

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

FRIENDS OF MERRYMEETING BAY AND )  
ENVIRONMENT MAINE, )

Plaintiffs )

v. )

MILLER HYDRO GROUP, )

Defendant )

Civil Action No.  
2:11-cv-00036

**DECLARATION OF MARK ISAACSON**

I, MARK ISAACSON, being over 18 years of age and competent in all respects to testify, having personal knowledge of the facts set forth below, hereby state the following:

1. I am the President of Miller Hydro Group (“Miller Hydro”).

2. Since Miller Hydro provided the National Marine Fisheries Services (“NMFS”) with a draft Biological Assessment (“BA”) on December 22, 2011, NMFS has provided extensive comments regarding the BA. The comments have been made primarily to shorten and improve the flow of the document. However, NMFS and the U.S. Fish and Wildlife Service (“USFWS”) (NMFS and USFS, collectively, the “Agencies”) have focused even more on the Species Protection Plan (“SPP”). The BA is the Licensee’s document whereas the SPP is essentially an Agreement between the Agencies and the Licensee.

3. Based on consultation to date the Agencies and Miller Hydro have worked out an Agreement as follows:

a. Consultation between Miller Hydro and the Agencies will cover both the ongoing regular Section 7 consultation under the Endangered Species Act,

as well as the required emergency after-the-fact consultation for spillway replacement at the project.

- b. Miller Hydro will conduct up to 3 years of studies on the effectiveness of upstream and downstream fish passage at the Project beginning with the 2013 season.
  - c. Downstream fish passage studies will use traditional radio telemetry to determine the route of passage at the project and mortality and predation associated with the various routes. Hatchery fish will be placed upstream of the dam in the Project headpond and a suitable number of control fish will also be placed downstream of the power station as a control group and as a head pond group for the downstream Pejepscot Project assuming that coordination can continue. Upstream passage studies will use pit tags on the small number of fish that naturally come upstream from the lower projects.
  - d. Details of the actual study design will be developed in consultation with the Agencies prior to the commencement of the studies.
  - e. NMFS expects to issue an interim Incidental Take Statement (“ITS”) to provide “coverage” for Miller Hydro during this period and to allow Miller Hydro access to hatchery fish for downstream fish passage study.
  - f. With the issuance of the Biologic Opinion by NMFS this consultation will be complete.
  - g. Upon completion of the studies, Miller Hydro and the Agencies will re-initiate consultation and finalize a plan for any additional protective measures if results from the studies determine such measures are necessary.
  - h. The Federal Energy Regulatory Commission has indicated that it will add the agreed conditions to the project license as necessary.
  - i. Implementation will occur in the first migration season after any such protective measures are included in the license.
  - j. Based upon this implementation plan NMFS will issue an ITS that will be in effect until the issuance of a new license for the Project in 2023 or thereafter.
4. During the ongoing consultation process, NMFS has indicated that it does

not believe the Miller Hydro project is a threat to the Atlantic salmon species.

5. Miller Hydro and the agencies remain on track to meet the deadlines in the Updated Schedule.

Executed on March 5, 2012

/s/ Mark Isaacson

Mark Isaacson