

Friends of Merrymeeting Bay

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FOR IMMEDIATE RELEASE:
JULY 18, 2011

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FEDERAL JUDGE: TWO ENDANGERED SPECIES ACT CASES AGAINST ANDROSCOGGIN DAM OWNERS SHOULD GO FORWARD

Rejects Argument by Miller Hydro Group and Topsham Hydro Partners That Cases to Protect Atlantic Salmon Should Be Dismissed

PORTLAND: In a preliminary victory for efforts to save the endangered Atlantic salmon from extinction, a federal judge has recommended that lawsuits brought by two conservation groups against Miller Hydro Group and Topsham Hydro Partners for violating the Endangered Species Act (ESA) should go forward.

The lawsuits, filed by Friends of Merrymeeting Bay and Environment Maine, claim that hydroelectric dams owned by the two companies illegally harm and kill endangered Atlantic salmon in the Androscoggin River. According to court filings, the dams' spinning turbines kill and injure salmon trying to swim past them, and the dams themselves block and delay migration and prevent access to spawning grounds, among other problems.

Miller Hydro owns and operates the Worumbo dam in Lisbon, Maine, and Topsham Hydro owns and operates the Pejepscot dam in Topsham, Maine.

The recommended decision, by United States Magistrate Judge John H. Rich III, rejects the companies' argument that the groups' real beef is with the failure of the federal government to enforce the ESA. Judge Rich stated that the ESA gives private citizens the right to sue the companies directly, because it is their dams that are causing the actual harm to the salmon and because the government has not itself taken enforcement action against the dam owners. Judge Rich also rejected the companies' argument that the groups must sit on the sidelines awaiting a

determination by the National Marine Fisheries Service (NMFS) as to whether the dams are harming (or “taking,” in ESA parlance) salmon. Judge Rich noted that the government’s review of the dams’ operations “is still apparently in the very early, informal consultation stage, making a rapid resolution [by NMFS] unlikely.”

The companies have fourteen days to file any objections to Judge Rich’s recommended decision, which must be adopted by U.S. District Judge George Z. Singal before it becomes final.

“Congress gave private citizens access to the courthouse to enforce the Endangered Species Act, and we applaud Judge Rich for preventing Miller Hydro and Topsham Hydro from trying to take this away,” said Ed Friedman, Chair of Friends of Merrymeeting Bay. “The long-term viability of Maine’s economy is directly proportional to environmental conditions. The Judge’s recommendation to move forward on our suit is a positive step for both Maine’s economic and environmental health”, he added.

“Now that we’ve been given the green light, we will seek to use the power of the federal courts to push the dam owners to do the right thing and bring the iconic Atlantic salmon back from the brink of extinction,” said Emily Figdor, director of Environment Maine.

Friends of Merrymeeting Bay is a non-profit organization dedicated to preserving the ecological, aesthetic, biological, and commercial values of Merrymeeting Bay and its watershed through research, advocacy, education and land conservation. FOMB has over 400 members.

Environment Maine is a citizen-based environmental advocacy organization with more than 5,000 members and activists that works to preserve Maine’s open spaces, protect clean air and water, and move the state toward a clean energy future.

The groups are represented by David A. Nicholas of Newton, Massachusetts; Joshua R. Kratka and Charles C. Caldart of the National Environmental Law Center; and Bruce M. Merrill, of Portland, Maine.