UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 1
5 Post Office Square, Suite 100
BOSTON, MA 02109-3912

May 19, 2010

David P. Littell, Commissioner
Maine Department of Environmental Protection
#17 State House Station
Augusta, ME 04333-0017

Re: Review and Action on Water Quality Standards Revisions

Dear Commissioner Littell,

By letter of December 7, 2009, the Maine Department of Environmental Protection, Bureau of Land and Water Quality (DEP) submitted revisions to its surface water quality standards for United States Environmental Protection Agency (EPA) review. The revisions, by statute, were adopted and became effective September 12, 2009, and were certified on October 27, 2009 by Maine's Assistant Attorney General in the Natural Resources Division as having been duly adopted pursuant to state law. EPA has completed its review of the submitted revisions as further described below.

I commend DEP for upgrading many of its waters, including 167 miles of rivers and streams and 214 acres of estuarine waters. Pursuant to Section 303(c)(2) of the Clean Water Act and 40 CFR Part 131, I hereby approve the following water quality standards revisions in Legislative Chapter 163 (L.D. 330), "An Act to Change the Classification of Certain Waters of the State":

1. Reclassification of Abbot Brook and its tributaries in Lincoln Plantation from Class A to Class AA;
2. Reclassification of Aunt Hannah Brook and its tributaries in Dixfield from Class B to Class A;
3. Reclassification of Kennebec River main stem from the Shawmut Dam to its confluence with Messalonskee Stream, excluding all impoundments, in Fairfield, Clinton, Benton, Waterville, and Winslow, from Class C to Class B;
4. Reclassification of Seboeis Stream tributaries, from Class B to Class A;
5. Reclassification of Alder Stream and its tributaries, from Class B to Class A;
6. Reclassification of West Branch Souadabscook Stream (Hampden, Newburgh) from Class B to Class A;
7. Reclassification of Brown Brook (Hampden) from Class B to Class A;
8. Reclassification of Mattamiscontis Stream tributaries from Class B to Class A;
9. Reclassification of Crooked River area previously impounded at Scribners Mill from Class A to Class AA;

10. Reclassification of South River and its tributaries (Parsonfield), those rivers lying within the State from Class B to Class A;
11. Reclassification of Beaver Brook and its tributaries (T.14 R.6 W.E.L.S., T.14 R.5 W.E.L.S., T.13 R.5 W.E.L.S., Portage Lake, Ashland, Castle Hill) from Class B to Class A;
12. Reclassification of Gardner Brook and its tributaries (T.14 R.5 W.E.L.S., T.13 R.5 W.E.L.S., Wade) from Class B to Class A;
13. Reclassification of Violette Stream and its tributaries, from their source to the confluence with Caniba Brook, (T17 R3 WELS, Van Buren) from Class B to Class A;
14. Reclassification of Little River and its tributaries, tributary to the Salmon Falls River, in Berwick, North Berwick, and Lebanon, from Class B to Class A;
15. Reclassification of Pemaquid River, Bristol, including tributaries, freshwater riverine sections below Pemaquid Pond from Class B to Class A;
16. Reclassification of selected tributaries to the Ducktrap River: Tucker Brook in Lincolnville, Black Brook in Lincolnville, and Kendall Brook in Lincolnville from Class B to Class A;
17. Reclassification of The Basin, including The Narrows, to the New Meadows River Estuary, Phippsburg from Class SB to Class SA;
18. Reclassification of upper reaches of Nonesuch River in Scarborough and Gorham to a point 0.5 miles downstream of Mitchell Hill Road, Gorham from Class C to Class B;
19. Reclassification of Stroudwater River in Scarborough from Class C to Class B;
20. Reclassification of all tidal portions of tributaries entering the Kennebec River between Sidney, Vassalboro, Augusta town line and a line drawn across the tidal estuary of the Kennebec River due east of Abagadasset Point, except for Eastern River from the head of tide to its confluence with the Kennebec River (including Bond Brook in Augusta, Cobbosseecontee Stream in Gardiner, and Togus Stream in Randolf and Pittston), from Class C to Class B;
21. Reclassification of Grand Falls Flowage between Black Cat Island and Grand Falls Dam from Class A to Class GPA and reclassification of Grand Falls Flowage between Route 1 (Princeton and Indian Township) and Black Cat Island from Class B to Class GPA; and
22. Clarification that the 0.7 mile segment of Trout Brook that serves as the town border between Cape Elizabeth and South Portland is Class C.

We are still reviewing the reclassification of a 0.3 mile segment of Long Creek that flows through Westbrook from Class B to Class C. Therefore, we are not taking any action with regard to this revision at this time.

Discussion

EPA bases the approval of the water body upgrades listed above to higher classifications based on justifications provided by DEP which include:

- Ecological, social, scenic, economic and recreational importance;

- Fishery value;
- Attainment of higher criteria based on recent DEP monitoring;
- Reasonable expectation that a water body can attain the higher classification uses;
- Protection of special concern species;
- Protection of critical habitat;
- Drinking water value; and
- Unique ecological characteristics.

Of the 23 reclassifications submitted, six were identified by DEP as "statutory clarification of assigned classification"[1] Of these, EPA found that three (numbered 18, 19 and 20 above) were also classification upgrades that were justified by DEP based on one or more of the above criteria. Therefore, EPA has approved them as reclassifications. Another of the six, proposed for Long Creek, is still being reviewed by EPA. Discussion of EPA's approval of the remaining two (numbered 21 and 22 above) is provided below.

Grand Falls Flowage

Grand Falls Flowage (Flowage) was created by the Grand Falls Dam at the eastern end of the Flowage that has been historically classified as a riverine tributary to the St. Croix River. The upstream section of the Flowage (from Route 1 to Black Cat Island), formerly a receiving water for an industrial discharger, is currently designated Class B. The downstream section of the Flowage (from Black Cat Island to the Grand Falls Dam) is currently Class A. Recent water quality monitoring of the dissolved oxygen profile in the Flowage indicates stratification more typical of a great pond environment. For this reason, DEP proposes to reclassify the entire Flowage as Class GPA, Maine's classification for great ponds[2], natural lakes and ponds less than 10 acres in size. Designated uses for Class GPA waters are the same as for Class A waters. However, limitations on the authorization of new direct discharges are more restrictive for GPA waters than for Class A waters. EPA approves of this reclassification on the basis that:

- the classification as a great pond rather than a river more accurately reflects the morphology of this section of the St. Croix;
- the reclassification will result in greater protection of existing and designated uses; and
- the Flowage is reasonably expected to attain Class GPA standards.

Trout Brook

The clarification of the classification for a segment of Trout Brook is to correct ambiguity in the statute that could be interpreted as assigning two different classes to this segment of Trout Brook along a town boundary that runs through the mid-channel of the Brook. The ambiguity arises from generic default language that classifies this reach of Trout Brook as both Class B, based on

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[1] DEP, "Memo concerning an Act to Change the Classification of Certain Waters of the State", December 7, 2009, attached to December 7, 2009 Letter from Andrew Fisk to Jennie Bridge.

[2] "Great Ponds" are defined in Maine Statutes Title 38 § 480-B as "*any inland bodies of water which in a natural state have a surface area in excess of 10 acres and any inland bodies of water artificially formed or increased which have a surface area in excess of 30 acres*".

the default language for Cumberland County, and Class C, based on the default language for South Portland. Because it is illogical to have two classifications apply to the same segment, it is important to resolve the ambiguity. In this case, the legislative history supports the conclusion that this segment has consistently been classified as Class C, and that only the part of Trout Brook that is in Cape Elizabeth was upgraded to Class B in 1989. This is also consistent with the way the segment has been described on Maine's 303(d) list of impaired waters since 2004, where it was listed as impaired for aquatic life use as measured by Class C aquatic life criteria (macroinvertebrates), and in the approved 2007 Total Maximum Daily Load (TMDL) for Trout Brook. Therefore, EPA approves the clarifying revision regarding the lower segment of Trout Brook.

EPA's approval of Maine's surface water quality standards revision does not extend to waters that are within Indian territories and lands. EPA is taking no action to approve or disapprove the State's revision with respect to those waters at this time. EPA will retain responsibility under Sections 303(c) and 303(d) of the Clean Water Act for those waters.

We look forward to continued cooperation with Maine in the development, review and approval of water quality standards pursuant to our responsibilities under the Clean Water Act. Please contact Ellen Weitzler (617-918-1582) if you have any questions.

Sincerely,

for

Stephen S. Perkins, Director
Office of Ecosystem Protection

cc: Andrew Fisk, MEDEP
Susan Davies, MEDEP
Dave Courtemanch, MEDEP
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