

Salmon Slammed

Despite having been overturned once already in this litigation by the First Circuit Court of Appeals, a federal judge again ruled against conservation groups seeking to enforce Clean Water Act protections for endangered Atlantic salmon and for American shad at four hydroelectric dams on the Kennebec River.

In the face of undisputed evidence (cited in his opinion) that dam owner Brookfield Asset Management knows up to 99% of adult salmon attempt to pass its dams by swimming through the rapidly spinning blades of hydropower turbines — and that Brookfield still does not shut the turbines down during fish migrations — Judge George Z. Singal nonetheless ruled, in a 44-page decision, there is an “absence of evidence” dam owners “desire” their turbines serve as a means of downstream fish passage.

According to the lawsuit brought by Friends of Merrymeeting Bay (FOMB) and Environment Maine, such a desire for turbines to serve as a downstream passage route would trigger measures to keep fish out of the turbines unless and until reliable studies prove such passage would be safe.

“Judge Singal has swallowed the corporate fish story; hook, line and sinker,” said Friends of Merrymeeting Bay Chairman, Ed Friedman. “On the heels of Singal’s dismissal in our Endangered Species Act claim, his current Clean Water Act decision proves justice from the law rare as the endangered salmon and shad refused his protection.”

Specifically, the groups’ lawsuit claims Brookfield is violating the requirements of “water quality certifications” governing operations at four of its Kennebec River hydroelectric facilities: Lockwood, Hydro Kennebec, Shawmut, and Weston.

The certifications provide that to the extent Brookfield “desires” to provide downstream passage of migrating adult Atlantic salmon (which are on the Endangered Species List) or adult American shad through turbines, Brookfield must first demonstrate through on-site studies, turbine passage will not result in “significant injury and/or mortality (immediate or delayed).”

The groups claim Brookfield knowingly allows (and thus “desires”) adult salmon and shad to pass downstream through turbines at all four dams, and Brookfield admits it has not conducted the necessary studies to prove turbine passage is safe.

“We are very disappointed by the decision,” said Taryn Hallweaver, Director of Environment Maine. “We ought to be doing all we can to protect endangered Atlantic salmon and American shad, especially during their migrations.”

Judge Singal’s ruling granted “summary judgment” to Brookfield. Unless the groups file a second appeal with 30 days, his ruling effectively ends the litigation. The groups are evaluating the decision and their options.

Brookfield Asset Management is a Canadian company with nearly \$200 billion in assets under management. Its affiliates own nearly half of the hydroelectric generating capacity in Maine.

Friends of Merrymeeting Bay is a non-profit organization dedicated to preserving through research, advocacy, land conservation and education the ecological, aesthetic, historical, recreational and commercial values of Maine's Merrymeeting Bay and its watershed, which includes the Kennebec and Androscoggin Rivers.

Environment Maine is a citizen-based environmental advocacy organization with more than 20,000 current members and supporters that works to preserve Maine's open spaces, protect clean air and water, and move the state toward a clean energy future.

Posted on Monday, April 06, 2015 (Archive on Monday, April 27, 2015)

Posted by Jym St. Pierre Contributed by Jym St. Pierre