

BREAKING NEWS: Judge Rules Against Dam Owner in Salmon Case

PORTLAND, MAINE – A federal judge in Maine ruled today that an Endangered Species Act (ESA) lawsuit brought by conservation groups against Brookfield Power U.S. Asset Management, LLC (Brookfield) and an affiliate, Hydro Kennebec, LLC, can go forward.

The lawsuit, brought by Friends of Merrymeeting Bay and Environment Maine, claims the Hydro Kennebec dam, owned and operated by the defendants, is “taking” endangered Atlantic salmon in violation of the ESA by killing fish and by blocking access to critical salmon habitat. United States District Court Judge George Z. Singal denied the companies’ motion to dismiss the case or, alternatively, to put the case on hold to allow federal agencies to deal with the issue.

The groups sued both companies in 2011, claiming their Hydro Kennebec dam on the Kennebec River kills salmon that must swim through the dam’s turbines to migrate downstream, and adversely affects habitat critical for salmon spawning, rearing, and migration. In addition, the groups assert that the companies are violating the federal Clean Water Act by allowing salmon and shad to go through the dam’s turbines without having first proven this would not result in fish kills.

“Time is of the essence for efforts to protect Atlantic salmon in the Kennebec River, and we applaud Judge Singal for ruling that this case deserves to be heard on its merits,” said Ed Friedman, Chair of Friends of Merrymeeting Bay.

The companies argued, unsuccessfully, that the case is too complex for a federal judge to decide; that no violation of the ESA is occurring; and that the case should be put on hold because federal agencies are expected to address the problem in a timely fashion. Judge Singal rejected each of these arguments.

Included in the evidence submitted by the plaintiff groups in opposition to the motion to dismiss is a 2006 internal Hydro Kennebec, LLC, document stating that the dam’s turbines kill 15-20% of the fish that try to pass through them.

“Now that we’ve been given the green light, we will use the power of the federal courts to push Brookfield to take the steps necessary to help bring the iconic Atlantic salmon back from the brink of extinction,” said Emily Figdor, director of Environment Maine.

The groups have filed similar lawsuits against NextEra Energy Resources, Miller Hydro Group, and Topsham Hydro Partners Limited Partnership, for illegally taking salmon at six additional dams these companies own and operate on the Kennebec and Androscoggin Rivers. The parties in the Brookfield case and these other cases have been ordered to be ready to start trial on July 2, 2012.

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 10,,000 members and activists. The group 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.