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NEWS

State board rejects dredging appeals

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AUGUSTA — After nearly five hours of discussion, the state Board of Environmental Protection on Thursday afternoon denied a slate of appeals seeking to modify a state permit for a controversial dredging project in the Kennebec River next month.

Despite a 6-1 vote to deny the appeals, most of the board members admitted being conflicted about the issue, saying they were uncertain about studies used by the U.S. Army Corps of Engineers to argue that dredging work would cause minimal damage to wildlife in the river.

While the board's decision Thursday ended one path of recourse for opponents of the project — who say the unusual August timing of the dredging will have significant impacts on lobstering, shellfish harvesting, tourism and other summertime river uses — foes of the project have filed a challenge in federal court as well.

On Monday, the U.S. District Court in Bangor will hear oral arguments in the case, in which a coalition of local environmentalists, business owners and commercial fishermen assert that the Army Corps did not select the least environmentally damaging practicable strategy for carrying out the project, as required by law.

Army Corps attorney John Almeida and BIW attorney Matthew Manahan on Thursday told the Board of Environmental Protection that any delays in the start of the dredging could jeopardize the sailaway of the destroyer Spruance from Bath on Sept. 1. The project is necessary to clear buildups of riverbottom sand and ensure enough water depth for the ship to pass by Doubling Point and, proponents argue, Popham Beach.

Steve Hinchman, the West Bath lawyer representing the appellants, said the local group acknowledges that dredging is needed, but believes the scope of the proposed work is overkill.

The Army Corps plans to remove 70,000 cubic yards of sand and silt between the two locations and dump the spoils in an in-river site known as the Kennebec Narrows and south of Jackknife Ledge, off the shore of Popham Beach.

Hinchman represents a group that includes the Friends of Merrymeeting Bay, the Phippsburg Shellfish Commission, the Phippsburg Land Trust, the Kennebec Estuary Land Trust and others. Separate appeals were filed by Dot Kelly, who lives at Pleasant Cove Road in Phippsburg, overlooking one of the dredge disposal sites, and the duo of Ed Friedman and Douglas Watts.

Historically, dredging in the Kennebec has taken place between November and the end of April, when river businesses and wildlife are less active.

"August is the most damaging time of year to dredge the river," Hinchman told the board Thursday. "If you have to dredge the river, fine, dredge the river. Nobody wants to jeopardize national security. Nobody wants to jeopardize Bath Iron Works. But dredge the minimum necessary to get the ship out."

Hinchman said the Army Corps could remove less than 16,000 cubic yards of material at Doubling

Point, and none at all at the second proposed location near Popham Beach, and it would be enough for the Spruance to pass. The dredge spoils would be much less damaging to the wildlife, he argued, and could even more manageably be transported offshore or upland to avoid affecting the river wildlife at all.

He suggested that a second dredging project could be planned for the winter to dig the channel deeper if the Army Corps deems it necessary for future destroyer transits.

Hinchman also suggested other potential permit conditions the board could set that would allow the dredging to continue while mitigating some of the negative impacts. Among them were: Having a third party scientist monitor the water quality during the project, with the authority to stop the work if the spoils pollute nearby clam flats; and setting up a program through which lobstermen and shellfish harvesters could be compensated if they lose significant amounts of income because their fishing grounds are smothered by spoils or blocked by dredging equipment.

"We can solve this problem by taking a responsible, fair approach," Hinchman told the board. "This is not a group of radicals looking to stop this project regardless of how that impacts the rest of the nation."

Almeida countered that forcing the Army Corps to split the dredging work into two projects would double the cost at a time when federal funding is hard to come by.

He also argued that studies conducted on the river at the time of previous dredging projects — in 1967, 1982 and 1997, respectively — showed no significant impact to Kennebec River wildlife. Almeida told the board that dredging work is no more damaging to the river ecosystem than a heavy storm, and that the creatures that live in the Kennebec are accustomed to the tumult.

Further, he argued the project would be "short lived," and would likely be completed in less than five days.

"Studies have been conducted on these very issues (raised by Hinchman), and in fact, studies have been conducted on the Kennebec," Almeida told the board.

"All the evidence in the record indicates the (environmental) standards are met, and are easily met," Manahan added. "It won't have a significant impact on the lobster fishermen. It won't have a significant impact on the clam flats. It won't have a significant impact on fish species.

"We acknowledge that there will be more impacts than a winter dredge," he continued, "but those impacts are not unreasonable, and do not violate the standards."

John Portela, a member of Local S6 of the Machinists union, the largest labor union at BIW, testified before the board that the dredging is necessary to maintain the shipyard's competitive positioning. BIW's main competitor, Ingalls Shipyard in Mississippi, isn't faced with similar sailaway obstacles, he told the board.

But some board members voiced skepticism about the studies cited by the Army Corps. Board member Elizabeth Ehrenfeld, of Falmouth, said that because all previous dredging projects were conducted in the winter, research done on the impacts to the river on those occasions might not be illustrative of what effects might emerge in the summer.

Board member Matt Scott, of Belgrade, made a motion to place a condition on the permit that would require the Army Corps to dispose of the spoils upland or offshore, to avoid the problematic in-river dumping, but didn't receive a second.

Fellow board member Richard Gould, of Greenville, then made a motion to deny the appeals before the board Thursday. That motion received a second by Donald Guimond, of Fort Kent, and was approved by a 6-1 vote, although some board members said they voted for the denial begrudgingly.

Scott offered the lone dissenting vote.

"The board must do whatever it can do to see that the Spruance sails on time," board member Franklin Woodard, of Falmouth, said.

Chairwoman Susan Lessard said she wasn't convinced dredging 70,000 cubic yards is necessary, but said much of the available evidence indicated there would be minimal impacts to the habitat. She added that despite her misgivings, she believes five days of dredging could be endured if it meant getting the Spruance out of Bath on schedule.

"I'm going to support this motion, but part of me is not happy about it," she said.

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