STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION

IN RE PETITIONS FOR REVOCATION, MODIFICATION OR SUSPENSION OF PERMITS AND WATER QUALITY CERTIFICATIONS FOR THE LOCKWOOD, HYDRO-KENNEBEC, SHAWMUT AND WESTON HYDRO PROJECTS

Merimil Limited Partnership Lockwood Hydro Project #L-20218-33-C-N	)	
Hydro Kennebec Limited Partnership Hydro-Kennebec Project #L-11244-35-A-N	)	**PRE-FILED REBUTTAL TESTIMONY OF F. ALLEN WILEY ON BEHALF OF FPL ENERGY MAINE HYDRO, LLC AND MERIMIL LIMITED PARTNERSHIP (LOCKWOOD, SHAWMUT AND WESTON PROJECTS)**
FPL Energy Maine Hydro, LLC Shawmut Hydro Project #L-19751-33-A-M	)	
FPL Energy Maine Hydro, LLC Weston Hydro Project #L-17472-33-C-M	)	

PRE-FILED REBUTTAL TESTIMONY AND EXHIBITS OF

F. ALLEN WILEY

- Summary of Claims Made by Petitioners;
- Overview of Maine's Water Quality Standards;
- Why Petitioners' Claims Do Not Comport with Maine's Water Quality Standards and Must Be Rejected; and
- Implications if the Board Reinterprets Maine's Water Quality Standards in the Way Suggested by Petitioners.

February 7, 2007

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MAINE BOARD OF ENVIRONMENTAL PROTECTION

KENNEBEC RIVER PETITIONS

PRE-FILED REBUTTAL TESTIMONY AND EXHIBITS OF

F. ALLEN WILEY

PURPOSE AND SCOPE OF REBUTTAL TESTIMONY

The purpose and scope of my rebuttal testimony is to 1) provide the Board a summary of the claims made by Petitioners; 2) provide the Board an overview of Maine's water quality standards as they relate to these claims; 3) describe why Petitioners' claims do not comport with Maine's water quality standards and must be rejected; and 4) describe some of the implications if the Board reinterprets Maine's water quality standards in the way suggested by Petitioners.

SUMMARY OF REBUTTAL TESTIMONY

1) Petitioners' claim that, in order to meet water quality standards, certifications must be modified by requiring immediate permanent upstream and downstream fish passage has no basis in law and is contrary to the longstanding positions taken by Maine's fishery resource agencies and the DEP.

2) Petitioners' claim that, in order to meet water quality standards, certifications must be modified by requiring passage of all fish attempting to migrate upstream or downstream past dams without injury or mortality has no basis in law and is contrary to the longstanding positions taken by Maine's fishery resource agencies and the DEP.

3) If the Board reinterprets Maine's water quality standards in a way that requires "immediate, safe and effective upstream and downstream passage for all indigenous migratory fish" as proposed by Petitioners, it would turn Maine's water quality laws and fisheries management

policies on their heads and could have grave implications on fish restoration efforts throughout the State.

4) The petitions to revoke, modify or suspend the water quality certifications for the Lockwood, Shawmut or Weston projects should be dismissed.

SUMMARY OF CLAIMS MADE BY PETITIONERS

- **Friends of Merrymeeting Bay (FOMB)**

In brief, FOMB claims that in order for the projects in question to meet water quality standards "immediate, safe and effective upstream and downstream passage [must be provided] for all indigenous migratory fish." (FOMB Direct, p.1, ¶ 2; p.2, ¶ 4b; p.4, ¶ 7)

FOMB defines immediate as "the date this certification is approved by the Board of Environmental Protection" and defines safe as "all fish migrating upstream can pass the dam and no fish migrating downstream are killed or injured by the dam." (FOMB Direct, p.1, ¶ 2, emphasis added)

FOMB claims that the Board has authority to modify the certifications for the projects under State law, and to the extent it is pre-empted under federal law from doing so directly, the Board can still modify existing certifications because the certifications and KHDG Agreement contain "re-opener" provisions. (FOMB Direct, p. 5-7, ¶¶ 12-15)

- **Douglas Watts**

Watts echoes FOMB's statements that water quality standards cannot be met for the Kennebec River unless "immediate, safe and effective upstream and downstream passage" is provided at all dams for migratory fish. (Watts Direct, p. 1-2, ¶¶ 1-7; p. 16-20, ¶¶ 34-45)

Watts also claims that the existing certifications are unlawful because they don't specifically prohibit "fish kills" and because they don't include enforceable deadlines. (Watts Direct, p. 24-28, ¶¶ 53-55; p. 28-31, ¶¶ 56-63)

OVERVIEW OF MAINE'S WATER QUALITY STANDARDS

The bulk of Petitioners' claims center around what is required under Maine's water quality standards to ensure that the lower Kennebec River meets these standards. In order to understand what is required, it is important to put the genesis of Maine's water quality classification system into context and to understand the specific provisions required in the stretches of the lower Kennebec River where the Lockwood, Shawmut, and Weston projects are located.

- **1986 Re-classification**

In 1986, after years of controversy, stakeholder meetings, and public input, the Legislature overhauled Maine's water quality classification system to form the system that in all material respects remains in place today. This effort was done in combination with other statewide activities that were focused on improving the condition and use of Maine's waterways.

According to the DEP'S 1985 Report summarizing the basis for the recommended change in water quality laws,

> "…a major revision is necessary at this time to bring our laws into conformance with federal laws, with the newly enacted state laws such as the Maine Rivers Act, and with the policies of other state agencies such as the Office of Energy Resources, Inland Fisheries and Wildlife, and Marine Resources…It is the intent of the Department, that this proposed revision of the law is not intended to change the present overall water quality in the State. It is only intended to improve the means by which the Department manages and monitors **quality** of the water…." [1] (emphasis added)

In establishing the new classification system, the Legislature struck a careful balance of protecting and preserving water quality for fish, wildlife and other uses while at the same time recognizing the importance of the State's water resources for commerce and industry. As such, different levels of water quality were assigned to various classes, depending upon the types of uses and level of protection envisioned for the water body. As noted by the DEP,

> "…the public wants waters of different quality available, both high quality recreation oriented waters as well as waters of lesser quality for economic and social needs." (EXHIBIT FPLE-15, p. 5-6)

Among other things, the Legislature adopted a new water quality classification system that 1) included a new pristine river Class known as AA[2]; 2) re-classified riverine waters from A, B-1, B-2, C and D to A, B and C; 3) defined designated uses, aquatic life and habitat characteristics for each class; and 4) established new biological standards and assessment tools to be used to determine attainment with water quality standards.

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[1] See page 2 from the excerpts from *A Summary of the Scientific Basis for the Proposed Changes to Maine's Water Quality Standards and Summary of Attainment Under Present and Proposed Standards*, October 15, 1985. (EXHIBIT FPLE-15)

[2] For Class AA waters, habitat shall be characterized as "free flowing and natural." (38 M.R.S.A. § 465(1)(A)) (Emphasis added.) Natural is defined as "living in a state of nature not measurably affected by human activity." (38 M.R.S.A. § 466(9), emphasis added)

- **Maine's Water Quality Classification System**

  - **Class C Waters**

For Class C waters, applicable to the Lockwood and Shawmut projects, the Legislature requires that the waters be:

> "…suitable for the designated uses of drinking water supply after treatment; fishing; recreation in and on the water; industrial process and cooling water supply; hydroelectric power generation, except where prohibited under Title 12, section 403; and navigation; and as a habitat for fish and other aquatic life." (38 M.R.S.A. § 465(4)(A), emphasis added)

As noted in this passage, a variety of designated uses are assigned for Class C waters, **including** both hydroelectric power generation and habitat for fish and other aquatic life. To determine whether the habitat is suitable for fish and other aquatic life, the Legislature adopted additional provisions:

> "The dissolved oxygen content of Class C water may not be less than 5 parts per million or 60% saturation…" (38 M.R.S.A § 465(4)(B))
>
> "Discharges to Class C waters may cause some changes to aquatic life, provided that the receiving waters shall be of sufficient quality to support all species of fish indigenous to the receiving waters and maintain the structure and function of the resident biological community." (38 M.R.S.A. § 465(4)(C), emphasis added)

Unlike Class AA waters, where discharges are not allowed and where habitat characteristics are not intended to be "measurably affected by human activity," the Legislature recognized that discharges to Class C waters may cause some impacts to aquatic life. In determining the level of acceptable impact, the Legislature first determined what species needed protection. They then provided guidance on the tools to be used to determine attainment and the degree to which attainment is required.

> "Indigenous means supported in a reach of water or known to have been supported according to historical records compiled by State and Federal agencies or published scientific literature." (38 M.R.S.A. § 466(8), emphasis added)
>
> "Community structure means the organization of a biological community based on numbers of individuals within different taxonomic groups and the proportion each taxonomic group represents of the total community." (38 M.R.S.A. § 466(4), emphasis added)
>
> "Community function means mechanisms of uptake, storage and transfer of life-sustaining materials available to a biological community which determines the efficiency of use and the amount of export of the materials from the community." (38 M.R.S.A. § 466(3), emphasis added)
>
> "Resident biological community means aquatic life expected to live in a habitat which is free from the influence of the discharge of any pollutant. This shall be established by accepted biomonitoring techniques." (38 M.R.S.A. § 466(10), emphasis added)

As noted in these passages, it is clear that the focus of Maine's water quality requirements for Class C waters is to ensure that discharges of pollutants do not impact the receiving waters such that the structure and function of the resident biological community are not maintained. The means to measure this impact is through accepted biomonitoring techniques.

Again, unlike Class AA waters where "aquatic" life is not expected to be "measurably affected by human activity," in Class C waters the aquatic life is that which is expected to exist in the absence of the discharge of any pollutant. Under Maine law, discharge and pollutant are defined as follows:

> "Discharge means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of any pollutant to waters of the State." (38 M.R.S.A. § 361-A(1), emphasis added)
>
> "Pollutant means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic,

> commercial or agricultural wastes of any kind." (38 M.R.S.A. § 361-A (4-A), emphasis added)

As noted above, dams and hydroelectric power facilities are not considered "pollutants" under State law unless they otherwise discharge substances that are defined as pollutants. Note also that there must be a "discharge," which is defined as an ongoing addition of a pollutant, not the mere existence of something in the water.

- **Class B Waters**

For Class B waters, like those at the Weston project, the Legislature requires that the waters be:

> "…suitable for the designated uses of drinking water supply after treatment; fishing; recreation in and on the water; industrial process and cooling water supply; hydroelectric power generation, except where prohibited under Title 12, section 403; and navigation; and as a habitat for fish and other aquatic life. The habitat shall be characterized as unimpaired." (38 M.R.S.A. § 465(3)(A), emphasis added)
>
> "Unimpaired means without the diminished capacity to support aquatic life." (38 M.R.S.A. § 466(11), emphasis added)
>
> "The dissolved oxygen content of Class B waters shall not be less than 7 parts per million or 75% saturation…" (38 M.R.S.A § 465(3)(B))
>
> "Discharges to Class B waters shall not cause adverse impact to aquatic life in that the receiving waters shall be of sufficient quality to support all aquatic species indigenous to the receiving water without detrimental changes in the resident biological community." (38 M.R.S.A. § 465(3)(C), emphasis added)
>
> "Without detrimental changes in the resident biological community means no significant loss of species or excessive dominance by any species or group of species attributable to human activity." (38 M.R.S.A. § 466(12), emphasis added)

As noted above, the water quality parameters for Class B waters are more stringent than Class C waters. For instance, dissolved oxygen requirements are higher and the level of impairment, as measured with accepted biomonitoring techniques, is lower for the resident biological

community. Like Class C waters, a variety of designated uses are assigned for Class B waters, **including** both hydroelectric power generation and habitat for fish and other aquatic life.

- **Antidegradation Policy**

In addition to these specific standards, Maine has adopted an "antidegradation" policy, which is intended to ensure that existing water quality is maintained to support existing uses and that no "backsliding" occur in water quality. Specifically,

> "Existing in-stream water uses and the level of water quality necessary to protect those uses must be maintained and protected. Existing in-stream water uses are those uses which have actually occurred on or after November 28, 1975…In making its determination of uses to be protected and maintained, the department shall consider designated uses for that water body and:
>
> (a) Aquatic, estuarine and marine life present in the water body;
> (b) Wildlife that utilizes the water body;
> (c) Habitat…within a water body supporting existing populations of wildlife or aquatic, estuarine or marine life, or plant life that is maintained by the water body…." (38 M.R.S.A. § 464(4)(F)(1), emphasis added)

Thus, existing uses that have occurred since November 28, 1975 are to be maintained such that water quality is not degraded from "existing" levels.

WHY PETITIONERS' CLAIMS DO NOT COMPORT WITH MAINE'S WATER QUALITY STANDARDS AND MUST BE REJECTED

Essentially, Petitioners interpret Maine's water quality statutes as though hydropower is not a designated use and is not a use worthy of protection. Petitioners claim that in order for the Kennebec River to be suitable for the designated use of habitat for fish and other aquatic life, permanent upstream and downstream fish passage must be installed now and no fish can be killed or injured as they migrate past dams.

The following is a brief discussion as to why these claims do not comport with Maine's water quality laws, or any other State or federal law.

- **Designated Uses**

As noted previously, when overhauling Maine's water quality standards in 1986, the Legislature struck a careful balance in determining what uses of Maine's waterways were worthy of protection and what uses were not. It is clear that the Legislature's main goal was to eliminate the discharge of "pollutants" (as defined in 38 M.R.S.A. § 361-A (4-A) above) to Maine's waters. That is why, for instance, utilizing Maine's waterways for waste assimilation is **not** considered a designated use and is **not** even considered an "existing use" under Maine's antidegradation law:

> "The use of the water body for recreation in and on the water, fishing, water supply, or commercial activity that depends directly on the preservation of an existing level of water quality. Use of the water body to receive or transport waste water discharges is not considered an existing use for the purposes of this antidegradation policy…"[3] (38 M.R.S.A. § 464(4)(F)(1)(d), emphasis added)

It was also clear; however, that the Legislature recognized the social and economic significance of the use of Maine's waterways for commerce and industry. Thus, they adopted a range of classes, with different levels of protection and, conversely, different allowances for impairment. The Legislature recognized then, and still does today, the value derived by Maine's unique hydroelectric resources. They also acknowledged producing power from hydroelectric facilities does not occur without some environmental consequence.

> "The Legislature finds and declares that the surface waters of the State constitute a valuable indigenous and renewable energy resource; and that hydropower

[3] This is also in keeping with the Clean Water Act (see 40 C.F.R. § 131.10(a)).

> development utilizing these waters is unique in its benefits and impacts to the natural environment, and makes a significant contribution to the general welfare of the citizens of the State…." (38 M.R.S.A. § 631(1), emphasis added)
>
> "Like all energy generating facilities, hydropower can have adverse effects; in contrast with other energy sources, they may also have positive environmental effects. For example, hydropower dams can control floods and augment downstream flow to improve fish and wildlife habitats, water quality and recreational opportunities." (38 M.R.S.A. § 631(1)(A), emphasis added)
>
> "The Legislature declares that hydropower justifies singular treatment…" (38 M.R.S.A. § 631(2), emphasis added)

When Maine's water quality laws were revised in 1986, hydropower was included as a designated use for **all** GPA waters as well as **all** rivers classified as A, B or C.

As noted in the Clean Water Act (CWA),

> "Among the uses listed in the Clean Water Act, there is no hierarchy."[4]

Types of uses listed in Section 303(c)(2)(A) of the CWA include[5]:

- Public water supplies
- Protection and propagation of fish, shellfish, and wildlife
- Recreation
- Agriculture
- Industry
- Navigation
- Coral reef preservation
- Marinas
- Groundwater recharge
- Aquifer protection
- Hydroelectric power (emphasis added)

[4] See EXHIBIT FPLE-16, *EPA Water Quality Standards Handbook, Second Edition, Update #1*, August 1994, p. 2-1.
[5] See EXHIBIT FPLE-16, *EPA Water Quality Standards Handbook, Second Edition, Update #1*, August 1994, p. 2-2.

Thus, it is clear that under the CWA and Maine's water quality laws, hydropower is considered a designated use for the waters in question and such use is required to be maintained and protected along with other designated uses.

In addition, the Lockwood, Shawmut and Weston hydropower projects are an "existing use" under Maine water quality laws since the projects were in existence before November 28, 1975.[6] Thus, hydropower from these projects is afforded additional protection under Maine's antidegradation policy to ensure that its use is maintained and protected.

- **Permanent Upstream and Downstream Fish Passage Do Not Need to be Installed Now at the Lockwood, Shawmut or Weston Dams.**

As noted in the Department's January 19, 2006 draft order recommending dismissal of these petitions, "*The Board is not aware of any state law or court ruling that requires installation of fish passage facilities at all dams.*" (See page 19 of the draft order, emphasis added) This is a correct statement of the law, and neither the FOMB nor the Watts testimonies cite any such law or ruling to the contrary.

First, we must reiterate that adequate provisions are currently in place to provide upstream and downstream fish passage at the Lockwood, Shawmut and Weston projects. While some of these provisions may be referred to as "interim" under the 1998 KHDG Agreement, they are fish passage provisions nonetheless.

[6] The Lockwood, Shawmut and Weston dams were constructed in 1919, 1913, and 1920, respectively.

Second, we must also reiterate that for projects such as these that are under FERC jurisdiction pursuant to the Federal Power Act, FERC is the ultimate authority that will determine 1) if fish passage facilities will be required at FERC-licensed projects; 2) what type of facilities will be required; 3) where the facilities will be built; and 4) when such facilities will be built. While other state and federal agencies play a pivotal, and in some cases mandatory, role in the FERC licensing process, ultimately it is FERC's responsibility to oversee such requirements. (See Wiley Direct – Part I, p. 11-18)[7]

That being said, DMR and DIFW do have statutory authority under Maine law to require fish passage to be installed on Maine waterways after due process is afforded.[8] Likewise, the DEP may require fishways to be installed under the Maine Waterway Development and Conservation Act statute if an applicant applies to the Department for a permit to construct or re-construct a hydropower project. (See Wiley Direct – Part I, p. 9-11) In each of these circumstances, however, there is nothing that mandates that fish passage be installed. Rather, the requirement to install passage is a discretionary action by the agency.

As highlighted by the Department in its January 2006 draft order recommending dismissal of the petitions,

> "Decisions regarding whether and when fish passage facilities should be installed at a given dam are made in the context of the available information (including fishery management goals, migratory fish restoration plans, habitat suitability and availability, and current status of fish passage) in a specific regulatory proceeding

[7] Indeed, if the State had the unilateral authority to require and enforce fish passage at FERC-licensed projects, it would have simply done so in the Edwards Dam case. However, the State recognized it did not have such authority and, instead, fostered the negotiated settlement that culminated in the Settlement Accord and its attendant KHDG Agreement, which were subsequently filed with FERC for approval.

[8] By way of example, DIFW (as opposed to the DEP) is currently undertaking an adjudicatory proceeding to determine if fish passage is required at the non-FERC jurisdictional Cumberland Mills Dam on the Presumpscot River, pursuant to 12 M.R.S.A. § 12760.

> (for example, the proposed relicensing of an existing hydropower project and associated water quality certification proceeding). These decisions run the full spectrum from not requiring fish passage, to leaving open the opportunity to require fish passage at a later date, to establishing a schedule for future installation of fish passage, to requiring the immediate installation of fish passage." (See p.19 of the draft order, emphasis added)

Petitioners would like the Board to mistakenly assume that the concept of being suitable "as habitat for fish and other aquatic life" means that fish passage facilities must be in place at all dams. (FOMB Direct, p.2, ¶ 4b) Likewise, they would like the Board to erroneously believe that the only way for "the Kennebec River and its tributaries to be suitable habitat for all aquatic species indigenous to them" is to install fish passage immediately. (Watts Direct, p. 19, ¶ 38)

However, there is nothing in Maine's water quality laws that even remotely suggest that fish passage must be installed at dams in order to meet water quality standards for indigenous fish. If the Legislature had intended that water quality laws be used to require fish passage at all dams in order to provide suitable habitat to indigenous fish, then they would have said so in the water quality statutes - but they have not done so, **nor** can this Board lawfully do so without statutory authorization. Indeed, the word "fish passage" is nowhere to be found in 38 M.R.S.A. § 464 *et seq*.

- **There is No Requirement in State Law That Requires All Fish Migrating Upstream or Downstream to Pass the Lockwood, Shawmut or Weston Dams Without Injury or Mortality**

As noted in EXHIBIT FPLE-2, when the revised water quality standards were being reviewed in the mid-1980s, the Legislature held a number of work sessions with stakeholders representing industry, utilities, environmental groups, and the DEP. As part of that process, the DEP also

held a number of workshops to explain the proposed changes in classification and what the implications would be for each water body. During the process, the DEP issued *A Summary of the Scientific Basis for the Proposed Changes to Maine's Water Quality Standards and Summary of Attainment Under Present and Proposed Standards, October 15, 1985*. Excerpts from this report are contained in EXHIBIT FPLE-15. In regards to the concept of providing suitable habitat for indigenous fish, the DEP stated the following:

> "…That portion of the proposed law regarding aquatic life states that discharges may cause some changes to aquatic life, provided that the receiving water shall be of sufficient quality to support all indigenous species of fish and maintain the structure and function of the aquatic community.
>
> Like Class B, this standard has two parts or tests. The first is that the receiving water must be of sufficient quality to support all indigenous species of fish. Since Class C would be Maine's lowest class it must at least be consistent with minimum federal requirements which require that the quality of waters necessary for fish propagation will be maintained. This would be established through effluent bioassay test, but again, I remind you, that fish species need not be present, only that water quality cannot be a limiting factor…
>
> The second part of the standard is that community structure and function must be maintained…Within Class C waters, significant losses and shifts in species would be allowed. One would expect to see some pollution intolerant species disappear, but it is essential that there is some replacement by more tolerant species and that these tolerant species fulfill all vital functional roles in the community…." (EXHIBIT FPLE-15, p. 7-8, emphasis added)

This concept of how to determine if waters are sufficient to support all indigenous species of fish was confirmed by the Legislature when it adopted the changes to the water quality laws in 1986:

> "In the definition of indigenous (sub-§ 7), the legislature recognizes that in some waters of the State (e.g. impoundments) habitat is unsuitable to support all indigenous species. The intent of the legislature is that the chemical aspects of water quality not be a limiting factor to the survival of an indigenous species although that species may not occur in a water body for other reasons." (EXHIBIT FPLE-17, p. 13)

As noted in 38 M.R.S.A. § 466(10), accepted biomonitoring techniques shall be the way to measure whether waters are suitable for indigenous species, not by Petitioners' prescription of

"immediate, safe and effective upstream and downstream passage for all indigenous migratory fish."

In fact, in 1985, the DEP provided a summary to the Legislature and interested parties to the re-classification process of how different water bodies would fare under the then-existing and then-proposed water quality standards. As shown in EXHIBIT FPLE-15, page 56, the DEP projected that, with the exception of the river stretch where the SAPPI mill discharges below the Weston project, the water bodies encompassed by the Weston, Shawmut and Lockwood projects were expected to meet their respective Class B or C standards.[9] Had the existence of fish passage been a criterion to determine whether these (or other) water bodies were in compliance with the proposed water quality standards, the DEP presumably would have listed the water bodies as being out of attainment and would have made note of the reasoning for such non-attainment. They did not. Indeed, the DEP does not even reference the need for fish passage as being a water quality criterion in its report.

IMPLICATIONS IF THE BOARD REINTERPRETS MAINE'S WATER QUALITY STANDARDS IN THE WAY SUGGESTED BY PETITIONERS

If the Board reinterprets Maine's water quality standards in a way that requires "immediate, safe and effective upstream and downstream passage for all indigenous migratory fish," as proposed by Petitioners, it would turn Maine's water quality laws and fisheries management policies on their heads. To interpret the standards in this manner, the Board will effectively have to draw the following conclusions:

[9] The stretch near the SAPPI discharge that was projected to be out of attainment with bacteria standards not dissolved oxygen or bio-criteria standards.

1) When it enacted the water classification system in 1986, the Legislature somehow implicitly intended that all hydropower projects in Maine include "immediate, safe and effective upstream and downstream passage for all indigenous migratory fish," even though it explicitly laid out provisions in the statute to the contrary.[10]
2) All water bodies in Maine with dams that do not have "immediate, safe and effective upstream and downstream passage for all indigenous migratory fish" would be out of compliance with water quality standards. There are hundreds of such dams in Maine.
3) All Section 305(b) reports and Section 303(d) lists of impaired waters submitted to the EPA under the CWA by the Department since 1986 have been in error since the absence of fish passage has **never** been denoted by the Department in the filings as a reason why these water bodies do not meet water quality standards.
4) All hydropower certifications issued by the Department and/or the Board since 1986 that do not require "immediate, safe and effective upstream and downstream passage for all indigenous migratory fish" will be invalid.
5) Title 12 M.R.S.A. § 6121(1) and § 12760(1), which provide authority to the Commissioners of DMR and DIFW, respectively, to require fish passage facilities at dams will no longer be valid because of the discretionary, rather than mandatory, nature of the authority granted by the Legislature under those laws. In addition, those laws will be superfluous since such mandatory authority would already be required under the water quality laws given the

[10] This is contrary to the fundamental rule of statutory construction that requires a tribunal to give effect to legislative intent behind the statute by applying the plain language of the statute itself. *See Enos v. Town of Stetson,* 665 A.2d 678, 680 (Me. 1995) (rejecting plaintiffs' construction of a shore land zoning statute on the grounds that such an interpretation would nullify the express language of a related shore land zoning provision). The plain language of the statute will be applied unless it leads to an absurd, illogical, or inconsistent result. *Trask v. Pub. Util. Comm'n,* 1999 ME 93, ¶ 7, 731 A.2d 430, 432.

interpretation prescribed by the Petitioners. *See Johnson v. Smith*, 1999 ME 168, ¶ 6, 740 A.2d 579, 581 (stating that the Law Court construes the plain meaning of the statutory language to avoid absurd, illogical or inconsistent results and considers related statutory provisions in its analysis to ensure a construction that is harmonious with the overall statutory scheme).

6) Any fishery management plan developed by Maine's fishery agencies and approved via public processes will no longer be valid unless it requires "immediate, safe and effective upstream and downstream passage for all indigenous migratory fish."

7) The longstanding positions of Maine's fishery resource agencies that fish passage should be required only when needed; that fish passage facilities be sized to meet targeted escapement goals rather than passing all species; and that fish passage facilities need not be 100% efficient in passing fish, will no longer be valid.

8) The ability of fishery agencies to preclude invasive or undesirable species from entering and occupying waters to which they may be indigenous will no longer be permissible since passage would be required for <u>all</u> indigenous migratory fish under petitioners' proposal, regardless of its impact to resident fisheries.

9) The 1987 KHDG Agreement; 1994 Saco River Fish Passage Agreement; 1998 Lower Kennebec River Comprehensive Hydropower Settlement Accord; 1998 KHDG Agreement; 1998 Upper Androscoggin River Storage Projects Settlement Agreement; and 2001 Indian Pond Settlement Agreement; would have been entered into under false pretenses and may no longer be valid.

10) The 2004 GLHA Penobscot Storage Settlement; 2004 Lower Penobscot River Basin Comprehensive Settlement Accord; and potentially other hydropower settlements may also have been entered into under false pretenses and may no longer be valid.

Obviously, we do not agree with Petitioners' interpretation of Maine's water quality statutes and urge the Board to reject their interpretation as well. The implications of doing otherwise could have grave implications on the efforts of State and federal resource agencies, progressive dam owners like FPL Energy and other parties to restore indigenous fish to habitats outlined in the State's fishery management plans in a thoughtful and rational manner.

CONCLUSION

1) Petitioners' claim that, in order to meet water quality standards, certifications must be modified by requiring immediate permanent upstream and downstream fish passage has no basis in law and is contrary to the longstanding positions taken by Maine's fishery resource agencies and the DEP.

2) Petitioners' claim that, in order to meet water quality standards, certifications must be modified by requiring passage of all fish attempting to migrate upstream or downstream past dams without injury or mortality has no basis in law and is contrary to the longstanding positions taken by Maine's fishery resource agencies and the DEP.

3) If the Board reinterprets Maine's water quality standards in a way that requires "immediate, safe and effective upstream and downstream passage for all indigenous migratory fish" as proposed by Petitioners, it would turn Maine's water quality laws and fisheries management

policies on their heads and could have grave implications on fish restoration efforts throughout the State.

4) The petitions to revoke, modify or suspend the water quality certifications for the Lockwood, Shawmut or Weston projects should be dismissed.

In conclusion, we respectfully request that the Board deny the Petitioners' requests to revoke, modify or suspend the water quality certifications for the Lockwood, Shawmut and Weston projects.

Dated: 2/7/07

F. Allen Wiley

STATE OF MAINE
COUNTY OF KENNEBEC

Personally appeared before me the above-named F. Allen Wiley and made oath that the foregoing is true and accurate to the best of his knowledge and belief.

Dated: 2/7/2007

Notary Public
My Commission Expires:

DONNA A. SEVERANCE
NOTARY PUBLIC, STATE OF MAINE
MY COMMISSION EXPIRES AUGUST 16, 2011

EXHIBIT FPLE-15

A Summary of the Scientific Basis for the Proposed Changes to Maine's Water Quality Standards and Summary of Attainment Under Present and Proposed Standards, October 15, 1985

STATE OF MAINE
Department of Environmental Protection

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JOSEPH E. BRENNAN
GOVERNOR

HENRY E. WARREN
COMMISSIONER

October 15, 1985

Mr. Tim Glidden
Office of Legislative Assistants
State House Station 13
Augusta, Maine 04333

Dear Tim:

In order that everyone interested in L.D. 1503 understand the rationale for the proposed changes from present law, we have prepared a package which we hope sufficiently justifies each major change from present law. Because many of the concepts are unfamiliar to the general public, we found it difficult to make the summary any briefer without sacrificing clarity.

The only amendment to L.D. 1503 offered here is the list of biological definitions found in Table II, page 18 and 19.

The packet is organized by topic and includes a Table of Contents to make it as easy as possible to locate topics of specific interest. We are very interested in any comments made concerning the rationale, since that, after all, is the foundation of L.D. 1503.

If you desire further clarification, let me know immediately.

Sincerely,

David Courtemanch

DAVID COURTEMANCH
Biologist
Division of Environmental Evaluation
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Bureau of Water Quality Control
Department of Environmental Protection

DC/w

A SUMMARY OF THE SCIENTIFIC BASIS FOR PROPOSED CHANGES TO MAINE'S WATER QUALITY STANDARDS AND SUMMARY OF ATTAINMENT UNDER PRESENT AND PROPOSED STANDARDS

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION
AUGUSTA, MAINE
October 15, 1985

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PROPOSED BIOLOGICAL STANDARDS
(from September 30, 1985 Workshop)

Classification of the State's waters began in the mid 1950's. The quality of the State's waters at that time was probably the poorest in history with little treatment. Little changed until the late 1960's and our knowledge of water pollution was astonishingly small. With the enactment of the Federal Clean Water Act and especially the amendments of 1972, water pollution control escalated at a rapid pace. By the late 1970's most industries and major municipalities were providing treatment for their wastes. The consequence was a dramatic improvement in the quality of the State's water, an improvement well beyond the expectations of most people. As a result these waters are being used in ways and to an extent which were previously not imagined.

In this same period, a large body of scientific knowledge about water quality management had been developed. Twenty years ago, oxygen demanding waste was the overwhelming concern. As this was reduced, water quality improved, but we also found many instances where the magnitude of oxygen demanding wastes had only masked other underlying water quality problems. Hence, the DEP is now attentive not only to oxygen demand but also to problems such as toxic substances, complex effluents, synergism, bioaccumulation, biomagnification, and so forth.

The present quality of our waters, the improved scientific basis of DEP policies, the greatly expanded public use of our waters, and the expanded

realization of all the intricacies of 'water quality' has led the department to propose a new classification system for our waters. It is thought that a major revision is necessary at this time to bring our laws into conformance with federal laws, with newly enacted state laws such as the Maine Rivers Act, and with the policies of other state agencies such as the Office of Energy Resources, Inland Fisheries and Wildlife, and Marine Resources. The State should make use of the best available knowledge and to recognize the present quality and uses and develop improved policies and programs for protection and improvement of the State's waters. It is the intent of the Department, that this proposed revision of the law is not intended to change present overall water quality in the State. It is only intended to improve the means by which the Department manages and monitors quality of the water. Where any modifications are proposed which cause easing or tightening of present standards, it has been done only where strong scientific evidence directs a change to conform with established uses.

With respect to the biological standards, those factions which represent either the environmentalist side or the discharger's side should not view these standards as wholly good or bad. While the discharger may regard any new standard as just an additional burden, benefits from this form of standard should not be overlooked. Likewise, while the environmentalist may see these standards as yet another way to tighten some screws, it should realized that this is not the purpose.

The Federal Clean Water Act in Section 101 states that "it is the objective of this Act to restore and maintain the chemical, physical and biological integrity of the Nations waters." Of those three characteristics, biological integrity is the most important since the physical and chemical characteristics have their greatest relevance as they relate to the well

being of the biological community. The biological community establishes the foundation for many of the uses made of our waters and where we realize our own well being. Title 38 Section 341 of Maine Statutes state the Department "shall protect and improve the quality of our natural environment and resources which constitute it, by directing growth which will preserve for all time an ecologically sound and aesthetically pleasing environment." Techniques of biological evaluation are obviously the most direct means for measuring the ecological soundness of the environment. Biological evaluation has proven itself to be too valuable a tool in our water quality program to be ignored. It is the best means to integrate all the factors which encompass the term water quality.

Many have suggested that biological standards are new and untried, yet this is definitely not the case. In fact, present state law has very definitive and strict biological standards in all classes except Class D. Department regulations presently exist which use diversity of bottom fauna to describe B-1 and B-2 waters, regulations specifying bioassay procedure and include the trophic state index to evaluate lake water quality. The concept is not at all new but is limited because of obsolete language in present law.

Class A standards presently state "there shall be no disposal of matter or substances in these waters which would .....contain chemical constituents harmful..... to animal or aquatic life." This class states specifically that effluents must be equal to or better than the receiving water. Thus, it must be assumed that all aquatic species could exist in such a water class.

Class B-1 and B-2 standards likewise state "there will be no disposal of matter or substances in these waters which would.....contain chemical constituents.....harmful to animal or aquatic life." Additionally these

waters "shall be free of any matter or substance which alters the composition of bottom fauna,.....or which interferes with the propagation of fish", "nor shall disposal of sewage or waste be injurious to aquatic life or render such dangerous for human consumption."

Class C standards also state "there will be no disposal of matter or substances in these waters which would ....also contain chemical constituents harmful to animal or aquatic life," "nor shall disposal of sewage or waste be injurious to aquatic life or render such dangerous for human consumption."

If these biological standards are examined collectively one finds they are all quite alike. In fact they are exactly alike by specifying no disposal of substances harmful to animals or aquatic life. Classes B-1, B-2, and C all specify disposal of wastes shall not be injurious. Classes B-1 and B-2 are actually the most restrictive by further specifying the waters must be free of substances which alter the composition of the bottom fauna.

Managing State waters by using these standards is rather difficult. It seems absurd to establish any criteria which defines the term "harmful to animals and aquatic life" as suitable for Class A (our highest quality waters) as well as for Class C (those waters receiving the greatest waste load). Criteria consistent with the other characteristics of Class A waters, specifically the clause that discharges shall be of equal or better quality than the receiving water, could doubtfully be applied to Class C waters without jeopardizing the quality of our Class A waters and introducing a potential for degradation which the legislature did not intend.

The existing biological language was written before the DEP had a biological staff to make these evaluations, and before there was widespread treatment of wastewater. The individuals who wrote these standards were certainly forward-thinking since they obviously recognized such issues as

toxics, fish consumption and the role of bottom fauna in their plan. They did work at a disadvantage, in that, it is doubtful they could foresee the quality of the State's water after treatment was applied. It is also doubtful they had a clear idea how these standards could be defined since the science of environmental biology was unrefined 20 years ago.

Environmental biology has evolved during this period and now provides a sound theoretical foundation to make these evaluations. Bioassay methodology has now become a very standardized science and is routinely performed by state and federal laboratories as well as a large number of private laboratories. Likewise, the ecology of aquatic communities is now well described especially as it relates to the benthic invertebrates. The river continuum theory (Vannote et al 1980) has become a central theme in this new understanding and encompassess other concepts such as materials spiraling (Wallace et al, 1977) and functional feeding strategy (Cummins, 1973, 1974), such that we now have a good understanding of how these ecosystems operate. Taxonomy, that bug-a-boo of early studies is well established for most groups now. These ideas have been incorporated into numerous water quality studies including works by Rabeni and Gibbs (1977) and Rabeni and Davies (1985) here in Maine. The Europeans have used biomonitoring since the early 1900s with the advent of the Saprobian index and numerous techniques have evolved since that time (Hellawell, 1977). Therefore the time is right to take the initiative of previous legislatures and turn this into a workable framework of standards applicable to the present status of our waters and with a sound ecological basis.

The D.E.P.'s proposal and the rationale for it is as follows:

It has been assumed that the public wants waters of different quality available, both high quality recreation oriented waters as well as waters of

lesser quality for economic and social needs. The DEP has recommended that four classes be established for Maine's rivers and streams.

Class AA is a new class with the highest degree of protection. It will be for free-flowing rivers and all discharges will be prohibited. This class is intended for waters of special value to the state. Consequently no change should be expected or observed in the biological community. We have thus recommended that the standard be that aquatic life shall be as naturally occurs. The definition of these terms is explained in more detail elsewhere but essentially the same species and numbers should be found as in similar habitats free of human influence.

Class A waters would be managed much as they are presently. While hydropower projects and certain highly treated effluents would be permitted, this class would have very high quality water similar to Class AA. Because of the expected high level of treatment and the restrictive clause for effluents of "equal to or better than," the same standard as Class AA is appropriate: that aquatic life shall be as naturally occurs.

The standards for Class B waters have been revised substantially. The portion of the proposed law about aquatic life states that discharges "shall not cause adverse impact to aquatic life in that the receiving waters shall be of sufficient quality to support all species indigenous to the receiving water without detrimental changes in the resident biological community." This standard has two distinct parts or tests. The first is that the receiving water will be of sufficient quality to support all indigenous species. This would be determined through use of an effluent bioassay test, but this does not mean that a species has to exist in the river or stream, only that water quality cannot be the limiting factor.

The second test is that the resident community can change but this must

not be a detrimental change such as a significant loss of species. The present law, as you recall states that the composition of the bottom fauna cannot be altered. We know for a fact that discharges, even the best treated ones with ample dilution invariably cause significant change in community composition. Maine waters are typically low in nutrients and great shifts in communities commonly occur below wastewater outfalls because of new food resources. Generally, these shifts are not indicative of any harmful effects of an effluent and should be differentiated from detrimental changes. Maintenance of species and the integrity of the community provides the aquatic system with high stability and resilience during stress periods and thus insures a sound basis for the propagation of fish and higher organisms.

Class C would be the lowest standard in the proposed system and has also been revised substantially. That portion of the proposed law regarding aquatic life states that discharges may cause some changes to aquatic life, provided that the receiving water shall be of sufficient quality to support all indigenous species of fish and maintain the structure and function of the aquatic community.

Like Class B, this standard has two parts or tests. The first is that the receiving water must be of sufficient quality to support all indigenous species of fish. Since Class C would be Maine's lowest class it must at least be consistent with minimum federal requirements which require that the quality of waters necessary for fish propagation will be maintained. This would be established through an effluent bioassay test, but again I remind you, that a fish species need not be present, only that water quality cannot be the limiting factor. The D.E.P. recognizes that there are other factors such as competition, predation, and habitat availability which may preclude the presence of a fish species.

The second part of the standard is that community structure and function must be maintained. These are the two essential ecological components of a community. Briefly stated structure is the richness of species and numbers of individuals within a community while function is the means by which they interact to utilize food and other resources. Within Class C waters, significant losses and shifts in species would be allowed. One would expect to see some pollution intolerant species disappear,but it is essential that there is some replacement by more tolerant species and that these tolerant species fulfill all vital functional roles in the community. This ecological condition is typical where communities are exposed to reduced D.O. near 5 ppm, where settleable solids are at tolerable levels and where no toxicity is measured. Maintenance of structure is one means by which stability of the community is protected, and both sound structure and function are necessary to support the higher and lower trophic levels of a balanced community. Preservation of all the functional units within the community assures there is a progressive transfer of energy to support higher trophic levels such as fish and prevents either excessive accumulation or pass-through of nutrient resources.

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The following series of tables summarizes the way the Department intends to implement each of the biological terms or phrases in L.D. 1503. A brief explanation or scientific justification is included as well as a list of references from the scientific literature. The table is arranged by classification and each classification is sub-divided into pertinent phrases.

Following the tables is a list of questions asked at the Bio-monitoring Workshop held at the Civic Center on September 30, 1985 and the Department's response to each.

Table 5. Attainment Summary for Various River Reaches[1].

River Reach	Class	Attainment[2] Present	Proposed
********** Androscoggin River **********			
From NH-Maine boundary to Gilead-Bethel boundary	C	D	X
From Gilead-Bethel boundary to confluence of Sunday River	C	D	C
From confluence of Sunday River to Rumford	C	D	C
From Rumford to Gulf Island Pond	C	D	C
Gulf Island Pond	C	X	X
From Gulf Island Pond to Lewiston	C	D	X
From Lewiston to Merrymeeting Bay	C	D	C
********** Aroostook River **********			
Ashland to Presque Isle	B2	D	B
Presque Isle to McGraw	C	D	X
McGraw to Fort Fairfield	B1&C	D	C&B
Fort Fairfield to New Brunswick	C	D	X
********** Kennebec River **********			
Above Bingham	B1	D	A
From Bingham to Skowhegan	B1&C	D	B
From Skowhegan to Somerset-Kennebec County boundary	B2	D	X&C
From Somerset-Kennebec boundary to 1 mile above Shawmut Dam	B2	D	B
From 1 mile above Shawmut Dam to The Chops	B2&C	D	C

[1] This table is a summary of the descriptions of attainment presented in Tables 2, 3 and 4. Overall attainment is based on the lwoest level of attainment for any of the three classification standards (e.g. a river reach which atttains Class B for dissolved oxygen, Class D for bacteria and Class B for biological standards has an overall attainment of Class D).

[2] "X" = nonattainment of the lowest classification under the present (Class D) and proposed (Class C) systems.

EXHIBIT FPLE-16

EPA Water Quality Standards Handbook, Second Edition, Update No. 1, August 1994

CHAPTER 2
DESIGNATION OF USES

2.1 Use Classification - 40 CFR 131.10(a)

A water quality standard defines the water quality goals of a water body or portion thereof, in part, by designating the use or uses to be made of the water. States adopt water quality standards to protect public health or welfare, enhance the quality of water, and serve the purposes of the Clean Water Act. "Serve the purposes of the Act" (as defined in sections 101(a)(2), and 303(c) of the Act) means that water quality standards should:

- provide, wherever attainable, water quality for the protection and propagation of fish, shellfish, and wildlife, and recreation in and on the water ("fishable/swimmable"), and

- consider the use and value of State waters for public water supplies, propagation of fish and wildlife, recreation, agriculture and industrial purposes, and navigation.

These sections of the Act describe various uses of waters that are considered desirable and should be protected. The States must take these uses into consideration when classifying State waters and are free to add use classifications. Consistent with the requirements of the Act and Water Quality Standards Regulation, States are free to develop and adopt any use classification system they see as appropriate, except that waste transport and assimilation is not an acceptable use in any case (see 40 CFR 131.10(a)). Among the uses listed in the Clean Water Act, there is no hierarchy. EPA's Water Quality Standards Regulation emphasizes the uses specified in section 101(a)(2) of the Act (first bullet, above). To be consistent with the 101(a)(2) interim goal of the Act, States must provide water quality for the *protection and propagation of fish, shellfish, and wildlife, and provide for recreation in and on the water* ("fishable/swimmable") where attainable (see 40 CFR 131.10(j)).

DESIGNATED USES
40 CFR 131.3(f)

Uses specified in Water Quality Standards for each water body or segment whether or not they are being attained.

2.1.1 Public Water Supplies

This use includes waters that are the source for drinking water supplies and often includes waters for food processing. Waters for drinking water may require treatment prior to distribution in public water systems.

2.1.2 Protection and Propagation of Fish, Shellfish, and Wildlife

This classification is often divided into several more specific subcategories, including coldwater fish, warmwater fish, and shellfish. For example, some coastal States have a use specifically for oyster propagation. The use may also include protection of aquatic flora. Many States differentiate between self-supporting fish populations and stocked fisheries. Wildlife protection should include waterfowl, shore birds, and other water-oriented wildlife.

To more fully protect aquatic habitats and provide more comprehensive assessments of aquatic life use attainment/non-attainment, it is EPA's policy that States should designate aquatic life uses that

appropriately address biological integrity and adopt biological criteria necessary to protect those uses (see Appendix R).

TYPES OF USES
CWA SECTION 303(c)(2)(A)

- Public water supplies
- Protection and propagation of fish, shellfish, and wildlife
- Recreation
- Agriculture
- Industry
- Navigation
- Coral reef preservation
- Marinas
- Groundwater recharge
- Aquifer protection
- Hydroelectric power

2.1.3 Recreation

Recreational uses have traditionally been divided into primary contact and secondary contact recreation. The primary contact recreation classification protects people from illness due to activities involving the potential for ingestion of, or immersion in, water. Primary contact recreation usually includes swimming, water-skiing, skin-diving, surfing, and other activities likely to result in immersion. The secondary contact recreation classification is protective when immersion is unlikely. Examples are boating, wading, and rowing. These two broad uses can be logically subdivided into an almost infinite number of subcategories (e.g., wading, fishing, sailing, powerboating, rafting.). Often fishing is considered in the recreational use categories.

Recreation in and on the water, on the other hand, may not be attainable in certain waters, such as wetlands, that do not have sufficient water, at least seasonally. However, States are encouraged to recognize and protect recreational uses that do not directly involve contact with water, including hiking, camping, and bird watching.

A number of acceptable State options may be considered for designation of recreational uses.

Option 1

Designate primary contact recreational uses for all waters of the State, and set bacteriological criteria sufficient to support primary contact recreation. This option fully conforms with the requirement in section 131.6 of the Water Quality Standards Regulation to designate uses consistent with the provisions of sections 101(a)(2) and 303(c)(2) of the CWA. States are not required to conduct use attainability analyses (for recreation) when primary contact recreational uses are designated for all waters of the State.

Option 2

Designate either primary contact recreational uses or secondary contact recreational uses for all waters of the State and, where secondary contact recreation is designated, set bacteriological criteria sufficient to support primary contact recreation. EPA believes that a secondary contact recreational use (with criteria sufficient to support primary contact recreation) is consistent with the CWA section 101(a)(2) goal. The rationale for this option is discussed in the preamble to the Water Quality Standards Regulation, which states: ". . . even though it may not make sense to encourage use of a stream for swimming because of the flow, depth or the velocity of the water, the States and EPA must recognize that swimming and/or wading may occur anyway. In order to protect public health, States must set criteria to reflect recreational uses if it appears that recreation will in fact occur in the stream." Under this option, future revisions to the bacteriological criterion for specific stream segments would be subject to the downgrading provisions of the Federal Water Quality Standards Regulation (40 CFR 131.10).

EXHIBIT FPLE-17

Excerpt from the Water Reclassification Report of the Joint Standing Committee on Energy and Natural Resources, March 1986

STATE OF MAINE
112TH LEGISLATURE
SECOND REGULAR SESSION

WATER RECLASSIFICATION
REPORT OF THE JOINT STANDING COMMITTEE ON ENERGY AND NATURAL RESOURCES
MARCH 1986

MEMBERS:

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Sen. Judy C. Kany
Sen. Jerome A. Emerson

Rep. Michael H. Michaud, Chair *
Rep. Paul F. Jacques
Rep. James Mitchell
Rep. Vinton T. Ridley
Rep. James Reed Coles *
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working group including the professional biologist with PIIO. All definitions have been approved by the working group and the committee.

In the definition of indigenous (sub-§ 7), the legislature recognizes that in some waters of the State (e.g. impoundments) habitat in unsuitable to support all indigenous species. The intent of the legislature is that the chemical aspects of water quality not be a limiting factor to the survival of an indigenous species although that species may not occur in a water body for other reasons.

In the definition of "direct discharge" in sub§5, the committee intends that the term "rolling stock" includes all vehicles including trucks and railroad cars.

§467: Classification of major river basins

This section revises the description of classifications of major river basins, currently located in Title 38 MRSA section 368. §467 describes the classification of all rivers, streams and brooks which are in drainages with an area greater than 100 square miles. Several of these river basins are presently contained in Title 38 MRSA section 369. Unlike the present law, §467 describes classifications in standardized outline form to aid readability and subsequent revisions. §467 also differs from the present law by describing the classification of all segments of the main stems of major river basins as well as the main stems of major tributaries. Since most minor drainages described in §467 are Class B, the section is headed by an overall classification of Class B for waters which are not otherwise classified. This aspect of the revision results in a shorter, more understandable text and will aid subsequent revision. §467 also corrects a few geographical inconsistencies and errors in the present law.

§467 changes the classification of certain waters of the State. The following waters are upgraded to Class AA:

1. All rivers, streams, brooks or segments thereof within the boundaries of Baxter State Park; and

2. Outstanding river and stream segments which merit special protection as specified in the Maine Revised Statutes, Title 12, section 403, which are currently Class A in the water quality classification system and which also do not presently receive licensed discharges.

All waters currently classified as B-1 or B-2 are reclassified as "B" except for a few which are upgraded to Class AA and a stretch of the lower Kennebec which is classified as "C", reflecting its existing quality and the major discharges it receives. All waters currently classified as "C" remain assigned to that classification except for a