

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

PHIPPSBURG SHELLFISH CONSERVATION)
COMMISSION; PHIPPSBURG LAND TRUST;)
FRIENDS OF MERRYMEETING BAY;)
BOB CUMMINGS; ETHAN DEBERY; DEAN)
DOYLE; BRETT GILLIAM; PEGGY)
JOHANNESSEN; DOROTHY KELLY;)
LAWRENCE PYE; LAURA SEWALL;)
and DOUGLAS WATTS;)

Plaintiffs,)

v.)

U.S. ARMY CORPS OF ENGINEERS; COL.)
PHILIP T. FEIR, in his official capacity as)
District Engineer, New England District,)
U.S. ARMY CORPS OF ENGINEERS,)

Defendants.)

TOWN OF PHIPPSBURG'S
MOTION TO INTERVENE
IN SUPPORT OF
PLAINTIFFS

CIVIL ACTION NO. 2:11-cv-259

**TOWN OF PHIPPSBURG'S MOTION TO INTERVENE
IN SUPPORT OF PLAINTIFFS**

The Town of Phippsburg ("Town") hereby moves to intervene in support of Plaintiffs' action to minimize the adverse environmental and economic impacts of the planned August 2011 dredging of the Kennebec River. The Town seeks permissive intervention pursuant to Federal Rule of Civil Procedure 24(b). The Town has been authorized to state that Defendants and putative intervenor Bath Iron Works take no position on this motion for intervention.

BACKGROUND

The Town of Phippsburg, with 2,216 residents, is situated in Sagadahoc County on a peninsula surrounded by the Kennebec River, the Atlantic Ocean, and the New Meadows River.

For four centuries, the lives and livelihoods of Town residents have been closely tied to the waters that surround them. Life today is no different: Phippsburg is dependent upon the Kennebec River and Estuary for its economy – including fishing, shellfish harvesting, tourism and recreation – its sense of community, and its quality of life.

Many Phippsburg families make their living from fishing, shellfish harvesting, or related activities, such as selling bait and equipment or buying wholesale. The Town owns and manages several public landings specifically for use of area fisherman, lobstermen, and clammers, including landings on the Kennebec River. The Town has worked diligently to help restore the quality of the Kennebec River Estuary and its fisheries, including by creation of a Shellfish Conservation Commission to regulate shellfish harvesting, monitor water quality conditions, and to seed and restore the clam flats. The Town has also worked to eliminate permits for overboard discharges and to clean up other pollution sources, and has created other Town committees to regulate and reduce the impacts of development upon the River and Estuary.

Phippsburg's other economic mainstay is tourism. Popham Beach State Park is one of the crown jewels of the Maine Park's system, and is among the most heavily visited parks in the entire state. Together with Fort Popham, the Popham Colony historic site, Fort Baldwin, the Seguin Island Lighthouse, the Bates-Morse Mountain Conservation Area, and Seawall Beach, the area offers some of the best recreation opportunities in Maine. The Town hosts multi-generational colonies of summer residents. Bed and breakfast inns, cottage rentals, fishing guides, local stores, restaurants, resorts, antique shops and artists round out its economic base. Visitors and locals alike come to enjoy the spectacular beaches, swimming, surf kayaking, sport fishing, sailing, motor boating, clamming, hiking, nature trails, historic sites, scenic ocean views

and more. August is the key month for each and every one of these businesses, and accounts for the bulk of their annual income.

The Town is deeply concerned that the scale of the proposed dredge and fill operation in August, 2011 greatly exceeds the levels necessary to enable safe transit of the USS Spruance in September, and that excessive dredging during August will harm the local economy by severely and adversely impacting the local lobster, shellfishing, and (commercial and sport) fishing industries at their peak seasons, and by deterring tourists from visiting Popham Beach State Park and area attractions and businesses this August. These impacts in turn will affect other residents by reducing the amount of economic activity in Town and by jeopardizing the long term economic health and viability of leading businesses in the community.

The Phippsburg Selectboard joined Plaintiffs' May 2011 appeal of the state water quality certification and Natural Resources Act permit for the dredging project. (Complaint, Ex. 3.) Due to the extremely rapid development of events in late June, however, the Town was unable to formally vote to join the federal appeal prior to Plaintiffs' filing of their complaint and motion for preliminary injunction on July 1st. On July 6th, the Phippsburg Selectboard voted unanimously to join this litigation on the exact terms and seeking the exact relief as Plaintiffs. The Town files this motion to seek permission of the Court to join their fellow plaintiffs as a named party in this case.

DISCUSSION

Under the doctrine of permissive intervention, "a court may allow intervention 'when an applicant's claim or defense and the main action have a question of law or fact in common.' A court must consider the potential of delay or prejudice to the existing parties, but otherwise has broad discretion in deciding whether to allow intervention." *Maine v. Norton*, 203 F.R.D. 22, 29

(D.Me. 2001), quoting Fed.R.Civ.P. 24(b)(2) and *Daggett v. Comm'n on Governmental Ethics and Election Practices*, 172 F.3d 104, 112 (1st Cir. 1999). Additional factors are whether the party seeking intervention “may be helpful in fully developing the case,” *Daggett*, 172 F.3d at 113, and whether they will significantly contribute to the just and equitable adjudication of legal questions presented. *United States Postal Serv. v. Brennan*, 579 F.2d 188, 191-92 (2d Cir. 1978). Like intervention of right, permissive intervention is to be granted liberally. *Washington State Bldg. and Const. Trades Council*, 684 F.2d 627, 630 (9th Cir. 1982)(“Rule 24 has traditionally has received a liberal construction in favor of Applicants for intervention.”).

Here, due to the very rapid pace of this litigation, the Town was unable to formally vote to join the case as a named plaintiff prior to filing. The Town seeks permissive intervention solely to catch up with events. The Town, as an applicant for intervention, seeks to contest the same legal and factual questions as Plaintiffs. It will be represented by the same counsel and will join in Plaintiffs’ filings. Accordingly, the Town meets the primary criteria for permissive intervention: it raises common questions of law and fact and its participation will not result in delay or prejudice to opposing parties.

The Town also meets the additional factors for permissive intervention: its participation will aid both in the full development of the case and in the equitable adjudication of the questions presented. As the elected government of the people of Phippsburg, the Town represents a broader array of interests than the current individual and organizational Plaintiffs. The Town’s formal participation in this case, via the unanimous vote of the Selectboard, acts to convey to the Court both the gravity of the situation and the widespread support of the people of Phippsburg for a more just and equitable solution to the dredging problem.

CONCLUSION

For the reasons above, the Town respectfully requests the Court grant them permissive intervention pursuant to Rule 24(b).

Respectfully Submitted, July 12, 2011

By: /s/ Stephen F. Hinchman
Stephen F. Hinchman

Law Offices of Stephen F. Hinchman, LLC
537 Fosters Point, West Bath, ME 04350
207.837.8637
SteveHinchman@gmail.com

*Counsel for Plaintiffs and the
Town of Phippsburg*

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

CERTIFICATE OF SERVICE:

I hereby certify that on July 12, 2011, I electronically filed **TOWN OF PHIPPSBURG'S MOTION TO INTERVENE IN SUPPORT OF PLAINTIFFS** with the Clerk of Court using the CM/ECF system which will send notification of such filing(s) to:

JOHN G. OSBORN
U.S. ATTORNEY'S OFFICE
DISTRICT OF MAINE
100 MIDDLE STREET PLAZA
PORTLAND, ME 04101
207-780-3257
Email: john.osborn2@usdoj.gov, abagail.kramer@usdoj.gov, usame.ecf@usdoj.gov

MATTHEW D. MANAHAN
PIERCE ATWOOD LLP
ONE MONUMENT SQUARE
PORTLAND, ME 04101
207-791-1189
Email: mmanahan@pierceatwood.com, cconnors@pierceatwood.com,
dursia@pierceatwood.com

By: /s/ Stephen F. Hinchman
Stephen F. Hinchman

Law Offices of Stephen F. Hinchman, LLC
537 Fosters Point Road
West Bath, ME 04350
207.837.8637
SteveHinchman@gmail.com

*Counsel for Plaintiffs and the
Town of Phippsburg*