

1	MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION	1	PROCEEDINGS
2		2	MR. MONGEON: Good morning. So I now call
3	IN THE MATTER OF	3	to order this adjudicatory hearing, or often called a
4	TIMOTHY DOWNING, SMITHFIELD,)	4	public hearing, of the Maine Department of
5	MERCER, ROME, KENNEBEC AND)	5	Environmental Protection on the petition to establish
6	SOMERSET COUNTIES)	6	a water level regime for North Pond located in the
7	COUNTIES, NORTH POND)	7	towns of Smithfield, Mercer, and Rome, Maine. This
8	L-30629-36-A-N)	8	public hearing is held pursuant to the Maine Dam
9		9	Registration Abandonment and Water Level Act, Title
10	ADJUDICATORY HEARING TO ESTABLISH A WATER	10	38 M.R.S., Section 840, Subsection 1.
11	LEVEL REGIME FOR NORTH POND, taken at 90 Blossom	11	This adjudicatory proceeding was initiated
12	Lane, Deering Building, Augusta, Maine, on April 14,	12	as a result of a petition filed with the Department
13	2025 commencing at 10:30 a.m., before Robin J.	13	by 58 littoral and/or riparian owners known as the
14	Dostie, a Notary Public in and for the State of	14	Petitioners or referred to as the Petitioners Along
15	Maine.	15	North Pond. This number represents more than 25
16	APPEARANCES:	16	percent of the total number of littoral or riparian
17	RONALD MONGEON, PRESIDING OFFICER.	17	owners of North Pond. The water levels of North Pond
18	CLAIRE BRIGGS, DEP PROJECT MANAGER.	18	are controlled by a dam owned by -- and operated by
19	JACK DAFOE, ESQ., OFFICE OF THE ATTORNEY GENERAL.	19	the North Pond Association, Inc., referred herein
20		20	after as Owner of the Dam.
21		21	The purpose of this public hearing is to
22		22	receive testimony from the parties and the general
23		23	public. The general public session is this evening
24		24	beginning at 5:30 p.m. The overall purpose of these
25		25	proceedings are for the establishment of a water
	1		3
1	I N D E X	1	level regime and, if applicable, minimum flow
2	TESTIMONY BY: PAGE	2	requirements for North Pond.
3	Timothy Downing 13	3	Testimony is limited to the statutory
4	Katie Meikle 25	4	criteria set forth in the Maine Dam Registration
5	Rick Watson 36	5	Abandonment for Water Level Act, again, Title 38,
6	Don Schassberger 38	6	Section 840, Subsection 4.
7	Laura Rose Day 39	7	My name is Ron Mongeon. I'm the
8	Danielle Wain 41	8	Department's Eastern Maine Regional Office Director
9	Stuart Cole 45	9	and I'll be the Presiding Officer for this public
10	Edith Cornwall (for Christine Keller) 47	10	hearing today. The Department's Commissioner,
11	Edith Cornwall 51	11	Melanie Loyzim, designated me as Presiding Officer
12	Gordon Woods 56	12	for this matter on July 21, 2024. As stated in the
13		13	Commissioner's July 21 designation, this designation
14		14	is, quote, limited in its scope to the authority
15		15	necessary to administer governing procedural statutes
16		16	and regulations in the development of the
17		17	administrative record. It does not include the
18		18	ultimate decision-making authority on the merits of
19		19	establishing a water level regime for North Pond,
20		20	which I expressly retain as Commissioner, end quote.
21		21	Other persons present today from Maine DEP
22		22	and the assistant attorney -- the Attorney General's
23		23	Office is Jack Dafoe, which is our Assistant Attorney
24		24	General and counsel to the Department, and Clair
25		25	Briggs, our DEP Project Manager for this matter.
	2		4

1 With us as well is Robin Dostie, who is our court
2 reporter, and will be taking a record of this
3 hearing.

4 I will note that this public hearing is
5 being recorded and transcribed, as I have said, and
6 made available to the public at the public's request.
7 Prior to presenting your summary of your direct
8 testimony and/or cross-examining a witness, please
9 make sure to state your name and who you represent
10 clearly and, for example, if Claire Briggs were to
11 ask a question of one of the parties before she would
12 ask her question she would say Claire Briggs with
13 Maine DEP. This makes it clear for the record and
14 the transcription as to who is asking the question
15 and who they are affiliated with.

16 At this time, please silence or turn off
17 electronic devices, including cell phones, so there
18 is not any interruptions. Also, I just want to point
19 out that there are emergency exits behind me to the
20 left and right and then the main exit to the building
21 is right outside the door. And the restrooms are
22 located if you exit the door down to the left on the
23 left-hand side down the hallway. So that's the
24 logistics for the room.

25 The hearing is being held by the Department

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1 pursuant to the Maine Administrative Procedure Act,
2 Title 5, Section 9051 through 9064 and Chapter 3 of
3 the Department's rules entitled Rules Governing the
4 Conduct of Licensing Hearings.

5 The procedure for today's hearing will be as
6 follows: We'll begin with direct testimony. Each of
7 the parties have been required to submit their direct
8 and rebuttal testimony prior to today's hearing. No
9 party should testify at the public hearing unless
10 they have submitted prefiled direct or rebuttal
11 testimony and no testimony will be allowed into the
12 record if the witness is not present and available
13 for cross-examination by the Department and parties.

14 In accordance with Chapter 3, unless
15 otherwise determined by the Presiding Officer,
16 summaries of the rebuttals and direct testimony shall
17 be offered in the following order: The Petitioners,
18 the Owners of the Dam, and then the Interveners.
19 Department staff and its representatives and
20 consultants may offer testimony at any time,
21 specifically the Presiding Officer, sets the order of
22 the parties testimony as follows: First is Timothy
23 Downing; second -- sorry if I -- let's just say Dam
24 Owner by Katie Meikle.

25 KATIE MEIKLE: Meikle.

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1 MR. MONGEON: Meikle. Thank you. Let me
2 write that down just so I don't...

3 -- Laura Rose Day, Melvin Croft, and then
4 Edith Cromwell, who will also be providing testimony
5 on behalf of Christine Keller.

6 For each party they will be allowed to
7 present the witness they previously noticed --
8 notified the Presiding Officer of. After Timothy
9 Downing provides his testimony, Katie Meikle will be
10 able to cross-examine him as was requested. As a
11 reminder, these cross-examinations are not an
12 opportunity to lead a witness through their direct
13 testimony but to ask specific questions relating to
14 their testimony. Department staff may cross-examine
15 any witness once they have completed their direct
16 testimony. Parties will be allowed to provide
17 redirect questions of their witnesses as an
18 opportunity to clarify, explain, or otherwise respond
19 to matters raised in cross-examination. These --
20 this testimony will be limited to the matters that
21 were raised in cross-examination and is not an
22 opportunity to go down different paths or introduce
23 additional information that was not questioned during
24 cross-examination. During parties' direct testimony,
25 they will provide an opening statement and a summary

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1 of their direct and rebuttal testimony. After the
2 hearing concludes, the Presiding Officer will discuss
3 the scheduling of closing and reply briefs.

4 Notice of the public hearing was published
5 in the Kennebec Journal, Central Maine Morning
6 Sentinel and the local ePaper on March 11 and April
7 1, 2025. Notice was also sent to the parties as well
8 as those persons and/or entities set forth in Chapter
9 3 and all those specifically requesting notification.
10 Additionally, press releases and public service
11 announcements were distributed to regional media
12 outlets on August 2, 2024.

13 Again, during this hearing the Department
14 will receive evidence from Timothy Downing on behalf
15 of the Petitioners; Katie Meikle on behalf of the
16 Owner of the Dam; and we will hear the Interveners,
17 Edith Cornwall, Melvin Croft, Laura Rose Day on
18 behalf of the 7 Lakes Alliance.

19 As I said, the testimony of the parties was
20 prefiled in advance of the public hearing. That
21 testimony is part of the record and all of the
22 parties have received copies. As such, today's
23 testimony should include an opening statement and a
24 summary of their direct and rebuttal testimony.
25 Parties should not just re-read the entirety of their

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1 prefiled testimony, as, again, parties have received
2 this testimony and it is already a part of the
3 record.

4 Again, please note that the counsel to the
5 Department and Department staff may ask clarifying
6 questions at any time, although the Department will
7 generally hold its questions until completion of
8 cross-examination and redirect by the parties.

9 The Department will hear testimony from the
10 general public tonight beginning at 5:30 p.m. here in
11 the Deering Building at 90 Blossom Lane in Augusta.
12 All witnesses at this hearing will be sworn in and
13 their testimony will be included as part of the
14 record. After the hearing, the project file will be
15 available for public inspection during regular
16 business hours at the DEP's office here in Augusta as
17 well as online.

18 At the conclusion of the hearing, no further
19 evidence or testimony will be allowed into the record
20 except for matters specifically identified by the
21 Presiding Officer. These matters will be identified
22 before the close of today's hearing, so later this
23 afternoon. These matters will be, as I said,
24 identified later, but also includes written public
25 comments, which will be accepted by the Department

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1 conduct themselves professionally, the Presiding
2 Officer reserves the right to take any appropriate
3 action, including excluding the individual from
4 further participation in these proceedings. In
5 closing, the goal is to have a fair and productive
6 public hearing.

7 Please be aware of the time constraints and
8 adhere to the time you requested in your filings.
9 We're not going to have an overly strict timeline,
10 however, we may ask you to wrap up your comments
11 should you start to exceed that time. Please be
12 concise and keep testimony relevant to the statutory
13 criteria that's set forth in Title 38, Section 840,
14 Subsection 4. Please be aware that the Department
15 has, again, read the prefiled direct and rebuttal
16 testimony. The Department is here to listen, to
17 consider all of the evidence placed before us. And
18 please understand the purpose of the public hearing
19 is to collect information as part of the process for
20 the Department to be able to be -- for the Department
21 to be able to, based upon the administrative record
22 as a whole, make an informed decision based on the
23 facts and statutory requirements. Thank you all for
24 your participation.

25 And lastly, we plan to break for lunch at

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1 until Friday, April 25 at 5 p.m. The record can be
2 reopened at any time at the discretion of the
3 Presiding Officer at the conclusion of the public
4 hearing today. The final date for submitting closing
5 briefs will be identified at the end of day today at
6 the end of the hearing.

7 At this time, I ask that all persons
8 testifying today to stand and raise their right hand.
9 If possible, I see someone is injured. Please repeat
10 after me: I affirm --

11 WITNESSES: I affirm --

12 MR. MONGEON: -- that the testimony I'm
13 about to give --

14 WITNESSES: -- that the testimony I'm about
15 to give --

16 MR. MONGEON: -- is the whole truth --

17 WITNESSES: -- is the whole truth --

18 MR. MONGEON: -- and nothing but the truth.

19 WITNESSES: -- and nothing but the truth.

20 MR. MONGEON: Thank you. You may sit.

21 I also would like to stress again today that
22 this is a public hearing. All parties are expected
23 to conduct themselves professionally, both in their
24 dealings with the Department and with each other,
25 throughout the proceeding. If a party is unable to

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1 12:30 for about 45 minutes. We'll have breaks for
2 about 5 to 15 minutes depending on requests as well
3 as if the court reporter needs any time to rest her
4 fingers.

5 With that, we're going to get the proceeding
6 started. There is a microphone here on the table
7 that has to be turned on when you're about to speak
8 and you push the thing when you're done so that it
9 doesn't squeal through the speakers. I'm going to be
10 turning mine off as well. I'm going to ask that when
11 it's your turn to speak that you come up to this
12 table over here to speak just so that you're closer
13 to the court reporter making it easier for her to
14 hear and then speak into the microphone so obviously
15 everyone in the crowd can hear as well.

16 So, again, with that, we'll get the
17 proceeding started. We're going to begin with the
18 Petitioners. Thank you. So logistically when you
19 are about to present, again, please move over to this
20 table, turn on the microphone, turn it off when
21 you're done. As soon as the Petitioners are
22 finished, I will have the Petitioner stay at that
23 table and allow Katie Meikle for the Dam to ask her
24 cross-examination questions that she has requested
25 time to do so.

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1 KATIE MEIKLE: Would that be the time to do
2 the rebuttals as well?

3 MR. MONGEON: No, you can do your rebuttals
4 during your testimony.

5 KATIE MEIKLE: Okay.

6 MR. MONGEON: Unless it is a specific
7 question you want to ask that you had mentioned in
8 your cross-examination.

9 All right. First up is Timothy Downing.

10 TIMOTHY DOWNING: All right. It works.
11 Great.

12 Thank you, Mr. Mongeon and DEP, for allowing
13 us to have these proceedings. Those of you that have
14 been involved from the original petition filing know
15 that it hasn't been an easy process just to get to
16 this point. First, there was a fee screw up on -- on
17 my part based on an old posting on email or on the --
18 the website. We were notified that it was
19 substantially more than the initial filing, but the
20 Petitioners came together and put forth that. Then
21 we were told that we didn't have a basis for filing
22 the petition and then additional information was
23 provided, the DEP team reviewed and gave us the
24 opportunity to move forward with this hearing. So,
25 again, you can't underestimate the work that the DEP

1 has written a book in 2020, Better Decisions, Fewer
2 Regrets. And he has five questions that he asks
3 people and the first one is the integrity question.
4 And the integrity question asks, am I being honest
5 with myself, really? As we go through this today, I
6 just ask that everyone that has knowledge of what the
7 historic water levels, what the history of North
8 Pond, the tributaries, the dams, not just the dams
9 and the water levels of North Pond but the ecosystems
10 below the dam and above the dams. Because these are
11 a lot -- the challenge that I've had as a
12 spokesperson is we have 58 signatures, I don't know
13 if 20 people agree on why they signed that petition
14 and that's why my opening testimony had so many
15 things. Some people were concerned about the lake
16 canopy, some people were concerned about the erosion
17 and the loss of property, some people were concerned
18 about the recreational aspect of not having a beach
19 anymore that they used to have for many, many years
20 and many decades. Water quality isn't an issue, but
21 that came up and that probably is what has
22 spearheaded the interest in the community is the
23 challenges that we have that we really didn't even
24 used to have.

25 The basis -- and the basic premise of the

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1 and the value, that -- that really is the basis of
2 the Petitioners in the first place. We wanted to get
3 a hearing in front of the authority department within
4 the state that -- that manages our great ponds in
5 this state to remove the emotions out of the thing.

6 I became a spokesman for the Petitioners
7 because it was becoming toxic. There was accusations
8 of vandalism of both dams. There was a lot of back
9 and forth at public locations in town, and we don't
10 have many, so, you know, the fact that that was --
11 was happening and that lifelong friends found
12 themselves on opposite sides and it was trying
13 relationships. It was tearing our community apart.
14 I've been involved in the community for a long time
15 in a lot of areas. I was a selectman. I've been on
16 the school board. I've been the moderator for about
17 25 years now. I am involved in the church. People
18 know me. I'd like to think that most in the room
19 that know me respect me and know that I have the best
20 interest of Smithfield in mind and North Pond.

21 And so when -- when -- when Mr. Mongeon
22 asked us who were going to testify today to have an
23 oath, the whole truth and nothing but the truth, I
24 was elated because that's all we've wanted to deal
25 with in the first place. And, you know, Andy Stanley

1 Petitioners is we feel that after 1987 and the
2 building of this dam, which the community was in
3 complete support of, I -- I don't know as if I've
4 ever seen anything where there was 100 percent
5 buy-in. People were writing checks and, you know,
6 the money was raised in no time then it was to go to
7 do the permitting and -- and get authority. Everyone
8 was on the same page because we had an extreme
9 drought. I -- I would say it was a 100 year drought
10 and there wasn't a water quality issue, but there was
11 a stench issue. I mean, there were sandbars and
12 sections of beach that had not been exposed to the
13 air in 50 years and it smelled and no one liked it.
14 And so people got together and said, okay, we got to
15 deal with this so it doesn't have to deal with it
16 again.

17 There has never been a formal dam on Great
18 Meadow Stream. It was sort of the wild west as to
19 how water levels were maintained. People would put
20 rocks in front of the -- the stream and then it
21 would -- water would get too high, someone would hire
22 to go blow up the dam. And then East Pond
23 Association hadn't owned the dam yet so there wasn't
24 an administrator that was managing that on a regular
25 basis, so it was even open to vandalism or

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1 unauthorized management of that as need be. And you
2 will say, well -- well, how did that happen? How
3 have we managed for all these years and then there
4 was just this one year. Well, North Pond has a very,
5 very interesting base or bottom of the lake and it
6 also has a very interesting water sources enter --
7 there is East Pond Dam can supply water to North
8 Pond. The mountain -- Mount Tom Stream provides some
9 and the Mercer Bog all provide water that comes into
10 North Pond. It's a pretty aggressive watershed when
11 we have a rain or a high water.

12 We've got one lane. I should say two
13 because I'll get corrected if I don't mention two,
14 but we have the Meadow Stream, which is extremely
15 gradual. The elevation of where the Meadow Stream is
16 to where it dumps into Great Pond is significantly
17 less in grade than, for example, the water that comes
18 from East Pond and comes down. The reason I mention
19 this is because it's a lot easier to fill up the
20 North Pond basin than it is to ex- -- evacuate
21 waters. I'm no engineer, but I think it's easy to
22 say conservatively that it's probably a 5 to 1 ratio,
23 I would guess, because it is just so gradual. And
24 the other thing is that the -- the frustrating part
25 of this, I went for a run this morning around and --

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1 and I went over the bridge in the village and I
2 talked to Edith before they -- East Pond, I wish they
3 didn't get dragged into this. They have been
4 collaborative, communicative, listened to our
5 concerns, have made adjustments and how they're
6 managing their dam when they really didn't -- I don't
7 have any basis. My original petition didn't ask for
8 any adjustments from East Pond, however, DEP, I
9 think, looked at it and said, hey, we can't have a
10 water level discussion with North Pond without the
11 primary source of water for North Pond being part of
12 the discussion, so I welcome that. But our beef, you
13 know, do we wish that there was a little more
14 consistent flow at certain times of the year in the
15 summer, yeah, but they're issues that we can debate
16 and they've been very responsive to. There are no
17 issues that we divide over and I think it's important
18 to make that distinction.

19 But the other thing that I mentioned about
20 the -- and the frustration is the property damage,
21 land erosion, loss of canopy, trees, we don't believe
22 had to happen. And the reason I say that, one of the
23 beauties why North Pond, and the east shore in
24 particular, was so popular for so many years from the
25 turn of the century right on through, people would

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1 joke about it, oh, you live on North Pond, my gosh,
2 you have to walk 500 feet out just to be able to go
3 swimming. Exactly. And when the water is at
4 historic levels the east side of the shore had
5 between 10 and 20 feet of beach. Knotty Pond
6 Campground always had boats that Ralph Winegardner
7 had made, 14 foot boats, they always could be pulled
8 up to dry land. That has not happened for years.

9 What happened when the dam was built, Mike
10 Zarcone was the owner of Sunset Camps. Bill Groves
11 was an engineer, did a great job managing. He --
12 Mike was a squeaky wheel and he was going to protect
13 his interest, but what happened -- and I just
14 realized this and that's why I'm going over it now
15 because I didn't cover it in the testimony. For a
16 while Mike was sort of the guiding principle. It's
17 like, hey, my docks are permanent docks, they can't
18 be under water. I can't have slippery docks for --
19 for my clientele. That became the new norm, however,
20 at the same time that Mike and -- and Mr. Groves
21 agreed on a new level Fern Corson down at Corson's
22 Beach, who has hosted swimming lessons for years, was
23 in the selectmens' office with pictures saying, hey,
24 my beach is gone, what am I going to do? And they
25 said, we've got no authority. You know, we don't.

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1 So I -- I share that history just because things
2 changed and they weren't supposed to.

3 They were the -- there is a saying that says
4 the main thing is keeping the main thing the main
5 thing. The main reason that that dam was built and
6 the main reason that 100 percent of the landowners
7 were in favor of that was because they didn't want to
8 have the experience that they experienced. They
9 wanted to prevent a drought from impairing our
10 ability to enjoy our lake and have adverse effects.
11 Somewhere along the line, and this isn't just North
12 Pond, it seems to be throughout the chain, if a
13 little water is good a lot of water is better. Less
14 rocks to hit, I don't need -- my dock doesn't need to
15 be as long. I mean, all summer long I listen to
16 people talking about I can't get to my boat because
17 the water is too low.

18 I read in the NPA newsletter -- and I'm
19 not -- as you know, I haven't asked to rebut or to
20 call any witnesses. Honestly, I don't think we
21 should have to. I think that it's pretty clear that
22 if the water level were at historic levels there
23 would still be a Pomerleau Point, which is gone now.
24 It has completely eroded away. You used to be able
25 to go fish in there in the spring, it's gone. I've

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1 lost a permanent step structure, my bank used to be a
 2 slope, it's now a cliff. Knotty Pond Camps has to
 3 get new stairs because there is no land left on their
 4 bank to support the old stairs that were there for, I
 5 don't know, 60 years. These are real things. And
 6 they're -- but they're symptoms and but I had to
 7 include it in the testimony because it is so
 8 unnecessary. If the water were at historic levels we
 9 would have the beach, we would have the erosion
 10 protection, we wouldn't have the damage to spring ice
 11 that so often -- particularly on the east side
 12 because it tends to -- to move, you know, prevailing
 13 winds from west to east do extreme damage. Even in
 14 the summer had we had those banks -- people are so
 15 concerned, we've got laws in the state now about
 16 wake -- wake speed. Make sure you respect the wake
 17 speed because the waves, they'll erode your beach.
 18 Goodness gracious, the damage is already done. A
 19 wind -- a 10 mile an hour wind on North Pond does
 20 more damage than 100 boats could do during the day,
 21 but my point is none of it would be damaged if there
 22 was beach and the natural contour of the base of
 23 North Pond provides for a beach and I wish that that
 24 would be respected.

25 So in closing, our -- our request is very
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1 simple. In the matter of Great Pond's and North Pond
 2 Association in 1987 there was permission to build a
 3 dam and we built a dam. In that petition there were
 4 just a couple of conditions, one was respect historic
 5 water levels. And that's when I come back to the
 6 integrity question. Who is familiar with 60 plus
 7 years, 50, 40 years of history on North Pond can
 8 honestly say that since 1988 historic water levels
 9 have been respected? The other one was minimum water
 10 flow that the state pretty much requires through most
 11 waters. It's -- it's considered a low flow. Low
 12 flow, 14.5 cubic feet per second. That's the flow.
 13 Do you know what it looks like? I don't, but I know
 14 what it doesn't look like and it doesn't look like
 15 what's been flowing over and under that dam for 37
 16 years. It just doesn't. And I don't know whether
 17 that's right or wrong, but those were the conditions.
 18 In order to get that, that translates into 6499.4
 19 gallons per minute.

20 Again, am I being honest with myself,
 21 really? All we're asking is to respect what was
 22 agreed to in 1987. Does it solve all our problems?
 23 Absolutely not. I don't even think that it matters
 24 whether or not it might create more or not. The fact
 25 of the matter is we never got any authority to change
 22

1 the rules. No one asked, oh, you know, we just built
 2 this dam and, you know, conditions are -- are now
 3 such that we feel there needs to be adjustment to
 4 this thing. DEP didn't even know we were holding
 5 back that much water. If they did, we wouldn't be
 6 here.

7 And so, again, that's a lot of information
 8 that you folks have been very gracious in allowing me
 9 to share because I'm not sure whether it meets and
 10 fits within the standards of what you laid out. I
 11 have had -- I've struggled with the administrative
 12 and bureaucratic aspects of the hearing from the
 13 outset and I suspect that I'll continue throughout
 14 the proceedings, but I do appreciate the opportunity
 15 to share.

16 I love this lake. I can honestly say and I
 17 would challenge anyone in this room or anyone that
 18 knows the history of Smithfield to debate the fact
 19 that I spend more time in that lake than anyone ever
 20 has ever. And I don't need to go out in a boat with
 21 a secchi disc and drop it every week to determine
 22 what the quality of the lake is. I'm in it every day
 23 whether it's green or pristine clear. I prefer it
 24 when it's pristine clear, but I don't mind having to
 25 walk another 15 feet before I can dive into the lake
 23

1 if it means that we don't have the erosion that we
 2 have experienced over the past three decades. Thank
 3 you.

4 Do you want me to sit here?

5 MR. MONGEON: Yeah, just for -- we have
 6 questions for cross-examination as well. If you
 7 would, can you -- sorry. So this turns it on and
 8 this is the microphone.

9 KATIE MEIKLE: I just have one question for
 10 cross.

11 MR. MONGEON: Okay. Yup. And so, yeah --

12 KATIE MEIKLE: Are we going to do the
 13 rebuttal at the end?

14 MR. MONGEON: That -- that was going to be
 15 my -- my statement to you is that you can -- it has
 16 to be a question in cross-examination --

17 KATIE MEIKLE: Right. Right.

18 MR. MONGEON: -- and if it's other things
 19 like you have your own rebuttal that you'd like to
 20 give you can do that during your --

21 KATIE MEIKLE: That would be at the end of
 22 my testimony. Okay.

23 MR. MONGEON: You can do that at the end of
 24 your testimony, so.

25 KATIE MEIKLE: Okay.

1 MR. MONGEON: There you go. Sorry. So if
 2 you -- if you want to just sit at the table or --
 3 KATIE MEIKLE: Sure.
 4 MR. MONGEON: And remember to state your
 5 name and who you represent.
 6 KATIE MEIKLE: I'm Katie Meikle. I'm
 7 President of North Pond Association and, therefore,
 8 represent the Owner and Operator of the Dam on Great
 9 Meadow Stream.
 10 Tim, I just have one question for you.
 11 Pretty simple yes or no. Do you believe in the
 12 scientific studies and conclusion of the Watershed
 13 Management Plan?
 14 TIMOTHY DOWNING: I don't think that's a
 15 simple question. If I have permission --
 16 KATIE MEIKLE: Just yes or no if you believe
 17 in --
 18 MR. MONGEON: Well --
 19 TIMOTHY DOWNING: If -- if you want to -- if
 20 we want to have information, I will answer in more
 21 detail. If you want to force me to weigh the pros
 22 and cons of -- of a document as significant as that
 23 with so many things and assumptions, I will say no.
 24 MR. MONGEON: Okay. All right.
 25 KATIE MEIKLE: Thank you.

25

1 MR. MONGEON: And if you want to just turn
 2 off the --
 3 TIMOTHY DOWNING: It's off.
 4 MR. MONGEON: Okay. Good.
 5 TIMOTHY DOWNING: I didn't need any
 6 prompting on that. I can -- I can figure out that
 7 part.
 8 MR. MONGEON: All right. So thank you very
 9 much.
 10 TIMOTHY DOWNING: Thanks.
 11 MR. MONGEON: All right. And next we will
 12 have the Dam Owner, so Katie Meikle.
 13 KATIE MEIKLE: Hello. Is it on?
 14 THE REPORTER: I think you have to hold it
 15 really close.
 16 KATIE MEIKLE: Hold it closer. Okay.
 17 THE REPORTER: Yeah.
 18 KATIE MEIKLE: Okay.
 19 THE REPORTER: Perfect.
 20 KATIE MEIKLE: Good morning, Mr. Mongeon,
 21 Members of the Department of Environmental
 22 Protection. I'm Katie Meikle. I'm President of the
 23 North Pond Association, a non-profit organization of
 24 over 155 active members and 23 active businesses.
 25 I've been President since August of 2023 and,

26

1 therefore, I represent the Owner and Operator of the
 2 Dam in question on Great Meadow Stream. I've owned
 3 shorefront property on North Pond since 1993 and have
 4 lived there full-time since 2013.
 5 The North Pond Association's mission is to
 6 advocate for the stewardship of the natural
 7 environment of North and Little North Ponds. As Tim
 8 said, the Association was formed in 1985 to install
 9 the dam in question in response to several years of
 10 severe drought when shorefront owners had little to
 11 no water for domestic use and public use of the pond
 12 for recreation was hampered by very low water levels.
 13 The North Pond Association manages the dam
 14 to balance the many interests of those who depend on
 15 the water, including shorefront owners, seasonal camp
 16 owners who rely on the water for domestic use and the
 17 public who recreate on the pond. We're also mindful
 18 of the wildlife who make the pond their home.
 19 The structure and management of the dam will
 20 be described at the end of my testimony by my two
 21 witnesses, Rick Watson and Don Schassberger. The
 22 comprehensive North Pond watershed-based plan
 23 introduced into evidence by Maine DEP, Exhibit 7, was
 24 approved by the Maine DEP and includes scientific
 25 studies and conclusions that provide guidance for

27

1 best practices to manage the health of North Pond.
 2 Changes to the dam management were not part of this
 3 plan. The Board of Directors supports -- the Board
 4 of Directors of the North Pond Association supports
 5 the Maine DEP determining minimum flow across the dam
 6 as well as that -- as long as that also includes a
 7 minimum water level in North Pond. It must allow for
 8 periods of drought and high rainfall as well as allow
 9 for closure of the dam to prevent compromised water
 10 from heading downstream -- down Great Meadow Stream
 11 into Great Pond. On multiple occasions the North
 12 Pond Administration has asked Maine DEP for guidance
 13 on appropriate flow rates and how they can be
 14 determined and measured as well as how that can be
 15 achieved with the current structure of the dam.
 16 I trust that Maine DEP will thoughtfully
 17 weigh the diverse testimony given here in determining
 18 its ruling. The North Pond Association also
 19 understands that all parties involved in this hearing
 20 have a shared goal for a really healthy North Pond
 21 for all of us to enjoy. Thank you.
 22 MR. MONGEON: All right. So --
 23 KATIE MEIKLE: Should I give my rebuttal
 24 testimony now?
 25 MR. MONGEON: Sure. We can do that if you'd

28

1 like. And then give a -- I will give the
2 representative for the Petitioners the chance to
3 respond to anything, so go ahead.

4 KATIE MEIKLE: So, again, can you hear me?
5 Yup.

6 Katie Meikle representing the Owner and
7 Operator of the Dam, North Pond Administration --
8 Association.

9 My rebuttal to the prefiled testimony of Tim
10 Downing for the Petitioners, in testimony lines 10
11 and 11, I would say there is no evidence that the
12 North Pond Association improperly altered the dam in
13 the early '90s adding a second beam. In fact, the
14 order in 1987 stipulated construction with, and I
15 quote, three steel beam flash boards, end quote,
16 which is the current configuration of the dam.

17 Testimony lines 25 through 44, the
18 Petitioner incorrectly suggests that the North Pond
19 Association was withholding Maine DEP document
20 Exhibit No. 3. Tim Downing had full access to all
21 our NPA documents, including the Maine DEP order for
22 the dam. That was entered on the NPA shared Google
23 drive in August of 2022 by Caroline Harlow, who was
24 the NPA secretary. Tim was a member of our board
25 from August 2023 until he resigned in January 2024

29

1 and he had full access to all of the NPA records.

2 Furthermore, on June 24, 2024, I provided
3 Claire Briggs the NPA -- excuse me, the Maine DEP
4 Hydropower Specialist, with the photographs and
5 measurements of the dam that allowed it to be --
6 deemed it to be jurisdictional. The evidence was
7 provided by me allowing the petition to move forward
8 and was done so in good faith and full cooperation
9 with Miss Briggs' request.

10 Under his testimony No. 3, Water Level,
11 there is a photograph labeled whale rock. It has no
12 date and, therefore, I would say is not a valid
13 reference for what the historic water level of the
14 lake should be. The historic water level has been
15 disputed for years as Tim describes, the old dam was
16 blown up when people wanted more beach and was built
17 up so that more boats could navigate and so they
18 could have higher water for docks. That goes well
19 back before I was even on the lake.

20 Under testimony No. 5, Erosion, again,
21 that's a photograph of the steps that Tim refers to.
22 There is no date on this photograph nor is there
23 evidence that damage -- that dam management caused
24 the damage seen in the photo. Severe storms such as
25 those that we experienced in June of 2021 or November

30

1 of 2023 where there was high waves and winds and --
2 and really raised havoc with the whole watershed area
3 with trees coming down that could have caused damage
4 such as what's seen in the photos, so there is no
5 evidence that that photo represents damage caused by
6 dam management.

7 And finally, an email was submitted into
8 evidence by Tim Downing from a Mr. Shoemaker. The
9 statement in the email is, quote, I did not receive
10 any response from them, indicating North Pond
11 Association, which was troubling to me, end quote.
12 This, in fact, is false. I included as evidence a
13 screenshot of NPA secretary Caroline Harlow's
14 response to Mr. Shoemaker sent just 10 minutes after
15 his email was sent to NPA. Unlike what the
16 Petitioner implies, the NPA has been cooperative and
17 responsive to interested parties. Thank you.

18 MR. MONGEON: All right. I'll give the
19 microphone a second to turn on.

20 Tim, is there anything you would like to
21 provide redirect testimony on or anything for -- that
22 was brought up directly in the rebuttal?

23 TIMOTHY DOWNING: Absolutely.

24 MR. MONGEON: I'm sorry?

25 TIMOTHY DOWNING: Absolutely.

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1 MR. MONGEON: Oh, sure. Okay. If you
2 wouldn't mind. Sorry.

3 TIMOTHY DOWNING: At the risk of being
4 described as being snarky, I would say that the
5 challenge that I put forth, was I being honest with
6 ourself, really, are we adhering to that in this
7 because --

8 MR. MONGEON: Let's just -- let's keep it to
9 the testimony of the rebuttal.

10 TIMOTHY DOWNING: I am. The testimony was,
11 for example --

12 MR. MONGEON: Okay.

13 TIMOTHY DOWNING: -- Mr. Shoemaker's letter.
14 The point of including Mr. Shoemaker's letter
15 wasn't -- it was very complimentary of North Pond
16 Association of the work that they do, the effort that
17 they've put in, the work that's gone into the plan.
18 The reason for putting it in there was he used to
19 have 8 foot of frontage that protected a tree. He
20 had a professional forester/arborist communicate to
21 him that the reason that that tree was lost was
22 because it had -- over time it had been undermined
23 and the soil that used to be there was no longer
24 there.

25 My testimony with respect to the flow of the

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1 dam and -- and the construction of the dam, I do, I
2 appreciate the fact that -- that you forwarded
3 information six days after -- after I did. It is the
4 reason that we move forward. And rather than what I
5 had desired, what I would have hoped to have happen
6 was that someone would have looked at that and said,
7 oh, this doesn't meet the requirements of 1987,
8 therefore, we should adhere to that as an
9 organization.

10 My term on the board, very, very interesting
11 time. I had volunteered to -- to join the board
12 because I thought that it would help to provide a
13 perspective with the goal of working within the
14 organization to help to promote integrity and provide
15 a historical basis. What I could not communicate to
16 the president or any board member, some of who are my
17 dearest friends, was why I had to resign, why once I
18 joined I was not able to put the amount of time and
19 effort and passion into it that I desired. I believe
20 I saw this document regarding the dam when I was a
21 selectman 35, 39 years ago. As a board member, other
22 than minutes that were sent out of the meetings, I
23 never had the opportunity to go to Google docs and do
24 the research. I had assumed that no one in DEP or no
25 one in NPA had it anymore and -- and as we discussed

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1 non-disclosure arrangement agreement. And so
2 admittedly for board members who may have wanted to
3 wonder, okay, what's the real story behind why Tim
4 joined the -- you know, did he just want to get in
5 there for information and -- and now he's -- he's
6 left. I couldn't share any of that. It's just -- I
7 just don't -- I can't -- I can't serve any --
8 anymore. I'm sorry. So to the degree that I had
9 access, I guess I did. To the degree that I
10 researched it, no. Would it have changed what I'm
11 doing here today? Absolutely not.

12 I would just like to -- since I had a yes or
13 no question and I'd like to expand on that. There is
14 a lot of good work that's in this plan. There is a
15 lot of things I agree with 100 percent. There are a
16 lot of things that I think are not able to be fully
17 justified because the premise of the -- or the
18 assumptions made to come to the conclusions and the
19 development of the plan are incorrect in my opinion
20 because I do not believe that, you know, changing of
21 water levels that's already happened and -- and
22 they're making it sound like since 1993 is -- this is
23 what the water level is. No. It might be what it
24 is, it wasn't what it's supposed to be and that's --
25 that's my rebuttal. Thank you.

35

1 at the beginning of the thing, you know, transition
2 change, this is the first hearing of this type that
3 you're presiding over, Kathy (sic) hadn't been
4 president for very long, there had been a -- changes
5 over time, so I just assumed they didn't have it.
6 But then the DEP provided me that in- -- that
7 document, refreshed my memory and I shared. And --
8 and I did. I -- I sent an email that said -- because
9 I didn't think this hearing was going to move forward
10 and so I thought we were going to have to play this
11 out in the court of public opinion and I sent a
12 letter that said, okay, now we know, what are we
13 going to do about it. And then -- and I said if I
14 don't hear from you, I'm going to go on social media
15 and share this information with the public and that
16 wasn't the direction I wanted to go because I got
17 into this to try and calm the waters, however at that
18 point in time, the DEP had said we had no basis for
19 having a hearing. So shortly after that we got
20 notice that we did, that this hearing was going to
21 proceed. I didn't say anything in public to anyone,
22 however, I was in negotiations at that point shortly
23 after I joined the board to repurchase the company
24 that I now own. They were a year plus negotiations,
25 but I was under very stringent -- strict

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1 MR. MONGEON: All right. Next on the list,
2 I believe, is Rick Watson or if you want to do --

3 KATIE MEIKLE: Yeah, the two witnesses.

4 MR. MONGEON: Okay.

5 RICK WATSON: Excuse me, I put my back out,
6 so I'm moving a little slow today.

7 I'm Rick Watson. I'm a member of North Pond
8 Association and have been involved off and on with
9 the Association since founding, was the president for
10 10 years, I've held most of the board positions and
11 including dam keeper on occasion.

12 I'm -- I'm kind of going to say that I -- I
13 agree with Tim on -- I'm encouraged to see so many
14 people here today and I think that the goal of all of
15 us is to see the water quality, the water clarity,
16 all of the issues that we're experiencing with North
17 Pond to -- to improve that. And I would also
18 encourage everybody to join the lake association and
19 to consider board positions to address issues like
20 this as they come up. The board, at least with my
21 involvement, would discuss the issues and then put it
22 out to the membership for a vote and it might save
23 future issues like this that come up.

24 And I know that at least when I was involved
25 there were an awful lot of needs for help with the

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1 dam. It's kind of a miserable procedure. You lug
2 hoists through the woods to the dam and put a hook
3 through the end of the dam and raise it manually and
4 then go across the beam to the other side, do the
5 same thing to raise it and lower it.

6 Is this the time to talk about the number of
7 beams or not?

8 KATIE MEIKLE: Sure.

9 RICK WATSON: Okay. From what I know
10 historically, it was my uncle, Bill Grove, that
11 worked on the dam initially. I think the permitting
12 or the discussion was around having three beams
13 horizontal and the idea was to try to get as close as
14 possible to the historic high water mark and one beam
15 was still -- one horizontal beam was still below the
16 high water mark, two most closely match the high
17 water mark and three was significantly higher. So
18 I've got to correct Katie on one thing, she said
19 there were three beams but there have always been two
20 to my knowledge. It was never one, there was never
21 three, it's always been two.

22 MR. MONGEON: Okay.

23 RICK WATSON: That's all I've got, I guess.

24 MR. MONGEON: All right. Thank you.

25 RICK WATSON: Okay.

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1 MR. MONGEON: All right. Next is Don --

2 DON SCHASSBERGER: -- Schassberger.

3 MR. MONGEON: -- Shassberger. Thank you.

4 DON SCHASSBERGER: Good morning. My name is
5 Don Schassberger. I am a current board member of the
6 North Pond Association. I have owned property on
7 North Pond since 1993 and have lived on the lake
8 full-time since 2013. I am one of three dam
9 committee members for the North Pond Association.

10 Decisions regarding the management of the
11 North Pond Association dam are based on predicted
12 weather events, information from upstream East Pond
13 Dam Committee and historic and current water levels.
14 Our goal is to maintain a consistent water level
15 realizing the competing interests of various
16 waterfront property owners. The North Pond Dam
17 consists of one fixed beam, which is buried in
18 concrete and two movable beams, so there are three
19 beams. One of them is fixed basically at ground
20 level embedded in cement, so that's why there is some
21 confusion as to how many beams we have because one of
22 them doesn't do anything. So the two movable beams
23 are each 12 inches high and 30 feet in length and
24 these are manually raised and lowered. A measuring
25 stick is mounted on one of the vertical dam supports.

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1 We have no means of actual water flow measurement.

2 I would be happy to answer any questions.

3 MR. MONGEON: Thank you very much.

4 DON SCHASSBERGER: Thank you.

5 MR. MONGEON: Next is -- I'll ask for Laura
6 Rose Day.

7 LAURA ROSE DAY: Hopefully it's -- is it on?
8 Can you hear me?

9 MR. MONGEON: Yup. It just takes a second to
10 turn on is all.

11 LAURA ROSE DAY: Gotcha. Okay.

12 Good morning, Mr. Mongeon, and we very much
13 appreciate the opportunity to address you today. I'm
14 Laura Rose Day. I'm the Chief Conservation Officer
15 at 7 Lakes Alliance. 7 Lakes is a regional
16 non-profit and we -- our mission is to conserve the
17 lands and waters in the Belgrade Lakes region that --
18 on all 7 Lakes, but that obviously includes North
19 Pond and we're -- we've been quite involved in
20 matters in North Pond, particularly recently with the
21 development of the North Pond Watershed Management
22 Plan. We have long-standing water quality science
23 programs in collaboration with Colby College that
24 includes monitoring, analysis, remediation of water
25 quality issues, for instance, that included an alum

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1 treatment on East Pond and one of our witness is
2 going to talk more about that. We have another --
3 one of our programs has to do with erosion control
4 that's both identifying areas of erosion control to
5 keep phosphorous out of North Pond and other lakes to
6 keep them from turning green and potentially toxic
7 and so we have a key interest in -- in North Pond.

8 We're here principally to provide relevant
9 information for your consideration as you move
10 through this process. And I think that there are
11 two-two reasons why the North Pond Water Shed
12 Management Plan in particular is something that we
13 have a vested interest in seeing that implemented.
14 One is that it is, in fact, science-based, things
15 like secchi discs are -- are -- measurements for
16 water clarity are a well-established scientific means
17 of measuring the issues in our -- in our lakes.
18 And -- and the other is that it was community-based.
19 Both science and community-based approaches are core
20 to 7 Lakes' work, so, therefore, we work with lake
21 associations like North Pond Association. And the
22 North Pond -- the North Pond Management Plan involved
23 a lot of community input, citizens around the lake,
24 North Pond Association, members of the -- the
25 Petitioners all could participate in that process and

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1 we believe that that is a -- is a well done document.
 2 The way that we're going to provide
 3 information both through our -- with -- through our
 4 testimony, but I have two witnesses, Dr. Danielle
 5 Wain, who is the head of our Water Quality Science
 6 Program and our Lakes Program and then Stuart Cole,
 7 who is -- runs our erosion control implementation
 8 project, so he spends a lot of time on the ground
 9 also working with landowners to address erosion
 10 control on their projects.

11 The outcome that we're looking for is a
 12 reasonable outcome that balances the criteria in --
 13 in the -- in the statute and both, you know, NPA has
 14 managed the dam in a way that where they're
 15 attempting to do exactly that and we think that this
 16 is a good process to bring the science and
 17 information up -- up-to-date and make sure that you
 18 have all of that in front of you. So I'm going to
 19 turn it over to our witnesses.

20 MR. MONGEON: All right.

21 LAURA ROSE DAY: Thank you.

22 MR. MONGEON: All right. We have Dr.
 23 Danielle Wain.

24 DANIELLE WAIN: Hello. Okay. As said, I am
 25 Dr. Danielle Wain. I've been the Lakes Science

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1 Director at the 7 Lakes Alliance since 2018. I have
 2 over 25 years experience within this field.

3 In my testimony, I presented information
 4 about the water quality -- water quality
 5 considerations surrounding this issue. In my written
 6 testimony, I showed water quality data for the past
 7 50 years from the Maine Department of Environmental
 8 Protection. While it is true that water quality in
 9 North Pond has declined over the past 50 years, the
 10 most severe decline in water quality has occurred
 11 since 2018, thirty years after NPA began managing the
 12 dam. There is no evidence that the changes are due
 13 to dam management as opposed to documented climate
 14 change and increased development around the lake,
 15 which are key drivers of declining water quality
 16 across the State of Maine.

17 The 7 Lakes Alliance recognizes that minimum
 18 flows play an important role in ensuring the
 19 ecological health of lake ecosystems. We, therefore,
 20 support the Department's establishment of minimum
 21 flows alongside a minimum lake level required to
 22 support both the ecology of both the lake and Great
 23 Meadow Stream, but it's crucial that there is
 24 flexibility in dam management in response to water
 25 quality conditions that might be harmful to public

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1 health. During periods in North Pond where there is
 2 excessive algal blooms, water should not be released
 3 downstream into Great Meadow Stream and -- and into
 4 Great Pond, which is a listed impaired waterbody in
 5 the state.

6 In addition to the phosphorous load that is
 7 contained in this water, low levels of the
 8 microcystin algal toxin have been detected by the
 9 Maine DEP within North Pond. It is irresponsible
 10 from a management perspective to pass potentially
 11 toxic water downstream. Additionally, flexibility in
 12 dam management needed to facilitate some remediate --
 13 remediation efforts such as ensuring the active
 14 invasive -- invasive aquatic plant remediation
 15 efforts that are ongoing in Great Meadow Stream can
 16 be conducted safely.

17 While there are -- there are certainly
 18 issues with high water levels in terms of water
 19 quality, low water levels can also have water quality
 20 impacts if the water level is below the current
 21 operational range of the lake. The littoral habitat
 22 of the lake could be lost, lead to colonization by
 23 weeding plants, including invasive species, the low
 24 water levels are likely to -- to resuspension of
 25 shallow sediments by wind waves and boat waves, which

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1 can introduce phosphorous from the lake bed into the
 2 water column.

3 And lastly, a smaller volume of water in the
 4 lake will concentrate the phosphorous that is there
 5 and will be more rapidly warmed by higher summer air
 6 temperatures than a larger volume of water so that
 7 will lead to higher phosphorous concentrations and
 8 warmer surface waters, conditions under which these
 9 potentially toxic cyanobacteria thrive.

10 As a final note, I just wanted to comment
 11 that a careful analysis of the historical record of
 12 algal blooms on North Pond does not support the
 13 Petitioners' statement that East Pond's dam operation
 14 may have created North Pond's first full algal bloom.
 15 Prior to 2018 there have been bloom conditions on
 16 North Pond, but as you've noted since 2018 it has
 17 been the worst years, but the Technical Advisory
 18 Committee for the Watershed-based Plan, which is
 19 comprised of experts from the Maine DEP, 7 Lakes,
 20 Colby, and outside consultants with decades of
 21 experience in this area did not attribute to the 2018
 22 bloom and the start of the blooms on North Pond Dam
 23 management and considered but did not recommend dam
 24 management as a remediation tool for the blooms.

25 So that is all I wanted to say today. Thank

44

1 you.

2 MR. MONGEON: Thank you very much. Next, we
3 have Stuart Cole.

4 STUART COLE: All right. Hi, everyone.

5 MR. MONGEON: It takes a second. There we
6 go.

7 STUART COLE: Hi, everyone. I'm Stuart
8 Cole. I work for 7 Lakes Alliance. I am their
9 Erosion Control Project Manager. I work alongside my
10 colleague Lynn Geiger who couldn't make it in today.
11 We -- I run our chapter Youth Conservation Corps and
12 I also work with landowner Clean Water Act Section
13 319 grant projects.

14 In this work, I -- well, in 2022, I also
15 helped update the North Pond Watershed Survey.
16 In this work I've seen most of the shoreline on North
17 Pond quite a bit and worked on a lot of projects to
18 remediate the shoreline erosion that has been
19 identified in the surveys. Most of the shoreline
20 erosion that we've identified is caused due to human
21 activities and lack of vegetation. The -- the
22 petition claims that the erosion is mostly caused by
23 high water levels, but in our experience that's not
24 what we've seen. Lack of vegetation is the -- is the
25 primary one and what most of the projects I've done

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1 that I've been trying to fix. If we were to reduce
2 the water levels it would kind of simply just move
3 where the erosion is. You know, it happens at the
4 shore/water interface and when there is a lack of
5 vegetation there is a lack of root structures and
6 that keeps it from holding. So if the water levels
7 were to be reduced it would move the water level, you
8 know, move that shore/water interface lower to where
9 there aren't any roots because the water has been
10 held up so high and, you know, potentially cause more
11 erosion in the future. From 2016 -- from the 2016
12 survey to the 2022 survey there was a pretty big
13 reduction in the amount of shoreline erosion sites
14 that were identified, which means that we've been
15 doing a good job at fixing them.

16 And so the other thing we see a lot is the
17 ice action on North Pond that causes a lot of
18 shoreline damage. And the ice gets pushed across the
19 lake in the spring, it crashes into the shoreline and
20 then in the winter depending on where the water level
21 is when the ice expands it pushes up on the shoreline
22 causing the ice berms that we see. But all this
23 damage generally occurs when the water level is at
24 its lowest when they have the dam wide open for the
25 winter and so the high water levels in the summer

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1 aren't really causing that. Yeah.

2 MR. MONGEON: All right. Thank you. All
3 right. Next up, Melvin Croft.

4 EDITH CORNWALL: Mr. Croft will not be here
5 today because of unforeseen experiences, personal
6 matters.

7 MR. MONGEON: Okay.

8 EDITH CORNWALL: So he will not be here.

9 MR. MONGEON: All right. So that brings us
10 to Edith Cromwell. We will -- if you wouldn't mind
11 starting with your substitute testimony for --

12 EDITH CORNWALL: Christine Keller.

13 MR. MONGEON: -- for Christine Keller just
14 so that -- because I believe you have a witness with
15 you as well for your testimony and I think it would
16 just make it so it will make it easier to
17 differentiate between the two.

18 EDITH CORNWALL: First of all, I'll turn on
19 your microphone. How is that? Is that okay? Can
20 you hear? Okay. Thank you.

21 I am representing Christine Keller. I thank
22 you for the opportunity to do this. Unfortunately,
23 she was called out of town on a health issue and
24 asked me to cover some of the information that she
25 had presented to you. She has been an integral part

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1 of a lot of things in East Pond. She has started the
2 Merrow Lake -- Merrow Lane Road Association, which
3 was extremely important. The reason for that was
4 because she was having issues on the road down there
5 and they were identified as one of the major sources
6 of phosphorous going into East Pond. As a result,
7 she got her neighbors together and she worked very
8 hard to get them to agree to form a road association,
9 put together some money to open an account and to
10 conduct the information and shed the -- share the
11 information with those residents.

12 In 2018, there was a two-phase alum
13 treatment costing one \$1.2 million, which was
14 completed on East Pond, and that was definitely a
15 driving force which encouraged her to go ahead and do
16 that road association. She also collects samples for
17 7 Lakes Alliance, which are then studied whenever
18 she's asked to do that. She has been the previous
19 East Pond Association secretary and in 2018 she was
20 the secretary of our organization. And she
21 facilitated a 77 percent participation in a
22 coordinated septic tank pumping schedule and that was
23 really important for that area because some of those
24 people had not had their tanks pumped for a long
25 time and she was able to coordinate that.

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1 Seven -- the Maine DEP and 7 Lakes Alliance
 2 identified the highly aggressive aquatic curly-leaf
 3 pondweed in the area about a half mile prior to the
 4 East Pond Dam and the East Pond Dam is down by Merrow
 5 Lane. And these people have had this in their area
 6 for approximately five years. It was identified in
 7 2021. We, as a result, attached a seine net to our
 8 dam and the reason for that seine net is because 7
 9 Lakes Alliance has a dive team which goes in and
 10 pulls curly-leaf pondweed. This is a very aggressive
 11 plant and very difficult to eradicate and this is one
 12 of the best ways to reduce the number of plants in
 13 the area. We put that net there in order to capture
 14 any fragments that might go downstream and flow
 15 possibly into North Pond as that's where the water
 16 flowing over the Coffin Dam goes into North Pond.
 17 There is also a second net placed further down in the
 18 stream between our lake and North Pond to capture any
 19 further fragments that might get over the dam. We
 20 cannot open our dam when that net is attached to our
 21 dam. The reason being if we open the dam the net
 22 gets sucked into the dam and the net becomes damaged
 23 and then you have holes in the net and it no longer
 24 can catch the fragments that we are so desperately
 25 trying to get for them. The divers are entering the

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1 lake in May of this year. They enter early and they
 2 go through until late into the fall and they pull
 3 plants periodically throughout that entire period of
 4 time. This has been determined to be a DEP rapid
 5 response project and is still ongoing since 2021.

6 If you look at Title 35, which if you look
 7 in the back of the room there are some copies of this
 8 on the back table. This is a document that was put
 9 out by the DEP. Number 840, testimony is limited
 10 Title 5 Section 9057. On Section F it says the water
 11 levels necessary to maintain public and private water
 12 supplies. There are six Merrow Lane households that
 13 draw water from the serpentine and that's the area
 14 just in front of the Coffin Dam and it is also the
 15 area where we have curly-leaf pondweed, so this is a
 16 very important area. Some of those homes have been
 17 grandfathered because they do not have lots large
 18 enough to put in a well and some of them don't have
 19 the finances to do that and just don't have the
 20 ability to go ahead and have a well put in.

21 The low water levels and/or boat traffic
 22 exceeding the no wake zone speed results in a
 23 stirring up of the sediments. When these sediments
 24 are stirred up, they are then drawn into the water
 25 lines, the water levels and the water quality are

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1 paramount to the proper functioning and preservation,
 2 plumbing, equipment, appliances, water pressure and
 3 health and safety of those residents. Residents wait
 4 for the sediments to settle, they delay showers and
 5 laundry and normal activities to promote -- to
 6 protect their hot water tanks, their washing machines
 7 and the equipment in their homes.

8 And that was what Christine wanted to have
 9 you be aware of.

10 MR. MONGEON: All right. Thank you very
 11 much. And so now if you'd like to testify on your
 12 own behalf. And I would say if you could limit any
 13 of your rebuttal testimony until the end just because
 14 then I can give Mr. Downing a chance to respond to
 15 just that specific part that you're rebutting.

16 EDITH CORNWALL: Excuse me, once again, I
 17 thank you for this opportunity to present this
 18 information to the organization.

19 I have lived on East Pond since 1998
 20 year-round, but I have owned property on East Pond
 21 since 1975. I am the President of the East Pond
 22 Association. My name is Edie Cornwall for anybody
 23 who doesn't know who I am. I became president when
 24 our current president at that time died after a COVID
 25 bout. It's been a challenge. We have done our best

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1 to do everything to keep East Pond -- in our work --
 2 we work with a wonderful board of people who work
 3 very diligently.

4 There is a few things about East Pond that I
 5 think are extremely important for you to know. One
 6 is that we are the first in a chain of seven lakes
 7 called the Belgrade Lakes. We have 1717 acres of
 8 water or land in the area. Our maximum depth is 27
 9 feet. We are a spring fed and water seepage lake and
 10 that is directly from the DEP website. There are no
 11 major inlets to East Pond. We depend very heavily
 12 upon our snow pack and melt and rain and we take
 13 two-and-a-half years or more to flush our lake.

14 The serpentine is a winding stream that
 15 flows through from the major portion of the lake down
 16 to our dam. It's approximately 2.86 miles long and
 17 it goes through a floating bog. It's a really
 18 interesting area. We have a lot of wildlife and even
 19 some plants that you don't find in other areas. At
 20 the end of that is the Coffin Dam. Over the Coffin
 21 Dam you flow into Old Mill Stream, which then enters
 22 North Pond. There has been a dam in this area since
 23 the early -- or since 1884 that I am aware of and it
 24 was originally a wooden dam. That dam was removed
 25 and Central Maine Power Company built the present day

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1 earthen and concrete dam and that was between 1947
2 and 1948. The East Pond Association was formed in
3 July of 1948 and since that time we have paid all the
4 taxes on the dam, so from 1949 on we have paid the
5 taxes to the Town of Smithfield. We have also done
6 all of the repairs for the dam since that time.

7 In 1997, the East Pond Association made an
8 agreement with Mike Zarcone of Sunset Camps that we
9 would follow his recommendation and put our flash
10 boards in on Memorial Day, which we understood was
11 the same schedule done as the North Pond Dam. Our
12 dam keeper, Gordon Woods, who is in attendance today,
13 continues to lower the gates on Memorial Day, or in
14 that weekend, as long as we have sufficient water
15 which is dependent upon the weather. We always
16 notify the North Pond Dam keeper and now we also
17 notify the Belgrade Dam Committee. East Pond Dam has
18 two boards. They're 12 inches high, 10 feet long
19 each board. At the end of each board there is a 2
20 inch by 5 inch opening on both ends of the boards and
21 these boards sit side-by-side on the crest of the
22 dam. We control 12 inches of water.

23 We began having recurring algal blooms in
24 1993. The DEP was very aware of the fact that we
25 were having deteriorating water quality as they had

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1 been observing the East Pond Association -- East Pond
2 since 1975. Colby began studying in 1998 and with 7
3 Lakes Alliance and our volunteer lake monitors we
4 continue to gather data today.

5 In the petition it stated that the East Pond
6 Dam was left open in May of 2018 to lower the waters
7 for the purpose of performing maintenance on the dam
8 in August three months prior to. This created
9 abnormally low stagnant water throughout the summer
10 and may have also created our pond's first algal
11 bloom. These pond minutes, which I provided for you,
12 document that the Coffin Dam was not open. The gates
13 were closed early that year. In fact, on May 14. It
14 was to maintain enough water to accumulate -- to
15 accommodate the large barges that we used in June and
16 again in October to do the two-stage 2018 alum
17 treatment on East Pond. It was also an extremely dry
18 summer and I provided you the U.S. climate data for
19 that summer. Our dam boards were closed and by
20 September the water was even with the bottom of the
21 gates. There was no water to flush. We didn't have
22 any.

23 The East Pond Association follows the
24 recommendations of our lake scientists. We promote
25 best management practices. We educate and strive our

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1 lake community -- strive to educate our community.
2 We're good neighbors to North Pond. We attend their
3 annual meeting. We have participated in discussions
4 with them and we try to be extremely supportive. The
5 goal of the East Pond Association is to keep East
6 Pond picture perfect.

7 MR. MONGEON: All right. Thank you. We're
8 going to have Gordon Woods go now.

9 EDITH CORNWALL: I -- I do have a rebuttal
10 too.

11 MR. MONGEON: Yup. And then after that I
12 will have -- let you do your rebuttal just because I
13 want to allow Mr. Downing a chance to respond, so if
14 we can just get...

15 EDITH CORNWALL: Mr. Woods is here. If
16 anybody wishes to have him speak, he can. Gordon, do
17 you want to come forward?

18 GORDON WOODS: I can.

19 MR. MONGEON: It was just he was on your
20 list of witnesses, so I...

21 EDITH CORNWALL: I wasn't sure that he would
22 be available because --

23 MR. MONGEON: Okay.

24 EDITH CORNWALL: -- he was out of -- out of
25 the country at the time that I put his name in.

55

1 MR. MONGEON: Yup.

2 GORDON WOODS: Hello. I'm Gordon Woods for
3 anybody who doesn't know who I am. I've been in the
4 area for -- since 2006, have lived on East Pond. I
5 moved there full-time in 2008 after I retired and
6 been living there ever since. I joined the East Pond
7 Association Group and been working with them ever
8 since. I got tied into helping with the dam, the
9 Coffin Dam, on the end of East Pond, I'm not sure
10 exactly what year it was, but I've been doing it for
11 over 10 --

12 EDITH CORNWALL: 2011.

13 GORDON WOODS: 2011. Okay. Since 2011. So
14 I -- I do that on a regular basis. I keep in touch
15 with the dam keeper at North Pond. Any time I make a
16 change or anything we always converse. Edie and
17 myself, I never make any changes to the dam or
18 anything without approval going through the
19 association and that's what I do.

20 So our dam is only 12 inches tall, about 20
21 feet long. It's actually a little longer because it
22 has a big section of concrete on the right-hand side,
23 so we can only control this much water in our lake.
24 A lot of times some years the water is so low that it
25 doesn't even make it to the dam. It's kind of very

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1 shallow, it comes through the end of the -- what's
2 called the serpentine, hits the dam, but the water
3 level at the dam is not very deep. So sometimes if
4 our lake drops more than say 6, 8 inches, the water
5 doesn't even make it to our dam, so we can't really
6 do anything about it to control it at that point.
7 But like I -- we keep after it. I keep records
8 for -- well, since 2018 I've been keeping records
9 when I go there, what kind of changes I do and what
10 not and do my best to do a good job and be a good
11 neighbor. Thank you.

12 MR. MONGEON: Thank you. All right. And
13 then if you'd like to provide your rebuttal
14 testimony.

15 EDITH CORNWALL: Thank you. I just wanted
16 you to know that the reason we are here representing
17 the East Pond Association is purely because the East
18 Pond Association was named or East Pond was named in
19 the original petition dated November 21 of 2023,
20 that's the only reason that we became involved.

21 Mr. Downing in a January 24 document to your
22 organization said that -- presented a picture taken
23 in October of Sunset Condos, Harlow Stream and it
24 showed some leaves on top of the water. There was a
25 reason why our gates were opened early in that

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1 season. In early of 2024, we opened the gates to
2 lower the water level as much as we possibly could
3 because we were having dam repairs done. These
4 repairs were done by Steve Liberty and when I
5 submitted this rebuttal, I was traveling at that time
6 and I did not have the opportunity to present the
7 actual statement. I said that I would bring it
8 today. I have copies if anybody would like to see
9 this, but it will tell you that the dam work was
10 completed on October 17 and we opened the dam at that
11 time and the dam has remained open since that time.

12 MR. MONGEON: Okay. One second. So of the
13 parties here that are from the Dam Owner, for the
14 Petitioners, and other Interveners, do you have an
15 objection to that document being provided after you
16 getting a chance to look at it at this time?

17 TIMOTHY DOWNING: Without question.

18 MR. MONGEON: So you're okay -- no -- no
19 objection?

20 TIMOTHY DOWNING: That's correct.

21 KATIE MEIKLE: Correct.

22 MR. MONGEON: If you wouldn't mind passing
23 out the copies to the -- the parties just so they
24 have a chance to look it over. I will give you a
25 chance to review them. If at the end of the

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1 testimony you do have an objection, please let me
2 know and I'll consider it that time once you've had a
3 chance to actually look at the record. Thank you.

4 EDITH CORNWALL: The other thing that has
5 come up time and time again is that the perch don't
6 run the way they used to. And when Mr. Downing
7 submitted his original petition he included a
8 document and it's this document right here. And I'll
9 be honest with you, at the time I looked at it I
10 didn't take a great deal of emphasis at it, but I
11 wanted to read it again so I dug it out and looked at
12 it again. Unfortunately for you, the northern pike
13 which were illegally introduced in the Belgrade Lakes
14 several years ago are now present in North Pond, how
15 the presence of this large voracious predator will
16 affect existing sport fishes is uncertain at this
17 time. This paper was originally written in 1950. It
18 was revised in 1953 and then it was revised again in
19 1989, so that means that there have been pike in
20 North Pond for at least 35 years.

21 On March 11 of 2024 at a Belgrade Dam
22 Committee, we had a couple of the representatives
23 from Maine IF&W and I specifically asked at that time
24 about the white perch spawning in Old Mill Stream and
25 I was informed that there isn't much concern with the

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1 white perch given how prolific they are in the lakes.
2 The white perch spawn between temperatures of 59 to
3 60 degrees. This is according to the Maine DEP IF&W
4 page. They survive and often thrive in most Maine
5 lakes. Their reproductive potential is so great that
6 only major mortalities induced by unfavorable weather
7 at spawning times can cause failures in certain
8 years.

9 Another area has stated that some species
10 have very sustainable populations in central and
11 mid-coast Maine and those are black crappie, white
12 perch and yellow perch. This is from the Maine
13 Resource Supervisor Jason Seigers and this is found
14 on the Maine DEP website. These species are
15 incredibly prolific and it is unlikely that anglers
16 harvesting will have much of an impact on these
17 species in this area. Water was flowing over the
18 Coffin Dam in the spring of 2024 until Memorial Day.
19 It was in 1997 that we made that agreement that we
20 would try to keep the dam open until Memorial Day and
21 we have tried our best to follow that since that
22 time. Perhaps the East Pond Association is not the
23 only factor affecting the spawning of the North Pond
24 perch. As noted by Mr. Downing, change is very hard
25 to accept. Thank you.

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1 MR. MONGEON: All right. Mr. Downing, do
2 you have any testimony you'd like to give or any
3 response to the rebuttal testimony that's specific to
4 what she just brought in?

5 TIMOTHY DOWNING: Yeah, just a
6 clarification.

7 MR. MONGEON: Sure. Do you want to come --

8 TIMOTHY DOWNING: Thanks. As I said in my
9 opening statement, our real beef is not with East
10 Pond. Their management, Gordon, has done a great
11 job. Edith has done an amazing job communicating.
12 They have listened to what we've done. I don't
13 think -- I -- I've been looking through my written
14 testimony and I don't see anywhere where I ever
15 mentioned water quality, adverse or flow from -- from
16 East Pond, so I'm not exactly sure where that's
17 coming from. I may be mistaken, but I thought I was
18 specifically requested to address only items that
19 reflected water flow and water quality, so I thought
20 I was pretty careful in the testimony that I put
21 forward. But I also said in my opening statement
22 that the 58 petitioners were a very diverse group and
23 there is a reason that the East Pond and the -- the
24 mention of perch and community was toward the end.
25 It is not our highest priority and concern.

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1 Since there was -- the biggest benefit
2 that's going to come out of this hearing is that
3 people who feel like they haven't had a voice that
4 has been heard for upwards of three decades got a
5 written testimony before the DEP that addressed their
6 concerns and primarily I'm talking about the stream
7 or the -- the people -- mostly the people below Great
8 Meadow Stream. There has just been so much
9 disrespect and disregard for those landowners.
10 Everything has been about the pond and they needed to
11 have a voice be heard. And, likewise, Edith, the
12 people who bought condos at Sunset Camps after it
13 changed from public to private, they've had a
14 concern, you know, they -- they bought a -- spent a
15 lot of money on property, shorefront, and they had
16 expressed concerns of the -- the water quality during
17 months, but the Petitioners acknowledge everything
18 and agree with all of the rebuttal testimony with
19 respect to why and the -- why the flow is what it is
20 from East Pond to North Pond. The need for the
21 serpentine is very shallow, as Gordon has mentioned,
22 and so the people that are getting water supplied
23 from them are at risk and we recognize and
24 acknowledge that that needs to take the -- but most
25 importantly, the invasive species and the work that's

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1 being done there. This curly-pond leaf is nasty
2 stuff. It -- it is more challenging than milfoil
3 ever proved to be and we need to -- we recognize
4 their need to -- to deal with that. So thank you.

5 MR. MONGEON: Thank you very much. All
6 right. Thank you. So that is the conclusion of all
7 of the testimony that was scheduled for today at this
8 point. Let's take a 5 minute break to give the court
9 reporter a second to stretch out her fingers and then
10 I will give the closing statements for this hearing,
11 which includes a reminder that we have a public
12 comment hearing today at 5:30 where anyone from the
13 public can come in and provide comments on this
14 hearing. Thank you. So 5 minutes.

(Break.)

15 MR. MONGEON: All right. So thank you all
16 again. Before I get into my closing statement, I
17 just want to thank all of our participants today in
18 presenting evidence in this water level petition
19 matter. The record is now closed with the following
20 exceptions: We will have the public evening session
21 at 5:30 and testimony received during tonight's
22 evening session of the public hearing is, as I said,
23 one of the exceptions. I'll remind parties that the
24 witnesses who prefiled testimony on behalf of a party
25

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1 in this matter will not be permitted to testify
2 tonight at the evening session. Individuals who are
3 affiliated with a party in this matter may testify at
4 the evening session only in their personal capacity
5 and not on behalf of a party.

6 Another exception to the record being closed
7 is closing briefs. So it is my understanding from
8 the court reporter at the latest we should expect a
9 transcript from today's proceeding within 30 days.
10 Once we receive that transcript, we will provide it
11 to all of the parties. It will be put on the FTP
12 online site for the public to see. Once you've
13 received the transcript, once we've set that date
14 through a procedural order you will have three weeks
15 from that time to provide a closing brief. In that
16 closing brief, if you wouldn't mind providing your
17 closing arguments as well as what you hope to find in
18 the water level hearing or the water level order, I
19 might say, and what you might hope that that would
20 look like based off of the testimony that you
21 provided. And then once -- once those three weeks
22 and the closing briefs have been filed, all parties
23 will have two weeks to provide reply briefs. Also,
24 we will be accepting written public comments until
25 April 25 at 5 p.m.

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1 All right. Pursuant to Chapter 3, Section
2 23, quote, all parties have the right to submit
3 briefs and proposed finding of fact in writing after
4 the close of the hearing and the record within such
5 time as specified by the Presiding Officer. And so
6 the deadline, as I mentioned, is going to be three
7 weeks from the time that you receive your
8 transcripts.

9 In this particular hearing I'm also
10 providing, as I said, an opportunity to submit reply
11 briefs and reply to comments made in the closing
12 briefs. The reply briefs will be due two weeks after
13 the parties have submitted their closing briefs and
14 this will be further detailed in an order that issues
15 after the public hearing.

16 The parties are put on notice that no
17 written material should be submitted other than
18 closing and reply briefs without specific
19 authorization from the Presiding Officer. Any
20 materials submitted in contravention of this ruling
21 will not be considered by the Presiding Officer in
22 deliberations and will not be considered part of the
23 record on which an ultimate decision is based. Along
24 those lines, per statute and rule, we are only able
25 to allow in the record and consider for decision

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1 testimony that was provided that was open to
2 cross-examination by either the Department or parties
3 at this hearing today. As such, I'm sorry to say,
4 Melvin Croft's testimony will not be considered as a
5 part of the record.

6 The other exception to the closing of the
7 record is written public comments, as I said. These
8 can be sent to the Department. Written comments
9 should be sent to Maine DEP, attention Claire Briggs.
10 The address is 17 State House Station, Augusta,
11 Maine. You can email the comments to
12 claire.briggs@maine.gov. That's C-L-A-I-R-E, dot,
13 B-R-I-G-G-S @maine.gov or you can hand deliver them
14 to 28 Tyson Drive, Augusta, Maine, which is actually
15 the building that's right down on the other side of
16 the driveway.

17 So just to recap, the record is closed with
18 the exception of the public evening session tonight
19 beginning at 5:30, the closing briefs and reply
20 briefs, and the written comments. Now, pursuant to
21 Chapter 3, the record may be re-opened at any time at
22 the discretion of the Presiding Officer and this will
23 only be done upon demonstration of good cause of why
24 the record needs to be re-opened.

25 So that is end of today's day portion of the

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1 adjudicatory proceeding and I'll remind folks that
2 the evening session begins at 5:30 p.m. Are there
3 any questions before we adjourn? Yup.

4 KATIE MEIKLE: I believe two members of the
5 North Pond Association have sent written comments to
6 Laura Day because that was previous -- in the
7 previous order.

8 MR. MONGEON: Yup.

9 KATIE MEIKLE: Will they be forwarded on?

10 MR. MONGEON: Yes.

11 KATIE MEIKLE: Okay. Thank you.

12 MR. MONGEON: Yup.

13 KATIE MEIKLE: So I don't have to tell them
14 to redirect?

15 MR. MONGEON: No, we have received those and
16 they --

17 KATIE MEIKLE: Thank you.

18 MR. MONGEON: -- have been accepted.

19 KATIE MEIKLE: Thank you.

20 MR. MONGEON: Any further questions? All
21 right. Thank you. And we are adjourned.

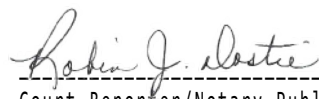
22
23 (Hearing concluded at 12:16 p.m.)
24
25

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C E R T I F I C A T E

1 I, Robin J. Dostie, a Court Reporter and
2 Notary Public within and for the State of Maine, do
3 hereby certify that the foregoing is a true and
4 accurate transcript of the proceedings as taken by me
5 by means of stenograph,
6

7 and I have signed:
8
9

10
11 
12 _____
13 Court Reporter/Notary Public
14

15 My Commission Expires: February 6, 2026.
16

17 DATED: April 29, 2025
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