Attachment 6); "[r]estoring native sea-run alewives and other native species can provide many ecological, social and economic benefits throughout all the natural systems where they are found currently."

> Five species of native anadromous fishes currently utilize the short, free-flowing reach from the stream's confluence with the Kennebec River to the first dam. American shad, blueback herring, rainbow smelt, (potentially sturgeon (two species) and alewife to some extent, spawn in this reach each spring. Striped bass appear in this area in the spring to feed on spawning adults and in the fall to feed on emigrating juveniles.
>
> In 1985, DMR drafted The Strategic Plan for the Restoration of Shad and Alewives to the Kennebec River above Augusta (1985 Plan), which outlined restoration goals for important fishery resources that historically resided in the Kennebec River above Edwards Dam, located in Augusta. Following public hearings, the Strategic Plan was formally adopted in 1986. The plan contained minimal reference to the Cobbosseecontee Stream drainage, because it lies below Augusta, and was blocked by multiple dams without fish passage.
>
> Eleven years after the 1985 Plan was adopted, DMR began stocking adult alewives into Pleasant Pond, Richmond, in order to reestablish a run in the Cobbosseecontee Stream drainage. Stocking has continued each year since 1997 (Table 2). This stocking program was initiated because alewives are an important source of food for many species of fish and wildlife, and DMR anticipated that a run of alewives would attract sportfish to the mouth of Cobbosseecontee Stream. This strategy has proved successful, and there is now an exceptional fishery for striped bass in both spring and fall. In addition to improving recreational fishing, the alewife run ultimately could support a commercial harvest (providing food for people, livestock, and bait for the lobster fishery).
>
> Estimates of migratory fish populations
>
> In the 1985 Plan, DMR estimated the number of alewives that could be produced by nine lakes and ponds in the Cobbosseecontee drainage. In this plan, estimates of alewife production have been included for an additional 11 lakes and ponds that were omitted from the 1985 Plan. All estimates of alewife production are calculated by multiplying the surface area, measured in acres, by a unit production of 235 fish/acre2. Total production for the drainage is estimated to be approximately 3,180,600 alewives (Table 3).
> In order to maintain a run of alewives, approximately 15% of the adults imprinted to a particular lake or pond must be allowed to spawn each year. Total spawning escapement would be about 477,100 adult alewives if no dams existed in the drainage (Table 3). However, fish will have to pass multiple dams to reach spawning habitat in this drainage, and fish passage facilities are never totally 100% efficient. Assuming 90% passage efficiency at each dam, total spawning escapement is approximately 700,000 adult alewives. The remaining 2.48 million fish could support a commercial harvest.[36]

The 2002 Draft FMP clearly establishes that should alewives, blueback herring and American eels regain safe and effective access to their native spawning or feeding grounds above the first three dams on Cobbosseecontee Stream, a substantial recreational and/or commercial fishery would result.

[36] Attachment 1 at 4.

Fifteen years later, both federal and state fisheries agencies involved in the relicensing of the ATD took the same position as set forth in the 2002 Draft FMP. Specifically, the NMFS, FWS and Maine DMR prioritized the installation and operation of fish passage facilities at the ATD as an enforceable license condition should such fish passage facilities be installed at the GPD.[37]

In response to the federal licensing calling for fish passage at the ATD, Upstream retained Acadia Civil Works to conduct a study concerning the feasibility of fish passage at all three of the lower dams on the Cobbosseecontee. See Brooke Decl. ¶ ¶ 15-17 and Exh. M. That study established that there were multiple engineering solutions for designing, installing and operating safe and effective fish passage at the GPD, ATD and NMD. Brooke Decl., Exh. M at 7-1 – 7-2.

Subsequent to the upstream and downstream fish passage requirements in the renewed operating license for the ATD and the Acadia report, the Commissioners of the DEP, DMR and IF&W sent a letter to the Municipal Officials of the communities in the Cobbosseecontee watershed stating that "[a]lewives are part of the cultural legacy of towns all along the drainage, as demonstrated by 1800's citizen and town petitions to the Commonwealth of Massachusetts for fish passage after dam construction in Gardiner. Restoring native sea-run alewives and other native diadromous species will provide many ecological, social and economic benefits throughout all the natural systems where they are found currently."[38]

Similarly, the city of Gardiner has long been in support of restoring access to native habitat for sea-run fish on the Cobbosseecontee Stream, as evidenced by a letter to DMR staff where the city noted that:

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[37] 167 FERC ¶ 62,076, at 4, App'x A–C (2019). (Attachment 4)
[38] (Keliher et al. letter (Apr. 27, 2021). (Attachment 6)

> [O]n three separate occasions in 2016, 2017, and 2018 the Gardiner City Council has voted in support of fish passage at Gardiner's three downtown dams, Gardiner Paperboard, American Tissue and New Mills. The City has continued the work of developing the Cobbossee Multi-Use Pedestrian Path and has supported community efforts on the Harison Avenue Nature Trail to create the vision of a revitalized corridor on Cobbossee Stream. With the support of Maine Department of Transportation (DOT) and the completion of fish passage at the Gardiner Paperboard this long-term goal can be realized.
>
> In April 2017, the City of Gardiner submitted comments to the Federal Energy Regulatory Commission (FERC) on the licensing of the middle dam, American Tissue Hydroelectric Project, in support of fish passage and public recreation on Cobbossee Stream, which resulted in the construction of downstream passage in 2020.[39]

The renewal of the license for the ATD with the obligation to install and operate a fishway within two years of a fishway being installed and operated at the GPD is the clearest statement one could have from local, state and federal authorities that the restoration of the Cobbosseecontee's migratory fish species is long overdue.

IV. Petition

The current status of Cobbosseecontee Stream underlines the importance of the fishway petition process provided under Maine law. That is, while a dam licensed under the Federal Power Act, like the ATD, can be required to install fish passage as a condition of its license, the only way to require facilities not subject to the Federal Power Act, such as the GPD and NMD, to install fish passage is through the Maine law that has been in place for more than a century.

Under that law, the Commissioners of the DMR and the IF&W

> shall initiate proceedings to consider construction, repair or alteration of fishways in existing dams… whenever the commissioners determine that one or more of the following conditions exist:
>
> A. Fish Passage at the dam or obstruction in issue, whether alone or in conjunction with fish passage of other upriver barriers, will improve access to sufficient and suitable habitat anywhere in the watershed to support a substantial commercial or recreational fishery for one or more species of migrating or anadromous fish.[40]

[39] (City of Gardiner to Sean Ledwin) (Attachment 7) Gardiner's efforts were recognized and supported by the Greater Atlantic Region Division of NOAA which published a newsletter highlighting the efforts on Cobbosseecontee Stream.
[40] 12 M.R.S. § 12760 (4).

In other words, Commissioners may require a dam owner to install fishways if the petitioner can establish that there are (1) native anadromous or catadromous fish below a dam, (2) suitable habitat for those fish above the dam and (3) the likelihood that providing fish passage will lead to a substantial commercial or recreational fishery for one or more of those fish. As set forth below, the conditions of Maine's fishway law are met on the lower Cobbosseecontee Stream. As such, the Commissioners must require the owners of the GPD and the NMD to install fish passage to allow alewives, blueback herring and American eels, among other species, to access their traditional spawning or rearing habitats above the dams, thereby supporting the restoration of the commercial and recreational fishery that once thrived in the Cobbosseecontee.[41]

A. Native Anadromous Alewives and Blueback Herring and Native Catadromous American Eel are Present in the Lower Cobbosseecontee Stream

There can be no debate that native fish such as alewives, blueback herring and American eels are present in large numbers just below the GPD. They are as willing and able to migrate to their traditional spawning grounds in 2026 as they were in 1766. Indeed, this fact has been recognized by the Maine DMR for more than two decades, beginning with its 2002 Draft FMP.[42]

Since 2017, Upstream members have confirmed the continued presence of numerous alewives and blueback herring, as well as elvers, entering the mouth of Cobbosseecontee

[41] As an initial matter, both Upstream and CLF are more than interested parties in terms of restoring access to native habitat in Cobbosseecontee Stream for migratory fish.

Upstream is a local 501(c)(3) non-profit dedicated to restoring native sea-run fish in the Cobbosseecontee Watershed. Upstream was founded in 2015 and has spent the last ten years working to educate the people and communities in the Cobbosseecontee watershed about the importance of restoring sea-run fish to their native habitat, as set forth in the Wood, Brooke and Graham Declarations.

The Conservation Law Foundation (CLF) is New England's oldest environmental advocacy organization, with offices in Portland, Maine and the five other New England states. CLF has over 5,000 members with more than 400 in Maine, including members who live in the Cobbosseecontee Stream watershed. CLF has long been an advocate for restoring Maine's coastal rivers and has specifically been involved over the last two decades in relicensing and fishway proceedings under state and federal law for dams on the Mousam, Presumpscot, Royal, Androscoggin, Kennebec, Penobscot, Union and St. Croix Rivers. Among its members in Maine is Steve Brooke. Brooke Decl., ¶ 7.

[42] Draft FMP at 3. (Attachment 1)

Stream.[43] These fish have also been observed and counted by students at Gardiner Area High School.[44] In a video produced by the students, the river herring quickly swim upstream to the base of the GPD and try to ascend the apron of the dam.[45]

The large number of alewives and blueback herring out migrating are present in the lower Cobbosseecontee stream because the DMR has stocked Pleasant Pond with both species since 1997. By the end of fall, the juveniles of the stocked fish emigrate to the ocean going over the three lower dams to begin the ocean phase of their life. Indeed, the presence of these juvenile fish was dramatically on display in October 2025, when DMR staff observed and photographed kills of juvenile alewives migrating downstream at the base of the GPD.[46]

Large numbers of American juvenile eels, called elvers, enter Cobbosseecontee stream in the spring. Upstream has videos of elvers packed into cracks in the GPD, trying unsuccessfully to reach the waters above the dam.[47] Upstream also has videos of out-migrating juvenile alewives being badly injured and/or killed as they drop onto the concrete apron of the GPD.[48] When stuck below the dam, incoming elvers are subject to an extremely high level of predation with little opportunity for escape. The juvenile fish also suffer physical damage or instant mortality when they fall onto the concrete apron below the GPD during low water years on their out migration.

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[43] *See* Brooke Decl., ¶ 23; Graham Decl., ¶¶ 8-9; Wood Decl., ¶¶ 9,11.
[44] In order to meet one of the requirements to harvest alewives, the science teacher from Gardiner Area High School has applied to IFW for permits to take a limited number of alewives every year since 2017 to collect data following DMR's Alewife Protocol including weight, length, sex. Scale samples are also taken from one out of every 5 fish to determine age distribution of the run. This work is done weekly by students from the Gardiner Area High School as water conditions allow during the spring run. During the run, the alewife are so abundant that these fish are taken with a simple hand net immediately below the GPD. Some years in low water and/or late in the run a throw net has been used for safety issues. Graham Decl. ¶ 9 and Exh. A.
[45] Videos of these events are available to view at Elvers at GPD May 2023 | Videos & Movies on Vimeo. (Graham Decl., ¶ 3)
[46] Id.
[47] Id.
[48] Id.

American eels are similarly present in the stretch of water below the GPD and are eagerly consumed by predatory fish and larger eels. For this reason, the Maine DMR chose Cobbosseecontee Stream to meet the requirement of an eel life cycle study, covering all life stages (glass, yellow, and silver). In the springs of 2016, 2017 and 2018, DMR personnel captured and counted glass eels and elvers (pigmented juvenile eels). The average annual number of glass eels captured was 143,983 and for elvers that number was 153,399. After they were counted, these juvenile eels were released in Pleasant Pond.[49] The samples taken were by no means the total number of eels entering the stream, as personnel and equipment availability limited the effort and many eels likely avoided capture. These juvenile eels are mostly blocked by the 3 lower dams, although under certain water conditions some may occasionally find a way to pass these dams.[50] Large numbers of juvenile American eels were observed stuck below the GPD in May 2023, many seeking passage in leaks and cracks of the GPD dam.[51]

In summary**,** despite not being able to reach the upper watershed, alewives, blueback herring and American eels have been and continue to be present in the stretch of river from Cobbosseecontee Stream's confluence with the Kennebec River to right below the GPD, even though they cannot reach their historic grounds further upstream in the Cobbosseecontee watershed.

B. Suitable Habitat Exists Above the Dams

Runs of alewives, blueback herring and American eels have been successfully restored at many locations in the state of Maine. All three species have proven to be very adaptable in the Kennebec River watershed. In the lower Kennebec River watershed, not far from

[49] As part of the study, adult yellow eels were captured in Pleasant Pond using traps and DMR attempted to capture emigrating silver eels. After 3 years, DMR concluded the study could not meet its goals due to the limited number of adult eels being captured and the study was moved to a new location**.**
[50] Graham Decl., ¶ 3. (Movies Fish Love to Watch)
[51] Id. at ¶ 9.

Cobbosseecontee Stream, they have been successfully restored to Webber Pond, Togus Pond and most recently China Lake after multiple dam removals and construction of fish passages. [52]

Pleasant Pond is a natural water body in Cobbosseecontee Stream that was enlarged significantly by the operation of the NMD and is the first pond in the Cobbosseecontee watershed. It is a mostly shallow pond with about 746 acres of surface area. The DMR has stocked Pleasant Pond with alewives since 1997, as well as with any incidentally captured blueback herring from other locations in the watershed. The blueback herring find suitable spawning habitat in the free-flowing water at multiple locations as far upstream as the Collins Mills Dam in West Gardiner.

The stocking program captures alewives from successful runs and transports them by truck to Pleasant Pond. The fish are stocked at about 6 fish per surface acre into Pleasant Pond, averaging around 5000 fish per year over the past 29 years. There is no question that suitable spawning habitat exists in Pleasant Pond for alewives as the DMR stocking program has been producing large out-migrating runs over the last 29 years. Once fish passage to Pleasant Pond is restored, the number of alewives returning each spring (rather than being stocked) could be substantially more than 6 fish per acre and produce larger runs.

C. Providing Fish Passage Will Lead to a substantial Commercial or Recreational Fishery

As noted earlier, in an April 27, 2021 letter, the Commissioners of the DMR, DEP and IF&W noted their shared objective of "restoring a keystone fish species," namely alewives, to the Cobbosseecontee watershed.[53] As stated in the letter, "[r]estoring native sea-run alewives and other native species can provide many ecological, social and economic benefits throughout

[52] Graham Decl., ¶ 3. (Movies Fish Love to Watch)
[53] Letter to Municipal Officials, April 27, 2021. (Attachment 6)

all the natural systems where they are found currently."[54] Similarly, and as noted earlier, the city of Gardiner has recognized that:

> [r]estoring fish passage on Cobbossee Stream would be a historic event, returning the millions of alewives and blueback herring to the stream and watershed for the first time since the 1700's. Since the Cobbossee Stream flows through downtown Gardiner, once fish passage is achieved it would become a unique showcase and an important recreation destination in our state, leading to direct economic benefit for the city and region. It is also our understanding that a harvest of the returning fish could lead to substantial revenues for the city.[55]

In 1985, the DMR produced a draft *Strategic Plan for the Restoration of Shad and Alewives to the Kennebec River Above Augusta*.[56] Though the plan did not focus on the Cobbosseecontee Stream below Augusta, DMR did conduct an analysis of that watershed and estimated that if access could be provided to just nine of the lakes and ponds in the Cobbosseecontee watershed, the number of returning adult alewives would be 3.18 million.[57] That estimate was later provided in the 2002 Draft FMP

Specifically, the DMR concluded that "the number of alewives that could be produced by nine lakes and ponds in the Cobbosseecontee drainage . . . is estimated to be approximately 3,180,600, enough to create a substantial commercial fishery.[58]

Kennebec Reborn's 2012 petition for fish passage at the GPD was denied by the Commissioner of the IF&W because there was no way for fish to get up above the ATD.[59] The

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[54] Id.
[55] City of Gardiner letter. (Attachment 7)
[56] Strategic Plan for the Restoration of Shad and Alewives to the Kennebec River Above Augusta (Department of Marine Resources, 1985). (Attachment 8)
[57] Draft FMP at 4 and Table 3. (Attachment 1)
[58] Draft FMP at 3.
[59] As stated by Commissioner Woodcock, "fish passage at the dam in question would not result in a substantial commercial or recreational fishery because there is no fish passage at any of the dams upstream of the Gardiner Paperboard Dam, and most importantly, the American Tissue Hydropower Project, which is the next dam in line is not required to have fish passage. Further, the Commissioners found as a matter of fact that the limited amount of available habitat between the dams is not sufficient to support significant populations of commercial or recreational fish. Further, they note that the Department of Marine Resources Draft Fishery Management Plan for the Cobbossee

landscape in 2026 is quite different and this petition specifically addresses the two reasons cited by the Commissioner for the denial in 2012:

1) This petition is for fish passage at both the GPD and the NMD, which will create access to Cobbosseecontee Stream up to the Collins Mills Dam in West Gardiner, including Pleasant Pond, creating significant spawning and nursery habitat for alewife, blueback herring, and grown-out habitat for American eel.
2) The ATD, FERC #P-2809-034, was relicensed in 2019 with the requirement to provide upstream fish passage for alewife and blueback herring, two years after fish arrive at the base of the dam. Provisions for upstream and downstream passage for American eel and downstream passage for alewife and blueback herring were included as requirements in the 2019 license.

More recently, in its water quality certification for the ATD in 2018, the DEP concluded, consistent with the other state and federal resource agencies, that when a fishway is constructed at the ATD, it "shall be designed to pass a maximum of approximately 3.18 million river herring."[60] A similar provision for safe upstream and downstream passage for American eels is also required by that certification.[61] Years of work by state and federal agencies, local stakeholder groups like Upstream and municipalities such as Gardiner support the conclusion that if safe and effective fish passage is constructed at each of the three dams on the lower Cobbosseecontee Stream, alewives, blueback herring and American eels will return to their native waters and reestablish substantial commercial and recreational fisheries.

V. Specific Action Requested

Stream (December 2002), did not identify this small section of the stream as a significant spawning or nursery area." (Attachment 2)

[60] ATD WQC at 33. (Attachment 3)

[61] Id.

As set forth above, Cobbosseecontee Stream should be a tributary rich with native anadromous and catadromous fish such as alewife, blueback herring and American eels. That this is not the case is solely the result of the three dams - Gardiner Paperboard, American Tissue and New Mills - lacking safe and effective fish passage. It is well past time for this situation to be redressed.

Therefore, pursuant to the authority vested in you by 12 M.R.S. § 12760(1), and the obligation assigned to you by 12 M.R.S. § 12760(4),[62] Upstream and CLF formally petition you to officially "initiate proceedings to consider construction … of fishways" for the GPD and the NMD within thirty (30) days of the date of this letter. Once you initiate a fishway proceeding, section 5 of the statute states that the proceeding must be conducted according to a certain set of requirements that apply to "adjudicatory proceedings." Upstream and CLF desire to participate completely and with full party status in such a proceeding and will seek to intervene promptly upon notification of the initiation of the proceeding. As there have been only a few such proceedings over the past century, we would endeavor to work with you and your staff, representatives of the Office of the Attorney General, representatives of the GPD and NMD, and other participants to fashion a fair and efficient hearing process. While section 5 also allows parties to request a public hearing, at this time we do not intend to make such a request.

In these initiated proceedings, Upstream and CLF will be advocating, in general, that you determine the following:

1. That the owner of the GPD is legally required to:

[62] Paragraph 4 of the statute states that the Commissioners "*shall* initiate proceedings to consider construction, repair, or alteration of fishways in existing dams ….*whenever* the commissioners determine that one or more of the following conditions *may* exist . . . ."(emphasis added). As set forth above, the conditions set forth in Paragraph 4(A) irrefutably exist in the lower Cobbossecontee Stream – "[f]ish passage at the [GPD and NMD], whether alone or in conjunction with fish passage at other upriver barriers, will improve access to sufficient and suitable habitat anywhere in the watershed to support a substantial commercial or recreational fishery for one or more species of anadromous or migratory fish."

a. "erect and maintain" safe and effective upstream and downstream fish passage facilities at the GPD capable of passing alewives, blueback herring and American eel in the numbers set forth in prior state and federal reports, studies and restoration plans;
b. Submit design and operation plans for these fish passage facilities to you for review and approval within approximately ninety days of your order, following a period of close consultation with the Department of Inland Fisheries and Wildlife, the United States Fish and Wildlife Service, Upstream and CLF; and
c. Construct, design and maintain fishways in a design approved by you, to be constructed in 2027.

2. That the owner of the NMD is legally required to
   a. "erect and maintain" safe and effective upstream and downstream fish passage facilities at the NMD capable of passing alewives, blueback herring and American eel in the numbers set forth in prior state and federal reports, studies and restoration plans;
   b. Submit design and operation plans for these fish passage facilities to you for review and approval within approximately two years and ninety days of the installation of fish passage facilities at the ATD, following a period of close consultation with the Department of Inland Fisheries and Wildlife, the United States Fish and Wildlife Service, Upstream and CLF; and
   c. Construct, design and maintain fishways in a design approved by you within one year of the approval of those design and operation plans.

Conclusion

The lack of fish passage has been an issue since the first dam on Cobbosseecontee Stream was built in the 1760's. On rivers and streams across Maine, dam removals and installments of fish passage facilities have demonstrated the ability of native sea-run species to return to their historic habitats in numbers that enhance recreational use and support self-sustaining commercial fisheries that significantly benefit local municipalities.

Maine has another opportunity to right the wrongs of the past and to restore access to habitat for economically and ecologically valuable sea-run fish in the Cobbosseecontee watershed. The actions and intransigence of two dam owners who have refused to make it possible for fish to surmount their barriers should not be allowed to render the investment by the State of Maine and local communities to restore the Cobbosseecontee meaningless.

We thank you for your attention to this petition and look forward to working closely with your departments and staff in the coming months.

Respectfully submitted,

Upstream

By: _____
Stephen Brooke

Conservation Law Foundation

By:_____
Sean Mahoney