

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

FRIENDS OF MERRYMEETING BAY,)	
DOUGLAS H. WATTS, and)	
KATHLEEN McGEE,)	
)	
<i>Plaintiffs,</i>)	Civil No. 1:11-cv-167-JAW
)	
v.)	
)	
NORMAN H. OLSEN, in his official capacity as)	
Commissioner of the Maine Department of Marine)	
Resources)	
21 State House Station)	
Augusta, ME 04333-0021)	
)	
CHANDLER E. WOODCOCK, in his official)	
capacity as Commissioner of the Maine)	
Department of Inland Fisheries and Wildlife)	
41 State House Station)	
Augusta, ME 04333-0041)	
)	
<i>Defendants.</i>)	

**FLEMING DECLARATION IN SUPPORT OF PLAINTIFFS’
MOTION FOR SUMMARY JUDGMENT**

1. I am an attorney with the public interest law firm of Earthjustice in Washington D.C., and one of the attorneys of record for plaintiffs Friends of Merrymeeting Bay, Douglas Watts, and Kathleen McGee in the above-captioned case. I make this declaration based upon my personal knowledge.
2. On June 28th, 2011, I downloaded the following URL from the Maine Department of Marine Resources website to my computer:
<http://www.maine.gov/dmr/searunfish/alewife/index.htm>. I printed out the page that

appeared, which was an accurate depiction of the web page that appeared on my computer. A true and accurate copy of that printed page is attached hereto as Exhibit A (“Maine River Herring Fact Sheet”).

3. On June 28th, 2011, I downloaded the following URL from the United States Fish and Wildlife Service (“USFWS”) website to my computer:

<http://www.fws.gov/GOMCP/pdfs/alewife%20fact%20sheet.pdf>. I printed out the page that appeared entitled “All About Maine Alewives,” which was an accurate depiction of the web page that appeared on my computer. A true and accurate copy of that printed page is attached hereto as Exhibit B (“Maine Alewives Fact Sheet”)

4. On June 28th, 2011, I downloaded the following URL from the National Marine Fisheries Service (“NMFS”) website to my computer:

http://www.nmfs.noaa.gov/pr/pdfs/species/riverherring_detailed.pdf. I printed out the page that appeared, which was an accurate depiction of the web page that appeared on my computer. A true and accurate copy of that printed page is attached hereto as Exhibit C. (“Species of Concern - River Herring”)

5. Attached hereto as Exhibit D is a true and correct copy of the “Order of Approval” of the International Joint Commission, dated November 9, 1915.

6. On June 28th, 2011, I downloaded the following URL from the International Joint Commission website to my computer:

<http://www.ijc.org/rel/boards/saint/saint2010ar.pdf>. I printed out the page that appeared, which was an accurate depiction of the web page that appeared on my computer. A true and accurate copy of that printed page is attached hereto as Exhibit E (the “Annual Report 2010” submitted by the International St. Croix River Watershed Board to the IJC).

7. On June 28, 2011, I downloaded the following URL from the International Joint Commission to my computer: http://www.ijc.org/rel/boards/saint/watershed_report.pdf. I printed out the page that appeared, which was an accurate depiction of the web page that appeared on my computer. A true and accurate copy of that printed page is attached hereto as Exhibit F (“St. Croix River: State of the Watershed Report”).
8. Attached hereto as Exhibit G is a true and correct copy of the Memorandum of Understanding Blocking access of sea-run alewives into the Grand Falls Flowage at the Grand Falls Dam fishway; A joint agreement of the State of Maine Department of Inland Fisheries and Wildlife, The State of Maine Department of Marine Resources Bureau of Sea-Run Fisheries and Habitats, and Domtar (2010), signed by the parties on or before August 10, 2010 (“Memorandum of Understanding”).
9. On June 28th, 2011, I downloaded the following URL to my computer: <http://www.maine.gov/dmr/searunfish/reports/stcroixalewifeflagg07.pdf>. I printed out the page that appeared which was an accurate depiction of the web page that appeared on my computer. A true and accurate copy of that printed page is attached hereto as Exhibit H (Lewis N. Flagg. 2007. Historical and Current Distribution and Abundance of the Anadromous Alewife (*Alosa pseudoharengus*) in the St Croix River. Atlantic Salmon Commission).
10. On June 28th, 2011, I downloaded the following URL from the Maine Department of Marine Resources website to my computer: <http://www.maine.gov/dmr/searunfish/reports/lakegeorge04.pdf>. I printed out the page that appeared which was an accurate depiction of the web page that appeared on my computer. A true and accurate copy of that printed page is attached hereto as Exhibit I.

(Kircheis, et al., *Analysis of Impacts Related to the Introduction of Anadromous Alewives Into a Small Freshwater Lake in Central Maine, USA*, (2002, revised 2004)).

11. On June 28th, 2011, I downloaded the following URL from the Maine Department of Marine Resources website to my computer:
<http://www.maine.gov/dmr/searunfish/reports/stcroixalewifebass06.pdf>. I printed out the page that appeared, which was an accurate depiction of the web page that appeared on my computer. A true and accurate copy of that printed page is attached hereto as Exhibit J (“Maine Rivers Two Reports on Alewives in the St. Croix River”).
12. Attached hereto as Exhibit K is a true and correct copy of *An Act to Restore Diadromous Fish in the St. Croix River* (“2008 Alewife Law”). ME Pub. Law Ch. 587, 123rd Legislature; 12 M.R.S.A. §6134(2) (2008) (“Alewife Law”).
13. Attached hereto as Exhibit L is a true and correct copy of the Board of Environmental Protection *Finding of Facts and Order On Appeal* in the Matter of S.D. Warren Company Water Quality Certification, #L-19713-33-E-N, (October 2, 2003).
14. On June 30, 2011, I downloaded the following URL from the NOAA website to my computer: http://response.restoration.noaa.gov/book_shelf/475_crc_state_ME.pdf. I printed out the page that appeared, which was an accurate depiction of the web page that appeared on my computer. A true and accurate copy of that printed page is attached hereto as Exhibit M.
15. Attached hereto as Exhibit N is a true and correct copy of Saunders, et al., *Maine’s Diadromous Fish Community: Past, Present, and Implications for Atlantic Salmon Recover*. 2006. Fisheries 31(11):537-47.

Signed under the pains and penalties of perjury this 30th day of June, 2011

/s/ Roger Fleming