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Judge denies injunction for Atlantic salmon on Worumbo Dam

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High water volumes from Tropical Storm Irene stalled progress at a work site at the Worumbo Dam in Lisbon Falls earlier this week. This photo, taken from Ed Friedman's helicopter Tuesday, shows the water volume and the temporary coffer dam, left, installed for the reconstruction project. Work on the project resumed on Wednesday, according to Miller Hydro officials.

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LISBON — A U.S. District Court judge has denied the request from a pair of Maine environmental groups that could have stalled the reconstruction of the Worumbo Dam at Lisbon Falls.

In August, Friends of Merrymeeting Bay and Environment Maine via their attorney argued in federal court that if the dam's reconstruction were allowed to go forward without a complete environmental review, it would be too late to effectively make any changes needed to protect federally endangered Atlantic salmon in the river.

The groups filed a motion for a preliminary injunction seeking an environmental consultation by the National Marine Fisheries Service to be completed before reconstruction of the dam started.

Miller Hydro Group, which owns and operates the dam, applied for authorization from the Federal Energy Regulatory Commission to replace the 520-foot-long timber crib portion of its dam because it was in poor condition, according to documents filed in court earlier this year.

FERC, the licensing agency for the dam, issued the reconstruction permit after the marine fisheries service agreed to waive the consultation because the nature of the reconstruction was deemed an emergency.

On Aug. 17, U.S. District Court Judge George Z. Singal denied the environmental groups' request, writing, "While the court does not ignore the significant public interest in preserving the endangered Atlantic salmon, there is no evidence in the current record suggesting that the Worumbo project has in fact caused any taking of the species in violation of the (Endangered Species Act)."

In his conclusion, Singal also notes that were the injunction granted, it would not have necessarily stopped the reconstruction of the dam or if it did, that stoppage would not have resulted in better protection for the salmon.

Singal notes, "It is far from clear that the intended ripple effect on the preliminary injunction requested by Plaintiffs would not harm the public."

Singal wrote that ongoing consultations on the project from the National Marine Fisheries Service aimed at ensuring Atlantic salmon are protected would stop under the injunction, were it granted, and the end result could very well be more damaging to the fish than allowing the work to continue.

"Thus, on the record presented, the Court believes that the public interest is best served by not interfering with a dam project that is literally and figuratively midstream," Singal wrote.

Ed Friedman, the executive director of Friends of Merrymeeting Bay, said his organization was obviously disappointed with Singal's ruling.

Friedman said his organization has questioned whether the emergency conditions the dam owners cited for the dam's rebuild, without an official environmental impact consultation, ever existed.

He said for years the dam was granted waivers from FERC allowing the dam to be operated without any emergency plan, mainly because the dam was classified as a "low hazard dam."

"Is the coffer dam stronger than the original dam — or not?" Friedman asked after an aerial tour of the dam Tuesday. "I don't know but clearly that's getting stressed out now. In theory they're still under emergency, I guess, until the new dam is built. Anyone can access any of those fishing areas below the dam and walk there and do their thing."

Based on its permit and court documents, Miller hopes to have the dam reconstruction complete by November and planned the rebuild for the low-water season of late summer and fall — also a time that would have the lightest impact on salmon, which spawn in the spring.

Flying over the dam Tuesday, Friedman said the dam operators were rushing the process by wanting to have the demolition of the old dam and reconstruction of the new one completed in one summer without first getting the consultation on the impact on salmon completed.

Friedman said he understands wanting to have the work done in one summer to avoid having the temporary dam in place over the winter, but believes Singal did not consider the evidence.

"There's no excuse for not having a full endangered species consultation," he said. "The fact that we could conceivably get to a place where that coffer dam stays in for the winter and maybe washes out and maybe not — who knows what happens — but that consultation should have taken place."

Mark Isaacson, a vice president of Miller Hydro and the project manager on the Worumbo reconstruction project, said Wednesday that they were satisfied with the Singal's ruling.

Isaacson said the reconstruction of the dam was delayed over the last few days as a result of Tropical Storm Irene but he was optimistic the project would still be complete by November.

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