


From: Stephen Heinz heinz@maine.rr.com 
Subject: Maine TU Council Legal Defense Fund Update
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Dear Legal Defense Fund Donor,

It has been a busy summer. The major focus of our effort has been on the Water Quality Certification for the Rumford Falls Relicensing that TU had appealed to the Maine Board of Environmental Protection. Here is what Maine TU Council Chair Matt Streeter sent out to all those who were involved:

"Although the Maine Board of Environmental Protection (MBEP) last Thursday decided to deny our request for a hearing and denied our appeal of Maine DEP's Water Quality Certification (WQC) for the Rumford Falls project, we learned more about the process, and reminded the board and MDEP about the harms of dewatering significant sections of river (the so-called bypass). That should serve us well in the future, since we will likely end up back before the board again with the West Branch relicensings.

It appeared that the outcome was predetermined, and conducting the proceeding as oral arguments, rather than a hearing, kept out additional testimony that would only have made our case stronger and MDEP's look worse before the public. They made a case out of our standing, and a stricter interpretation of the rules on establishing it than we have ever seen before: that you have to show not only that the organization as a whole, but also that at least one specific member of the organization is personally harmed by the action, the WQC. They ruled that our usual statements of organizational standing were inadequate and did not let us introduce additional information. Given the five to one vote against us, we need to be prepared to appeal to the court system on similar situations in the future.

[Attorney] Scott [Sells] represented us well. It was shocking that MDEP never acknowledged that there is low-gradient habitat in the bypass despite LIDAR data on the record showing that there is, something that would not stand up in court. On this project, though, without more than there is in the record, it would be difficult to win an appeal. This is not the hill we want to die on.

We have gotten some press in the MST, Sun-Journal and I assume the Kennebec Journal. The Joe Charpentier article includes many of our key points, and ended with Steve's quote: "It's hard to imagine that this is what the majority of Maine's people would want here." We hope that Emmett Gartner of the Maine Monitor will write something more in-depth.

Most of all, I want to say Thank You to all of you for your help and support. I see this as preparatory to the relicensings on the West Branch where we will now turn our attention. We trust that those who were part of our coalition will help us wage a more effective fight for the West Branch, especially regarding adequate minimum flows in Ripogenus Gorge and the reach below Stone Dam. We see more potential for an eventual appeal in the courts here, and will be proceeding with that plan in mind."

The story by Joe Charpentier - State board denies appeal over Rumford Falls Hydro certification - covered most of our major points. <https://www.sunjournal.com/2025/07/18/state-board-denies-appeal-over-rumford-falls-hydro-certification/>

This will close out TU and co-appellant efforts involving the Rumford Falls Project. On to the West Branch where there are a number of similar issues and we can take the fight to the next level. Your continued support will make that possible.

TU remains engaged in the Aziscohos Project relicensing that affects the Magalloway River and its brook trout fishery. There we are waiting for Brookfield to issue a revised draft Memorandum of Agreement that will be legally binding. This will cover aspects of the agreed settlement that will NOT be included in the new FERC license terms and conditions. A thorough legal review of the document will be required.

On the West Branch, the most significant event of the summer up to this point was another generator trip event at McKay Station on June 17. This undoubtedly killed hundreds of salmon parr and also caused a small forest fire. TU reported this to Maine Department of Environmental Protection and included it in comments to FERC on additional information that Brookfield had supplied concerning what it was doing to prevent fish kills. The filing is attached. I think you will find it worth your time to read it.

Additionally, we are working with our fellow stakeholders on comments on Brookfield's draft Recreational Facilities Management Plan. We had a teleconference last week excellently facilitated by camp owner representative Kathy Houston. Mark Zakutansky of the Appalachian Mountain Club will be drafting a joint stakeholder response. One of TU's concerns is maintenance of the parking pull offs on the Golden Road that enable fishermen and others to safely access places like Nesowadnehunk Falls and Holbrook. It is significant that Brookfield will issue the final Plan before our comments are due - they have involved focus groups in the development of this and other plans involved with the relicensing, and then ignored the recommendations. Next week, the stakeholders will again meet to discuss flows, a key issue. How to stabilize lake levels, prevent peaking flows, and put water in dryways are some of the key issues for discussion. An example of what we are working toward is a requirement to put 300 cfs in Ripogenus Gorge year-round from a coldwater source to benefit the macro invertebrate community, provide additional fishing opportunity, provide a new paddling opportunity, and improve the aesthetics of Maine's most specular gorge.

We have had surveyors in the field this summer collecting both economic and fisheries data to support what we expect to include in our Final License Application comments. Brookfield has given us no indication that they intend to settle on the West Branch, and we fully expect the need to go to court to achieve our goals there.

Please contact me if you have questions.

Thanks again,

Steve
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<https://tumaine.org/sites/default/files/Dam%20Relicensing/Fish%20Kill%20and%20Forest%20Fire%20Report.pdf>