

Index in text by **Speaker [in red]** and **Androscoggin comments [yellow shading]**. Page # is upper right. Page number in text is from original transcript PDF. Converted here verbatim, with index colors added.

- Andy Fisk, DEP pg. 4
- Susan Davies, DEP pg. 5
- Lee Dassler, pg. 9
- Bart Hague, pg. 13
- Paul Hunt, Portland Water District, pg.16
- Steve Sutter, pg. 18
- Steve Hinchman, Conservation Law Foundation, pg. 21**  
**Andro., pg. 23**
- Josh Royte, The Nature Conservancy, pg. 29
- Landis Hudson, Maine Rivers, pg. 31
- Jenn Burns, Maine Audubon, pg. 34**  
**Andro., pg. 35**
- Mike Barden, Maine Pulp & Paper Assoc., pg. 36
- Dusti Faucher, Friends of the Presumpscot, pg. 36
- Ron Faucher, pg. 37
- Nick Bennett, Natural Resource Council of Maine, pg. 38**  
**Andro., pg. 43**
- John Burrows, Atlantic Salmon Federation & Maine Rivers, 42**  
**Andro., pg. 44**
- David Jones, Public Works, Lewiston, pg. 48
- Ed Friedman, Friends of Merrymeeting Bay, pg. 50**  
**Andro., pg. 50**
- Neil Ward, Androscoggin River Alliance, pg. 57**  
**Andro., pg. 57**
- Richard Lawrence, pg. 59
- Richard Kelly, pg. 61
- Peter Milholland, Friends of Casco Bay, pg. 64**  
**Andro., pg 64**
- Greg Ponte, Kennebec Valley Trout Unlimited, pg. 69
- Lawrence Faiman, Androscoggin River Alliance, pg. 72**  
**Andro., pg. 72**

Page 1  
 1 STATE OF MAINE  
 2 BOARD OF ENVIRONMENTAL PROTECTION  
 3  
 4  
 5  
 6 \* \* \* \* \*  
 7 IN RE: WATER RECLASSIFICATION PROGRAM  
 2008 RECLASSIFICATION  
 8 OF CERTAIN MAINE WATERS  
 9 \* \* \* \* \*

10

11

12 PRESIDING OFFICER: ERNEST HILTON, CHAIRMAN

13

14

15 This hearing was held pursuant to Notice at the  
Ground Round, Civic Center Drive, Augusta Maine,

16 on September 18, 2008, beginning at 1:00 p.m.

17

18

19

20

21

22

23

24

25

ALLEY & MORRISETTE REPORTING SERVICE

207-495-3900

Page 2

1 (This hearing was held before the Board

2 of Environmental Protection, Ground Round, Civic

3 Center Drive, Augusta, Maine, on September 18,

4 2008, beginning at 1:00 p.m.)

5 \* \* \* \* \*

6 CHAIRMAN HILTON: Good day. My name is

7 Ernest Hilton, I'm the Chair of the Board of

8 Environmental Protection. We are here holding a

9 public hearing on proposed changes in the water

10 classification of certain waterbodies and the

11 adequacy of Maine's water quality goals and water

12 quality standards. This is in accordance with the

13 provisions of the State's Water Classification

14 Program, Title 38 MRSA, Section 464 to 469. I

15 will be the presiding officer of today's hearing.

16 Other Board members here today are Wing Goodale, a

17 biologist with the Biodiversity Research Institute

18 from Falmouth; Lissa Widoff, who resides in

19 Freedom; we have Andy Nixon, a retired business

20 executive from Brunswick; we have Richard Gould, a

21 code enforcement officer and former legislator and

22 retired teacher from Greenville; we also have

23 Nancy Ziegler, who is an attorney from South

24 Portland and Matt Scott, a retired aquatic

25 biologist from Belgrade. Do aquatic biologists

ALLEY & MORRISSETTE REPORTING SERVICE  
207-495-3900

Page 3

1 ever retire? I'm not sure. The Department staff  
2 person here today is or will be Susan Davies,  
3 she's not here exactly right now, water quality  
4 standards coordinator in the Bureau and Land and  
5 Water Quality. Bureau Director, Andrew Fisk is  
6 also present to address the Board's questions.  
7 The hearing recorder is Joanne Alley of Alley &  
8 Morrisette.  
9 The notice of today's hearing was published  
10 on August 27, 2008 in the Bangor Daily News, the  
11 Kennebec Journal, the Portland Press, the  
12 Lewiston Daily Sun, and the Waterville Morning  
13 Sentinel. Notice was also sent by e-mail on  
14 August 27, 2008 to individuals who were expected  
15 to have an interest in these proceedings. Copies  
16 of the sign-in sheets are on the podium. If you  
17 plan to speak and have not already done so, please  
18 sign in. I will not differentiate for purposes of  
19 this proceeding between persons speaking for or  
20 against the proposed changes since there are many  
21 parts of the proposal; therefore, there is only  
22 one sign-in sheet. Following the Department's  
23 presentation, I will be calling for testimony in  
24 the order that individuals have signed in.  
25 To assist recording of the testimony, I

ALLEY & MORRISSETTE REPORTING SERVICE  
207-495-3900

Page 4

1 would ask persons who are testifying to stand at  
2 the podium, state your name and residence and the  
3 name of the organization you represent. Speakers  
4 are asked to remain at the podium for questions  
5 following their presentation. I will invite  
6 questions first from Board members and then from  
7 Department staff. If you intend to submit  
8 exhibits into the record here today, please give  
9 one copy to Susan Davies for the official record.  
10 Written comments on the reclassification proposal  
11 may be submitted at today's hearing or following  
12 the hearing until 5 p.m., on Thursday, October 2,  
13 2008. All written comments or testimony submitted  
14 subsequent to the hearing should be addressed to  
15 Susan Davies, Maine Department of Environmental  
16 Protection, Statehouse Station 17, Augusta, Maine

17 04333.

18 Now, I'd like to note that because we're  
19 giving some extra time, I would ask that you all  
20 keep your statements quite brief. I'm going to  
21 allocate about four to five minutes per speaker.  
22 Any detail should be enclosed in a separate  
23 writing and then forwarded on to Ms. Davies.  
24 Today's hearing will be transcribed and made  
25 available to all Board members. Based on today's

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 5

1 testimony and written comments submitted before  
2 the comment deadline, DEP staff will prepare a  
3 final recommendation for consideration by the  
4 Board. Based on the complete record, the Board  
5 will vote to approve, deny or amend the  
6 reclassification proposal at a future Board  
7 meeting to be announced. Copies of the final  
8 recommendation will be available upon request. If  
9 you wish to receive a copy, please let Susan  
10 Davies know.

11 At this time, I would ask all persons  
12 intending to testify to please stand and be sworn  
13 in. Do you affirm the testimony you will give  
14 will be the truth?

15 (Whereupon, witnesses respond in the affirmative.)

16 CHAIRMAN HILTON: Are there any other  
17 questions before we proceed? So we'll hear  
18 testimony beginning with the staff, Andy Fisk, and  
19 I assume Susan -- you say she's on the way?

20 MR. FISK: Yes, she is.

21 CHAIRMAN HILTON: She'll be here shortly.  
22 Welcome, Andy.

23 MR. FISK: Thank you. Again, My name is  
24 Andrew Fisk. I'm the Bureau Director for Land and  
25 Water Quality. I'm here with Susan. It would

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 6

1 have ordinarily been David Courtenmanch, but he is  
2 out of the office so I'm spelling for Dave who's  
3 head of the Division of Environmental Assessment.  
4 I want to briefly review the process that has  
5 occurred to date. The Board in preparation for  
6 this public hearing has actually gone out and

7 solicited public input on a number of proposals.  
8 We have done that through direct receipt of  
9 proposals, conducting three public meetings.  
10 These public meetings were publicly noticed, and  
11 we also solicited attendance at these meetings  
12 from our list of interested stakeholders so that  
13 we could get a cross-section of ideas as well as  
14 comment on ideas that were submitted directly to  
15 us. As noted in the notice, we are in the process  
16 of the hearing, and then we will come back to you  
17 preparing recommendations for your consideration  
18 to advance to the Legislature.  
19 Very briefly, I'd like to go over the basis  
20 of our recommendations. Susan, do you want to  
21 come on up? The basis of our recommendations come  
22 from public input. This is a publicly-driven  
23 process. It is also a technical process, but it  
24 is driven by the public.  
25 CHAIRMAN HILTON: Mr. Fisk, would you bring

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 7

1 the microphone a little bit closer?  
2 MR. FISK: Sure, is that better?  
3 CHAIRMAN HILTON: Welcome, Ms. Davies.  
4 MS. DAVIES: Thank you.  
5 MR. FISK: So proposals will come to us for  
6 reclassification, change of classification of  
7 waters of the State. We look at them in any  
8 number of ways. It depends on the type of water  
9 body and the adjacent land uses and the actual  
10 status of licensed discharges into those water  
11 bodies. Smaller water bodies with minimal land  
12 use we would look at in a different fashion in  
13 terms of recommending something than a larger main  
14 stem river that traversed a very populated part of  
15 the State and that had many different types of  
16 dischargers and land use activities on them. We  
17 put a higher data bar on those types of proposals  
18 because in those instances we would need to be  
19 able to look at either existence of attainment of  
20 a proposed classification or the probability of  
21 attaining that, and for us to do that, that means  
22 we need to have data as well as the possible  
23 presence of a water quality model so we can run  
24 different scenarios and understand what the  
25 probability of attainment would be under the legal

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 8

1 requirements by which we issue licenses to those  
2 dischargers. So the main point is we may apply  
3 different filters and different bars in making our  
4 recommendations on proposals that are put in front  
5 of us.

6 I'll just briefly go over the proposals in  
7 summary and if Susan would like to add anything in  
8 terms of detail, you have the packet and the  
9 packet has been available for public review.

10 There are 17 proposals for upgrade. Just one of  
11 those is a marine proposal, 16 of them otherwise  
12 are river and stream proposals. I would like to  
13 note we have modified one proposal. The  
14 recommendation for the Class C to Class B change  
15 on the Kennebec from Shawmut to Messalonskee,  
16 Shawmut Dam to Messalonskee Stream. At this point  
17 we would like to modify that proposal to exclude  
18 the impoundments within that segment. As I think  
19 we described when we brought this forward to you  
20 initially, this proposal as it's written is  
21 contingent on us obtaining some dissolved oxygen  
22 data in those impoundments this season. It was a  
23 high flow year. We were not able to get the data  
24 that we would have liked to have obtained, so at  
25 this point we are not recommending that those

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 9

1 impoundings be upgraded, just the free-flowing  
2 segments. So that is a modification that's been  
3 in your proposal.

4 This is a little unique. As part of the  
5 package we actually have six proposals to change  
6 ambiguous or unclear classifications. This could  
7 range from a transition from the old Delorme  
8 paper-based world into GIS and higher resolution  
9 information has shown us sometimes we have  
10 ambiguous classifications or classifications that  
11 don't necessarily line up or the initial  
12 classification we find was not correct. We do  
13 also have one segment that is proposed for a use  
14 attainability analysis and, again, that is coming  
15 to you as a recommendation for you to decide or  
16 give us feedback about conducting a use

17 attainability analysis which is a process that you  
18 would go through separately to downgrade or create  
19 a sub-category of use on a particular urban  
20 stream, and then we do have three proposals that  
21 are not being recommended by the Department that  
22 we received, and this is largely because we do not  
23 feel that there is sufficient data to recommend  
24 those proposals at this time, and I believe you  
25 will hear testimony on those today and can help

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 10

1 you inform our position.

2 Susan, did you want to --

3 MS. DAVIS: No.

4 MR. FISK: Okay.

5 CHAIRMAN HILTON: Thank you, Mr. Fisk. Any  
6 questions from the Board? I was a little bit  
7 curious as to -- my understanding is that the  
8 statute requires that these be reviewed every  
9 three years, and it's been more than three years  
10 since the last time this took place. What's the  
11 time frame look like here? Why has it been so  
12 long?

13 MR. FISK: There are a number of time  
14 frames in the statute that we don't necessarily  
15 always get to that correct interval. Largely it  
16 was a question of staffing and having the staff  
17 resources to mount the work. Susan was named the  
18 water quality standards coordinator about three  
19 years ago or so, and, again, we felt that -- we  
20 had scoped this process close to 18 months or two  
21 years ago and we really felt like we have to plan  
22 about a full year of preparation and hearings, and  
23 that year slid for other priorities, largely  
24 getting our report submitted to EPA which says  
25 what are your impaired waters and what's the

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 11

1 status of the main waters. That was a very  
2 difficult process because it transitioned from an  
3 in-house database to a national database, and I  
4 can tell you Susan labored mightily in the salt  
5 mines on that project and it took about twice as  
6 long as we thought.

7 CHAIRMAN HILTON: I've been through one of  
8 these once before, and I'm curious as to whether  
9 there is any kind of a trajectory, if you will, as  
10 to the miles of upgrade that's done and whether  
11 the Department has any kind of sense about, say,  
12 15 years out given -- given your efforts to  
13 continually have your water quality permits issued  
14 on a five-year rotation, is there any kind of a  
15 sense as to where we might be, say, 10, 15, 20  
16 years out on this process?

17 MR. FISK: That's an excellent question,  
18 and I think that it's something that I know as a  
19 Department and myself personally how do you do  
20 that, and I think it's something that we should be  
21 doing more of which is let's come up with a long  
22 range plan for what our waters are going to look  
23 like and can we structure a conversation that  
24 captures water quality goals as well as capital  
25 investment and the dollars it would take to get to

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 12

1 a place. We don't do that well enough right now.  
2 So I think that, yes, the trend lines are all  
3 going towards higher classifications and more  
4 attainment of classifications, but I couldn't tell  
5 you what it would be over 15 years. It is still  
6 fundamentally an ad hoc iterative process over  
7 these three- or four-year windows.

8 CHAIRMAN HILTON: Yes, Susan.

9 MS. DAVIES: There has been over the years  
10 since the water quality standards program was  
11 changed back in 1987 there's been a great deal of  
12 activity in order to adjust the classification of  
13 specific water bodies to that change in the  
14 standards, and so I think that a lot of the  
15 activity that perhaps other boards have seen or  
16 that you saw previously is trying to get the  
17 assigned classification closer to what the current  
18 classification standards are in the currently  
19 existing law. So there's been a lot of sort of  
20 fixing the classifications to better match the  
21 standards and criteria that apply and that process  
22 has probably -- I wouldn't expect to see it as  
23 active as it has been in the future.

24 CHAIRMAN HILTON: Okay. Matt?

25 MR. SCOTT: I've got a follow-up question

ALLEY & MORRISSETTE REPORTING SERVICE  
207-495-3900

Page 13

1 for Susan. In this process, Susan, that we're  
2 going through right now as far as rate class goes,  
3 the Board adopted a few years ago the numerical  
4 and narrative standards on biological criteria,  
5 and three major orders that we use in that  
6 process. This doesn't change any of that I assume  
7 in what we're going through as far as the  
8 reclass?

9 MS. DAVIES: No.

10 MR. SCOTT: Those still would be applied as  
11 they are established?

12 MS. DAVIES: Correct.

13 MR. SCOTT: Thank you.

14 CHAIRMAN HILTON: Any other questions of  
15 staff? Thank you very much. So we'll start with  
16 the members of the public, and it might be a good  
17 idea to take that list and put it on the table to  
18 the side there, and, again, anyone else who wishes  
19 to sign up to speak, please do so. So we're going  
20 to start with Lee Dassler. Is Lee here?

21 MS. DASSLER: I am.

22 CHAIRMAN HILTON: And Bart Hague is on  
23 deck.

24 MS. DASSLER: Good afternoon. Thank you  
25 for letting me speak here today. My name is Lee

ALLEY & MORRISSETTE REPORTING SERVICE  
207-495-3900

Page 14

1 Dassler. I live in Bolsters Mills on the Crooked  
2 River. I've lived there for 16 years. I enjoy  
3 the presence of the river. I kayak on the river,  
4 and I moved there four years after the river was  
5 freed in Bolsters Mills, and everyone was talking  
6 about it when I moved in, but they were -- the  
7 village was very proud of the fact that their once  
8 dam had been unbuilt to allow the river to free  
9 flow again and for free transport of the fish  
10 upstream, and now that things have changed and I  
11 work with the land trust at this moment, I  
12 understand the importance of what the village had  
13 done in 1988.

14 What I'd like to talk about with you this  
15 morning briefly is the role of the western  
16 foothills land trust, a land trust based in

17 Norway, Maine, that works in a ten-town area in  
 18 western Maine, and the Crooked River runs in our  
 19 region and so we are very involved with the  
 20 river. Since 2005, 2006, sometime right around  
 21 that period, the Western Foothills Land Trust has  
 22 aligned itself with four other land trusts in our  
 23 region. We realize that not all natural resources  
 24 behave according to political boundaries, so it  
 25 was important for us to work on a regional basis.

ALLEY & MORRISSETTE REPORTING SERVICE  
 207-495-3900

Page 15

1 So we aligned with the Greater Lovell Land Trust,  
 2 Loon Echo Land Trust, Mahoosuc Land Trust, the  
 3 Upper Saco Valley River Land Trust and we work  
 4 together. Our first project was mapping all of  
 5 the conserved lands in the region that was  
 6 protected by those land trusts, and the second  
 7 project that was chosen was called the Crooked  
 8 River Initiative Project and we're in about the  
 9 first year and a half of that project, recognizing  
 10 the importance of the Crooked River to the entire  
 11 region that we serve. The Crooked River starts  
 12 just south of the Songo Pond up in Bethel and, of  
 13 course, runs eventually to the sea, but to Sebago  
 14 Lake prior to its running to the sea. So the  
 15 Initiative has had a wonderful partner to date and  
 16 that has been the Portland Water District, and  
 17 Paul Hunt from the Water District is here today  
 18 and will testify in just a bit, but those land  
 19 trusts are bringing to this collaborative the  
 20 tools that the land trust has access to, working  
 21 with landowners along the river corridor, offering  
 22 them conservation options and being there to help  
 23 assist in whatever way we can to conserve the  
 24 watershed along the Crooked River. The Portland  
 25 Water District, I think Paul will probably talk

ALLEY & MORRISSETTE REPORTING SERVICE  
 207-495-3900

Page 16

1 about the resources that the PWD has brought to  
 2 this project which have been magnificent, and we  
 3 are planning our first public meeting, the first  
 4 one of four initially, public meetings this autumn  
 5 to bring together people who are landowners along  
 6 the Crooked River Watershed, who are town

7 officials there, other conservation-minded people,  
8 people involved as stakeholders along the  
9 watershed, so opening up meetings to talk about  
10 what the Crooked River provides for our area and  
11 what needs to happen to see that its waters and  
12 its resources are properly conserved, and I'm  
13 pleased to say that on Monday we're partnering  
14 with another nonprofit, the National Nonprofit  
15 Light Hawk, and they're providing us with a plane  
16 and a pilot to fly the watershed and film it for  
17 these meetings we are going to have. So we'll  
18 have a visual overhead from source to sea of the  
19 Crooked River. I am not a fisherman nor do I eat  
20 fish, but the Crooked River is an impressive  
21 fisheries resource for the State of Maine, quite  
22 an asset for southern Maine and I know Susan has  
23 received a lengthy letter from France Brodigan of  
24 the Maine Department of Inland Fisheries and  
25 Wildlife, but I wanted to step out of my

ALLEY & MORRISSETTE REPORTING SERVICE  
207-495-3900

Page 17

1 non-fisheries self and read just a small paragraph  
2 from what he's written about the Crooked. The  
3 Crooked River not only supports a generically  
4 unique and indigenous salmon population but the  
5 river's relatively undeveloped and unspoiled  
6 shoreline in heavily developing southern Maine  
7 creates an attractive destination for anglers and  
8 other water-based outdoor enthusiasts. The  
9 Crooked also provides the closest opportunity for  
10 anglers in Maine's most populated region of the  
11 State to fish for wild landlocked Atlantic salmon  
12 in a river setting. The Crooked River is the  
13 crown jewel of riverine salmon and trout fishing  
14 in southern Maine, and other than two sections of  
15 the Saco River is the only other Class AA river in  
16 rapidly developing southern Maine. So he's the  
17 fisheries expert for the Inland Fisheries and  
18 Wildlife Department and really has quite a bit of  
19 faith and admiration for the Crooked River.  
20 I also would like to read something from a  
21 gentleman who is not here and also a gentleman  
22 I've not met except by e-mail, Bill Townsend, and  
23 Bill Townsend is a practicing attorney, and I  
24 signed him in saying that I would read for him.  
25 Bill Townsend is a practicing attorney in

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 18

1 Skowhegan, a former board member of the NRCM,  
2 current board member of the Atlantic Salmon  
3 Federation and current board member and past  
4 president of Maine Rivers, and Bill apologizes for  
5 not being able to drive here today but has sent  
6 this e-mail for me to read. The Crooked River is  
7 the principal spawning tributary of the indigenous  
8 wild landlocked salmon of Sebago Lake and  
9 generates as much as 70 percent of the species in  
10 the lake. The river was identified in 1982, Maine  
11 River Study, as one of only seven rivers which are  
12 the State's most significant inland fisheries  
13 rivers. It is the only one in the heavily  
14 populated southern part of the State. In the 1983  
15 Rivers Act, the Crooked River was designated as  
16 worthy of special protection because of its  
17 fisheries resource. John and Marilyn Hatch have  
18 applied to the Maine Department of Environmental  
19 Protection for a permit to construct and operate a  
20 water powered saw mill at Scribners Mill on the  
21 Crooked River basically as a tourist attraction.  
22 The Hatches concede in their application that they  
23 have alternative methods of powering their  
24 proposed sawmill. The fisheries value of the  
25 Crooked River should not be compromised. A free-

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 19

1 flowing river in which wild native landlocked  
2 salmon have existed since the retreat of the  
3 glaciers should take priority of the develop plans  
4 proposed by Mr. and Mrs. Hatch. So that's the end  
5 of what Bill wrote. And I think as a resident of  
6 Bolsters Mills, it took us as a human community  
7 150 years of blocking that river via dams, and  
8 worthwhile dams, dams that powered our early  
9 settlements along the Crooked River in that area,  
10 but that river was blocked for 150 years and now  
11 it's time that it remains unblocked, and I would  
12 urge the Board to reclassify the river as a double  
13 A river. Thank you very much.  
14 CHAIRMAN HILTON: Any questions for Ms.  
15 Dassler?  
16 MS. DASSLER: Okay.

17 CHAIRMAN HILTON: Thank you very much.

18 Bart?

19 **MR. HAGUE: I am Bart Hague, a landowner in**  
 20 Waterford, 376 McWayne Hill Road. I'm also a  
 21 board member, very much involved in the land trust  
 22 and the Crooked River Initiative that Lee referred  
 23 to, as well as now the president of the Congress  
 24 of Lakes Association. All these organizations  
 25 have real concern and interest in the protection

ALLEY & MORRISSETTE REPORTING SERVICE  
 207-495-3900

Page 20

1 of the Crooked River which supplies 70 percent of  
 2 the direct water flowing into Lake Sebago. Paul  
 3 hunt will tell you about the importance of the  
 4 river, the headwaters protection measures, as well  
 5 as the lake searching 200,000 people or more. I  
 6 have culminated a career in water quality  
 7 management, including water quality standards and  
 8 land protection going back to the days of Stewart  
 9 Udall with the National Park Services Initiatives  
 10 to identify and stake out and obtain protection of  
 11 the national seashores, and particularly the wild  
 12 and scenic rivers, very much involved in the  
 13 development of that legislation, and part of that  
 14 we had great hopes that the states would develop  
 15 statewide wild and scenic rivers to protect free  
 16 flowing rivers of regional and state interest, and  
 17 Maine is to be commended with its Maine Rivers Act  
 18 back in the early eighties, I believe, partly as a  
 19 result of some of the issues with Big A and has  
 20 adopted a program and designated, among others,  
 21 the Crooked River as an outstanding river in the  
 22 classification. Now, the water quality standards  
 23 of which I was involved since 1965 Clean Water Act  
 24 essentially evolved as a -- from a series of  
 25 public hearings just like this one where the

ALLEY & MORRISSETTE REPORTING SERVICE  
 207-495-3900

Page 21

1 public stated the kinds of uses that they sought  
 2 for their rivers. I even testified at a hearing  
 3 in the Washington area. Then with the designated  
 4 uses, and we'll hear about the uses and values of  
 5 the Crooked River today, water quality standards  
 6 essentially reflected the chemical, the physical

7 and, above all also, the biological criteria that  
8 is deemed by the scientists necessary to sustain  
9 those uses, and I think that's what we're talking  
10 about today. The Crooked River is outstanding as  
11 far as contributing high quality water. It's  
12 classified as AA except for a couple of segments.  
13 I think one segment now. It's an integrated  
14 system, in other words, you don't want to break  
15 it. You want to have a standard classification  
16 for this river because the water quality with  
17 water temperature and so on and also particularly  
18 the salmon fishery, it supports one of the four  
19 native -- genetically native species of landlocked  
20 salmon in the State of Maine, and continuity of  
21 the river as far as flow, as far as water quality,  
22 as far as temperature concern is critical, should  
23 not be broken. To give you a picture of the river  
24 itself, this is from Waterford, the Town of  
25 Waterford's Planning and Implementation Committee

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 22

1 recommended on scenic areas, these are all photos  
2 showing the Crooked River and these photos here,  
3 three of them, are part of the McDaniel's Rips  
4 that are on part of our family place, which has  
5 been in our family and I put on the National  
6 Register, the whole place, since 1920s. This  
7 shows the kind of habitat we're talking about. I  
8 used to take the school teachers down with their  
9 children who would raise salmon fry to put them in  
10 here because it was deemed to be an excellent place  
11 for spawning and for raising the salmon. Any dams  
12 or other impediments downstream or break in the  
13 triple A -- the double A classification -- I guess  
14 I'm going for more now -- would diminish somewhat  
15 the value of this. Now, the principal thing I  
16 wanted to emphasize is as a culmination of my  
17 career melding water quality and landscape  
18 protection, we have donated last December a  
19 conservation easement protecting the rapids I  
20 mentioned, McDaniel's Rips, protecting our  
21 ownership of a mile and a half of the river as  
22 well as 350 acres of the parcel that constituted  
23 the headwaters. I walked this site with Francis  
24 Brodigan of IFW with Paul Hunt and Ron Faucher of  
25 the Portland Water District, various land trust

ALLEY & MORRISSETTE REPORTING SERVICE  
207-495-3900

Page 23

1 people, including Lee, in giving serious  
2 consideration whether to include this headwater's  
3 land because it was tying up a lot of land. I  
4 concluded that we really needed to emphasize  
5 protecting those very small but critical headwater  
6 streams. We gave up -- we've given up rights to  
7 develop the old mill site that was at those rips  
8 in the picture because we felt it was critical to  
9 maintain the values of this free-flowing river.  
10 The whole water quality standards issue is to have  
11 the standards meet the criteria that are really  
12 required for the designated uses and the emphasis  
13 is on an integrated system. We have the salmon  
14 spawning, for example, which would be impaired by,  
15 for example, additional blockage of the flow as  
16 far as not only migration but also any changes in  
17 temperature upstream, but all this is downstream  
18 and affecting us because it's affecting the kind  
19 of fish migration that we're trying to protect.  
20 There is also the issue of maintaining and  
21 emphasizing --  
22 CHAIRMAN HILTON: Mr. Hague --  
23 MR. HAGUE: And carrying forward the Maine  
24 Rivers Act, the concept of a free-flowing river.  
25 CHAIRMAN HILTON: Mr. Hague? Mr. Hague?

ALLEY & MORRISSETTE REPORTING SERVICE  
207-495-3900

Page 24

1 MR. HAGUE: Yes.  
2 CHAIRMAN HILTON: We have a number of  
3 people who want to speak today.  
4 MR. HAGUE: Okay, fine, sure. All I can  
5 say is that we have due respect. We know that  
6 there is a dam issue here lurking behind us. We  
7 have due respect for the efforts of the Scribner  
8 Hatch family to develop the water power site. We  
9 feel that the kind of mill that they would be  
10 providing, the kind of historic value, can be done  
11 without having to further dam the river or  
12 interfere with reclassifying the river.  
13 CHAIRMAN HILTON: Any questions?  
14 MR. HAGUE: Oh, and I will introduce for  
15 the record the first three or four pages of our  
16 conservation easement.

17 CHAIRMAN HILTON: Thank you, Mr. Hague.  
 18 Are there any questions for Mr. Hague?  
 19 MR. SCOTT: One quick question.  
 20 CHAIRMAN HILTON: Bart? Mr. Hague?  
 21 MR. HAGUE: Excuse me.  
 22 MR. SCOTT: For the record, how many years  
 23 did you work for EPA? How many years did you  
 24 spend with EPA? Would you tell the Board for the  
 25 record?

ALLEY & MORRISSETTE REPORTING SERVICE  
 207-495-3900

Page 25

1 MR. HAGUE: What?  
 2 MS. DAVIES: How many years at EPA?  
 3 MR. HAGUE: Oh, I was one of the founding  
 4 members. I've been in this game actually 42 years  
 5 when I retired. I was with Stewart Udall and I  
 6 started a federal career with the forest and then  
 7 with Eisenhower's public works planning staff but  
 8 I went with Udall so that makes it 42.  
 9 MR. SCOTT: Okay, 42. Thank you.  
 10 CHAIRMAN HILTON: Thank you very much, Mr.  
 11 Hague. We have Paul Hunt next and then Steve  
 12 Sutter.  
 13 MR. HUNT: Good afternoon, Members of the  
 14 Board. My name is Paul Hunt, a resident of Gorham  
 15 and for the last nine years I've been the  
 16 environmental manager with the Portland Water  
 17 District. Before that for five years I was the  
 18 source water protection coordinator at the Maine  
 19 Drinking Water Program responsible for  
 20 coordinating protection of all sources of drinking  
 21 water in Maine.  
 22 As you may know, the Portland Water District  
 23 is Maine's largest water and wastewater utility  
 24 responsible for providing drinking water to one  
 25 out of six Maine residents living in 11 Maine

ALLEY & MORRISSETTE REPORTING SERVICE  
 207-495-3900

Page 26

1 communities. The source of water for these  
 2 200,000 Mainers is Sebago Lake. When you consider  
 3 how many customers we serve and add to that the  
 4 hundreds of thousands more that use Sebago Lake to  
 5 live, to work, to enjoy outdoor recreation, it's  
 6 easy to see why we certainly think Sebago Lake is

7 one of Maine's most important natural resources.  
8 So what does that have to do with the  
9 reclassification of the segment of the Crooked  
10 River at Scribner's Mills? I'm here to testify  
11 today because the Crooked River is the most  
12 important feeding tributary to Sebago Lake. As  
13 goes the Crooked River, so goes Sebago Lake.  
14 Treatment of water is one of the ways that we  
15 ensure that the water is safe to drink. Our  
16 treatment plant represents an investment of over  
17 20 million dollars in 1993 and it will be upgraded  
18 in the next five years to enhance its ability to  
19 disinfect water as required by recent amendments  
20 to the Federal Safe Drinking Water Act. The  
21 ultimate cost and effectiveness of any treatment  
22 enhancements are a function of the quality of the  
23 water that we start with. The cleaner the lake,  
24 the less expensive it is to treat and the more  
25 effective is the treatment. Because dirtier water

ALLEY & MORRISSETTE REPORTING SERVICE  
207-495-3900

Page 27

1 generally requires addition of more and varied  
2 chemicals, many of which produce unhealthy  
3 disinfection by-products, the cleaner the lake,  
4 the safer the water as well. Source protection,  
5 therefore, is the most important public health  
6 barrier that water utilities employ. Nothing  
7 works as well as simply keeping pollutants out of  
8 the lake in the first place. The Federal Safe  
9 Drinking Water Act states clearly what one of our  
10 legal obligations is, and, I'll quote, control of  
11 all human activities which may have an adverse  
12 impact on the microbiological quality of the  
13 source water. The irony in that requirement is  
14 that it falls on water utilities and, yet, in  
15 Maine, the authority for actually protecting lakes  
16 and rivers that serve as sources of drinking water  
17 rests with the State, not with the utilities. So  
18 I'm here because we are relying on you.  
19 Reclassifying the Crooked River to the highest  
20 designation in Maine law will provide the greatest  
21 level of protection possible to the primary  
22 tributary to Sebago Lake. Keeping Sebago Lake  
23 clean will protect the health of our customers  
24 better than any form of treatment we can provide  
25 and for millions of dollars less. That's why I'm

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 28

1 here to ask you to support the reclassification.  
2 CHAIRMAN HILTON: Thank you, Mr. Hunt. Any  
3 questions of Mr. Hunt? Thank you. Steve Sutter  
4 followed by Steve Hinchman, and I would remind the  
5 speakers to keep your -- if you have already  
6 prepared remarks, just give a copy to the reporter  
7 and to Terry and keep it down to maybe three or  
8 four minutes or so, if you could.

9 MR. SUTTER: My name is Steve Sutter. I'm  
10 a citizen/owner of a ten-acre riverfront property  
11 on the Aroostook River between Presque Isle and  
12 Caribou, and it's what's left of a farm that's  
13 been in the family since 1854. I'm sure you've  
14 noted in the reclassification package that the  
15 segment from Presque Isle to Caribou did not move  
16 forward from C to B in both 2002 and 2008. I am  
17 the author of both of the proposals. The strength  
18 of my latest proposal is demonstrated by DEP,  
19 their acknowledgment that the water quality model  
20 authored by Paul Mitnick predicted Class B  
21 dissolved oxygen attainment from Presque Isle to  
22 Caribous at simultaneous maximum loading from all  
23 point sources on the river. That's a remarkable  
24 achievement to stay within such a huge margin of  
25 safety; furthermore, the BOD5 and TSS standards

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 29

1 were issued by US EPA in 1977. The technologies  
2 have undoubtedly improved and based on my most  
3 recent EPA data, normal BOD loadings by  
4 dischargers on the Aroostook are most likely below  
5 35 percent maximum loading. Even more remarkable,  
6 Maine DEP bio-monitoring at Station #595, just  
7 across the river from my property indicated Class  
8 B attainment in late August of 2001 at 7Q10.  
9 That flash summer drought facilitated the largest  
10 study effort ever done by DEP in Aroostook County.  
11 That drought was a miracle for me and I had prayed  
12 for it. With the Department's data, I can  
13 demonstrate the Presque Isle to Caribou stretch  
14 could reasonably be expected to even meet the  
15 draft total phosphorus limits for Class B at  
16 normal or even maximum TP loadings. I'll send all

17 of this in or hand it in, but in that miracle  
 18 drought August 2001, McCain, the largest  
 19 phosphorus source discharging out at 77 percent of  
 20 it's flow, about 77 percent of total phosphorus.  
 21 The relationship to the R is .95. The range in TP  
 22 concentrations at those three monitoring sites  
 23 between Presque Isle and Caribou was from 11 to 26  
 24 parts per billion, a median of 18.5. Guess  
 25 what? That demonstrates that the Department's

ALLEY & MORRISETTE REPORTING SERVICE  
 207-495-3900

Page 30

1 draft TP limits currently at 20 parts per billion  
 2 for A, 33 for B, it appears the river from Presque  
 3 Isle to Caribou at 7Q10 was closer to Class A than  
 4 Class B.  
 5 Finally, maximum loadings pending nutrient  
 6 criteria and an assertion the complex model may  
 7 have to be re-built because algal activity may  
 8 have increased are all relatively weak bases that  
 9 I believe are being used by the Department to  
 10 thwart my strong upgrade proposal. A fact often  
 11 misunderstood by the public is that assimilating  
 12 wastewater is not a designated use of Maine  
 13 waters. I believe reclassification should be  
 14 based solely on water quality assessment. The DEP  
 15 regional office in Presque Isle recommends this  
 16 decision be deferred until 2012 or likely beyond.  
 17 My recommendation is that this upgrade proposal be  
 18 included among those recommended to the  
 19 Legislature at this time based on Title 38,  
 20 Section 464.4.F(4), that's antidegradation, and  
 21 I'll read it briefly, when, that's my emphasis,  
 22 the actual quality of any classified water exceeds  
 23 the minimum stands of the next highest  
 24 classification, that higher water quality must be  
 25 maintained and protected. The Board, my emphasis,

ALLEY & MORRISETTE REPORTING SERVICE  
 207-495-3900

Page 31

1 shall recommend to the Legislature that the water  
 2 be reclassified into the next higher  
 3 classification. A minor point is that  
 4 towards the end of June, the regional office in  
 5 Presque Isle told me that I would now need to go  
 6 through FOIA, Freedom of Information Act, to look

7 at discharge monitoring reports. That was new.  
8 That didn't bother me because I had some left over  
9 from several years ago to do this analysis, but as  
10 a public member, I'm disturbed and privately I'm  
11 impressed.

12 So I've said my piece as briefly as I can.

13 As a citizen of Aroostook who rushed to get here,  
14 thank you for your consideration.

15 CHAIRMAN HILTON: Any questions of Mr.  
16 Sutter?

17 MR. SCOTT: Yes, Chairman.

18 CHAIRMAN HILTON: Yes, Matt.

19 MR. SCOTT: Steve, I want to make it clear  
20 for the record that you're proposing to support  
21 the upgrade from class --

22 MR. SUTTER: C.

23 MR. SCOTT: C to --

24 MR. SUTTER: B, only between Presque Isle  
25 and Caribou. It will never make it from Caribou

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 32

1 to Fort Fairfield.

2 MR. SCOTT: I just wanted it clear for the  
3 record, though. Thank you.

4 CHAIRMAN HILTON: Yes, Mr. Goodale.

5 MR. GOODALE: Just very briefly, here in  
6 our packet it says need to consider pending  
7 nutrient rules. I know you didn't speak to that  
8 but if you could just in 30 seconds just reiterate  
9 your thoughts on that.

10 MR. SUTTER: Yeah, in 2001 the phosphorus  
11 was in parts per billion and McCain is the largest  
12 source of phosphorous and was discharging close to  
13 their maximum based on the volume calculated.  
14 Now, in an earlier meeting the Board had you were  
15 introduced to draft TP concentrations in parts per  
16 billion. I don't know if you saw that slide but I  
17 used those to demonstrate that back in 2001 the  
18 big study, the river would have been closer to A  
19 than B between Presque Isle and Caribou. There's  
20 Maysville and there are two other monitoring  
21 stations there. So I'm not worried about total  
22 phosphorus.

23 MR. GOODALE: Thank you.

24 CHAIRMAN HILTON: Thank you.

25 MR. SUTTER: Thank you.

ALLEY & MORRISSETTE REPORTING SERVICE  
207-495-3900

Page 33

1 CHAIRMAN HILTON: Steve Hinchman, followed  
2 by Josh Royte.

3 **MR. HINCHMAN: Good afternoon, Chairman**

4 Hilton, Members of the Board, my name is Steve  
5 Hinchman, I'm the staff attorney for the  
6 Conservation Law Foundation in our Brunswick,  
7 Maine office. CLF has been involved in protection  
8 of water quality in Maine for many years,  
9 including some of the waters that are in the  
10 memorandum under consideration for  
11 reclassification today.  
12 State water quality classification State  
13 standards are at the heart of the Clean Water Act  
14 and the decisions you make recommending to the  
15 State Legislature in terms of water quality may be  
16 among the most important decisions you make as a  
17 Board. I want to emphasize that the Act requires  
18 the restoration and maintenance of the chemical,  
19 physical and biological integrity of our nation's  
20 waters and that was written by our own Ed Muskie.  
21 The way that is done is through enforcement of  
22 State water quality standards and it's designed  
23 for continual improvement, and there's two  
24 principles that I hope to convey to you that you  
25 can use as you look at each one of these

ALLEY & MORRISSETTE REPORTING SERVICE  
207-495-3900

Page 34

1 recommendations.

2 The first is what's called the  
3 antidegradation provisions, and it's a flat out  
4 mandate. You could never enact this in today's  
5 legislature, either State or Federal, but this is  
6 what the law is, existing uses in water quality to  
7 protect those uses shall be protected and  
8 maintained. So where existing uses are not  
9 protected, in other words, the existing water  
10 quality is higher than the current classification,  
11 you must raise the classification, and when you  
12 make that consideration, you are allowed to  
13 consider industrial use as a designated use of  
14 water, but that's process water, in other words,  
15 that's the input pipe. You are not allowed to  
16 consider waste discharge and waste transport as a

17 designated use. So you're not allowed to consider  
 18 the discharge pipe for the industrial use. I just  
 19 want to make that part clear. So when the  
 20 Department memo says we can't verify that this  
 21 body of water, the Aroostook, for example, the one  
 22 that was just described, will meet the higher  
 23 class at maximum license load, that is an illegal  
 24 criterion. If you make your decision on that  
 25 basis, it's contrary to the Clean Water Act. So

ALLEY & MORRISETTE REPORTING SERVICE  
 207-495-3900

Page 35

1 that's probably the most important piece of that,  
 2 but the corollary under antidegradation is you  
 3 can't downgrade an existing classification and  
 4 remove an existing use if it's meeting that use.  
 5 The second principle that's very, very  
 6 important here could be described as an anti  
 7 backsliding rule, and that you may not downgrade  
 8 waters that fail to attain designated uses. If  
 9 those uses are attainable through implementation  
 10 of effluent limits, either the national  
 11 technological standards or water quality based  
 12 standards or through national performance  
 13 standards, and before you could recommend such a  
 14 removal, you must do a use attainability analysis,  
 15 and those are very strict, proscribed procedures,  
 16 and these are the two ways that the Clean Water  
 17 Act achieves this goal of continual improvement.  
 18 As we get better, we have to protect that new  
 19 higher water quality, and you can't give up and  
 20 lower standards and make it easier to pollute.  
 21 CLF supports the upgrades recommended by the  
 22 staff memorandum, indeed, most of them because of  
 23 the reasons I just described are actually legally  
 24 required, specifically if a water body currently  
 25 meets that higher classification, you must approve

ALLEY & MORRISETTE REPORTING SERVICE  
 207-495-3900

Page 36

1 that upgrade and that's true even if a licensed  
 2 discharger will then when their current permit  
 3 expires be forced to upgrade their water treatment  
 4 system. That's the design of the Act. There's no  
 5 vested right to pollute, rather the Act requires  
 6 continual improvement. So any discharger may

7 continue under their current permit for the  
8 remainder of the permit's five-year term, but upon  
9 renewal, if necessary, they may have to invest in  
10 additional control.

11 The Androscoggin is another river as a case  
12 in point on that. The Department has taken the  
13 position that it cannot in good faith recommend  
14 the upgrade. This is on page 29 of the staff  
15 memo, and I'll just read you their words, that the  
16 sampling intensity in a number of sampling  
17 locations are insufficient to determine the  
18 likelihood of attaining a Class B water quality  
19 criteria at maximum licensed loads. Whether or  
20 not the Androscoggin deserves to be upgraded, that  
21 is an irrelevant consideration. You can't base  
22 your decision on the requirements laid out here  
23 that you have to look at maximum -- new water  
24 quality monitoring at maximum license load. The  
25 Act says you can't consider waste transport when

**ALLEY & MORRISETTE REPORTING SERVICE**  
207-495-3900

Page 37

1 you make your decisions. I also want to point out  
2 that it's ridiculous -- you all know and we know  
3 this from the Androscoggin hearings, if you were  
4 lucky enough to be there, nobody operates at  
5 maximum license load. It's designed for a buffer  
6 so they can safely operate the facility and not  
7 get a violation because violations trigger all  
8 sorts of consequences. So that maximum license  
9 load provision creates an unnecessary and  
10 artificially high bar that's very hard to clear,  
11 both on the Aroostook and the Androscoggin.  
12 Second, as I already said, it's illegal; and,  
13 third, many of the dischargers have recognized  
14 that generally increasing classification is a good  
15 thing. It's been shown over and over again that  
16 clean water is an economic boom. We've seen that  
17 in Boston Harbor, Portland Waterfront, the Auburn  
18 Riverfront, Merry Meeting Bay and the Kennebec.  
19 This will be good for Maine. We believe that the  
20 data on the Androscoggin which the Department  
21 itself says they have no reason to doubt is  
22 sufficient to show that existing uses in the lower  
23 Andro are improving and that the river should be  
24 protected with higher bacteria and dissolved  
25 oxygen standards under the Class B designation.

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 38

1 I just want to emphasize that the criterion  
2 for the Aroostook River, which is page 30 of the  
3 staff memo, the Department has definitively found  
4 that the river's existing conditions currently  
5 meet Class B. The Department cannot require a  
6 showing that it would also meet Class B under  
7 maximum license load, nor can it require a showing  
8 that it would meet Class B for some future  
9 nutrient standard that hasn't even been  
10 promulgated. You have to look at current  
11 conditions. It meets the standard under current  
12 conditions right now according to the Department's  
13 own data and, therefore, you're required to  
14 recommend the upgrade.

15 Our next major concern is Long Creek, which  
16 is page 22 of your memo. The Department is  
17 proposing to lower the classification of .3 miles  
18 in Long Creek from B to C. Again, here's the  
19 legal standard, you can recommend to the  
20 Legislature and the Legislature can so move to  
21 reduce the standards, in other words, lower the  
22 designated uses only if after conducting a use  
23 attainability analysis it's conclusively shown  
24 that the current standard which in this case would  
25 be Class B is not attainable through

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 39

1 implementation of effluent limitations and  
2 national performance standards. As you may know,  
3 Conservation Law Foundation has filed a petition  
4 with the Environmental Protection Agency seeking a  
5 determination that stormwater discharges into Long  
6 Creek that contribute to the nonattainment of the  
7 Class B standard, that would be the hotels, golf  
8 courses, office buildings and big box stores in  
9 the upper part of that watershed, so you're on the  
10 upstream side of 95 in the headwaters of Long  
11 Creek, not the Mall side but the other side, most  
12 of which were built after this designation went  
13 into law in 1990 that these dischargers must  
14 obtain Clean Water Act permits and begin to  
15 implement controls to clean up their waste. EPA  
16 is, we're told, weeks away from issuing a decision

17 on that and we're told that any property with more  
 18 than one acre impervious service will begin to  
 19 have to control their storm waters to start curing  
 20 the problem in Long Creek. So in this case, the  
 21 State cannot complete a UAA until that process  
 22 goes forward; in other words, you'll never know if  
 23 use is attainable through implementation of  
 24 effluent standards until you actually start  
 25 implementing permits and effluent standards. So

ALLEY & MORRISSETTE REPORTING SERVICE  
 207-495-3900

Page 40

1 we would oppose downgrading that section and, in  
 2 fact, we think it's illegal and the Department  
 3 says we're going to clarify that it should have  
 4 been C not B. There's no ambiguity here, there's  
 5 nothing to clarify. This is not like the Trout  
 6 Brook example where the body of water is on the  
 7 town line and one town has B, one town has C.  
 8 This is clearly in Westbrook, it's clearly B, it's  
 9 been managed as B for 19 years, there's no  
 10 ambiguity, there's nothing to clarify. If the  
 11 Department wants to move forward with downgrading,  
 12 it has to do a UAA.  
 13 The final point is Jepson Brook in Lewiston.  
 14 Here the Department is recommending a UAA.  
 15 They're following the correct procedure. We agree  
 16 with the Department in its response to the  
 17 Lewiston proposal that there's no process under  
 18 the Clean Water Act to de-list a stream, to render  
 19 it suddenly and magically no longer waters of the  
 20 U.S. The problem, however, is very similar to  
 21 Long Creek. The only cause of the pollution here  
 22 is urban stormwater. The Department has never  
 23 tried to regulate urban stormwater so how can it  
 24 determine that attainment is not possible through  
 25 implementation of best management practices and

ALLEY & MORRISSETTE REPORTING SERVICE  
 207-495-3900

Page 41

1 other controls if it's never been done and never  
 2 been required. I'd also point out that this is a  
 3 very slippery slope -- I'm almost done -- there  
 4 are many, many urban impaired streams in Maine and  
 5 the other New England States. Everybody is  
 6 watching Jepson Brook, the City of Bangor, for

7 example, here in Maine but also down in Boston.  
8 This is a flood gate. You open this flood gate  
9 and you're going to get proposals for every urban  
10 impaired stream in the State, but it's a problem  
11 to get that water body cleaned up so I'll just  
12 make a recommendation for you that you might  
13 choose to pass on to the Department. A more  
14 reasonable approach would be to direct the  
15 Department to blend the UAA process with the  
16 residual designation process and ask them what  
17 portions of the stream can be brought back through  
18 best management practices and stormwater controls  
19 that currently don't exist and which portions of  
20 the stream, for example, because it's underground  
21 in a culvert will never be brought back and come  
22 back to you with a mixture of recommendations for  
23 classification that reflect the requirements of  
24 the UAA.  
25 I'm sorry I ran on. I'm happy to answer

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 42

1 questions.

2 CHAIRMAN HILTON: Nancy.

3 MS. ZIEGLER: Back to Long Creek, what are  
4 you proposing? You're concerned about what the  
5 Department is doing, but what would you like to  
6 see happen?

7 MR. HINCHMAN: I would like you -- right  
8 now the Department is recommending to downgrade .3  
9 miles from B to C and I recommend that you reject  
10 that proposal as not authorized by the Act until  
11 you've done a UAA.

12 MS. ZIEGLER: Thank you.

13 CHAIRMAN HILTON: Matt.

14 MR. SCOTT: Steve, you obviously support  
15 the antidegradation policy which the Board does as  
16 well, and in this process that we're working,  
17 every few years we're continually ratcheting in  
18 this process of upgrades. Do you see any -- in  
19 relation to Chairman Hilton's question about  
20 looking into the future, would there be some  
21 narrative language in the four classes that might  
22 be changed over time in your opinion that would  
23 support the ratcheting process? Do you envision  
24 anything like that or are you satisfied with the  
25 narratives that are already in the language?

ALLEY & MORRISSETTE REPORTING SERVICE  
207-495-3900

Page 43

1 MR. HINCHMAN: One springs to mind  
2 immediately and it has to do with the difference  
3 between recreational use in and on the water  
4 between B and C. If you look at the numerical  
5 criteria in the statute for B and C, you'll see  
6 that the bacteria criteria, E-coli criteria, are  
7 more stringent in B than they are in C, but the  
8 reason for that is not explained in the narrative  
9 criteria. The point obviously is that, for  
10 example, body contact and recreational, that  
11 there's less risk of disease because there's less  
12 bacteria in a Class B stream than there is in a  
13 Class C stream. I think clarifying that the  
14 intent of a Class B standard is to enhance the  
15 recreational opportunities, particularly body  
16 contact recreation, would go a long way toward  
17 pushing us towards the type of water restoration  
18 we're seeking in Maine which is to allow Mainers  
19 and visitors to Maine to maximize recreational use  
20 of our great rivers and streams and estuaries.  
21 MR. SCOTT: So not only the narrative but  
22 you related in your response to the numericals as  
23 well?  
24 MR. HINCHMAN: Yeah, I haven't looked to  
25 see if the numerical criteria should be changed or

ALLEY & MORRISSETTE REPORTING SERVICE  
207-495-3900

Page 44

1 not. I'd just point out that there's no  
2 explanation in the narrative of why there are two  
3 different numerical standards between B and C on  
4 E-coli. Also the Basin is one of the places I  
5 frequent that's on the list is one of the most  
6 spectacular places in the Maine Coast, and I  
7 highly recommend the upgrade and a visit.  
8 MR. SCOTT: Thank you.  
9 CHAIRMAN HILTON: Yes, Nancy.  
10 MS. ZIEGLER: If you do a UAA on this  
11 section of Long Creek in the way that they're  
12 talking about doing in the Jepson Creek area,  
13 which is a little bit different because it's a  
14 concrete channel there I gather, but if you did a  
15 UAA, would your goal be to deal with the  
16 stormwater runoff that is not being regulated at

17 this point? Would that be something that you  
18 would hope would be looked at and is there any  
19 mechanism to do that?  
20 MR. HINCHMAN: The point I was trying to  
21 make is that UAA says you can't -- downgrading is  
22 a measure of last resort. You can only do it if  
23 you can show that you can't attain standards  
24 through reasonable use of effluent standards and  
25 national performance standards. In the case of

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 45

1 Jepson Brook where you have long stretches that  
2 are in culverts underground or that are  
3 enchannelized, that's clearly not a situation  
4 where you can fix everything through standards --  
5 enforcement of effluent limitations, but there are  
6 places that you can fix and you could certainly  
7 consider changing those channelized sections and  
8 those culverted sections. Long Brook is a  
9 completely different animal, and in the case of  
10 Long Brook, it's highly likely that if you impose  
11 storm water controls, which haven't existed up to  
12 this point, you will be able to attain standards  
13 across the board at Class B standards. So doing a  
14 UAA in the case of Long Creek would be a waste of  
15 resource in my opinion. First you should go  
16 forward with the stormwater controls, and if that  
17 doesn't work, then come back and recommend  
18 reductions through the UAA process.  
19 MS. ZIEGLER: You would then -- your  
20 recommendation really is that you just take this  
21 one off of this particular reclassification?  
22 MR. HINCHMAN: Yeah, it's a two-part  
23 recommendation. One is to take it off and,  
24 secondly, if you're going to pursue it, you can't  
25 do it through a, quote, clarification. There's no

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 46

1 ambiguity. You'd have to do a UAA.  
2 MS. ZIEGLER: Thank you.  
3 MR. HINCHMAN: Thank you.  
4 CHAIRMAN HILTON: Steve, it would be really  
5 good if you could provide a synopsis of all that  
6 in writing.

7 MR. HINCHMAN: I will, yes.

8 CHAIRMAN HILTON: Thank you. We have Josh  
9 Royte. I'm going to ask that everybody really try  
10 to truncate their remarks and provide -- if you  
11 want to provide follow-up in writing, that would  
12 be great. We have 50 minutes and we have at least  
13 11 speakers and there may be some more people  
14 signed up over there. So that really gets us down  
15 to about four minutes apiece, and we're all  
16 running over four minutes, and at some point I  
17 really start to get tough.

18 MR. ROYTE: I would have to slip in after  
19 he starts getting tough. My name is Josh Royte.  
20 I'm with the Nature Conservancy in Brunswick,  
21 Maine, and I live in Yarmouth, Maine. The Nature  
22 Conservancy has a mission of protecting the  
23 biodiversity of life on this planet by protecting  
24 the lands and the waters that supports  
25 biodiversity. We've done assessments of

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 47

1 terrestrial ecosystems and aquatic systems  
2 somewhat later in the game, but starting in 2002  
3 we began assessing all of Maine's fresh waters as  
4 part of a large eco regional assessment that was  
5 occurring across the Eastern U.S. in all the  
6 places where conservancy works. The goal of this  
7 assessment is to make sure we identify enough  
8 places that can represent the biodiversity that we  
9 have in the State at high enough quality in order  
10 to maintain the diversity that we have in the  
11 State without losing any of the cogs or gears that  
12 we know keep these systems functioning. We do not  
13 have a classification system for the different  
14 types of streams and lakes in the State existing.  
15 We developed one with the system that we've used  
16 in other states, we've developed it with experts  
17 throughout the State of Maine. We reviewed it  
18 with them as well as existing water quality data,  
19 digitizing Inland Fisheries and Wildlife data that  
20 had not been digitized. We looked at the Maine  
21 Lakes -- Gem Lakes Study, Maine Natural Areas  
22 Program Biodiversity data, Inland Fisheries and  
23 Wildlife rare species and significant wildlife  
24 habitat data, put this together with diadromous  
25 fish data, land cover to do this assessment to

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 48

1 figure out where the most important places to  
2 protect biodiversity were, what's the best suite  
3 of places where we could protect biodiversity. We  
4 put all these data together, we came up with some  
5 solution sets, if you will, all the places that  
6 might work and still have decent quality where we  
7 can maintain the existing biodiversity. We met in  
8 five different meetings around the State with the  
9 DEP, staff from IF&W, DMR, the Natural Areas  
10 Program, the Maine Aquatic biodiversity Project of  
11 which this was a part of, the Atlantic Salmon  
12 Commission, Trout Unlimited, the Houlton Band of  
13 Maliseet Indians, the Penobscot Indian Nation,  
14 Acadia National Park, Rachel Carson National  
15 Wildlife Refuge, the Wells National Estuarine  
16 Research Reserve, the University of Maine, Project  
17 Share, the Gulf of Maine Program, the U.S. Fish  
18 and Wildlife Service, the Wild Salmon Resource  
19 Center and consultants from Woodlot Alternatives.  
20 So we reviewed map by map around the State  
21 where these streams were, what the values were and  
22 what are the best places for protection, what are  
23 the best places for mitigation and restoration and  
24 came up with what we call a portfolio of sites  
25 that we think provide the best opportunity for

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 49

1 protection of waters. There are 11 waters which  
2 we recommended for upgrades. Some of these -- a  
3 good bunch of them are tributaries to streams that  
4 have higher ranks. The tributaries, my  
5 understanding is, by default were ranked B when  
6 the main stems were ranked A, the tributaries  
7 didn't come with them. I'm going to go through  
8 the list quickly. The first one on the list is  
9 actually not a stream but the Basin which Steve  
10 just mentioned. The Basin has 2000 acres of its  
11 watershed in permanent protection by the Nature  
12 Conservancy, and over 80 percent of the shoreline  
13 of the Basin. It's in fantastic shape and worthy  
14 of an upgrade, has fantastic biodiversity  
15 resources in the mud flats and the intact  
16 shoreline. The next is Alder Stream, a tributary

17 of the Piscataquis River. It has low dissolved  
 18 oxygen but that's the type of stream it is.  
 19 Again, in trying to represent all the types of  
 20 streams, it means we are going to look at some  
 21 that are slow, warmer water, lower dissolved  
 22 oxygen rivers as well as those pristine, tumbling  
 23 cold brook trout waters. Seboeis Stream  
 24 tributaries, again, this is a case where the  
 25 tributaries are B but the main stem is A,

ALLEY & MORRISETTE REPORTING SERVICE  
 207-495-3900

Page 50

1 Mattamiscontis is the same, the Souadabscook is  
 2 the same. The Crooked River is a place where we  
 3 support the upgrade. The South River is a  
 4 tributary of Ossipee, again, a huge amount of the  
 5 watershed is in permanent protection through a  
 6 Department of Conservation easement that we  
 7 brokered. That is 8,700 acres that watershed,  
 8 it's spectacular in for brook trout as well as sea  
 9 run Atlantic salmon. The Little River is on  
 10 Salmon Falls, has great diadromous fish runs with  
 11 efforts to classify all the tributaries of Great  
 12 Bay, that's one of the important tributaries.  
 13 Beaver Brook and its tributaries on the  
 14 Aroostook. That's another default tributary  
 15 upgrade, Violette Stream and its tributaries, the  
 16 Pemaquid River has diadromous fish runs that are  
 17 kind of outstanding for such a small coastal river  
 18 and a very intact forested watershed for where it  
 19 is in the State and the tributaries of the  
 20 Ducktrap which, as many of you know, has  
 21 outstanding conservation work up and down the main  
 22 stem. There are several tributaries that could be  
 23 upgraded to match that of the main stem. If there  
 24 are any questions on any of these, I'd be glad to  
 25 provide details. Thank you.

ALLEY & MORRISETTE REPORTING SERVICE  
 207-495-3900

Page 51

1 CHAIRMAN HILTON: Any questions of Mr.  
 2 Royte? Thank you very much, Josh. Next is Landis  
 3 Hudson and then we have Jennifer Gray.  
 4 **MS. HUDSON: Good afternoon, Chairman**  
 5 Hilton and Members of the Board, my name is Landis  
 6 Hudson. I'm the program director for Maine

7 Rivers. I also live with my husband on about a  
8 tenth of an acre in Yarmouth close to the Royal  
9 River. The mission of Maine Rivers is to protect,  
10 restore and enhance the ecological health of  
11 Maine's river systems, and on behalf of our  
12 members and board of directors, thank you for this  
13 opportunity to testify. We are broadly in support  
14 of the upgrades proposed by DEP, but I would like  
15 to summarize a few comments about upgrading  
16 sections of the Crooked River which you've heard  
17 quite a bit about and the Kennebec river.  
18 The Crooked River, Maine's natural  
19 resources, including rivers, are really the  
20 foundations of our health, our economy and our  
21 future, and we believe that the ecological value  
22 and its related economic importance of the Crooked  
23 River should lead us to fully upgrade the Crooked  
24 to AA along its entire length. The current level  
25 of protection is high, but we really believe that

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 52

1 it merits the highest protection. As you've heard  
2 from other people, the Crooked River is Sebago  
3 Lake's largest tributary and it provides excellent  
4 spawning and juvenile habitat for landlocked  
5 salmon and there is relatively little salmon  
6 spawning and nursery habitat associated with other  
7 Sebago Lake tributaries. As a result, the Crooked  
8 supports all of Sebago Lake's wild salmon  
9 production.  
10 What's the actual value of the Crooked  
11 River? What's the actual ecological or economic  
12 value? It's very hard to say. I have been  
13 reading over Francis Brodigan's comments in  
14 response to the Hatch application and it's not  
15 easy to put a number value on ecological systems.  
16 One way you could do it would be to try and  
17 imagine a replacement value or to try and figure  
18 out exactly how much money is spent on  
19 recreational activities in the Sebago Lake area,  
20 and I can tell you that from my personal  
21 experience recently it's a very busy place. There  
22 are an awful lot of people out there, and the wild  
23 landlocked salmon certainly provides an important  
24 goal for sort of sending people out in that  
25 direction. So the wild salmon produced in the

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 53

1 Crooked River which enter Sebago Lake are  
2 terrifically important. In conversation with  
3 Francis Brodigan recently, we thought it wasn't  
4 unrealistic to imagine it could certainly be  
5 somewhere worth \$500,000, \$1,000,000 and it's  
6 something very important to protect.  
7 The existing free passage for salmon on the  
8 Crooked River is currently threatened by a  
9 proposed dam at the Scribner's Mill, and there's a  
10 small stretch of the river which is Class A but  
11 this dam, if built as proposed, could actually  
12 compromise access to over 66 percent of the salmon  
13 spawning habitat, not including tributaries. So  
14 it's also not consistent with IF&W fisheries  
15 management objectives and could potentially  
16 jeopardize attainment of the Department's  
17 management goal for landlocked salmon. So it's  
18 conceivable that the Department could legally  
19 approve the dam application for Scribner's Mill  
20 even if the Board votes to upgrade the Crooked  
21 River entirely to AA; however, Maine Rivers  
22 sincerely hopes that by upgrading the river to AA,  
23 it will encourage the DEP to similarly make a  
24 decision to protect the river and its assets for  
25 the ecological health of the river and its

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 54

1 landlocked salmon and it's related economic  
2 values. The purpose of the designation of the  
3 Crooked River as an outstanding river segment in  
4 the legislation is the protection of this fishery  
5 resource.  
6 I would also like to say a few words about  
7 the Kennebec River. As we all know, the Kennebec  
8 River has received national attention for its  
9 improving ecological health. Twenty-five years  
10 ago it would have been hard for most people to  
11 imagine how much more vibrant the river and its  
12 watershed could become, but thanks to the efforts  
13 of many people, it really has improved  
14 tremendously, and we believe that these upgrades  
15 as proposed show strong commitment to continued  
16 improvement. So Maine Rivers' position is that

17 the entire section of the Kennebec River from  
 18 Skowhegan to Waterville should be upgraded to  
 19 Class B, not just the free flowing stretches from  
 20 Fairfield to Waterville. This stretch of river  
 21 provides an excellent cold water fishery for both  
 22 rainbow and brook trout and, of course, the  
 23 recreational activities are of great benefit to  
 24 central Maine. We are aware that the Departments  
 25 of Commerce and Interior are considering the

ALLEY & MORRISSETTE REPORTING SERVICE  
 207-495-3900

Page 55

1 implications of an endangered species listing for  
 2 the Atlantic salmon, and we believe that  
 3 improvements in water quality implicit in  
 4 upgrading this section of the Kennebec can only  
 5 count in Maine's favor with regard to ESA  
 6 consideration and shows that steps are being taken  
 7 to improve habitat. We understand that the  
 8 Department has collected data showing that the  
 9 stretch of the river from Skowhegan to Waterville  
 10 attains Class B standards for aquatic life  
 11 criteria and for dissolved oxygen, and while the  
 12 Department originally proposed upgrading only half  
 13 of this stretch, it was reduced last week, we  
 14 support upgrading this 15-mile segment of the  
 15 river now; however, if the Board adopts the EPA's  
 16 recommendations that only the sections outside of  
 17 the impoundment are upgraded, we would like to  
 18 advocate for the remaining section of the Kennebec  
 19 River to be completed as soon as possible.

20 Thank you very much.

21 CHAIRMAN HILTON: Thank you. Wing?

22 MR. GOODALE: A very quick question, do you  
 23 have any comments on the Aroostook River?

24 MR. HUDSON: No.

25 CHAIRMAN HILTON: Thank you very much.

ALLEY & MORRISSETTE REPORTING SERVICE  
 207-495-3900

Page 56

1 Jennifer Burns, welcome. Burn.

2 **MS. BURNS: Thank you. Good afternoon,**

3 Chairman Hilton and Members of the Board of

4 Environmental Protection. My name is Jenn Burns

5 Gray and I represent Maine Audubon and our 11,000

6 members and supporters, and I reside in Bath.

7 Maine Audubon supports DEP's proposed  
8 reclassification in addition to reclassifying, as  
9 Landis just mentioned, the whole segment of the  
10 Kennebec between Skowhegan and Waterville. Water  
11 quality is critically important to both the people  
12 and wildlife in the State of Maine, and we applaud  
13 this recognition officially of our progress in  
14 improving the water quality on many of our waters  
15 here in the State. We concur with the Department  
16 of Inland Fisheries and Wildlife and others that  
17 the Crooked River is very special and important to  
18 our landlocked salmon. One thing I have not heard  
19 people mention that IF&W has shared is in the past  
20 a number of mill dams were located on the river  
21 and severely restricted historical access to much  
22 of the river's available salmon spawning and  
23 nursery habitat, and over the last several decades  
24 much work has occurred to restore, recolonize and  
25 re-establish depleted salmon runs within the upper

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 57

1 sections of the river, and I think it's really  
2 important to recognize that work and the progress  
3 that's been made and upgrade the classification,  
4 and it's not just about the salmon in the Crooked  
5 River. I understand, as we all know, other fish  
6 species find a home in the Crooked River,  
7 including the species of concern such as the brook  
8 trout, the creep, chub sucker and the white  
9 sucker.  
10 Maine Audubon also supports reclassifying  
11 the entire segment of the Kennebec River from  
12 Skowhegan to Waterville. The segment below the  
13 Shawmut dam contains a valuable cold water  
14 fishery, as you heard, and it's of statewide and  
15 regional significance. According to the IF&W's  
16 web site, the premier brown trout water in the  
17 region and perhaps the State is the Kennebec, and  
18 it is that 40-mile reach of the Kennebec from  
19 Skowhegan to Augusta that has gained a reputation  
20 of one of the best brown trout rivers on the East  
21 Coast, and we really need to do all that we can to  
22 support these habitats, and we also encourage you  
23 to seriously consider the proposal from the  
24 Friends of Merry Meeting Bay for the Androscoggin,  
25 and I thank you for your consideration.

ALLEY & MORRISSETTE REPORTING SERVICE  
207-495-3900

Page 58

1 CHAIRMAN HILTON: Any questions for  
2 Jennifer? Thank you very much Jennifer.

3 MS. GRAY: Thank you.

4 CHAIRMAN HILTON: Mike Barden is next  
5 followed by Dusti Fournier. Welcome, Mike.

6 **MR. BARDEN: Chairman Hilton, Members of**  
7 the Board, my name is Mike Barden. I'm here on  
8 behalf of Maine Pulp and Paper Association. I'll  
9 be very brief. Our primary issue is on the  
10 Kennebec with the impoundments but DEP has  
11 indicated that they don't have the data, and we  
12 agree with that. That's all my comments.

13 CHAIRMAN HILTON: I guess a question I  
14 would ask is do the mills have -- do the dam  
15 owners have the data?

16 MR. BARDEN: I don't think so. I don't  
17 think so. My understanding is the last time DEP  
18 has collected any DO data is late nineties, and I  
19 don't think that includes the impoundment areas  
20 either. So we don't have a problem if they want  
21 to upgrade it, but we'd like to see the data  
22 first.

23 CHAIRMAN HILTON: Thank you. Ms. Faucher,  
24 welcome.

25 **MS. FAUCHER: My name is Dusti Faucher. I**

ALLEY & MORRISSETTE REPORTING SERVICE  
207-495-3900

Page 59

1 live at 30 Moose Run in South Casco, and I have  
2 been here before the Board before talking about  
3 upgrades on the Presumpscot, but today I'm  
4 actually talking about the Crooked River which is  
5 an upper watershed of the Presumpscot. For the  
6 past 12 years, Friends of Presumpscot and other  
7 groups have been working on restoration of the  
8 Presumpscot. We've been working of migratory fish  
9 restoration, improvements in the water quality and  
10 increasing the productivity of Casco Bay. As a  
11 group, we have worked through the dam relicensing  
12 process and all the subsequent appeals that have  
13 happened through that, and we have stressed the  
14 importance of ecosystem management for the  
15 Presumpscot. That is one of the things that we're  
16 asking about this, that you --

17 CHAIRMAN HILTON: Could you slow down?  
 18 MS. FAUCHER: Sorry about that. I'm trying  
 19 to make that four minutes. So that we can take  
 20 the Crooked and work it as an entire ecosystem as  
 21 opposed to segmenting it. That is one of the  
 22 problems that has happened on the Presumpscot.  
 23 It's been segmented dam between dam, and we have  
 24 been working to make sure that the entire system's  
 25 water quality and fisheries and everything is

ALLEY & MORRISSETTE REPORTING SERVICE  
 207-495-3900

Page 60

1 taken as a whole. So we're asking that that  
 2 happen on the Crooked as well. So while we're  
 3 rebuilding the resources of the Presumpscot, we  
 4 are asking that the Crooked be protected from the  
 5 misguided request to reestablish a dam at  
 6 Scribner's Mills or any of the future threats that  
 7 might occur on this river. It's a rare chance  
 8 that we have to save this outstanding resource in  
 9 the midst of all the development of southern Maine  
 10 and we're hoping that that opportunity won't be  
 11 lost.

12 CHAIRMAN HILTON: Thank you very much. Any  
 13 questions for Mrs. Faucher? Thank you, Dusti.

14 And Ron Faucher followed by Nick Bennett.

15 MR. FAUCHER: My testimony and my contact  
 16 information (indicating), and I'll be very brief  
 17 since everybody has talked about the Crooked and  
 18 they've done a good job talking about. I'll tell  
 19 you who I am. My name is Ron Faucher. I live at  
 20 30 Moose Run, and I'm here to speak for the  
 21 classification upgrade. I am a CPESC. I have  
 22 been for 10 years. That's certified professional  
 23 erosion sediment control. I'll put my classes on  
 24 here so I can read the rest of it. Over the --  
 25 and also I've worked for the Portland Water

ALLEY & MORRISSETTE REPORTING SERVICE  
 207-495-3900

Page 61

1 District as a watershed protection coordinator for  
 2 decades. It used to be called a source protection  
 3 coordinator. I'm still very active in the  
 4 environmental protection area. I'm president of  
 5 IRCA, another acronym. It's the International  
 6 Erosion Control Association. IRCA is an

7 international organization working for erosion and  
8 sediment control al over the world, but I want to  
9 talk now about the passion that I've had for 43  
10 years for my service with the Water District.  
11 Water quality doesn't just happen. What it does  
12 it's there because of what people -- the hard work  
13 people are doing in the watershed, meetings,  
14 planning meetings, board meetings, all these  
15 meetings, school meetings with kids teaching them  
16 about the environment. It's just you need the  
17 passion to make this happen, and what I'm asking  
18 you guys to do is pass this segment of the  
19 Scribner's Mill to a Class AA classification.  
20 Thank you.  
21 CHAIRMAN HILTON: Thank you, Mr. Faucher.  
22 Any questions for Ron? Nick Bennett. Welcome,  
23 Nick.  
24 MR. BENNETT: Thank you, Chairman Hilton,  
25 Members of the Board. My name is Nick Bennett.

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 62

1 I'm the staff scientific for the Natural Resources  
2 Council of Maine and I reside in Hallowell,  
3 Maine. We support the upgrades in this proposal  
4 that the DEP has put before you. Like a few  
5 others before me, I plan to focus on the Crooked  
6 and the Kennebec and just say a couple words about  
7 each of them, hopefully not being repetitive. In  
8 terms of the Crooked, I think folks now realize  
9 there's a dam application out there at Scribner's  
10 Mills which is the one small segment of the  
11 Crooked River that is not double A. For some  
12 strange reason, most of the Crooked is double A  
13 both below and above Scribner's Mills. So there's  
14 just a one-mile segment of the river that isn't  
15 and we don't know why. That's an oversight that  
16 should never have happened, and that river, as you  
17 heard from the Portland Water District, is  
18 critical to the water quality of the water source  
19 for a sixth of the State of Maine. It provides  
20 the vast majority of the spawning habitat for  
21 landlocked salmon in Sebago Lake. There should  
22 not have been the opportunity to put that dam  
23 application in, and in addition, unfortunately,  
24 although that dam application was complete in  
25 February, and I believe there were 16 commenters

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 63

1 who opposed that dam application and none in  
2 support of it, the Department has not made a  
3 decision, and that's why this issue is sort of  
4 confused in front of the Board today, and we think  
5 that's unfortunate. Nevertheless, we hope the  
6 Department is going to make the right decision on  
7 this and reject the dam application and we would  
8 urge the Board to please upgrade that segment at  
9 Scribner's Mills so this doesn't happen again.  
10 The second segment I wanted to talk about is  
11 the proposed upgrade for the Kennebec. In it's  
12 initial proposal, the Department proposed  
13 upgrading from C to B the entire segment from  
14 below the Shawmut Dam to Waterville-Fairfield. We  
15 weren't very happy about that, although it did  
16 include the fishery at Shawmut, really that whole  
17 stretch of river from Skowhegan to Waterville is a  
18 very good fishery and all of it should be  
19 protected as Class B. That's the last segment of  
20 the Kennebec that's Class C and it meets Class B  
21 standards according to all of the data that DEP  
22 has. In 2002, the last time you went through this  
23 reclassification proposal, I came before you and  
24 asked the Board to please upgrade that segment.  
25 At that time the Department said, no, we don't

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 64

1 have the aquatic life data so we don't know  
2 whether it meets aquatic life standards. Well,  
3 now they have those data and it does meet aquatic  
4 life standards for that whole segment from  
5 Skowhegan to Waterville, and so we were very  
6 disappointed to hear at the last second that not  
7 only were they not going to propose an upgrade  
8 for the whole class B segment, but they weren't  
9 even going to propose an upgrade for the Shawmut  
10 to Waterville section that they initially  
11 proposed. Now, I understand that this past summer  
12 was a hard summer to get data, and I know that the  
13 Department tried to get some data but, again, I  
14 think the Department has a lot of data and all of  
15 those shows that this segment meets standards. So  
16 if the Board is going to accept the Department's

17 recommendation and not upgrade this full segment,  
18 we would strongly urge that the Board make it  
19 clear to the Department that as soon as possible  
20 they need to get the data that they need to  
21 upgrade this last remaining Class C segment of the  
22 Kennebec, and with that I'll be happy to take any  
23 questions.

24 MR. GOODALE: Any comment on the Aroostook  
25 River?

ALLEY & MORRISSETTE REPORTING SERVICE  
207-495-3900

Page 65

1 MR. BENNETT: No.

2 CHAIRMAN HILTON: Nick, I'd like to know do  
3 you have any idea when the dam was taken out on  
4 the Crooked River?

5 MR. BENNETT: '72 I believe.

6 CHAIRMAN HILTON: So it's been free flowing  
7 -- and I take it when they took it out it's  
8 actually gone or are there remnants left? Was it  
9 officially removed or has it just been washed  
10 out?

11 MR. BENNETT: No, it was removed.

12 MR. HILTON: So it's been free flowing for  
13 36 years?

14 MR. BENNETT: That's my understanding.

15 CHAIRMAN HILTON: And you don't have any  
16 particular idea -- I should have asked this of  
17 somebody else I suppose, but it just never  
18 occurred to me. You have no idea why the  
19 Department might have left that one last stretch?

20 MR. BENNETT: No, that's definitely a  
21 question for the Department.

22 CHAIRMAN HILTON: Yeah. The last time we  
23 went through this reclassification, the issue of  
24 this segment of the Kennebec came up then, and we  
25 talked about how much data they had, and it

ALLEY & MORRISSETTE REPORTING SERVICE  
207-495-3900

Page 66

1 appeared even then that they might have had enough  
2 data to do this. I'm also a little bit concerned,  
3 just as you are, with the fact that even though  
4 there's a three-year interim -- statutory interim  
5 between these reclassification proceedings it's  
6 been five or six years now, and Mike indicated

7 that there's a paucity of DO data. Is that your  
8 understanding also?

9 MR. BENNETT: Well, DEP did two, what they  
10 call -- I think they call them synoptic surveys  
11 which basically means intense surveys of the river  
12 in '97 and '98, and they collected a whole bunch  
13 of DO samples from the river, and there was one  
14 sample, you know, out of hundreds I think that  
15 didn't meet standards essentially, and that was in  
16 '97. In '98, which was a dryer year, all the  
17 samples met standards, and I actually asked the  
18 Department, you know, where were all those samples  
19 located, do you have any samples in the  
20 impoundments, and they sort of scratched their  
21 heads and said, well, we're not sure. So maybe  
22 between now and when I had that conversation they  
23 came up with the answer, no, we have no data from  
24 the impoundments. I find that a little troubling  
25 if that's true and, again, you know, if that's

ALLEY & MORRISSETTE REPORTING SERVICE  
207-495-3900

Page 67

1 really the case and the Department really feels  
2 that there's an issue with these impoundments and  
3 I have never heard that before, I mean, I think  
4 maybe there's some concern about thermal  
5 stratification and having another Androscoggin  
6 and, you know, I don't know. The statute, as  
7 Steve Hinchman said, if the data says it meets  
8 standards, you upgrade it. The Department has a  
9 lot of data from the Kennebec River. It's a very  
10 intensely-studied river, and they're not upgrading  
11 it, and, again, it's been six years since the last  
12 time we went through this. So I would ask the  
13 Department very carefully to look at all of the  
14 data it has available.

15 CHAIRMAN HILTON: Typically in your  
16 experience or to your understanding is the only  
17 source of data that which comes through from  
18 qualified scientific studies or can it come  
19 through -- for instance, the VLMP or whatever it  
20 is, program collects all sorts of water quality  
21 from various lakes around the State.

22 MR. BENNETT: Right.

23 CHAIRMAN HILTON: Is that data recognized  
24 as having any kind of scientific value?

25 MR. BENNETT: That data or those data, yes,

ALLEY & MORRISSETTE REPORTING SERVICE  
207-495-3900

Page 68

1 are I think very highly regarded. I know Friends  
2 of Merry Meeting Bay and Kennebec Valley Trout  
3 Unlimited have a lot of data for the Kennebec and  
4 I would strongly encourage the Department to look  
5 at those data if they have data for the  
6 impoundments and, again, I'm just stunned that in  
7 two big synoptic surveys of the type the  
8 Department did in 1997 and 1998 they don't have  
9 any DO data from the impoundments. I just find  
10 that difficult to believe. If it's true, you  
11 know, all right, but, again, if that's the case,  
12 that's, you know, a reason why the Department  
13 really needs to go out and get these data and get  
14 this upgrade passed because I don't want to be  
15 here six years from now asking the Board to do  
16 this again which seems not unlikely under the  
17 circumstances. So I would look at those Friends  
18 of Merry Meeting Bay data. I think I would look  
19 at those data for the lower Androscoggin too. I'd  
20 encourage you to look at those data.

21 CHAIRMAN HILTON: Any other questions?

22 MR. SCOTT: Nick, as a follow-up with what  
23 Chairman Hilton was asking about the Crooked  
24 River, if the classification of the Crooked River  
25 was all double A, that precludes any sort of

ALLEY & MORRISSETTE REPORTING SERVICE  
207-495-3900

Page 69

1 impoundment being constructed, correct?

2 MR. BENNETT: Correct.

3 MR. SCOTT: Now, go back to Shawmut and the  
4 Kennebec and the two impoundments, if it's  
5 upgraded to a B, that doesn't change the character  
6 or the use of those -- existing uses of those  
7 dams, correct?

8 MR. BENNETT: Correct.

9 MR. SCOTT: Thank you.

10 CHAIRMAN HILTON: Any other questions?

11 Thank you very much, Nick. Next up is John  
12 Burrows. I'd like to point out that we've lost  
13 one member of the Board. Dick Gould just left. I  
14 was going to say that we're going to be losing  
15 another member at 3:00, but I've just been  
16 informed that even with fewer than six, we still

17 have an adequate quorum for proceeding. So much  
 18 of our time constraint has been lifted here. That  
 19 is not an invitation to speak longer. We still  
 20 have to have four as a quorum, and we need to  
 21 actually leave here by 4:00. Mr. Burrows.

22 **MR. BURROWS: Great. Thank you very much,**  
 23 Chairman Hilton, Members of the Board. My name is  
 24 John Burrows. I am the Maine coordinator for the  
 25 Atlantic Salmon Federation. I'm here today to

ALLEY & MORRISSETTE REPORTING SERVICE  
 207-495-3900

Page 70

1 represent both ASF and our Maine Council, which is  
 2 comprised of 20 different angling, conservation  
 3 and watershed groups from across the State, and in  
 4 the interest of full disclosure, I'm also the new  
 5 president of Maine Rivers and you heard Program  
 6 Director Landis Hudson beforehand. In my  
 7 testimony, I will be both brief and I will try not  
 8 to repeat too much of what you have heard already  
 9 and try to focus on some of the other proposed  
 10 upgrades that have not been mentioned.

11 The mission of the Salmon Federation is to  
 12 promote the conservation and wise management of  
 13 the Atlantic salmon and its environment. Here in  
 14 Maine we have a membership of about 2,000  
 15 individuals between both ASF and our Maine  
 16 Council. I will mention briefly our strong  
 17 support for the upgrade to the Kennebec River.  
 18 Nick spoke very well about the importance of that,  
 19 as did Landis before him. For 15 or so years my  
 20 organization has worked extremely hard to restore  
 21 this river as well as many other groups, agencies  
 22 and individuals. The health of the Kennebec today  
 23 is just phenomenal compared to what it was just  
 24 ten years ago before the Edwards Dam was removed,  
 25 and if the water quality has improved, the

ALLEY & MORRISSETTE REPORTING SERVICE  
 207-495-3900

Page 71

1 fisheries are abundant and growing year by year.  
 2 It's a tremendous economic and environmental asset  
 3 for the State of Maine; however, the work on the  
 4 Kennebec is not finished yet, and we must make  
 5 sure that in the future we do all we can to  
 6 protect the water quality so we don't slide

7 backwards and allow degradation to happen, and  
 8 that's why the proposed upgrades both to the  
 9 Kennebec from Shawmut -- from the Shawmut Dam down  
 10 to Waterville as well as the proposed upgrades on  
 11 some of the tidal tributaries, Cobbossee, Bond  
 12 Brook, Togus are very important. The lower  
 13 tributaries are important habitat for wild  
 14 Atlantic salmon as well as sea run trout and a  
 15 number of other native diadromous fish species.  
 16 Protecting those and improving those to Class B is  
 17 extremely important and certainly well  
 18 worthwhile. In terms of the main stem Kennebec,  
 19 I, too, was here six years ago testifying in  
 20 support of upgrading the entire section from  
 21 Skowhegan down to Waterville, and I agree with Mr.  
 22 Bennett that all the data that's out there shows  
 23 that in terms of dissolved oxygen and aquatic life  
 24 bacteria that we know that the Kennebec is either  
 25 meeting those standards or is reasonably expected

ALLEY & MORRISSETTE REPORTING SERVICE  
 207-495-3900

Page 72

1 to be maintaining those standards, and so  
 2 upgrading that section to Class B I don't think is  
 3 an unrealistic goal for the Kennebec River if you  
 4 say it's not meeting those standards currently,  
 5 which we do think it is.  
 6 In addition to other large rivers, I would  
 7 like to mention the Androscoggin River which  
 8 you'll be hearing about from other folks more  
 9 after me. I think, hopefully as everyone on the  
 10 Board knows, recently the federal services, the  
 11 Federal fisheries agencies, recommended listing  
 12 Atlantic salmon in the Androscoggin, Kennebec and  
 13 Penobscot Rivers as an endangered species under  
 14 the Federal Endangered Species Act. This  
 15 certainly has strong implications, not just for  
 16 dams and land use practices and the watershed but  
 17 also water quality, and water quality issues were  
 18 identified by the Federal services as a  
 19 significant impediment to the Atlantic salmon  
 20 restoration, and so that's something to be mindful  
 21 of when thinking about the Kennebec upgrade and  
 22 also the Androscoggin upgrade because a section of  
 23 the Androscoggin River from the Durham boat launch  
 24 down to Merry Meeting Bay was also designated or  
 25 proposed to be critical habitat for Atlantic

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 73

1 salmon. So that's an extra layer of scrutiny in  
2 terms of regulatory processes that anything that  
3 happens in that section will have to be looked at  
4 and assessed in terms of its impacts. Certainly  
5 water quality is one of those major things which  
6 will be looked at in the future. So it's my  
7 understanding that Friends of Merry Meeting Bay  
8 have some data from this section. There's  
9 certainly a lot of strong community support for  
10 that upgrade, and that's something I hope that the  
11 Board will look at carefully and strongly  
12 consider.

13 The only other two things I'll mention are a  
14 couple of the smaller rivers, one of which is the  
15 Ducktrap River and this is a salmon river which  
16 was listed as endangered back in 2000. It's one  
17 of the smallest salmon rivers in Maine which was  
18 listed at the time, and it has one of the most  
19 genetically unique runs of salmon left here in  
20 Maine and the U.S. The entire main stem of the  
21 Ducktrap is Class AA, and there are several  
22 tributaries to that which are proposed to be  
23 upgraded to Class A. Certainly the water quality  
24 standards are meeting Class A there, and this is  
25 an important river and tributaries for both salmon

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 74

1 as well as brook trout, and so we definitely  
2 recommend upgrading those tributaries.  
3 Finally, I will mention the Souadabscook  
4 River. Back ten years ago ASF and our Maine  
5 Council removed the grist mill dam on the  
6 Souadabscook River in Hamden. Removing this dam  
7 opened up the entire watershed to Atlantic salmon,  
8 American chad, to river herring and American eel,  
9 and now the Souadabscook has the largest run of  
10 river herring anywhere in the Penobscot drainage  
11 because of that. This is an extremely important  
12 tributary for all of those species. Currently all  
13 of the river, the main stem of the river above the  
14 head of tide is classified as double A, and there  
15 are several tributaries being proposed to be  
16 upgraded to Class A. These include West Branch

17 and Browns Brook and these are extremely high  
18 value habitat for Atlantic salmon and because of  
19 that, we support fully upgrading those tributaries  
20 as well. That is all I have and I'll be happy to  
21 answer any questions.

22 CHAIRMAN HILTON: Yes, Matt.

23 MR. SCOTT: John, you and I spent a lot of  
24 time together working in the Downeast rivers and  
25 that Endangered Species Act process. My question

ALLEY & MORRISSETTE REPORTING SERVICE  
207-495-3900

Page 75

1 for you on the Kennebec, Androscoggin and  
2 Penobscot, all three, in your opinion, John, do  
3 you think all three would be listed or do you  
4 think the Services might consider one over the  
5 other?

6 MR. BURROWS: Well, the way they have it  
7 set up now, they're recommending adding those  
8 three rivers to the existing DPS and the distinct  
9 population segment level or DPS is the lowest  
10 level that they can list at. They can look below  
11 that at certain areas that have different  
12 management regimes for, you know, different  
13 portions of that broader area, but they can't list  
14 the Penobscot, say, threatened and the Kennebec as  
15 endangered. All the rivers from the Dennys River  
16 down to the Androscoggin have to be the same.  
17 They don't have any flexibility to go below that.

18 MR. SCOTT: Well, you recall in the  
19 hearings in the process Downeast there was a lot  
20 of concern about what this might do to activity,  
21 where it's industrial, commercial or individuals.  
22 Did you think that sort of activity could still  
23 prevail as far as the current activities in those  
24 watersheds?

25 MR. BURROWS: I certainly do, and I think

ALLEY & MORRISSETTE REPORTING SERVICE  
207-495-3900

Page 76

1 in terms of what happened Downeast, you know, it  
2 was very unfortunate that there was a lot of awful  
3 rhetoric that happened eight, nine years ago over  
4 the listing and fortunately all those dire  
5 predictions didn't take place. We certainly have  
6 strong businesses and industries down there in

7 terms of forest products, in terms of the  
8 aquaculture industry, which is doing much better  
9 these days, and the blueberry industry and they  
10 got a lot of help and assistance in dealing with  
11 some of their long-standing issues which were  
12 having a negative impact on the rivers and streams  
13 down there. There certainly has been an added  
14 layer of what some would call protections, others  
15 would say bureaucracies, but as a whole, it  
16 certainly has done a good job there, and I think  
17 most folks you would talk to that are involved in  
18 those industries would say that the listing has  
19 not been an economic burden to them. In terms of  
20 the larger rivers, you're dealing with much bigger  
21 scale problems. These watersheds are much more  
22 developed. They have huge development in terms of  
23 hydropower. You've got the pulp and paper mills  
24 and a lot more municipal dischargers on these  
25 rivers. I think all those things will be allowed

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 77

1 to continue to happen. They aren't going to close  
2 down the mills and rip out every dam on all these  
3 rivers; however, there will have to be some  
4 careful consideration and scrutiny given to the  
5 level of protections which are currently in place,  
6 everything from wastewater licenses to fisheries,  
7 passage of dams and other things, and I think it's  
8 somewhat uncharted territory and I think it will  
9 be interesting to see how it plays out, and our  
10 big hope is we don't have the huge controversy  
11 which we had last time, we can just move ahead and  
12 focus on the restoration because a lot of great  
13 work has been done over the past decade or so and  
14 hopefully that will continue on these larger  
15 rivers.

16 MR. SCOTT: So our decision as far as the  
17 upgrades and this process as far as those rivers  
18 are concerned would not interfere with the listing  
19 process?

20 MR. BURROWS: No, I certainly don't think  
21 so. That listing won't be finalized for probably  
22 at least a year or so; however, in the future, you  
23 know, assuming -- whether or not the rivers are  
24 listed as endangered or threatened, there may not  
25 be much difference between the two and the rivers

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 78

1 will certainly be listed as one or the other. So  
2 in the future when licenses come up for renewal,  
3 there will be that added layer of looking at it to  
4 make sure the protections and stuff are very  
5 adequate. So in terms of reclass in the future, I  
6 think there will be much greater pressure put on  
7 in terms of making sure that those rivers are  
8 meeting higher standards. So anything you can do  
9 now to upgrade I think will certainly make the  
10 State look much better in that light in the  
11 future.

12 MR. SCOTT: Thank you, Mr. Chairman. Thank  
13 you, John. I think it was important to have that  
14 for the record.

15 CHAIRMAN HILTON: Any other questions for  
16 Mr. Burrows? Thank you very much. We have next  
17 Dave Jones and then Ed Friedman. Welcome, Mr.  
18 Jones.

19 MR. JONES: Thank you. Mr. Chairman,  
20 Members of the Board, my name is Dave Jones. I'm  
21 a resident of Bowdoinham but I work as the  
22 director of public services for the City of  
23 Lewiston. I'm here to talk to you a little bit  
24 about Jepson Brook, and I've got a strong belief  
25 that a picture is worth a thousand words and

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 79

1 seeing as we're trying to keep on schedule, I'll  
2 use all those thousand words here. This is a map  
3 showing what Jepson Brook is, the so-called Jepson  
4 Brook. It actually is about a 12,000 linear foot  
5 stream, quote, unquote, that goes from Garcelon  
6 Bog all the way down through and eventually  
7 discharges into the Androscoggin River. Of the  
8 12,000 linear feet of stream, about 900 feet of it  
9 is natural stream bed from this point to here.  
10 From Garcelon Bog all the way down to this point  
11 where you see this little yellow dot, it looks  
12 like this, all right, basically underground pipe  
13 or concrete culverted areas and stuff. So this  
14 all started about back in the 1960s. They had a  
15 lot of flooding problems in that area. It's  
16 generally a residential area, and they went

17 through the whole permitting process and decided  
18 the best way to address the issue is to actually  
19 put in these open culverts or pipe areas and stuff  
20 and they began construction back about in the  
21 early 1970s. A little later on around 1972 or 3  
22 or 4 or somewhere in that area is when EPA came  
23 out and had all the different states actually  
24 classify different streams at whatever the  
25 classification was. The state didn't have an

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 80

1 opportunity to actually go out and visit every  
2 single stream and identify where it was, and there  
3 was a lot of streams that were just block  
4 classified. Jepson Brook fell into that category  
5 and it was automatically classified as a Class B  
6 stream. Quite frankly, looking at the stream the  
7 way it is, and this was under construction at the  
8 time probably, I don't think that the Department  
9 would have classified the stream as a Class B as  
10 it did if they had actually been able to go out  
11 and see it. They didn't have the time to do that  
12 obviously. It really wasn't an issue until about  
13 four years ago. I got a call and I had a  
14 technician from the Department saying that she was  
15 trying to gain access to Jepson Brook to do some  
16 sampling and she'd never seen a stream like this  
17 before and didn't understand what it was that she  
18 was looking at, and I said, well, what is it  
19 you're trying to do, and she says I'm trying to  
20 get some sampling because we're looking at the  
21 classifications of the different streams and  
22 stuff. That was the first we'd actually heard  
23 something about this. It was a year or so later  
24 that the urban stream standards came out and now  
25 all of a sudden the city is looking at it and

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 81

1 saying, wholly cow, we've got some impacts here  
2 and we need to do something about this. So we  
3 began talking with the Department at that time,  
4 but what I want you to keep in mind is looking at  
5 the map and looking at what we're talking about  
6 here, keep in mind from here all the way down

7 through to here it looks like this. Okay, that is  
8 not a Class B stream. No matter what we do to it  
9 it's not going to become a Class B stream unless  
10 we take out those sections there, and I don't  
11 think that's an economically-feasible action. The  
12 Department has looked at and recommended that we  
13 do a study to identify what classification we  
14 might be able to achieve for that lower 800 or 900  
15 feet at least for the river. We support that, and  
16 that's all I've got to say.

17 CHAIRMAN HILTON: So how does -- so I take  
18 it the storm water drains throughout the city  
19 through the -- the drainage just kind of dumps  
20 right into the --

21 MR. JONES: Most of the water that actually  
22 comes down through here, and Andy Fisk and I  
23 actually went to the headwaters and actually  
24 watched what was going into the upper reaches,  
25 most of the water actually comes out of Garcelon

ALLEY & MORRISSETTE REPORTING SERVICE  
207-495-3900

Page 82

1 Bog. Now, Garcelon Bog is about a 180-acre area  
2 that's protected by the city. It's pretty unique  
3 in that it's right inside kind of the urban part  
4 of the city, and it's a protected area of  
5 wildlife. We've got deer and fox and all kinds of  
6 stuff that run through there, and it does collect  
7 storm water from the surrounding areas that feeds  
8 in through the bog and then eventually into Jepson  
9 Brook, if you will. There are also areas along  
10 this stretch here that actually feed in, it's  
11 storm water coming through from other areas.

12 CHAIRMAN HILTON: Is your storm water  
13 system in that part of the city designed to empty  
14 into the stream or into the river?

15 MR. JONES: It -- well, most of the storm  
16 water system actually goes into this stream and  
17 then eventually gets down to the river.

18 CHAIRMAN HILTON: Thank you. Any other  
19 questions? Thank you very much. We're losing  
20 another Board member. Mr. Nixon has just left.  
21 Ed Friedman. We still have an adequate number  
22 here for a quorum for this hearing. Welcome, Ed.

23 MR. FRIEDMAN: Thank you, Mr. Chair,  
24 Members of the Board. We're down to I think one  
25 Board member that I don't recognize now. I'm the

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 83

1 chairman of Friends of Merry Meeting Bay. Most of  
2 you know that we've been here a number of times  
3 over the last few years regarding safe passage for  
4 fish. The recent decision by National Marine  
5 Fisheries Service and Fish and Wildlife Service  
6 bears out our petition to expand the Atlantic  
7 salmon listing and also a subsequent lawsuit aimed  
8 at pushing that decision. So it's good to see  
9 that the feds are at least backing up some of our  
10 safe passage issues, and we're still in Supreme  
11 Court here in Maine over some appeals regarding  
12 Board decisions. I want to thank all of our  
13 volunteer monitors, trained water quality monitors  
14 that have made my being here possible and made our  
15 proposal possible to upgrade the lower  
16 Androscoggin from the vicinity of Durham boat  
17 launch on down into Merry Meeting Bay, and I want  
18 to thank the municipalities as well for the  
19 efforts they've put in and considerable expense  
20 they've put in over the years in upgrading their  
21 facilities, and it's quite clear from our data  
22 that conditions on the river more than meet Class  
23 B standards. It's also clear that there is CSO  
24 work to be done but that is not -- that does not  
25 really have a bearing on your decision here.

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 84

1 Really briefly because most of this stuff has been  
2 said, I assume you all have our proposal. I know  
3 you've gotten letters of support or will from the  
4 Brunswick Town Council, Merry Meeting Audubon, a  
5 lot of individuals but from the Maine DEP's own  
6 guidelines, when proposing an upgrade in  
7 classification recommend waters that either  
8 presently attain or with reasonable application of  
9 improved treatment or best management practices  
10 could reasonably be expected to attain the  
11 standards and criteria of a higher proposed  
12 class. Well, we're there, we're more than there.  
13 We also have a section -- a quote in our proposal  
14 from a Supreme Court case Bangor Hydro v the Board  
15 of Environmental Protection 1991 where the key  
16 words are classification is goal oriented as

17 required by the Clean Water Act. What that says  
18 is that even if you're not exactly there, the  
19 point of this whole exercise is to drive up,  
20 ratchet up, as Matt said earlier, the quality of  
21 our water, and we set a precedent in 2002, our  
22 data were used by the DEP and with a proposal of  
23 ours to upgrade the lower Kennebec, and we didn't  
24 even actually have any bacteria data then but a  
25 deal was made with the Augusta Sanitary District

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 85

1 to give them X amount of years to kind of come up  
2 to speed there but our DO data were there and  
3 backed up that upgrade. I should also say to  
4 digress that we do have DO data from Solon,  
5 Norridgewock, Skowhegan, Waterville on the  
6 Kennebec. We don't have anything like in the  
7 middle of the SAPPI impoundment, and those data  
8 are all on our Web site now. DEP has them all.  
9 I'm assuming that some of the folks here have them  
10 as well. I know we have one of our Kennebec  
11 monitors here, and probably lastly -- two more  
12 points quickly and then I'll let you ask me some  
13 questions if you have any, Steve Hinchman brought  
14 up the no wastewater business here, use of the  
15 water body to receive or transport wastewater  
16 discharges is not considered an existing use for  
17 purposes of this antidegradation policy and then  
18 really the most important, when the actual quality  
19 of any classified water exceeds the minimum  
20 standards, the next highest classification, that  
21 higher water quality must be maintained and  
22 protected. The Board shall, not may, shall  
23 recommend to the Legislature that that water be  
24 reclassified in the next higher classification.  
25 And I'll close with saying that brings to mind we

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 86

1 had a hearing in Auburn a few weeks ago and Nick  
2 Bennett and others were there and the DEP members  
3 that were there were sort of casting around  
4 saying, well, what do you think, what do you feel  
5 to the members of the public there, and Nick made  
6 the excellent point that it sounded like they were

7 asking for -- looking for a referendum on water  
8 quality, and this is really dictated in statute,  
9 and I've just cited, and other people have cited  
10 as well, the governing statute here. So I  
11 appreciate your taking the time to review our  
12 proposal and we support the others as well, the  
13 other upgrades. This is a constant effort to  
14 ratchet up levels. We were supposed to have no  
15 discharge by the mid eighties according to the  
16 Clean Water Act and here we are. So I'll be happy  
17 to answer any questions for you about data, about  
18 protocols. Peter Milholland from Friends of Casco  
19 Bay is here. We train and work with them, EPA  
20 certified program, and you've used our data  
21 before.

22 CHAIRMAN HILTON: Just a second, Ed, did  
23 you come in too late to get sworn?  
24 MR. FRIEDMAN: I didn't get sworn in. I  
25 signed in. I thought we started at 1:30.

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 87

1 CHAIRMAN HILTON: I think that you and also  
2 Mr. Ward, and is there anybody else who came in  
3 that has signed in that needs to be sworn in?  
4 Okay, everybody who hasn't been sworn in yet who  
5 plans to or has just testified, please raise your  
6 right hand. Do you all affirm that the testimony  
7 that you either have given or will be giving is  
8 the truth?  
9 (Whereupon, witnesses respond in affirmative.)  
10 CHAIRMAN HILTON: Okay. So we'll start  
11 with questions and Wing is first.  
12 MR. GOODALE: Maybe it's already in the  
13 record but I just want to make sure that the data  
14 you've collected is available to us on the Board.  
15 We can't go to Web sites and whatnot, so please  
16 submit it as part of --  
17 MR. FRIEDMAN: It's submitted as part of  
18 our proposal. It looks like that.  
19 MR. GOODALE: Good, and do you have --  
20 maybe we'll get information on the references  
21 here.  
22 MR. FRIEDMAN: Let me clarify. It was  
23 submitted to the DEP. I assume it made its way to  
24 you.  
25 MS. BERTOCCI: Not yet.

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 88

1 CHAIRMAN HILTON: It hasn't yet.  
2 MR. FRIEDMAN: Well, it was -- the  
3 proposals went to Susan Davies and I assumed all  
4 those proposals would make their way to the BEP.  
5 MR. GOODALE: I want to make sure.  
6 MR. SCOTT: It will eventually.  
7 CHAIRMAN HILTON: Susan or Andy, can you  
8 assure that that data gets to us?  
9 MR. FISK: Sure, absolutely.  
10 MR. GOODALE: Going along with that is one  
11 of the comments is that you did not do a QAPP,  
12 quality assurance project plan. I've done that  
13 many times myself. To that effect, if you could  
14 also include detailed methods on how you collected  
15 your data so that I can look at those, that would  
16 be helpful.  
17 MR. FRIEDMAN: We can do that, and as I  
18 say, we basically come under the Friends of Casco  
19 Bay QAPP.  
20 MR. GOODALE: Because that's specifically  
21 said, while the Department has no reason to  
22 question Friends of Merry Meeting Bay data, it  
23 does not have an approved QAPP.  
24 MR. FRIEDMAN: Peter can address that I  
25 hope, and I'll be happy to fill in any holes for

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 89

1 you and remind you that the Department has used  
2 our data before.  
3 MR. GOODALE: Thank you. Finally, however  
4 sampling numbers, sampling locations are  
5 insufficient to determine likelihood of attainment  
6 of Class B water quality criteria at maximum  
7 licensed loads, and if you could just include a  
8 reference on what the maximum license loads are so  
9 as I look at your data I can --  
10 MR. FRIEDMAN: I would ask that you get  
11 that from the Department, if you would. That's a  
12 false premise there and I addressed that with the  
13 wastewater comment. Wastewater is not to be  
14 included in this issue, wastewater discharges, and  
15 this frankly is an excuse. It's been used before  
16 to essentially set -- and what it does is it sets

17 an artificial limit on water classification  
18 upgrades. Five years, six years in the case of DO  
19 data, business as usual, for every discharge on  
20 the river we're meeting Class B standards, that  
21 tells me that the license limits are set too  
22 high.  
23 MR. GOODALE: Thank you.  
24 CHAIRMAN HILTON: Nancy?  
25 MS. ZIEGLER: Yeah, I think Wing asked most

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 90

1 of the questions I was going to ask. My one  
2 question to you is do you believe that having an  
3 approved -- I gather that means approved by the  
4 Department -- quality assurance project plan is  
5 what you need to present in order to do this  
6 classification?  
7 MR. FRIEDMAN: No, I don't believe that.  
8 We have a very active group, we've been doing it  
9 for years, we're well trained. As I say, we work  
10 with Friends of Casco Bay, they have an approved  
11 QAPP multiple times. If you're going to throw out  
12 our data, which you've used before, you're going  
13 to throw out their data, it's better than anyone  
14 in the State probably, and I would ask you to  
15 consider that please.  
16 MS. ZIEGLER: Thank you.  
17 MR. FRIEDMAN: And Peter can address that  
18 when he comes up.  
19 MR. SCOTT: I wanted to thank Ed for that  
20 comment because it goes back to your earlier  
21 question, Mr. Hilton, of the use of volunteer data  
22 for quality assurance and quality control.  
23 MR. FRIEDMAN: I'd also like to point out  
24 if I could that at least more or less the DEP has  
25 historically had a plan where they essentially

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 91

1 rotate between watersheds once every five years or  
2 so, major watersheds. We've got data that's taken  
3 monthly from April to October for multiple years.  
4 So they are the best data out there. Volunteer  
5 data, yeah, there's going to be a glitch here and  
6 there as there is with anybody, but these are the

7 best data out there on both rivers frankly.  
8 CHAIRMAN HILTON: So when you say that your  
9 data -- the Department has used your data in the  
10 past, in what sort of a proceeding? Was it used  
11 in a licensing proceeding?  
12 MR. FRIEDMAN: No, in this same proceeding  
13 in 2002 we proposed an upgrade for the Kennebec  
14 from Augusta down to Abagadasic Point in Merry  
15 Meeting Bay.  
16 CHAIRMAN HILTON: And they explicitly used  
17 your data?  
18 MR. FRIEDMAN: Well, we submitted it and  
19 they supported our proposal.  
20 CHAIRMAN HILTON: Okay. Wing?  
21 MR. GOODALE: Do you have a report that  
22 goes along with the data?  
23 MR. FRIEDMAN: Yeah, there's a proposal.  
24 It's not just raw data, and, again, I apologize, I  
25 assumed that all these proposals made their way to

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 92

1 you.  
2 MR. GOODALE: Okay, so that summarizes your  
3 data?  
4 MR. FRIEDMAN: Yeah.  
5 MR. GOODALE: Will we get those, Andy?  
6 MR. FISK: Sure, absolutely.  
7 MR. GOODALE: Great.  
8 CHAIRMAN HILTON: I know nothing at all  
9 about these QAPPs. Do you know -- have you looked  
10 at or how familiar might you be with the QAPP or I  
11 can ask --  
12 MR. FRIEDMAN: If you could ask Peter, that  
13 would be great. I know we actually started work  
14 on our own years ago, and I forget but there was  
15 an issue around turbidity or something which isn't  
16 part of what we're dealing with here for  
17 standards, and we never -- we never actually  
18 finished it. Again, we're working with people  
19 that have one and we're part of that program.  
20 MR. GOODALE: And you followed their  
21 protocol?  
22 MR. FRIEDMAN: Yes. I'll say that they  
23 don't do bacteria. They do dissolved oxygen and  
24 pH and so do we and so forth, but our bacteria  
25 sampling is done using a ColiQuant EZ bacteria

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 93

1 fecal and non-fecal coliform monitoring kit from  
2 Lemont, very standard, it's all pre-measured,  
3 everything, all you have to do is count the  
4 colonies basically, incubate the thing and count  
5 the colonies.

6 MR. GOODALE: Thank you.

7 CHAIRMAN HILTON: Thank you, Ed. The next  
8 person I have is Neil Ward. I've heard reference  
9 to others as perhaps speaking. They need to sign  
10 in if they haven't already.

11 MR. WARD: Chairman Hilton, Members of the  
12 Board.

13 CHAIRMAN HILTON: Neil, just a second.  
14 Peter, beyond you, is there anyone else who is  
15 going to be speaking? Have you signed in, sir?  
16 And who else? Okay, and you've signed in, all  
17 right, good. It looks like we have four more  
18 speakers.

19 MR. WARD: Chairman Hilton, Members of the  
20 Board, thank you for this opportunity to speak.  
21 My name is Neil Ward, I'm program director for the  
22 Androscoggin River Alliance. I didn't think I  
23 would be back before this Board quite as quickly  
24 as this, but I did want to thank the Board for  
25 moving our river forward following the last

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 94

1 hearings on the Androscoggin.  
2 As I said, I'm the program director for the  
3 Androscoggin River Alliance and I'm speaking on  
4 their behalf. We're asking that you approve the  
5 petition filed by Friends of Merry Meeting Bay to  
6 upgrade the lower Androscoggin for two reasons;  
7 first, as a matter of law; and, second, as a  
8 matter of public responsibility. The reasons the  
9 Department gives for not recommending upgrading do  
10 not stand up to legal scrutiny. The Department  
11 says that it must decide whether the river could  
12 meet Class B standards if the sources upstream  
13 emitting all the pollution into the river --  
14 excuse me -- emitting all the pollution that their  
15 permits allow but Maine law sets a different  
16 standard, not maximum license loads at low flow

17 but actual conditions of the river today. There's  
 18 no need for more modeling about the mills and  
 19 other sources. The best available data says that  
 20 the lower Androscoggin does currently meet Class B  
 21 standards, and the Department says that it has no  
 22 reason to question Friends of Merry Meeting Bay's  
 23 data. Second, we should upgrade as a matter of  
 24 public responsibility. The Department's written  
 25 explanation of the reclassification process says,

ALLEY & MORRISETTE REPORTING SERVICE  
 207-495-3900

Page 95

1 quote, upgrades of classifications are appropriate  
 2 where it is socially and economically desirable to  
 3 attain higher standards. We have data shared with  
 4 the agency last week that indicates that an  
 5 upgrade is clearly desirable. Over the last year,  
 6 35 Bowdoin College students surveyed parents and  
 7 students in high schools from Brunswick, Topsham  
 8 Lisbon, Lewiston/Auburn and Rumford, 960 people  
 9 answered the survey, and I will get you the  
 10 survey. I didn't bring it with me, but I will  
 11 make sure you get a copy of the survey. The  
 12 survey indicates that people think the lower  
 13 Androscoggin River is dirtier than it actually is,  
 14 that large numbers use the river anyways, and that  
 15 they agree the river should become cleaner, 38  
 16 percent rate the river in poor health and another  
 17 38 percent in fair health. People do think the  
 18 river is important to their communities, 51  
 19 percent say it's important to their communities  
 20 because it makes their towns a nicer place to  
 21 live, and 41 percent say the river is important  
 22 because it's useful for industry. Whichever the  
 23 reason they give, that the river makes the towns  
 24 nicer places or that it helps industry, they want  
 25 the same future for their river. Even though they

ALLEY & MORRISETTE REPORTING SERVICE  
 207-495-3900

Page 96

1 I think the river is not in good health, they still  
 2 use the river actively, 32 percent of respondents  
 3 fish, boat or swim in the river. Sadly, students  
 4 are less optimistic about the river. They're less  
 5 likely to think the river is very important to  
 6 their communities or to make their communities

7 nicer places to live. They also use the river  
 8 less than the adults. This data clearly says, to  
 9 use the Department's words, it is socially  
 10 desirable and appropriate to upgrade the lower  
 11 Androscoggin.  
 12 The Board and the Department have it within  
 13 their power to change public perception about the  
 14 lower Androscoggin. You have it in your hands to  
 15 encourage people to use the existing trails and  
 16 boat launches along the river, build more trails,  
 17 boat launches and parks, make prudent investments  
 18 in businesses along the river corridor and  
 19 continue our efforts to clean up the remaining  
 20 sources of pollution. If you look at the Clean  
 21 Water Act, you see that the process of upgrading  
 22 is designed to direct you to do this precise  
 23 thing. The law says that if the river can meet  
 24 higher standards, the Department must upgrade it.  
 25 Upgrading will not take jobs away from the mills

**ALLEY & MORRISETTE REPORTING SERVICE**  
 207-495-3900

Page 97

1 up river. The river already meets Class B  
 2 standards. Upgrading, however, will create jobs  
 3 in Lewiston/Auburn, Lisbon, Durham, Topsham and  
 4 Brunswick.  
 5 You can take credit for the good work that  
 6 you, the towns, the mill, the Legislature, the  
 7 Department and others have done to clean up the  
 8 river so far. There's more to do, of course, but  
 9 we are making progress. Please encourage the  
 10 Department to change their position on  
 11 reclassifying the lower Androscoggin, and if it's  
 12 too late to do that, please vote to support  
 13 upgrading the river, and we look forward to  
 14 working with the Department and the Board and the  
 15 Legislature to make our river cleaner and an  
 16 economic asset for our communities, and also on  
 17 behalf of the board of selectmen and the residents  
 18 of the town of Durham, they have asked me to  
 19 submit their letter of support in reclassifying  
 20 the river, and you will receive other letters  
 21 before the comment period closes. Thank you.  
 22 CHAIRMAN HILTON: Thank you, Mr. Ward. Any  
 23 questions? Thank you. Next we have Richard  
 24 Lawrence and then Richard Kelly.  
 25 MR. LAWRENCE: Thank you. I appreciate the

ALLEY & MORRISSETTE REPORTING SERVICE  
207-495-3900

Page 98

1 opportunity to speak to you today. I'm a former  
2 selectman from Benton. I was a selectman for 18  
3 years.

4 MS. ZIEGLER: I'm sorry, I couldn't hear  
5 that.

6 MR. LAWRENCE: I'm sorry, I'm a former  
7 selectman from Benton. I've been a selectman 18  
8 of the last 30 years there, and Benton, as you may  
9 know, is on the east side of the Kennebec River.  
10 It's the rural side, and we span the Shawmut Dam  
11 both up and down stream and also down to our  
12 neighbor Winslow, and so we have a great interest  
13 in seeing an upgrade to the Kennebec in that  
14 stretch. As I say, we're on the rural side. I've  
15 been there for 40 years, and in that time I've  
16 seen a real change, a change from when the river  
17 was brown with bark and logs and you couldn't see  
18 anything but the brownness of the water. That's  
19 changed. Back then nobody would think of swimming  
20 in the river. Most people if they had any luck  
21 lived somewhere else. The river smelled and it  
22 wasn't a pleasant sight. The people -- the  
23 creatures that enjoyed it were the snapping  
24 turtles because they could catch ducks from  
25 underneath without the ducks even seeing them as

ALLEY & MORRISSETTE REPORTING SERVICE  
207-495-3900

Page 99

1 they rose up. Well, nowadays there are a lot of  
2 fish there, a lot of fishermen there. The river  
3 is beautiful. When you cross the bridges from  
4 Benton to Fairfield you can see boaters, swimmers,  
5 the water quality is great, and it's a visually  
6 stunning change. I'm not speaking from the  
7 science. I think you heard that from others. I'm  
8 also bringing greetings from Peter Garrett who has  
9 established the Kennebec Messalonskee Trail which  
10 now runs from Benton to Winslow and from Oakland  
11 to Waterville, a 23-mile long trail system. It  
12 wouldn't have been conceivable 30 or 40 years ago  
13 that they would do this. You walk along this  
14 trail and you feel as though you're in the  
15 wilderness or you're in nature. You can look  
16 across it to the urban parts of Fairfield and

17 Waterville but you have a feeling that this river  
18 has changed, and I think we can celebrate that and  
19 I hope part of the celebration will be  
20 reclassifying this river. Thank you very much.  
21 CHAIRMAN HILTON: Questions? Mr. Lawrence,  
22 I've got one question and that is, right there  
23 where the bridges cross from Fairfield to Benton  
24 is that a free flowing stretch or is there an  
25 impoundment right there?

ALLEY & MORRISSETTE REPORTING SERVICE  
207-495-3900

Page 100

1 MR. LAWRENCE: It's free flowing there,  
2 although I suppose the impoundment from Waterville  
3 may affect that area. To the island there's  
4 always a lot of water moving there.  
5 CHAIRMAN HILTON: How far above there is it  
6 to the Shawmut Dam?  
7 MR. LAWRENCE: The Shawmut Dam, I'd say  
8 about two miles and then Benton extends about a  
9 mile above the Shawmut Dam to Clinton.  
10 CHAIRMAN HILTON: Yup.  
11 MR. LAWRENCE: A beautiful stretch, lots of  
12 farms, farms that were there from the late 1700s  
13 and they're still operating today, although  
14 they're milking 800 cows instead of 20.  
15 CHAIRMAN HILTON: I come from that area.  
16 Thank you very much.  
17 MR. LAWRENCE: Thank you.  
18 CHAIRMAN HILTON: Mr. Kelly.  
19 MR. KELLY: Mr. Chairman, Commission, I'm  
20 here representing the Friends of the Basin which  
21 is the other major group which represents the  
22 other owners of the shore of the Basin for which  
23 the Maine Nature Conservancy owns a large portion  
24 of the Basin, and just to express our wholehearted  
25 enthusiasm and support for upgrading the

ALLEY & MORRISSETTE REPORTING SERVICE  
207-495-3900

Page 101

1 classification of the Basin. I'm also the  
2 resident agent for the Brightwater Corporation  
3 which owns approximately a mile and a half of the  
4 basin both in the area of the basin itself in the  
5 Narrows. I can also say that that is a part of --  
6 that group is a part of the Friends of the Basin

7 and it's really 21 families that have been part of  
 8 the summer community in Maine since 1925. If some  
 9 of you have never been in the Basin, it's one of  
 10 the most remarkable little pieces of estuary on  
 11 the Maine Coast. It has been used by generations  
 12 for yachts that come in and up along the coast and  
 13 if you come in on a summer's afternoon at 3:00 and  
 14 look into the water as they come into the Basin,  
 15 the yachts will come in, 25, 30, 40 on a busy  
 16 weekend. It's known in all of the cruising guides  
 17 in New England as one of the most remarkable spots  
 18 for coming in. It's as though you're in an inland  
 19 lake. It also has many archeological sites of  
 20 considerable value. It's been inhabited by people  
 21 for over 6,000 years, and we're just the present  
 22 custodians and feel thrilled that the Nature  
 23 Conservancy has acquired this large tract of land  
 24 and we support the upgrade completely, and if any  
 25 of you would like to come visit the Basin, give me

ALLEY & MORRISETTE REPORTING SERVICE  
 207-495-3900

Page 102

1 a call next spring. My outboard died so it's at  
 2 the shop over in East Vassalboro right now getting  
 3 repaired but next year I'd be glad to take anybody  
 4 who wants to go for a ride who hasn't been there.  
 5 So it's a great spot and my testimony is not  
 6 technical. It comes from -- my first visit was in  
 7 1937. So I know pretty much all of it. I've  
 8 taken two wives on canoeing trips there.  
 9 CHAIRMAN HILTON: Not at the same time I  
 10 hope.  
 11 MR. LAWRENCE: It works every time. Thank  
 12 you, Mr. Chairman.  
 13 CHAIRMAN HILTON: I have one question or a  
 14 couple. One is, I'm looking at this little  
 15 chart.  
 16 MR. KELLY: Yes.  
 17 CHAIRMAN HILTON: And is the Nature  
 18 Conservancy's preserve is that to the south and  
 19 the east? Is that where it's located?  
 20 MR. KELLY: I can show you -- kind of from  
 21 here it's kind of hard to say. If you come into  
 22 the basin, they own a portion of land that fronts  
 23 on the New Meadows just below Sebasco and before  
 24 the Narrows which is the entrance to the basin.  
 25 They do not own the land which is in the

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 103

1 entrance. Brightwater is on the south side of the  
2 entrance and a private family owns the portion on  
3 the left side. This is a little larger and so you  
4 can see that the area -- the Basin itself is right  
5 here and we're talking about, as I understand --  
6 I'm not exactly sure where the exact border is but  
7 we're trying to include the entrance because  
8 that's where a great deal of the water comes in  
9 and out twice a day, and the basin itself, this is  
10 the Brightwater section and then this part is  
11 owned by the Nature Conservancy and private owners  
12 here who also have -- who are part of the Friends  
13 of the Basin who were very much committed to  
14 maintaining the water quality and the natural  
15 appearance of the environment.

16 CHAIRMAN HILTON: From what I can gather,  
17 everything you see there that's brown is part of  
18 the Nature Conservancy?

19 MR. KELLY: Is the Nature Conservancy.  
20 This is Brightwater which has its own internal  
21 protection in terms of development. This land  
22 here has no specific developments but it doesn't  
23 have a right-of-way to allow electricity to get in  
24 there.

25 CHAIRMAN HILTON: You say there's no

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 104

1 development there at all now?

2 MR. KELLY: There are three small cottages  
3 owned by one family, a local Phippsburg family,  
4 who are very nice people. I'm not being critical  
5 of them when I say that.

6 CHAIRMAN HILTON: And where is your group?  
7 Your group is the Brightwater section?

8 MR. KELLY: Brightwater is here. Our  
9 cottage is right here built in 1930.

10 CHAIRMAN HILTON: Thank you very much. Any  
11 other questions for Mr. Kelly? Matt.

12 MR. SCOTT: Just a comment, Mr. Kelly. You  
13 don't have to be technical, Mr. Kelly. Anecdotal  
14 comments are appreciated. We're a citizen board  
15 and we represent all the citizens.

16 MR. KELLY: Okay, thank you.

17 CHAIRMAN HILTON: Our final speaker unless  
18 someone else wants to is Peter Milholland, Friends  
19 of Casco Bay. Welcome.

20 MR. MILHOLLAND: Good afternoon, Board. I  
21 hadn't had anything prepared to speak to you today  
22 but I would like to be in support of two of the  
23 proposals, one that is the proposal for the Basin  
24 for the upgrade, and the other is for the  
25 Androscoggin by Friends of Merry Meeting Bay. I

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 105

1 I can speak a bit about the Basin. Friends of Casco  
2 Bay is an organization that has supported the work  
3 by Friends of the Basin. In fact, a number of the  
4 volunteers who live within the Basin have been  
5 volunteers for Friends of Casco Bay. We have an  
6 organization that runs a water quality monitoring  
7 program that we're now in our 16th year of  
8 monitoring the health of Casco Bay. Over the  
9 years we've had over 116 water quality stations in  
10 the bay and the data that is collected by both  
11 volunteers and staff is EPA approved with a  
12 quality assurance project plan called QAPP. The  
13 QAPP that's been approved for Friends of Casco Bay  
14 has gone through three iterations now with EPA and  
15 it really spells out the structure of the program  
16 soup to nuts really for the whole program, how the  
17 volunteers collect the water quality data, how  
18 they're trained, how they're retrained, how the  
19 kits and supplies within the kit are quality  
20 assured, what their expiration dates are and so  
21 on. It's really quite an arduous process to go  
22 through writing a QAPP with EPA, but we feel at  
23 Friends of Casco Bay that it's a very important  
24 process to do because data that gets collected by  
25 volunteers has credibility to it, it has some

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 106

1 teeth, it has been used in a number of occasions  
2 in Casco Bay.  
3 To speak on behalf of Friends of Merry  
4 Meeting Bay, I have personally trained a number of  
5 their volunteers. We've been collaborating on  
6 water quality work that Friends of Merry Meeting

7 Bay has done for nine years now, and their  
8 volunteers are trained side by side with our  
9 volunteers. They're also run through a pretty  
10 rigorous quality assurance session that we hold  
11 every year which is a retraining for volunteers to  
12 make sure that, again, their kits are up to date,  
13 all the equipment works, we have them go through  
14 various stations where we know the sort of answers  
15 to the processes that they're supposed to do their  
16 -- supposed to measure temperature and salinity,  
17 they do a dissolved oxygen test in our presence,  
18 and we validate the tests that they do and we  
19 compare their results to what our results are or  
20 our known sort of standards, so to speak, and we  
21 have sort of a leeway that we give them. They  
22 need to fall within a certain criteria and pass,  
23 and for nine years now volunteers for Friends  
24 Merry Meeting Bay have passed quite well. I have  
25 worked with members of Friends of Merry Meeting

**ALLEY & MORRISETTE REPORTING SERVICE**  
207-495-3900

Page 107

1 Bay over the years to develop a QAPP for their  
2 organization. It's been in process for a few  
3 years. I know material has been submitted to EPA  
4 for their QAPP. I believe at the moment it's  
5 still in process or may not have been worked on.  
6 Due to the nature of people who come in and go out  
7 of organizations, somebody may have been working  
8 on it for a while and sort of dropped the ball at  
9 one point and have not been working on it. Again,  
10 it is quite a process to deal with EPA. So I  
11 guess I'm here to answer any of your questions  
12 regarding water quality issues or QAPPs or any of  
13 that kind.

14 CHAIRMAN HILTON: Yes, Mr. Goodale.

15 MR. GOODALE: At the risk of more  
16 paperwork, knowing how QAPPS can be having written  
17 one myself, could you submit that as part of your  
18 testimony for part of our record?

19 MR. MILHOLLAND: QAPP for Friends of Casco  
20 Bay?

21 MR. GOODALE: Yes, the QAPP that Friends of  
22 Merry Meeting Bay is following.

23 MR. MILHOLLAND: Yes, that can be done  
24 easily enough.

25 MR. GOODALE: Great, and do you have the

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 108

1 same confidence in Friends of Merry Meeting Bay's  
2 data as you do in your own?

3 MR. MILHOLLAND: I do, absolutely. The  
4 volunteers that have been collecting data in the  
5 sections of the Androscoggin River have been doing  
6 it for many years. We have records that go back  
7 to when they've been recertified by us and with  
8 Friends of Merry Meeting Bay and have quite good  
9 confidence with their data.

10 MR. GOODALE: I haven't done DO sampling  
11 for quite some time, but as I recall, it's not  
12 terribly complicated. It's fairly simple  
13 sampling?

14 MR. MILHOLLAND: Actually, it can be quite  
15 complicated. What the volunteers do is called a  
16 Winkler titration test and, Winkler titration is a  
17 chemical process that measures dissolved oxygen  
18 in the water. The accuracy of the Winkler  
19 titration is quite good, in fact, a lot of  
20 researchers, Friends of Casco Bay included, use a  
21 Winkler test to calibrate instruments that are  
22 \$10,000 to \$15,000 pieces of equipment. So it's  
23 really the gold standard for measuring dissolved  
24 oxygen.

25 MR. GOODALE: I did those in high school.

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 109

1 You just reminded me of that.

2 CHAIRMAN HILTON: Any questions? I've got  
3 one. I'm curious as to when you go through this  
4 training process with these volunteer monitors, do  
5 they as individuals get certified?

6 MR. MILHOLLAND: They as individuals are  
7 under sort of our QAPP policy with EPA, so to  
8 speak. They go through certification with us,  
9 they have to come in, go through all the  
10 procedures for restocking equipment, they go  
11 through various stations that get -- their results  
12 need to be compared to our results within a  
13 certain limitation. There's no sort of paper  
14 certification necessarily that we give them, but  
15 we do submit their names and dates to EPA when  
16 called upon if there's any question of data. We

17 do have records of our volunteers, again, who have  
 18 been sampling in the Basin as well as Friends of  
 19 Merry Meeting Bay who have gone through that  
 20 process for several years.

21 CHAIRMAN HILTON: And does the VLMP have  
 22 the some sort of process, the same sort of a QAPP,  
 23 do you know?

24 MR. MILHOLLAND: I don't know.

25 CHAIRMAN HILTON: It strikes me that Casco

ALLEY & MORRISETTE REPORTING SERVICE  
 207-495-3900

Page 110

1 Bay -- Friends of Casco Bay is sort of -- could  
 2 act as sort of like a parent so you could actually  
 3 bring any number of people in underneath your QAPP  
 4 it sounds like.

5 MR. MILHOLLAND: Provided that they follow  
 6 the guidelines that we set forth in our program  
 7 and that they go through retrainings and we  
 8 document how well they've done. Certainly that  
 9 could happen.

10 CHAIRMAN HILTON: So there is sort of a  
 11 certification process. I mean, there's this  
 12 training that you folks supervise as to both your  
 13 people and other people, Friends of Merry Meeting  
 14 Bay, Friends of Casco Bay?

15 MR. MILHOLLAND: Yup.

16 CHAIRMAN HILTON: So would there be -- can  
 17 you see any reason why the data collected by the  
 18 Merry Meeting Bay people would be less trustworthy  
 19 than others?

20 MR. MILHOLLAND: No, not at all. I mean,  
 21 in all essence, members of Friends of Merry  
 22 Meeting Bay who have been doing sampling follow  
 23 the same protocol with the exception of fecal  
 24 coliform because we do not collect fecal coliform  
 25 data, but dissolved oxygen and temperature and so

ALLEY & MORRISETTE REPORTING SERVICE  
 207-495-3900

Page 111

1 on, you know, the protocol is identical. They use  
 2 our protocol so I have no issue with their data.

3 CHAIRMAN HILTON: And just so I'm clear, so  
 4 the QAPP process is an EPA process?

5 MR. MILHOLLAND: It's an EPA process. There  
 6 is a representative now at DEP that can read and

7 review QAPPs, but for many years it was a process  
8 that dealt through the organization and a  
9 representative at the EPA Quality Assurance Office  
10 and we continue to work with EPA since we have a  
11 relationship with them.

12 CHAIRMAN HILTON: Why is it so -- is it, in  
13 fact, difficult for an organization to get a QAPP  
14 certification? I mean, it sounds like you just  
15 rubber stamp -- I shouldn't say rubber stamp --  
16 but if Merry Meeting Bay is just going to take  
17 yours, change the title on it and submit it and  
18 showed that they were capable of following through  
19 on it, wouldn't that be --

20 MR. MILHOLLAND: That's a good question.  
21 The QAPP involves more than just the procedures  
22 and methods and collecting the data. It really is  
23 a document that talks about the whole organization  
24 and your approach to collecting the data but also  
25 how you quality assure that data, how the data

**ALLEY & MORRISETTE REPORTING SERVICE**  
207-495-3900

Page 112

1 gets handled once it's collected, what type of  
2 database is it and how are there checks and  
3 balances performed on that data. It's really kind  
4 of a road map for the whole procedure that the  
5 organization approaches towards doing that data  
6 collection. Again, we've worked with friends of  
7 Merry Meeting Bay to develop a QAPP for their  
8 organization and, again, it's in process. I know  
9 for Friends of Casco Bay it was a two-year process  
10 from when we started collecting data until we  
11 actually got approval from EPA. There's a real  
12 give and take with EPA quality assurance officers  
13 to really validate your QAPP.

14 CHAIRMAN HILTON: Thank you very much. Any  
15 other questions? Yes, Matt.

16 MR. SCOTT: Yeah, Ernie, a follow-up with  
17 Wing's question, Peter, since you mentioned the  
18 titration method, the Winkler method in  
19 particular, I assume you're very familiar with the  
20 standard methods?

21 MR. MILHOLLAND: Yes.

22 CHAIRMAN HILTON: Thank you very much. Is  
23 there anyone else who wanted to speak before us?  
24 I see two more people. I need to have you sign in  
25 and if the other gentleman would also come down

ALLEY & MORRISSETTE REPORTING SERVICE  
207-495-3900

Page 113

1 and sign in. Do you both affirm that everything  
2 you're going to testify to will be the truth?  
3 (Witnesses respond in the affirmative.)  
4 **MR. PONTE: Good afternoon, Board and**  
5 Chairman. My name is Greg Ponte. I live in West  
6 Gardiner. I'm an avid angler, a member of Trout  
7 Unlimited here in Maine. I've spent quite a bit  
8 of time on the Kennebec and the Crooked and the  
9 Androscoggin that we're talking about. There will  
10 be data that was sent in that you will see  
11 obviously that's been discussed today, but I'm  
12 also in favor of Skowhegan down to Waterville, and  
13 five years ago I attended a public meeting on the  
14 Scribner's Mills. I went in on the mill site on  
15 the west side of the river and at that time was  
16 the first time it was approached that the Hatch  
17 family was going to try to rebuild a dam, and  
18 since that time there's been an application and  
19 for some reason Dana Murch I feel has been sitting  
20 on it since February for whatever reason. There's  
21 been a lot of comments sent back and forth on this  
22 particular proposal, but I just want to mention  
23 one thing and, that is, I visited also the  
24 Bolsters Mill site which was done primarily by the  
25 White family right there in the Harrison section

ALLEY & MORRISSETTE REPORTING SERVICE  
207-495-3900

Page 114

1 of the area, and they built the first rock ramp  
2 here in Maine on that site. The Region A ripped  
3 out the dam and the locals wanted to keep that  
4 small little impoundment so they put a rock ramp  
5 in, but it's a unique rock ramp because even  
6 during a drought year the water actually goes  
7 underneath the ramp instead of over the ramp so it  
8 actually has fish passage all the time. The only  
9 comment I'll make about that Scribner's Mills spot  
10 is, in essence, there's a dam there already. If  
11 you look at it, it's not a natural site, meaning  
12 when they put the bridge in and they put in the  
13 pen stock that goes over to this facility that's  
14 there, they already narrowed up this river. So  
15 when they want to put this dam back in, they're  
16 basically trying to put a dam underneath the

17 bridge. The bridge has got two abutments to get  
 18 over and then they filled this in. So if you'd  
 19 looked at this place back in the 1700s the river  
 20 would have been wider there. That's just  
 21 something to consider. There's already a narrow  
 22 constriction there already. So to me, putting a  
 23 more narrow constriction is just going to lead  
 24 into an impoundment that warm water species will  
 25 just have a great ability to take any small fry

ALLEY & MORRISETTE REPORTING SERVICE  
 207-495-3900

Page 115

1 that are in the river of the landlock and that's  
 2 basically all. I just wanted to bring up that  
 3 point about the -- because I didn't hear anybody  
 4 talk about Scribner's that actually talked about  
 5 the site itself, and the DEP has all the plans on  
 6 that particular site that they're evaluating to  
 7 this day. I don't know when they're going to come  
 8 up with a decision. I'm just surprised that here  
 9 we are eight months or seven months later and  
 10 we're still waiting to hear something about this.

11 If you have any questions, you can ask.

12 CHAIRMAN HILTON: Any questions? Yes,  
 13 Matt.

14 MR. SCOTT: Greg, for the Board, would you  
 15 tell the Board your long-standing position and  
 16 expertise with Trout Unlimited? I think we should  
 17 know.

18 MR. PONTE: Let's see, where do I start?

19 I'm a lifetime member of Trout Unlimited, former  
 20 chair of the Maine Council of Trout Unlimited,  
 21 current New England Embrace-A-Stream grant so, for  
 22 example, this year I'm going to Tampa, Florida, I  
 23 just found this out. For the last four years I've  
 24 represented New England. So if anybody wants to  
 25 do a grant and receive Trout Unlimited money, they

ALLEY & MORRISETTE REPORTING SERVICE  
 207-495-3900

Page 116

1 have to get the straight-face test from me in  
 2 November. If they can't convince me, they sure as  
 3 hell are not going to convince my friends from  
 4 Alaska, Wyoming, Colorado, et cetera. It's just  
 5 not going to work. So that means if you're in  
 6 Connecticut or Vermont or wherever, so last year

7 we were able to award \$20,000 to Inland Fisheries  
8 and Wildlife to Mary Gallagher in the research  
9 division, also \$10,000 went to the Batten kill and  
10 for the last -- oh, since I've been involved with  
11 it for four years representing New England, we've  
12 been able to get at least \$10,000 to \$20,000 here  
13 in Maine. We also got an additional \$10,000 in  
14 Orland on Hot Hole Brook because they needed to  
15 release \$78,000 of NRCS money but they needed  
16 private money and we finally was able to get them  
17 10 grand which freed up the 78 grand. That's just  
18 in the last year alone. I could go back all over  
19 the state, Depot Brook in southern Maine, Sunday  
20 River, South Bog Stream, Sandy River, you get the  
21 idea. Let's see, past president of Kennebec  
22 Valley Trout Unlimited.  
23 CHAIRMAN HILTON: You need to slow down a  
24 little bit.  
25 MR. PONTE: Okay. Director of the Maine

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 117

1 Trout Camp, 12 kids, we pick 12 kids with LL Bean  
2 and Patagonia.  
3 MR. SCOTT: I think that's good.  
4 MR. PONTE: You get the idea. Also a  
5 government -- no, Governor appointee of the  
6 Capital Riverfront Improvement District here in  
7 Augusta. I'm the only person on the environmental  
8 side of that. It's the only -- the CRID board is  
9 the only entity by the Legislature that was  
10 created. When Edwards Dam was taken out, they  
11 started a 15-person board and most of the people  
12 on this board are by position, senators,  
13 representatives of the area, meaning Augusta, of  
14 course, the city manager and people like that.  
15 There's a few people like myself appointed by the  
16 Governor to be on the board. I've been retired  
17 for nine years for the Merchant Marine and I fish  
18 a lot.  
19 MR. SCOTT: I've got one other question.  
20 Frances Brodigan's name was brought up during this  
21 hearing process today, and Frances was on  
22 television this morning with the Asian Coy. Any  
23 concerns about that being spread, say, in these  
24 training systems that we're talking about  
25 classification?

ALLEY & MORRISSETTE REPORTING SERVICE  
207-495-3900

Page 118

1 MR. PONTE: Well, as you well know, Matt,  
2 the coy is a carp, and we've got grass carp in the  
3 Kennebec since the U.S. Fish and Wildlife Service  
4 decided in the late 1800s to stick carp -- they  
5 were stuck in 16 counties in Maine, only two have  
6 them, Sagadahoc and Kennebec, and they're both in  
7 the Kennebec. I don't think any of them have  
8 reached the upper part. I don't know if anybody  
9 has caught one in Waterville. I know you did a  
10 lot of studies down in south Gardiner which seemed  
11 to be like the strong pothole for carp, if you  
12 wanted carp, go to south Gardiner. I'm not sure  
13 what the impact would be. It seemed like somebody  
14 must have drained their aquarium. I know people  
15 prize these fish. I'm surprised that coy was  
16 actually -- when I turned on the news this morning  
17 there was my friend Frances with this coy. It  
18 really surprised me because people pay a lot of  
19 money for these fish and so I'm just surprised. I  
20 mean, I've known like Colby College and other ones  
21 who have a little pond, Bates College, when the  
22 kids are going home for the summer, they'll throw  
23 them in the local puddle. Those are different  
24 because they're contained, but I know the  
25 Department has a policy to go in there and kill

ALLEY & MORRISSETTE REPORTING SERVICE  
207-495-3900

Page 119

1 them, no questions asked. So this will be quite  
2 interesting. The good news is the coy is really a  
3 bright-colored fish. It reminds me of some of the  
4 weird fish I've seen in the southern states where  
5 they take certain trout and mix them all up and  
6 you end up with this white rainbow. I mean, it's  
7 kind of weird but that's the only thing we have in  
8 our favor is this fish is like bright orange, but  
9 once they start disturbing the water column, they  
10 will create havoc for everything else in that  
11 pond, to say the least.  
12 CHAIRMAN HILTON: Thank you very much, and  
13 finally we have Lawrence Faiman I think it is.  
14 MR. FAIMAN: Yes, thank you, Lawrence  
15 Faiman. Thank you, Mr. Chairman, Members of the  
16 Board. I really didn't expect --

17 CHAIRMAN HILTON: You might want to just  
18 spell your last name for the record.  
19 MR. FAIMAN: My name is Lawrence Faiman,  
20 F-A-I-M-A-N, and I'm the president of the  
21 Androscoggin River Alliance. I didn't intend to  
22 speak today, but just being here and witnessing  
23 the enthusiasm shown by so many people, I felt the  
24 need just to say a couple of words, especially in  
25 light of the words that the gentleman said about

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 120

1 it being a citizens board and you accept citizen  
2 comments. I'm not a technical person, but I am  
3 extremely interested in seeing the upgrade of the  
4 Androscoggin as proposed. I'm not a native of the  
5 area. I've been associated with the area for many  
6 years. My wife is a native, and she had a school  
7 reunion this summer and the people at the reunion  
8 -- the reunion was right on the Androscoggin  
9 River, and the people were talking about the river  
10 back when and the change between then and now.  
11 It's remarkable what the people were saying, and  
12 the improvement in the river is also remarkable.  
13 As you probably know, there has been literally  
14 millions of dollars spent on the improvement of  
15 the river. The Lewiston/Auburn Wastewater  
16 Treatment Facility has spent upwards of 13 million  
17 dollars thus far improving their sewer overflows  
18 into the river. They are on line to complete that  
19 project within the next two or three years. Our  
20 organization in anticipation of this hearing has  
21 met with representatives of cities all along the  
22 river from within the area that's being proposed  
23 for the upgrade. Each of those cities was  
24 extremely enthusiastic about accomplishing the  
25 upgrade. As Mr. Ward indicated a few minutes ago,

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 121

1 I think he submitted a letter from the town of  
2 Durham, we expect to have letters from Topsham,  
3 Brunswick, Lisbon, which will be submitted to  
4 you. Each of these from the heads of -- the  
5 chairman of the boards of those cities indicating  
6 their enthusiastic support for your recommendation

7 for upgrade. From my viewpoint, again, being  
8 fairly new to the area, it's readily apparent that  
9 people see the Androscoggin as the lifeblood of  
10 their communities, and they are just anxious to  
11 have this river improved. I think that the  
12 upgrade of the river will provide a stimulus to  
13 them which will give them the impetus and momentum  
14 to work toward improving what they see as the --  
15 the lifeblood passing through their cities and  
16 will give them the ability to market their areas  
17 as an environment which will provide their  
18 citizens with an improved economic lifestyle and  
19 the ability to generate economic benefits from  
20 this river which for so long has literally been  
21 shunned by the communities. I think that they  
22 foresee right now that the time is at hand to  
23 allow this river to become, as was mentioned  
24 earlier, what Edmund Muskie had foreseen that it  
25 could be, and I'm just speaking from the heart.

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 122

1 Again, I'm not a technical person but I do  
2 sincerely appreciate your time and hope that you  
3 will take into consideration what the previous  
4 speakers have said concerning the Androscoggin and  
5 recommend the upgrade.

6 CHAIRMAN HILTON: Thank you, Mr. Faiman.

7 MR. FAIMAN: Thank you.

8 CHAIRMAN HILTON: Questions? Seeing none,  
9 thank you very much. There being no one else who  
10 wishes to speak, I think we've come to the end of  
11 our speakers' list and I would declare the hearing  
12 closed.

13 (Whereupon, the above-named hearing was concluded  
14 at 3:45 p.m.)

15

16

17

18

19

20

21

22

23

24

25

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900

Page 123

1 CERTIFICATE

2

3 I, Joanne P. Alley, a Notary Public in and  
4 for the State of Maine, hereby certify that on the  
5 18th day of September, 2008, personally appeared  
6 before me the within-named witnesses who were  
7 sworn to testify to the truth, the whole truth,  
8 and nothing but the truth in the aforementioned  
9 cause of action and that the foregoing is a true  
10 and accurate record as taken by me by means of  
11 computer-aided machine shorthand.

12

13 I further certify that I am a disinterested  
14 person in the event or outcome of the  
15 aforementioned cause of action.

16

17 IN WITNESS WHEREOF, I have hereunto set my  
18 hand this 17th day of October, 2008.

19

20 \_\_\_\_\_

21 Joanne P. Alley

22 Court Reporter/Notary Public

23

24 My commission expires: July 17, 2015

25

ALLEY & MORRISETTE REPORTING SERVICE  
207-495-3900