

## EXHIBIT B

From: [Fein.Ronald@epamail.epa.gov](mailto:Fein.Ronald@epamail.epa.gov) [<mailto:Fein.Ronald@epamail.epa.gov>]  
Sent: Wednesday, August 10, 2011 4:30 PM  
To: [info@dougwatts.com](mailto:info@dougwatts.com); Taub, Christopher C; Reid, Jerry; [rfleming@earthjustice.org](mailto:rfleming@earthjustice.org);  
[dnicholas@verizon.net](mailto:dnicholas@verizon.net); [smahoney@clf.org](mailto:smahoney@clf.org)  
Cc: [Weitzler.Ellen@epamail.epa.gov](mailto:Weitzler.Ellen@epamail.epa.gov)  
Subject: St. Croix river alewife issue

In July 2011, the Conservation Law Foundation sent a formal Notice of Intent to file a lawsuit against EPA in connection with 12 Me. Rev. Stat. § 6134(2) (the "Alewife Law"), which requires that alewife passage be blocked at the Grand Falls Dam. EPA has also recently been made aware of the Friends of Merrymeeting Bay v. Olsen litigation, which raises similar issues.

On November 8, 2010, in response to an inquiry by Mr. Doug Watts, EPA Region 1 expressed the view that the Alewife Law is not a water quality standards revision (see e-mail below). As a result of the Notice and other newly acquired information, EPA has decided to take a fresh look at this question. Consequently, please be advised that the preliminary views expressed in the November 8, 2010 e-mail message are undergoing further review and, therefore, do not represent the agency's final decisions on this issue.

Ron Fein  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 1 (New England)  
5 Post Office Square, Suite 100 - Mailcode ORA18-1  
Boston, MA 02109-3912  
617-918-1040

>-----Original Message-----

>From: [Fein.Ronald@epamail.epa.gov](mailto:Fein.Ronald@epamail.epa.gov) [<mailto:Fein.Ronald@epamail.epa.gov>]  
>Sent: Monday, November 8, 2010 03:27 PM  
>To: [info@dougwatts.com](mailto:info@dougwatts.com)  
>Cc: [Weitzler.Ellen@epamail.epa.gov](mailto:Weitzler.Ellen@epamail.epa.gov)  
>Subject: Re: St. Croix river alewife issue

>

>Mr. Watts -

>As we discussed two weeks ago, EPA does not view 12 MRS 6134 as a water  
>quality standards revision. Moreover, even if Maine did in fact revise  
>its water quality standards to remove an existing or designated use  
>without EPA approval or if EPA disapproved the removal, the previously  
>approved (now removed from state law) standard would still be in effect  
>for Clean Water Act purposes because under 40 CFR 131.21(e) the state's

>previously approved standard "remains the applicable standard until EPA  
>approves a change, deletion or addition to that standard or until EPA  
>promulgates a more stringent water quality standard." If the state  
>refused to change its state law in response to an EPA disapproval  
(based  
>on EPA's position that the state did not justify removal of the  
>designated use), then the remedy would be for EPA to propose and  
>promulgate a revised water quality standard pursuant to CWA 303(c)(4)  
to  
>restore the removed use. However, in the context of this dam, which  
>does not appear to require Section 401 certification, such an  
>EPA-promulgated water quality standard revision would not provide the  
>ultimate relief you are seeking, i.e., to open the fishways. I hope  
>this is helpful.

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>Ron Fein

>Assistant Regional Counsel

>U.S. Environmental Protection Agency, Region 1 (New England)

>5 Post Office Square, Suite 100 - Mailcode ORA18-1

>Boston, MA 02109-3912

>617-918-1040