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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BOARD OF ENVIRONMENTAL PROTECTION

Public Hearing

on

2021 Triennial Review of Water Quality Standards

PUBLIC HEARING reported by Lorna M. Prince, a
Notary Public and Court Reporter in and for the State
of Maine, on October 7, 2021, at the Augusta Civic
Center, 76 Community Drive, Augusta, Maine, meeting
commenced at 9:00 a.m.

BEP MEMBERS IN ATTENDANCE:

ROBERT DUCHESNE, BEP Member
STEVEN PELLETIER, BEP Member
ROBERT SANFORD, BEP Member
JIM PARKER, BEP Member (via Zoom)
MELANIE LOYZIM, DEP Deputy Commissioner
SCOTT ROAK, Assistant Attorney General
BILL HINKEL, BEP Executive Analyst
RUTH ANN BURKE, BEP Administrative Assistant

DEP STAFF IN ATTENDANCE:

SUSANNE MEIDEL, Biologist, Division of
Environmental Assessment
BRIAN KAVANAUGH, Director of Bureau of Water Quality

1 MR. DUCHESNE: Rob?

2 MR. SANFORD: Good morning, I'm Rob
3 Sanford, an environmental science professor from
4 Gorham, Maine.

5 MR. DUCHESNE: And Mr. Parker?

6 MR. PARKER: Yes, I'm Jim Parker. I'm a
7 retired civil engineer. I also serve the legislature
8 and I'm on the coast.

9 MR. DUCHESNE: And I reside in Hudson.
10 I'm mostly retired from a bunch of different things.
11 Also present this morning are DEP Commissioner Melanie
12 Loyzim; Board Executive Analyst, Bill Hinkel; Board
13 Administrative Assistant, Ruth Ann Burke; and advising
14 the Board today is Assistant Attorney General Scott
15 Roak.

16 Additionally, Department staff are
17 present and will introduce themselves prior to
18 speaking. I note that this hearing is part of a Clean
19 Water Act related matter for which certain Board
20 members may not participate pursuant to Title 38,
21 Section 341C8A. Board members Mark Draper, Susan
22 Lessard and Mark Dubois are excused from this matter
23 and are absent from today's hearing.

24 Notice of hearing, this hearing is being
25 conducted in accordance with Section 403B, the Freedom

1 of Access Act. Notice of today's hearing was provided
2 by or on August 18th, 2021 in accordance with Section
3 406 of the Freedom of Access Act and was published on
4 August 18, 2021 in the Bangor Daily News, Kennebec
5 Journal, Morning Sentinel, Portland Press Herald and
6 Sun Journal newspapers.

7 Additionally, notice was given to
8 stakeholders and other persons who previously requested
9 materials related to the proposed revisions to Maine's
10 water quality standards or are on various Department
11 contact lists, the Gov Delivery distribution lists for
12 notice of Department and Board public meetings and
13 hearings and opportunities for comments, all members of
14 the legislature, and it was posted on the Department's
15 and Board's Web pages.

16 The Board meeting agenda also provided
17 notice regarding how members of the public may
18 participate in the hearing through both in-person and
19 remote meetings. An audio recording of the hearing is
20 being made and a written transcript of today's hearing
21 will be prepared by Dostie Reporting of Augusta.

22 How to comment, persons in the physical
23 attendance at today's hearing who wish to offer
24 comments on the proposed revisions to Maine's water
25 quality classification system and related standards are

1 directed to use the sign-in sheet near the entrance to
2 this room. The sign-up sheet is, as we suspected, over
3 there on that table. The person who is participating
4 by remote means and who wish to comment should use the
5 raise hand feature of Zoom. I'm aware of at least
6 three people so far who have indicated their intention
7 to do so.

8 When there's an opportunity for public
9 today, I will call on meeting attendees to speak based
10 on the name they used to sign up on their Zoom or their
11 Zoom screen name. Please be sure that your Zoom screen
12 name is appropriate for this type of public proceeding.

13 When I call on a person to address the
14 Board, please state your name, the town where you live,
15 and the name of the organization you represent, if any.
16 The Board or staff and counsel of the Board may ask
17 questions of each person offering comment today. Each
18 person will be allotted approximately three minutes to
19 comment. To assist our court reporter in producing an
20 accurate hearing transcript, I may ask that you spell
21 your name, speak louder or speak more slowly as
22 necessary. Please direct all comments and testimony to
23 the Board. This hearing is not an opportunity to ask
24 questions of the Board or the Department staff.

25 In addition to receiving oral comments

1 and testimony today, written comments on
2 recommendations for proposed revisions to Maine's water
3 quality classification system and related standards may
4 be submitted until 5:00 p.m. on October 25th, 2021.
5 All written comments should be addressed to Susanne
6 Meidel at the Maine Department of Environmental
7 Protection at 17 State Street -- State House Station,
8 Augusta, 04333-0017 or via e-mail at
9 SusanneKMeidel@Maine.Gov.

10 Any person who wishes to provide the
11 Board with written comments today should see Board
12 clerk Ruth Ann Burke or the Department staff, Susanne
13 Meidel.

14 In consideration of all timely submitted
15 comments, Department staff will prepare a revised
16 recommendation for the Board's further consideration at
17 a subsequent Board hearing. Notice of Board meetings,
18 meeting agendas and meeting materials are posted on the
19 Board's calendar and meeting materials in advance of
20 each meeting. Persons who wish to receive direct
21 notification of --

22 UNIDENTIFIED PERSON: I can't -- I can't
23 hear anybody.

24 THE ARBITRATOR: Were you able to -- I
25 just heard somebody say they couldn't hear us, so it

1 will just take me a second to make sure that people can
2 actually hear this public meeting. Jim, can you hear
3 us okay, Jim Parker? Jim is muted. Mr. Parker, can
4 you hear us?

5 LAURA JENSEN: This is Laura Jensen, I
6 can hear you guys.

7 MR. DUCHESNE: Okay. Would anyone like
8 me to read all of this all over again?

9 MR. ROAK: I just wanted to clarify, I
10 think earlier you said Board members Mark Draper, Susan
11 Lessard and Mark Dubois are excused, I believe they're
12 recused today.

13 MR. DUCHESNE: Okay. For the record I
14 should have said recused. I think we're up to
15 administration of oath now. So at this time I ask all
16 persons who wish to comment or testify today to direct
17 your attention to me and I would ask you to do so by
18 standing. Do you swear or affirm that the comments or
19 testimony that you are about to give is the truth, the
20 whole truth and nothing but the truth?

21 UNIDENTIFIED PERSONS: I do.

22 MR. DUCHESNE: Thank you. I assure all
23 persons offering comment or testimony today have
24 affirmed to this by oath and I will be doing so with
25 every person who wishes to testify on Zoom. Are there

1 any questions about these procedures that I've
2 outlined? We will now proceed with a statement by the
3 Department staff, Susanne Meidel, please.

4 SUSANNE MEIDEL: Good morning, Presiding
5 Officer Duchesne, other Board members and everybody
6 present in the room and on Zoom, welcome to the hearing
7 today. My name is Susanne Meidel and I'm a biologist
8 with the Department's Division of Environmental
9 Assessment. I will provide a brief overview of the
10 process for recommending changes to water quality
11 standards under the Department's triennial review
12 followed by a brief summary of the current
13 recommendations.

14 The triennial review is governed by
15 Maine Statute and the Clean Water Act and consists of
16 the following steps, the Department solicited from the
17 public, including regulated entities, proposals for
18 changes to Maine's water quality standards between
19 January and March of 2020.

20 We evaluated all proposals and developed
21 a draft set of recommendations, which was available for
22 public comment for about four weeks in April and May of
23 2021. During that time we held one virtual public
24 information meeting. We then reviewed all comments
25 received and new information obtained to prepare the

1 revised recommendations to present to the Board and to
2 the public for additional comment and testimony.

3 As Presiding Officer Duchesne explained
4 in his opening statement, in addition to receiving oral
5 comments and testimony today, written comments on the
6 proposed revisions to Maine's water quality standards
7 may be submitted until 5:00 p.m. on October 25, 2021.

8 Following the close of the comment
9 period, the Department will prepare a final list of
10 recommendations for the Board's consideration at a
11 subsequent meeting.

12 In terms of the Department's
13 recommendations to the Board, they are based on
14 proposals received from members of the public and
15 Department staff as well as requests from the
16 Environmental Protection Agency, or EPA.

17 For each proposal to update water
18 quality standards, staff evaluated multiple factors
19 such as the complexity of the proposal with respect to
20 the time constraints of the current triennial review,
21 the availability of data or information to inform our
22 decision, the impacts on licensed wastewater
23 dischargers, including hydropower facilities, and last
24 but not least, the environmental benefits anticipated
25 from each proposed water quality standards revision.

1 For proposals to upgrade the water
2 quality classification of a water body, we've
3 considered a number of relevant factors such as the
4 current classification attainment status, land use and
5 the presence of conservation land in the watershed.
6 The presence of licensed wastewater dischargers,
7 including hydropower facilities, and the value of the
8 water body as endangered species habitat, for example,
9 for Atlantic salmon.

10 The Department considered a total of 36
11 proposed changes to water quality standards and water
12 classifications. For the reasons that I will discuss
13 in a moment, not all of the proposals received to date
14 are being advanced by the Department to the Board. The
15 Department recommends a total of 18 updates to water
16 quality standards. Because the primary purpose of
17 today's hearing is to allow the public to provide
18 comment, I will only briefly summarize current
19 recommendations with a focus on important items.

20 So starting with water quality standards
21 proposals, the Department considered a total of 15
22 proposed updates to water quality standards falling
23 into the following three subcategories. One, proposed
24 updates to existing statutes recommended by the
25 Department. Seven of the proposed updates fall into

1 this category and are being recommended by the
2 Department to the Board for advancement as
3 recommendations to the legislature.

4 Two, proposed updates involving
5 statewide expansion of geographically limited federal
6 water quality standards. Two of the proposed changes
7 fall into this category and would expand statewide
8 certain geographically limited federal water quality
9 standards involving naturally elevated concentration of
10 toxics and bacteria and seasonal applicability of
11 bacteria standards. These proposed updates are not
12 being recommended by the Department for the reasons
13 outlined on Pages 22 to 23 and 29 to 31 of the packet.

14 And third, proposed updates to water
15 quality standards that require further review. The
16 remaining six proposed changes to water quality
17 standards are complex in nature and require further
18 research and consideration before a recommendation to
19 the Board can be made. Therefore, the Department is
20 not recommending changes to the water quality standards
21 at this time for the proposals discussed on Pages 34 to
22 43 of your packet.

23 Now on to classification proposals.
24 Department staff considered a total of 21 proposals for
25 upgrades of the water classification of rivers and

1 streams. The Department recommends upgrading 11 water
2 bodies, but recommends against upgrading the remaining
3 10. And there are three general reasons for
4 recommendations against upgrades.

5 First, regulatory uncertainty. For
6 upgrade proposals from class A to class AA, which
7 account for eight of the ten proposals not being
8 recommended by the Department for action, there are
9 ongoing regulatory uncertainties with respect to storm
10 water dischargers to class AA waters. Such storm water
11 dischargers are evaluated by the EPA under the Clean
12 Water Act differently than they are treated under Maine
13 Statute.

14 As a consequence, certain Maine storm
15 water discharge provisions involving class AA waters
16 have been disapproved by the EPA creating regulatory
17 uncertainty with respect to those waters. The
18 Department is currently working with the EPA on
19 possible approaches with respect to such dischargers
20 that will hopefully clarify the issue.

21 Two, water quality standards attainment.
22 For the lower Androscoggin River upgrade proposal from
23 class C to class B, given current circumstances, the
24 Department does not foresee the ability to ensure that
25 class B water quality standards could be consistently

1 attained at all times during critical conditions and is
2 thus not recommending this upgrade at this time.

3 And three, insufficient data. For the
4 lower Presumpscot River --

5 MR. DUCHESNE: Hold on just a moment,
6 we're having an audio problem.

7 SUSANNE MEIDEL: Okay.

8 MR. DUCHESNE: We think it's not quite
9 loud enough online. Sorry about that.

10 (Off-the-record discussion was held.)

11 SUSANNE MEIDEL: So the third reason was
12 insufficient data. For the lower Presumpscot River
13 proposed upgrade from class C to class B, the
14 Department does not have sufficient monitoring data to
15 update the existing water quality model to evaluate
16 current conditions in this river segment.

17 In the absence of these data, the
18 Department is unable to assess whether water quality
19 standards are or would be consistently attained at all
20 times during critical conditions or what impact an
21 upgrade would have on existing licensed dischargers.
22 Thus the Department does not recommend this upgrade
23 proposal, but is actively working on acquiring the
24 necessary data to inform a decision at a later point in
25 time.

1 And this concludes my brief overview of
2 triennial review recommendations.

3 MR. DUCHESNE: Okay. I would turn to
4 the Board for questions. Any questions from the Board?
5 I'm looking for Mr. Parker, and seeing none, I would
6 like to give Miss Meidel an opportunity to answer -- to
7 re-answer a question that I asked during our briefing
8 as we were preparing for this public hearing and I
9 asked about the Androscoggin. It's been a question for
10 probably close to 20 years or more, it's close to a B,
11 but not quite, and I asked, I think at the time when we
12 began debating this, there was a lot of concern about
13 where was most of the degradation coming from, was it
14 paper mills, was it agriculture upstream. We seem to
15 be still in about the same place we were when I started
16 dealing with this issue 17 years ago, so what is the
17 course of progress being made? What are
18 identifications of problems, especially when the paper
19 mills aren't producing quite as much phosphorous in the
20 river as they once did?

21 SUSANNE MEIDEL: There have been a few
22 projects addressing non point source pollution, but not
23 very many, and I think I also want to defer to Brian
24 Kavanaugh to speak to the permitting side whether there
25 have been any changes because that is more his

1 expertise than mine.

2 MR. DUCHESNE: Mr. Kavanaugh, if you can
3 just introduce yourself.

4 BRIAN KAVANAUGH: I'm Brian Kavanaugh,
5 I'm the director or Bureau of Water Quality at Maine
6 DEP. So in terms of the Androscoggin, I think it's
7 good to recognize that there's very good water quality
8 in the Androscoggin River in the upper section and the
9 lower section, but there is a big difference between
10 the class B and class C criteria, particularly the
11 dissolved oxygen. And the monitoring data does show
12 that the lower Androscoggin often, most of the time,
13 meets the DO criteria for class B, which is seven parts
14 per million. The class C criteria is five.

15 Our position is in order to ensure that
16 it meets it under the requirements of the law when
17 there are dischargers, which is the seven to ten flow,
18 the lowest flow you'd expect to see in seven continuous
19 days in a ten year period. And we have to ensure that
20 the boundary condition for the upgraded section at
21 Cliff Island Dam meets seven as a starting point.

22 And in order to ensure that, we have to
23 look at the upper section and ensure that any permitted
24 dischargers in that section don't cause the DO to be
25 below seven when it gets to the dam. When we did that,

1 that looked to be about a 54 percent reduction in the
2 licensed loads for the paper mills there and that just
3 didn't seem like it was a feasible way to bring it to
4 that seven all the time in the lower section.

5 It certainly is something that the
6 legislature can do. The legislature can upgrade it if
7 it chooses to. We just like to make sure the
8 legislature is fully informed of what the implications
9 were, and that seemed to be a very big implication.

10 MR. DUCHESNE: Thank you. Mr.
11 Pelletier?

12 MR. PELLETTIER: Thank you. Just to
13 follow up on that, my understanding is that it met the
14 criteria most of the time except under critical
15 conditions, the fact that there was a test done for
16 critical conditions; is that correct?

17 BRIAN KAVANAUGH: It's hard to
18 replicate. It's almost impossible to replicate
19 critical conditions. You can monitor during seven
20 through ten conditions if that happens, or close to
21 seven through ten, but it's really hard to replicate
22 the conditions of the license, what's currently
23 licensed there now.

24 So what's currently licensed would not
25 fit under a class B criteria because you can never

1 really replicate all of the dischargers as they are
2 currently licensed. They don't generally discharge at
3 the license load. The license load can have a seven
4 through ten conditions, so that is where the modeling
5 has to come into place for us to replicate that.

6 MR. PELLETTIER: So it's not a matter of
7 collecting data at a particular point in time when
8 conditions are --

9 BRIAN KAVANAUGH: No, I feel we have
10 enough data to make this judgment, it's really not an
11 issue of data.

12 MR. PELLETTIER: So there was several
13 proposals that I think went to further investigation,
14 this would not be one of those?

15 BRIAN KAVANAUGH: No, no.

16 MR. PELLETTIER: Thank you.

17 BRIAN KAVANAUGH: I do want to make it
18 clear that dischargers are not a designated use.
19 They're not an existing use. The Board and the
20 legislature does not have to consider dischargers in
21 this evaluation. We always want to make sure that the
22 decision makers are fully informed on what the
23 implications are of changing of classification.

24 MR. PELLETTIER: Thanks.

25 MR. DUCHESNE: Mr. Sanford, question?

1 MR. SANFORD: I have a question about
2 the Presumpscot. Whenever it is said that you don't
3 have enough information, the problem with that is that
4 it's really vague in how to interpret that because it
5 doesn't say what information you do have, and the
6 discussion on Page 60, the summary refers to starting
7 in the summer of 2020 extending into 2021, which we're
8 already well into, so I'm curious if there's an update
9 from that, and if you can give me something a little
10 bit more than saying you don't have enough information.

11 BRIAN KAVANAUGH: So we did gather more
12 information this year. We have a continuous monitor in
13 place. We just recently pulled that data and engineers
14 are evaluating that now. We've got an existing model.
15 We're trying to evaluate whether we can put this new
16 data into the existing model, so I think probably
17 within a couple of months we'll have a decision on the
18 Presumpscot in terms of what recommendations -- whether
19 we recommend it to be upgraded or not.

20 MR. SANFORD: Okay. So are you still
21 doing more studies, or do you have enough already to
22 put it into a model?

23 BRIAN KAVANAUGH: We're currently
24 evaluating the data that we got this summer.

25 MR. SANFORD: Okay. And when would the

1 next opportunity be to resubmit? It would have to be
2 the next time a triennial occurs?

3 BRIAN KAVANAUGH: Reclasses don't have
4 to wait for a triennial review. Really any entity
5 could request the legislature to introduce a bill, so
6 that can happen in any legislative session potentially.

7 MR. SANFORD: Okay.

8 MR. DUCHESNE: And it used to. Susanne?

9 SUSANNE MEIDEL: If I could also add
10 another clarification to that. At the moment we are
11 doing a triennial review, which covers all water
12 quality standards. In 2018 starting -- through 2020,
13 but predominantly in 2018 we did a reclassification
14 study initiative where we didn't look at water quality
15 standards in a broad sense. We only looked at the
16 classifications. So that's only a possibility that
17 that could come up before the next triennial, full
18 triennial review.

19 And a clarification, while the
20 information on the new data is not in the package that
21 you are looking at, because that package was put
22 together in late July, and that is the package that is
23 currently out for public comment, so we couldn't alter
24 that package until the public comment period is over.
25 So the next package will have updates on the data

1 collection. We just couldn't include it in these new
2 -- in the current package.

3 MR. DUCHESNE: Any other questions from
4 the Board? Seeing none, and I don't see a hand up for
5 Mr. Parker, I believe we can go to public comment now.
6 And let me --

7 MR. PARKER: Can you hear me now?

8 MR. DUCHESNE: Yes, we can, Mr. Parker.

9 MR. PARKER: Okay. I have a couple of
10 questions for the staff. I'll read them off and then
11 they can respond to them. Back on Page 29, you're
12 talking about an anonymous commenter, I find it odd to
13 find an anonymous commenter making comments on this
14 related to something as far as bacteria. It seems as
15 though we'd identify the commenter so we know where the
16 information is coming from. That's just a minor one,
17 and then I have a couple more and then I'll be quiet.

18 I'm going through this slowly because I
19 can only turn the paper with one hand. On Page 38 I'd
20 like to know what they mean by shore hugging flume. I
21 think I understand that, but I'd like to know what that
22 is.

23 Then moving on, on Page 50 when they
24 start talking about the west branch of Penobscot, I
25 know the segments they're talking about, and I know

1 it's a high quality fishery and all that, but what
2 impact are these rules going to have on use of the
3 Golden Road because the Golden Road does have drainages
4 that deliver that segment of the river. I'm concerned
5 about what impact that may have. The Golden Road isn't
6 used a lot right now, but it's going to be more in the
7 future I'm assuming.

8 And then one more comment, and I'll be
9 quiet. On Page 57, when we're talking about Long Creek
10 in Westbrook, it looks like we're going to classify, or
11 recommend a classifying maybe to class B, which is
12 already known that it cannot attain, so why are we
13 making them a non attainment water until improvements
14 are made so that it could go either C or B? Those are
15 my questions.

16 SUSANNE MEIDEL: This is Susanne Meidel.
17 I will start with the first one. The anonymous
18 commenter, it was exactly that. It was an e-mail
19 addressed to me signed as anonymous and the e-mail
20 address did not include a concrete name so I could not
21 provide a name. It was just a member from the public
22 maybe. I really don't know. It was simply anonymous.

23 The second question about the shore
24 hugging flume, I'll hand it over to Brian Kavanaugh.

25 BRIAN KAVANAUGH: This is Brian

1 Kavanaugh. So the shore hugging flume is a flume from
2 a discharge that doesn't fully mix immediately with the
3 receiving water, so depending on the characteristics of
4 the discharger and how that outfall is designed and the
5 characterization of the receiving water, it may stay
6 close to the bank of the river for some period of time
7 until the sub condition spreads out and gets mixed with
8 the receiving water. And sometimes you can see that,
9 particularly with heat you might be able to notice that
10 in a river segment in a river where you would see the
11 lack of ice along the shore below it discharging.

12 MR. PARKER: One question, Brian, is
13 that a result of the discharge not being made far
14 enough out into the water and close to shore?

15 BRIAN KAVANAUGH: It could be. It can
16 sometimes depend on the design of the diffuser, somehow
17 falls on diffusers which spread the discharge out over
18 the longer section of the river and some don't and
19 sometimes it's a combination of that and the
20 characteristics of the receiving water.

21 MR. PARKER: Thank you.

22 SUSANNE MEIDEL: For the west branch
23 Penobscot upgrade question about Bowman Road, I'm not
24 familiar with the Bowman Road so I will look into that,
25 but at the moment I cannot provide an answer.

1 MR. PARKER: My comment there was that
2 the Golden Road is like a hundred feet off that piece
3 of river, which is trying to be protected, and I drive
4 it frequently. I know there's drainage that's going to
5 go over, so is that going to impact the Golden Road?
6 That's my real concern. Because that's a primary
7 trucking route for that whole northeast area.

8 SUSANNE MEIDEL: Yeah, and like I said,
9 I'm not familiar with that. You said Golden Road, not
10 Bowman?

11 MR. DUCHESNE: It's Golden Road.

12 SUSANNE MEIDEL: Golden Road, okay, I
13 will look into that.

14 MR. PARKER: Golden like the color.

15 SUSANNE MEIDEL: Yup, okay, I will look
16 into that. I'm afraid I can't provide an answer off
17 the top of my head.

18 And for Long Creek, this was a request
19 from the Environmental Protection Agency. We had in
20 2009 reclassified this 0.3 mile segment in Westbrook
21 from class B to class C to fit in with the remainder of
22 Long Creek because we argued that it had originally
23 been an oversight to classify that as a class B and EPA
24 did not agree with that reasoning, so they never
25 approved that reclassification from B to C and so we

1 have -- for Clean Water Act purposes, that never became
2 effective. So we have to put it back to class B, which
3 we're doing in this current reclassification as part of
4 the triennial review to -- so that it can be approved
5 again by EPA, or they don't actually need to reapprove
6 it since they had previously approved the class B.
7 They never approved the downgrade to a class C.

8 MR. PARKER: So that is being classified
9 as class C, not class B?

10 SUSANNE MEIDEL: We had changed it from
11 C to B -- sorry, from B to C in 2009. That segment is
12 in Westbrook and Westbrook by default all water bodies
13 in that city are class B. So that 0.3 mile segment of
14 Long Creek was classified as a B without really looking
15 into it, we think. And when we realized that, as you
16 stated, class B criteria cannot really be attained in
17 class B, and then also that the remainder of Long Creek
18 in the other adjacent towns is class C, we determined
19 that it would be the best cause to change the
20 classification of Long Creek in Westbrook from B to C
21 to be consistent with the remainder of Long Creek and
22 also to make it easier to actually really attain the
23 criteria. Because class B, as you said, is really
24 unattainable given the watershed of Long Creek and how
25 highly developed it is.

1 MR. SANFORD: Can I ask a clarification?

2 MR. DUCHESNE: Yes.

3 MR. SANFORD: Did you just say that all
4 waters in Westbrook are class B?

5 SUSANNE MEIDEL: By default, yeah.
6 There might be one or two exceptions that I can't think
7 of that, you know, I don't remember all the entire
8 statute off the of top of my head.

9 MR. SANFORD: Because Presumpscot River
10 in Westbrook is class C requesting to go to B, and
11 you're recommending against that, but yet you're saying
12 that Westbrook are all class B. So it seems to me like
13 the Long Creek one is like an aspirational management
14 tool, is that a different strategy than for some of the
15 other rivers?

16 SUSANNE MEIDEL: There are actually two
17 different sections in our statute, the Section 467,
18 which is all the larger rivers, which are in that
19 section is Androscoggin River and Penobscot River and
20 Penobscot River, and so the Presumpscot River mainstem
21 has its own classifications and then a tributary to the
22 Presumpscot or Penobscot or Androscoggin. I included
23 in that section with their own individual
24 classifications and there are also some default
25 classifications.

1 These smaller water bodies, especially
2 along the coast, are in the statute in Section 468,
3 which goes by county. So in Cumberland County
4 there are -- waters in Cumberland County by default are
5 class B unless they are split out then by city. So the
6 default of Cumberland County is B, including Westbrook.
7 And then if they are split out in Westbrook, breaks up
8 currently in Maine statute Long Creek is called out in
9 Westbrook as a class C, which is what EPA never
10 approved. So we would delete that exclusion.

11 MR. PARKER: I'm still a little confused
12 with this. In your discussion you say that a segment
13 of Long Creek will require restoration work just to
14 attain class C.

15 SUSANNE MEIDEL: That is correct.

16 MR. PARKER: And you're recommending
17 classifying it to class B.

18 MR. ROAK: This is Scott Roak, Mr.
19 Parker, and hopefully just sort of pulling back away
20 from the details, I think hopefully this may clarify
21 it, Susanna will correct me if I'm wrong, but I believe
22 what had happened was this stretch had once upon a time
23 inadvertently by operation of the default rules been
24 classified as B. When that was discovered, there was
25 an attempt by the State to reclassify it to C. That

1 was not approved by EPA because you have to go through
2 a separate Clean Water Act process to revert from the B
3 to a C. And so at present the EPA, for the purposes of
4 the Clean Water Act, has this as a class B while
5 Maine's statute for that section does not reflect it.
6 And in order to align it with how it is actually being
7 treated, that is what this change is being proposed for
8 because that's the way it actually is at present under
9 the Clean Water Act. I hope that clarifies things a
10 little.

11 MR. PARKER: I hear what you're saying,
12 yes.

13 MR. DUCHESNE: Any other questions from
14 the Board or staff? Seeing none, I believe we can
15 proceed to public comment.

16 Procedurally let me just talk a little
17 bit about that. First of all, we are -- let me clarify
18 this, first of all, we are testing this hybrid system
19 for the first time in real life, and if it is not
20 satisfactory, if you're having difficulty hearing
21 online for any speaker or all the speakers, feel free
22 to send us a comment and we can try to get that
23 addressed, and you can use the comment function on
24 Zoom.

25 Secondly, I have sworn in four people

1 within the room to testify and I have at least five
2 people on the list from the Zoom remote who have
3 indicated a willingness or an interest in talking and
4 I'll be swearing each one of those in individually when
5 we get to them. I will start with the four people in
6 the room here who have already been sworn in. A few
7 people may have arrived a little later, was there
8 anybody else who was looking to testify who did not
9 previously -- yes?

10 ROLAND ARSENAULT: Roland Arsenault,
11 superintendent of Rumford, Mexico Sewer District.

12 MR. DUCHESNE: Great. In fact, while
13 you're here, I might as well just swear you right in.
14 Do you swear or affirm that the comment or testimony
15 that you are about to give is the truth, the whole
16 truth and nothing but the truth?

17 ROLAND ARSENAULT: Yes.

18 MR. DUCHESNE: Thank you. So I have
19 five people here who are sworn in. I will be swearing
20 everybody else online later. And we can proceed with
21 Mr. Rubins.

22 And once again, if you would identify
23 your affiliation, please.

24 PETER RUBINS: Will do. My name is
25 Peter Rubins. I'm with Grow LA River Working Group and

1 live in Cumberland, Maine.

2 MR. HINKEL: Excuse me just one second,
3 I just want to acknowledge that Mr. Rubins did hand me
4 this morning a paper handout. I suspect this is --
5 you're the author of this document?

6 PETER RUBINS: Yes, along with others of
7 our coalition basically, but yes.

8 MR. HINKEL: And you're submitting this
9 as written comment in support of your testimony today?

10 PETER RUBINS: Yes, if you could look at
11 that as I speak, we will be submitting it
12 electronically also.

13 MR. HINKEL: Okay, thanks.

14 PETER RUBINS: My name is Peter Rubins.
15 I'm the chair of the Grow LA River Working Group. Our
16 mission statement is to be the conduit of interested
17 river groups for best use of the river. Contributing
18 groups include Friends of Merrymeeting Bay,
19 Androscoggin Land Trust, the cities of Lewiston and
20 Auburn, Brunswick, Bates College, Trout Unlimited,
21 Maine Rivers, Senator John Nutting and Senator Ned
22 Claxton, among others.

23 My dad was a scientist and I spent my
24 teenage years paddling, fishing, camping through
25 scouting the rivers and lakes of Tennessee. Somehow I

1 found Bates College and was astounded to see the open
2 sewer of the Androscoggin in 1970. I decided then in
3 those tumultuous years to be an environmentalist.

4 Senator Ed Muskie was running for
5 president and had just passed a Clean Water Act, and
6 that is where I stand today 50 years later. He is my
7 hero.

8 The Androscoggin was classified a C
9 50 years ago and it is still classified as C today.
10 You're all environmentalists, or you wouldn't be here.

11 Rivers are a part of the public domain
12 defined as the state of belonging or being available to
13 the public as a whole. They are the arteries and veins
14 of our little planet earth. We ask the Board of
15 Environmental Protection to endorse LD 676 and to find
16 a way to work with industry, government and the public
17 to reclassify the Androscoggin below Gulf Island Dam to
18 class B according to the law that states, once a river
19 has met a higher quality that it cannot be allowed to
20 slip backwards. Muskie's Androscoggin deserves the
21 status on the 50th anniversary of the Clean Water Act.

22 This request is from our coalition.
23 This includes the public domain of over two hundred
24 thousand Maine citizens that live up and down the
25 river.

1 I wanted to talk about science and the
2 law. Science data collection, first, DEP volunteered
3 data collection. The data we present to you, on
4 basically Page 1 of the graphs that I've handed you,
5 the data we present to you is from the DEP volunteer
6 program over the past 20 years, and it's collected by
7 hundreds of volunteers for hundreds of hours early in
8 the morning. The DO data shows that the river has met
9 class B standards 99 percent of the time. That's
10 361 days a year. The E. coli is also way below the
11 maximum.

12 Second, I'd like to talk about combined
13 sewerage overflow, CSO in Lewiston, Auburn. Lewiston
14 and Auburn have both spent together over \$50 million
15 over the past ten years on CSO. Lewiston has one big
16 project scheduled to be met and low flow toilets have
17 reduced wastewater considerably. All the cities on the
18 lower Androscoggin are working on lowering the CSOs.
19 Auburn is down near zero.

20 Third, I'd like to talk about electronic
21 sondes, see Page 3 of the graphs. In this age of
22 information, this is the state of the art in hydro data
23 collection. Our request -- at our request the DEP
24 installed electronic sondes in three locations, Gulf
25 Island Dam, Lewiston Falls and the Durham boat launch

1 at low drought flows in September 2019 for a 15-day
2 period. The readings are all above seven parts per
3 million at minimum required licensed flows reflecting
4 drought conditions. And this minimum flow is for
5 Brookfield to allow for 1,450 cubic feet per second out
6 of Gulf Island Dam and also through the Lewiston Falls
7 hydro plant.

8 Note on the graph my readings that day
9 for that same location using the DEP's DO testing
10 device are below what the electronic sondes recorded.
11 This implies that for accurate readings electronic
12 sondes should be installed at all questionable sites on
13 a yearly basis for the DEP to make modern scientific
14 data collection and standard. The cause should be
15 shared with the hydro and paper industries for their
16 licensing.

17 Fourth, the law. The law states that
18 the Department's refusal to recommend and upgrade
19 violates the legal standard and the Clean Water Act
20 that a state revised its standards to reflect uses and
21 water quality actually being attained.

22 The history is in 1942 the Androscoggin
23 River was so polluted that it actually peeled paint off
24 houses and was harmful to the health of two hundred
25 thousand people living along the river. The Maine

1 Supreme Court ordered the River Commission to be headed
2 by Bates College chemistry professor, Dr. Walter
3 Lawrence, to aid the cleanup of the noxious wastewater
4 effluent polluting the river. He helped change the
5 paper manufacturing process from sodium to the craft
6 method, which helped a little.

7 In 1972 Senator Ed Muskie passed a Clean
8 Water Act with good intentions of cleaning out the
9 river within ten years. It didn't happen. It has
10 taken legislation every step of the way to get industry
11 to comply with Muskie's Law.

12 In 1990 State Senator John Nutting, a
13 dairy farmer that lives on the Androscoggin in Leeds,
14 passed a contentious color-odoring foam bill that put
15 industry on notice to clean up their effluent. They
16 found that by complying they actually could burn some
17 of the waste and make electricity.

18 In '96 State Senator Nutting passed a
19 dioxin bill. In 2004 Senator Nutting again passed a
20 phosphorus bill. The point is that nothing has
21 happened without legislation.

22 Our bill, LD 676, recognizes the science
23 of water testing and data over the past 20 years that
24 shows the river from the outflow of Gulf Island Dam
25 down through Brunswick meets B standards seven parts

1 per million 99 percent of the time. That's 361 days
2 out of the year, and the Clean Water Act is
3 goal-oriented by law.

4 Conclusion, industry has never
5 self-regulated and legislation has been the only way to
6 convince them that it is not their river to pollute.
7 The public domain and the law does not allow them to
8 add pollutants over their current usage that will
9 reduce DO in the lower Androscoggin. Our data shows
10 the water below Gulf Island Dam down through Brunswick
11 meets class B now without any -- now without any
12 changes.

13 The paper companies are all working well
14 below their licensed maximum flows and have the
15 technology to keep them that way through the licensing
16 process. The paper companies fears are unsubstantiated
17 as the data shows that B has been attained for the past
18 20 years of their standard operations. There is a
19 major difference between classification and licensing.

20 MR. DUCHESNE: I'm just checking to make
21 sure that you are --

22 PETER RUBINS: I'm almost done. I'm
23 almost done. Our contention is that it needs to
24 meet -- that it meets class B now and not allowed to go
25 backwards. We request the Board of Environmental

1 Protection to endorse LD 676 to the Environmental
2 Natural Resources Committee and let the legislation see
3 the data and vote to reclassify the lower Androscoggin
4 to class B. Hopefully we can reclassify Muskie's
5 Androscoggin to class B for the 50th anniversary of his
6 Clean Water Act. So we are asking you to please
7 endorse LD 676.

8 We have met with Brian Kavanaugh, and
9 Brian basically has told us that they cannot make a
10 model that will meet B. He said our recourse is to go
11 to the legislature. Well, that's what we're trying to
12 do. We have a bill 676 that is sitting in there, but
13 it seems to be blocked by no recommendation to the
14 Environment of Natural Resources Committee by the DEP.
15 We are asking you, the Board of Environmental
16 Protection, to endorse our bill 676 to the Environment
17 of Natural Resources Committee so it can move on and be
18 voted on by the legislature. Any questions?

19 MR. DUCHESNE: Are there questions from
20 the Board? Mr. Parker, I'm just looking to you, but
21 I -- you're good, okay. Thank you, you packed a lot
22 into that three minutes.

23 PETER RUBINS: Thank you.

24 MR. DUCHESNE: I will ask you to keep it
25 as brief as possible, and we can continue with Mr.

1 Reed.

2 SCOTT REED: Good morning, my name is
3 Scott Reed. I'm the environmental manager at ND Paper
4 in Rumford, Maine. I live in Turner. And I'm
5 providing comments today in support of the DEP's
6 triennial review package, which specifically does not
7 recommend an upgrade to the lower Androscoggin from
8 class C to class B.

9 We all recognize the lower Androscoggin
10 River demonstrates significantly improved water
11 quality. However, a classification upgrade to class B
12 establishes a directive to the Maine DEP to implement
13 controls in order to meet class B standards at all
14 times under all conditions. Similar proposals in
15 different forums have been rejected in 2009, 2010,
16 2011, 2013, 2018, and in this last legislative session
17 the bill was carried over. So why is this? Because
18 Maine DEP has evaluated this directive from a technical
19 perspective and concluded there's no feasible approach
20 to ensure it came at a class B dissolved oxygen
21 criteria in the lower Androscoggin.

22 DEP modeling demonstrated that even
23 eliminating all dischargers, class B standard would not
24 be met in all locations at all times. So there are
25 several reasons why the DEP and the legislature do not

1 reclassify a water body unless it meets the new
2 classification.

3 It puts any discharge into that water
4 body in immediate noncompliance. It prohibits any new
5 or increased dischargers, such as growth, to that water
6 body. It usually requires changes to the discharge
7 licenses and it can require costly expenditures for
8 equipment and process changes. So despite not
9 attaining class B standards, upstream communities will
10 be drastically affected.

11 So what are some of these consequences
12 for the upstream facilities and communities? The DEP
13 has communicated to us that a 54 percent reduction in
14 discharge limits the ND Paper Mill in Rumford and the
15 Pixelle Mill in Jay will be needed, or increase the
16 oxygen injection system in Gulf Island Pond, which also
17 impacts Brookfield and White Pine Paper Mill in Gorham,
18 New Hampshire. Our mill cannot meet the proposed
19 54 percent reduction and will require multimillion
20 dollar capital upgrades.

21 The DEP also communicated that the
22 municipal treatment plant in Lewiston, Auburn will
23 require a 33 percent reduction in discharge limits to
24 account for their contribution. It will result in
25 restrictions for hydro certifications and restrictions

1 on expansion and growth in the upstream communities.

2 DEP has evaluated this directive and
3 concluded there's no feasible approach to ensure
4 attainment of class B DO standards in the lower
5 Androscoggin. So it will not improve the water
6 quality, but it will have a detrimental effect on a
7 regional economy. It will impose unnecessary costs
8 that will be passed onto ratepayers and municipalities
9 and will restrict future growth and threaten the
10 viability of private businesses.

11 In the legislative session, this last
12 session in front of the committee for LD 676, there
13 were comments submitted that opposed this upgrade from
14 the legislative delegation in the Rumford, Jay and
15 surrounding communities from Senator Jeff Timberlake,
16 who was one of the sponsors of the bill, from Pat
17 Strauch from Maine Forest Fire Council, from Ben Gilman
18 at Maine State Chamber of Commerce, and from the
19 presidents of both labor unions at the Rumford Mill,
20 and those comments were incorporated into the training
21 overview record.

22 That concludes my testimony and I'm
23 happy to answer any questions.

24 MR. DUCHESNE: Thank you. Are there
25 questions of the Board? Mr. Pelletier? And if you

1 could turn your mic on.

2 MR. PELLETTIER: Thank you. Maybe this
3 would be a better question for Mr. Kavanaugh, but what
4 I understand you're saying 54 -- you're getting a
5 54 percent increase in your -- 54 percent reduction
6 from any paper company?

7 SCOTT REED: Yes.

8 MR. PELLETTIER: To meet a standard, a
9 model standard that --

10 SCOTT REED: Yes. And I can let Mr.
11 Kavanaugh chime in. The proposed upgrade to a dotted
12 line at Gulf Island Dam, so anything downstream was to
13 be class B and everything upstream is class C. So at
14 that dotted line the water that leaves the dam is class
15 C on this side must be class B on the other side, and
16 that drove modeling of a 54 percent reduction and
17 discharge limits upstream.

18 MR. PELLETTIER: And it could be a
19 combination of increasing the amount of dissolved
20 oxygen at Gulf -- would be another way of offsetting
21 that?

22 SCOTT REED: Correct. And I mentioned
23 that, the DEP did also recommend increased oxygen
24 injection in Gulf Island Pond.

25 MR. PELLETTIER: Can we ask Mr.

1 Kavanaugh?

2 MR. DUCHESNE: Actually procedurally I
3 would like to stick with public comment, but when we
4 begin to consider this later on after all the public
5 comment is in, I think it would be appropriate to
6 know -- Mr. Reed has said the DEP has said this to them
7 a number of times, I'm not sure if any of that's
8 actually in our record. So when we come to consider
9 all of this, I think it would be handy to get those two
10 to be on the same page. Does that seem reasonable?

11 Once again, looking for any other
12 questions from the Board. Seeing none, thank you, Mr.
13 Reed.

14 SCOTT REED: Thank you.

15 MR. DUCHESNE: Mr. Kraske? If you could
16 also identify your affiliation.

17 CHUCK KRASKE: Good morning members of
18 the Board. My name is Chuck Kraske. I live in
19 Hartford, just west of here. I am the manager of
20 environmental services at the Pixelle Specialty
21 Solutions Androscoggin Mill located in Jay, Maine.

22 I am here today to testify, let's see if
23 I get this right, in opposition to the proposal to
24 reclassify the Androscoggin River from its current
25 status of class C up to class B, but in support of the

1 DEP's review and recommendations of the triennial water
2 quality classification review.

3 I'm going to focus my comments, or my
4 testimony specifically on the impacts, or the potential
5 impacts of this proposal on the Androscoggin mill in
6 Jay. As you are aware, Pixelle's Androscoggin mill
7 lost its wood pulping capacity in the spring of 2020.
8 As a result of that event, the facility has
9 transitioned from a large fully integrated pulp and
10 paper facility, manufacturing facility, to a much
11 smaller non integrated mill with two machines, two
12 paper machines furnished only by purchased pulp. We no
13 longer manufacture our own pulp.

14 This transition has completely changed
15 the operational and economic dynamics of the facility.
16 The mill still employs 250 or so hard-working
17 employees, much fewer than in the past, but still a
18 workforce that plays a vital part in local communities
19 and Maine's economy.

20 And while the mill no long procures pulp
21 wood, a significant amount of pulp is purchased from
22 other Maine-based mills. We use local construction and
23 maintenance contractors, engineering firms, chemical
24 suppliers, analytic laboratories and environmental
25 consultants to support the ongoing mill operations.

1 The economic impacts of the Androscoggin mill still
2 carries far out across the entire State of Maine.

3 The mill is fully engaged in becoming a
4 much smaller more efficient facility with major
5 reductions in energy and water consumption. Conducting
6 our business as we have in the past is not an option.
7 Our survival and success depends on being quick to
8 learn and adapt. And an example of this is our waste
9 water treatment facility operation.

10 Prior to the 2020 event, we processed
11 wastewater flows of up to 30 to 35 million gallons of a
12 day with BOD loadings of 60 to 80,000 pounds a day.
13 The facility operated well resulting in BOD effluent
14 dischargers well below our current permitted limits.
15 Fast forward to today when our effluent flows are
16 approximately one-third and BOD loading is
17 approximately one-tenth of what they used to be. We
18 have made significant efforts to evaluate and update
19 the operations to reduce energy consumption while
20 maintaining environmental performance.

21 In addition, our wastewater discharge
22 permit was voluntarily modified to capture the lower
23 effluent flows well ahead of the time required by the
24 normal regulatory process, and I emphasize voluntarily.

25 One of the keys for the future of our

1 mill is regulatory stability; however, as DEP has
2 stated in its testimony in various reports, if the
3 proposal to reclassify the lower Androscoggin to class
4 B was successful, it would create significant
5 regulatory uncertainty. Implications for the
6 Androscoggin mill include significantly reduced BOD
7 permit limits, as Scott has mentioned, 54 percent, and
8 that's what we've talked about with the DEP at a time
9 when we are already working to transform our plant to
10 small -- to a much smaller operation.

11 Furthermore, again, Pixelle and other
12 GIPOP partners would likely face increased spending to
13 inject even more oxygen into the Androscoggin River.
14 And the success of those efforts are still undetermined
15 whether it would allow the lower Androscoggin to one
16 hundred percent of the time achieve that class B
17 standard.

18 This uncertainty is the last thing that
19 our mill needs, and given that the modeling information
20 available to us today does not confirm whether the
21 additional regulatory measures will have any effect
22 whatsoever on the water quality of the lower
23 Androscoggin.

24 Now, look, I am proud to have been a
25 member of the Androscoggin mill for the past 30 years.

1 I'm proud of the work that we have completed over that
2 timeframe. We have worked voluntarily and
3 cooperatively on environmental projects with the Maine
4 DEP, the USEPA and other stakeholders on a variety of
5 fronts. Those efforts have contributed to the
6 improvements that have been achieved in the
7 Androscoggin River.

8 So, in conclusion, we support the DEP's
9 triennial water quality review process and we support
10 their recommendations not to upgrade the Androscoggin
11 River classification at this time.

12 MR. DUCHESNE: Thank you, Mr. Kraske.
13 Before I take questions, you used an acronym that may
14 not -- everybody may not be familiar with, that's
15 GIPOP.

16 CHUCK KRASKE: The Gulf Island Pond
17 Oxygenation Partnership.

18 MR. DUCHESNE: Thank you. Any questions
19 from the Board? No? Seeing none, and Mr. Parker says
20 no, thank you very much for your testimony. Mr.
21 Arsenault.

22 ROLAND ARSENAULT: Good morning, my name
23 is Roland M. Arsenault. I'm the superintendent of the
24 Rumford, Mexico Sewerage District, born and raised in
25 Mexico, Maine, lived on the Androscoggin Swift River my

1 entire life.

2 In 1983 I began my career in the
3 environmental field working at the Rumford, Mexico
4 Sewer District as an operator. I left there and went
5 to the Rumford paper mill, worked in their wastewater
6 treatment plant, became an environmental engineer,
7 worked in the mill for 32 years, left to become the
8 superintendent of the wastewater treatment plant
9 downstream. I'm very familiar with all that's gone on
10 in the Androscoggin River, the work of Maine DEP, the
11 work of the paper mills and all the receiving water
12 bodies.

13 I'm here today to give support to the
14 Maine DEP and their findings to remain the
15 classification of Androscoggin River as it is, and I'm
16 also in opposition of Bill LD 676.

17 And to speak to that a little bit more
18 clearly, I've been tied up with a major renovation to
19 the current wastewater treatment plant I'm at because
20 it had been neglected for a long period of time. And
21 LD 676 came to my attention through a fellow
22 superintendent on the Androscoggin that I was unaware
23 of because I hadn't been paying attention. And it was
24 made known to me that Maine Municipal Association said
25 they had supported every one along the river, all the

1 dischargers all up and down the Androscoggin River.
2 And I said well, that can't be true because no one
3 consulted me, and so I asked my counterparts on
4 Androscoggin River above Gulf Island Pond and none of
5 them had been consulted by Maine Municipal Association.
6 So I reached out to Lisa Keim's office, Senator Lisa
7 Keim, and I said how can Maine Municipal Association
8 support this bill and say they have full support of all
9 of the dischargers on the Androscoggin River when all
10 of us have not been contacted. And I said, you know,
11 Maine Municipal Association did not contact me, did not
12 contact Livermore Falls or any other wastewater
13 treatment plant, upstream Gulf Island Pond, we're all
14 in opposition of that bill.

15 So I said in discussion with Senator
16 Clarkson's office and he made it aware to me that he
17 was misled also by the group who brought the bill to
18 him that they were, you know, full concession on that,
19 and that is not the case. So I want to make it clear
20 that people upstream of Gulf Island Pond are not in
21 favor of LD 676 and we want it killed in session if we
22 could, if possible, because it's not going to do any
23 good for dischargers upstream. It's going to limit my
24 treatment plant if the river should change
25 classifications so we will not be able to have any

1 future upgrades.

2 In other words, if the towns
3 miraculously, you know, start increasing in size and
4 population and any more economic development was to
5 happen, we wouldn't be able to increase our discharge
6 because we'll be limited because of the classification
7 of the river.

8 So that is all -- that's why I came here
9 to testify today. That concludes my testimony and I'm
10 open to any questions or comments.

11 MR. DUCHESNE: Thank you, Mr. Arsenault.
12 Questions from the Board? Seeing none, I'm looking at
13 Mr. Parker, I see no questions there, so thank you very
14 much. I understand we have one more person, Mr. Sells,
15 who has just joined us. And Procedurally once again,
16 I'm taking everybody who has testified or has signed up
17 to testify here in the room because most of it's sworn
18 in and I'm about to swear in Mr. Sells, and then I have
19 six people online that have indicated they wish to
20 speak. Mr. Rayback, how did I miss you?

21 BRIAN RAYBACK: I can't say.

22 MR. DUCHESNE: Of all people. Mr.
23 Rayback, if you would please proceed. And procedurally
24 I do have at least six people who have indicated they
25 wish to do so remotely, Will Plumley, Aidan McGrory,

1 Landis Hudson, Kaitlyn Bernard, Peter Stuckey,
2 Honorable Peter Stuckey, and Ed Friedman. That's what
3 I have currently indicated on Zoom who wish to speak
4 later on and I'll be swearing those people in
5 individually. So Mr. Raybeck, nice to see you.

6 BRIAN RAYBACK: Thank you, sir. Thank
7 you for having us, good morning. My name is Brian
8 Rayback. I'm a lawyer with Pierce Atwood, a law firm
9 in Portland, Maine.

10 We're here representing two separate
11 clients today. I think I can be fairly efficient. The
12 first is Sappi North America's Westbrook mill, which
13 discharges to the Presumpscot River, and the second is
14 the Gulf Island Pond Oxygenation Partnership, GIPOP,
15 that we talked about earlier, that discharges, or that
16 rather serves dischargers on the Androscoggin River.

17 I'd like to speak briefly in support of
18 the Department's approach not to recommend upgrades of
19 either of these two rivers from class C to class B
20 today.

21 Let me start with Sappi, whose paper
22 mill holds a discharge license to discharge treated
23 wastewater to the Presumpscot in Westbrook. A citizen
24 group suggested at the start of this process that the
25 Department should upgrade about eight miles of the

1 Presumpscot from class C to B. The Department is
2 recommending against that primarily because the river
3 cannot meet the class B DO standards based on current
4 data. We've talked about that a little bit already.

5 When we learned of the proposal, we
6 hired an engineering firm called HDR to help us figure
7 out whether the river could meet class B standards.
8 HDR used the Department's quality two model to assess
9 the river based on the available data to answer two
10 questions for us. The first was, would the river meet
11 class B under current licensed conditions. And the
12 second was, would the river meet class B if the
13 Westbrook mill were to stop discharging entirely. The
14 answer in both cases is no, but even if the mill didn't
15 exist, the river still would not meet the class B DO
16 standards under model conditions.

17 Now, there are multiple potential
18 reasons for this, including the presence of other point
19 source dischargers on the river like a municipal
20 treatment plant, and there's significant urban
21 development in this area, as you know.

22 In short, there's no reasonable
23 expectation that class B standards can be achieved at
24 this point, so an upgrade is not appropriate. That is
25 consistent with long-held Department policy.

1 The result would be to drastically
2 reduce the license limits, as you've heard, from point
3 sources without any expectation that it would be
4 enough. So you'd have dischargers put into violation
5 without getting to class B standards at all. There are
6 major social and economic impacts of doing that, as
7 facilities would have to either curtail production or
8 add costly new treatment or shut down.

9 Now, the Department is continuing to
10 collect data to study this issue further, including
11 from this past summer, and we know that our
12 understanding of the river will continue to improve.
13 This issue can be revisited of course in the future.
14 At this point, however, the modeling, which we will
15 submit from HDR, we will submit that to the Board for
16 your record, doesn't support an upgrade.

17 Now, the Clean Water Act is
18 aspirational, we've heard that today, that's correct,
19 but one needs a reasonable expectation that higher
20 standards can be met within a reasonable period of time
21 in order to upgrade river segments. Here where the
22 licenses have to be issued by law under worse case
23 scenarios, like when licensing the Department looks at
24 low flow conditions, high temperatures, maximum
25 discharge of everybody on the river. And by the way,

1 that's very conservative. That approach is not some
2 kind of dodge. It's conservative to protect the river.

3 So we ask what happens when things get
4 bad? Is the river still going to be in compliance, and
5 the Department has to issue licenses on that basis.

6 So if we upgrade prematurely, you're
7 very much at risk of putting people out of business or
8 restricting growth, as you've heard from some of the
9 other dischargers.

10 Also, I note that the Department does
11 have an anti-degradation policy mandated by the EPA,
12 which says in short that once you achieve an actual
13 level of water quality in the river, you cannot go
14 backwards, okay? So there is protection, if you're
15 almost at B, but you're not quite there, you don't get
16 to slide back to the bottom of C by issuing a bunch of
17 licenses willy-nilly, or allowing dischargers to do
18 whatever they want to do. No, the Department has to
19 protect that actual water quality being achieved.

20 So let me stop there for Sappi's
21 purposes on the Presumpscot and ask if there are
22 questions that I can answer, and then I'll switch over
23 to GIPOP.

24 MR. DUCHESNE: Mr. Pelletier?

25 MR. PELLETTIER: Good morning. Just to

1 that point, you said can't slide back, but the
2 standards are either B or C, so how can it stay close
3 to B instead of going back to C?

4 BRIAN RAYBACK: Right, so, and maybe Mr.
5 Kavanaugh is the better person to answer that for you
6 in real time, but the way that process works is we
7 realize that there's, you know, there's a margin there
8 with these different classes, right? The class C
9 standard is five milligrams per liter. The class B
10 standard is seven milligrams per liter. So if you're
11 at, let's just say hypothetically six, you can't slide
12 back to five, right? You have to maintain that actual
13 level of six.

14 MR. PELLETIER: Thank you.

15 MR. DUCHESNE: Other questions from the
16 Board? Seeing none, I just have one that I'm going to
17 tee up really for the benefit of others who are coming
18 after you, but I'll ask it in the form of a question,
19 and that is, there's a lot of emphasis on what's
20 happening in the legislature, and that bill that has
21 been carried over, what the Board does is essentially
22 make a scientific decision about whether
23 recommendations meet EPA standards, state law and state
24 approval. We're being asked by some parties I think to
25 go beyond that and make political judgement, which

1 normally is done by the legislature. So would either
2 you like to address the justification for doing that,
3 or I'll tee that question up for anybody who follows
4 you.

5 BRIAN RAYBACK: Well, my experience with
6 this Board and the reclassification process is that you
7 have traditionally been driven by both law and science
8 in making these decisions. It is correct that
9 ultimately it's the legislature that decides the
10 classification status, and they do it through statute.
11 So they have a bill available to them. I think it's
12 also fair to say -- that has been carried over to the
13 next session to look at this issue, but I think it's
14 fair to say that they're looking to the Board for
15 guidance. They have held that over for a reason. My
16 understanding is that the reason is that they're
17 looking for technical information out of the experts
18 for the State, which is the Department staff and this
19 Board.

20 MR. DUCHESNE: Thank you. Other
21 questions from the Board? Seeing none, nope, thank you
22 very much.

23 BRIAN RAYBACK: Thank you. Let me
24 switch over to the Gulf Island Pond Oxygenation
25 Partnership on the Androscoggin River. The Department

1 similarly received a citizen request on that river,
2 several people have talked about that already, so I
3 think I can be brief.

4 Just to tell you a little bit about who
5 we are, the GIPOP partnership was formed in 1991 by
6 four partners. It is a separate legal entity,
7 Brookfield, who owns the dam; ND Paper; White Mountain
8 Paper in Gorham, New Hampshire, and Pixelle. It was
9 formed for the purpose of introducing oxygen into the
10 lower levels of Gulf Island Pond. Some people call the
11 system like a bubbler. It actually bubbles up oxygen
12 into the river. And they do this to improve water
13 quality and bring the oxygen levels in the pond up to
14 class C water quality standards. That oxygenation
15 system went into effect in 1991. It's been operating
16 since then, and I think it's fair to say that the DEP
17 and the partnership and its members have worked pretty
18 hard over the years to fine-tune how it works and make
19 sure it's maximizing the benefits.

20 Gulf Island Pond is at that upstream
21 boundary of the class B segment that is being proposed
22 so that, as Scott Reed said, that at the dam is the
23 location where the water is supposed to go from C on
24 the other side of the dam to B in very short order.

25 Existing dischargers would be in

1 noncompliance with this new standard and there would
2 be, as we talked about, there would be impacts to the
3 dischargers.

4 From the partnership's perspective,
5 what's difficult is that the partnership may be
6 required to inject additional oxygen, or operate in a
7 different way than it has in the past. Again, that's
8 very expensive, it's costly, it's difficult, and
9 there's no guarantee that it's going to actually get us
10 into compliance with standards. And so the partnership
11 has much the same concerns that I've raised previously
12 that Sappi have on the Presumpscot and that you've
13 heard from some of the mills that discharge to the
14 Androscoggin.

15 And so I won't belabor that, but I just
16 wanted you to understand that the partnership has that
17 same perspective because it affects them as well.
18 They're trying to operate this bubble system in a way
19 that is productive and gets us towards compliance.
20 Thank you, sir.

21 MR. DUCHESNE: Thank you. Questions
22 from the Board? Seeing none, thank very much.

23 BRIAN RAYBACK: Thank you.

24 MR. DUCHESNE: Now Mr. Sells. And i
25 would need to swear you in. Do you swear or affirm

1 that the comment or testimony that you are about to
2 give is the truth, the whole truth and nothing but the
3 truth?

4 SCOTT SELLS: I do.

5 MR. DUCHESNE: Thank you. You may
6 proceed.

7 SCOTT SELLS: Good morning, and thank
8 you for giving me an opportunity to speak this morning.
9 I am here as an attorney. I am an environmental
10 attorney with a practice in Portland, Maine, and I'm
11 here on behalf of Friends of Merrymeeting Bay. You'll
12 be hearing from Ed Friedman, the director of that
13 organization later virtually, and he'll be presenting
14 some of the scientific data that has been recently
15 collected and collected historically in the lower
16 Androscoggin stretch.

17 And I am referring, for the Board's
18 convenience, to the materials in the DEP summary memo
19 on Pages 57 to 59 and their denial, or recommended
20 denial of the reclassification from class C to class B
21 of the lower Androscoggin River.

22 And I'm really here to summarize legally
23 Friends of Merrymeeting Bay's legal position as to why
24 the Board is compelled to reclassify that rivering
25 segment to class B. And I say compelled here because

1 as the Board is aware, the governing statutes here are
2 non discretionary. They use words like must and shall,
3 which have very common meanings. It's really unclear,
4 and we take exception to the fact that the Department
5 has used external circumstances to justify leading the
6 Board away from their mandated duty, and I understand
7 that mandate has a pretty charge meaning these days,
8 but unfortunately the law is what it is.

9 There's really only two legal issues
10 here for the Board to consider, what the law says it
11 must do and whether there's any statutory
12 interpretation that provides for any exceptions,
13 circumstances or judgment on the part of the
14 Department. And as you've heard earlier, these issues
15 must be resolved in context of the descriptive Clean
16 Water Act, which provides that standards must be
17 revised to reflect uses in water quality actually being
18 attained. And I stress actually because as you'll hear
19 from Mr. Friedman, this is not a question of premature
20 reclassification, we are meeting class B standards for
21 E. coli, dissolved oxygen and the designated uses for
22 the section of the lower Androscoggin River in question
23 are consistent with class B designated uses.

24 And specifically there's Maine statutory
25 language that explicitly states what the Department

1 must read -- consider reclassification, and I'm sure
2 I'm not stating anything you're not already aware of,
3 but I want to be clear because this is a
4 nondiscretionary duty.

5 The first is whether the data
6 demonstrates the river segment in question meets class
7 B water quality criteria, and you will hear, and it is
8 not disputed by the Department that it does.

9 The second is whether the actual
10 designated uses of that rivering segment of the lower
11 Androscoggin meet the -- are consistent with class B
12 designation, and there is no dispute that it does not.

13 We come then to the Department's
14 recommendation that goes against the standard that is
15 set forth in Maine statute, and not only in federal
16 Clean Water Act, but also Maine's anti-degradation
17 laws. And fortunately rather than looking at the plain
18 language of the statute, it is looking at external
19 factors that are neither appropriate nor legal under
20 federal and Maine law or lawful to deny
21 reclassification when the actual data suggests that
22 class B standards are being met.

23 And I want to specifically note that
24 this Board has heard testimony recently in another
25 matter by Mr. Kevin Martin from the Department, who is

1 a specialist in statutory interpretation. And I really
2 looked at this issue through his lens and really looked
3 and said well, what is the -- what's the real issue
4 here. And the issue is well, the law has very explicit
5 language, the statute has very explicit language saying
6 that the Board must, shall act when the river meets a
7 higher classification to recommend to the legislature
8 to raise the classification. There's no legislative
9 intent behind that statute that indicates that external
10 factors such as point source dischargers, nutrient
11 loading to the river, or any other pollutant source
12 should prevent that reclassification from happening,
13 and I want to be very clear about that.

14 Now, with respect to Friends of
15 Merrymeeting Bay's involvement that will speak more to
16 this issue, they have been involved extensively in
17 these triennial reviews. They've submitted more than
18 one detailed proposal, the most recent of which the
19 Board and the Department have reviewed, along with
20 legal analysis in terms of what the Board's
21 responsibilities are with respect to reclassifying that
22 stretch of the river, and I don't want to spend a lot
23 of time going over those in detail. What I would
24 suggest, however, is that the Friends of Merrymeeting
25 Bay have, by any account, exhausted their

1 administrative remedies here. And they have recently,
2 in fact, as of several weeks ago, collected even more
3 data scientifically compensable samples indicating that
4 that section meets class B standards.

5 There is no -- there's no ambiguity
6 here. There's no ambiguity about whether the rivering
7 segment of the lower Androscoggin is meeting class B
8 standards. That is the trigger that compels the Board
9 to act and reclassify that rivering segment from class
10 C to class B.

11 I would just point out that in closing,
12 because I know I have a very limited time here, the
13 Department's rationale for denying the
14 reclassification, this denial was based part on
15 consideration of upstream point source dischargers,
16 upstream point source and PDS point source permits that
17 is prohibited under law, specifically under Maine law,
18 which prohibits the use of water bodies to receive and
19 transport waste dischargers. That's not to be
20 considered for an existing use for the purposes of
21 Maine's anti-degradation policy. And in federal law in
22 no case shall the State adopt waste transport or waste
23 assimilation as a designated use for any waters of the
24 United States.

25 This is a very clear mandate that says

1 you can't prevent reclassification, and the intent of
2 the Clean Water Act to improve water quality just
3 because you have upstream dischargers that might have
4 to change their permits.

5 There are no other existing conditions
6 that the Department raised in connection that have any
7 basis for preventing this classification. The
8 impoundments that they mention, there is specific
9 statutory language, and I'll provide the detailed cites
10 in connection with my comments. I don't want to take
11 the time and go through them now. But as far as
12 natural impoundments, those are exempt from preventing
13 a reclassification to class B. As far as manmade
14 hydroelectric impoundments, those also are not to be
15 considered. In fact, if there is a class C, because of
16 the stratification of those impoundments, the statute
17 compels the hydroelectric operator and owner provided
18 the changes aren't going to interfere with their energy
19 production to improve them to class B.

20 And finally, the notion that there is
21 somehow upstream pollution, urban sources, nutrient
22 loading, that is contrary to both federal law, which
23 says that the State's designation of those upstream
24 sources should not negatively impact downstream waters,
25 and that's found in 40 CFR, Section 131B, EPA Guidance,

1 which states that no waste load allocation can be
2 developed or any PDS permit issued that would result in
3 standards being violated.

4 So in conclusion, I would strongly urge
5 the Board to give this reclassification a much higher
6 scrutiny because there is nondiscretionary language in
7 the statute when a rivering segment is meeting a
8 particular classification directing what the Board must
9 do.

10 I hope the Board will give this more
11 considerable thought. I also would encourage the Board
12 to consider the data that Mr. Friedman is going to be
13 introducing later on by video. Thank you.

14 MR. DUCHESNE: Thank you, Mr. Sells.
15 I'm looking at the Board for questions. Mr. Pelletier?

16 MR. PELLETTIER: Pertaining to some
17 testimony just before you, is it your opinion as well
18 that there's any kind of ratcheting of water quality
19 that has improved over time as an example of going
20 from, you know, the five parts to million oxygen level
21 to seven, if you get to a six, you can't drop below
22 six?

23 SCOTT SELLS: Well, I don't know that
24 there's any -- in fact, I guess I kind of looked at it
25 in a slightly different light. Instead of

1 anti-backsliding, I looked at the Clean Water Act in
2 Maine Degradation Act to ratchet the standards upward
3 when you -- when you get the data that says the river
4 is meeting the class B standard. So the push is to,
5 from a legislative intent, from a statutory language
6 perspective, is for cleaner water. It's not to say
7 okay, you're almost there, so nope, next time you got
8 to wait for the next triennial review and, you know,
9 we'll kick the can further down the road.

10 So the prescription of the Clean Water
11 Act in Maine's anti-degradation statutes clearly, at
12 least from my view, and from Friends of Merrymeeting
13 Bay's view, say if you're meeting class B standards,
14 there really aren't very many external circumstances
15 you need to look at, the scientific data that says that
16 you're meeting the segment, and whether the segment is
17 going to be for designated uses for that upgraded
18 classification.

19 So, you know, I sense that, you know, I
20 think here you really can't look and say oh, it's
21 almost close, but not quite because the data is telling
22 you that it's there. It's at class B.

23 Now, are upstream dischargers going to
24 be affected by that, most certainly. And I think there
25 are ways for the Department to work with those upstream

1 dischargers in connection with their discharge permits,
2 and I think there's ways of accommodating what statute
3 intends to do, which is upgrade the classification when
4 the scientific data tells you to do so.

5 MR. PELLETTIER: Can you elaborate on
6 that last section, what might some of those things be?

7 SCOTT SELLS: Well, I think, you know,
8 in the context of transitioning MPDS permits, it's not
9 just a matter of flipping a switch and saying okay,
10 well, we've got a reclassification here so you're all
11 going to go out of business because you can't satisfy
12 your MPDS point service discharge permits. The
13 Department has the discretion, in fact, more discretion
14 than in the classification statutes to look at the MPDS
15 licenses in particular and their terms and conditions
16 and provide some kind of phase in or look and see how
17 and what the effects are going to be to those
18 dischargers in terms of whether they can be met or what
19 terms or conditions need to be modified and over what
20 period of time.

21 So this isn't a case where all of a
22 sudden the lights are going to go out for upstream
23 point source dischargers. There is plenty of room, and
24 I think you heard testimony earlier, about how the
25 permitting process involves very conservative discharge

1 parameters. There's a lot of room here. It's not like
2 oh, we're in class B so all of these upstream
3 dischargers are going to be suddenly noncompliant.
4 That's not the case, and we haven't seen any indication
5 of that. It is the case that they are going to have
6 to, you know, perhaps look, and whether they'll be in
7 compliance with their permit and seek guidance from the
8 Department as to how they can come into compliance, but
9 that's not a -- that's just not a switch that gets
10 flipped and a plaque awaits.

11 MR. DUCHESNE: I'm looking at Mr.
12 Parker, any questions? Seeing none from Mr. Parker, I
13 do have, I guess, one question. You used terms like
14 we're mandated by law etc., that there's no ambiguity
15 and the number of other statements that basically says
16 we have no real choice based on the data, but we
17 actually have a conflict of data. We have I think what
18 Mr. Friedman is going present and then what the
19 Department is going to present, and the real judgment
20 we would have to make is does the data we get from
21 other parties supersede what we're getting from the
22 Department in order to make that judgement. Would you
23 wish to comment on that?

24 SCOTT SELLS: Well, I think, you know,
25 the -- at least from what I've seen from what the

1 Department has gathered as far as data, it's not
2 inconsistent with the rivering segment meeting class B
3 standards. The data that Friends of Merrymeeting Bay
4 have been gathering, the Department does not contest,
5 is scientifically invalid in any way. There's no
6 dispute as to whether or not the methods or the
7 integrity of the data that are being gathered is
8 suspect in any way. It's pretty scientifically
9 defensible, and it is intended to supplement that of
10 the Department, not conflict with it.

11 I think one of the objectives and why
12 Friends of Merrymeeting Bay's volunteers are out there
13 gathering data on their own time is to provide
14 scientific data that the Department may not have the
15 resources to get or obtain. So I sort of, at least
16 from my view, and I'm speaking on behalf of Friends of
17 Merrymeeting Bay, we look at it in the context of our
18 data not being in conflict necessarily with the
19 Department, but supplementing it.

20 MR. DUCHESNE: So the mandate really is
21 based on what judgment we render over what data is
22 going to be most supportive of the arguments being
23 made?

24 SCOTT SELLS: Well, the mandate is that,
25 and this is really right from the statute, when the

1 actual water quality of any classified water exceeds
2 the minimum standards of the next highest
3 classification, that higher water quality must be
4 maintained and protected. The Board shall recommend to
5 the legislature that the water be reclassified to the
6 next higher classification. So there's nothing in what
7 the Department is saying in terms of denying the
8 reclassification, it says it's not meeting class B.

9 MR. DUCHESNE: At certain times of the
10 year under certain conditions, that's what I
11 understand.

12 SCOTT SELLS: Well, I guess then you get
13 into a situation where you're saying a rivering segment
14 has to meet the water quality segment 24 by 7 in all
15 segments in all portions of that river.

16 MR. DUCHESNE: And certainly that's what
17 we would have to look at, the law, to determine if
18 that's --

19 SCOTT SELLS: I would think so. I would
20 think so.

21 MR. DUCHESNE: Thank you. Any other
22 questions from the Board? Seeing none, I believe we've
23 exhausted those who wish to speak within the room. We
24 can proceed to our online segment. Does anyone need to
25 take a break?

1 (Break.)

2 MR. DUCHESNE: Okay, I believe we're
3 reassembled and ready to go again. Let me just look
4 and make sure that everybody online can hear us all
5 right, and I will check with Mr. Parker to make sure
6 he's with us and able to hear and answer. Mr. Parker,
7 you are muted, can you just verify that you're with us
8 and able to hear everything? Still muted.

9 MR. PARKER: How's that?

10 MR. DUCHESNE: That's perfect. We
11 couldn't do this without you, legally. All right.
12 Then we will proceed with those who submitted, wish to
13 submit testimony online. I will need to swear each
14 individual as they enter, and the first one on my list
15 is Will Plumley. Could you reveal yourself and be
16 brought up, thank you, I see you. And do you swear or
17 affirm that the comment or testimony you are about to
18 give is the truth, the whole truth and nothing but the
19 truth?

20 WILL PLUMLEY: Yes, I do. Can you hear
21 me okay?

22 MR. DUCHESNE: Yes, we can, thank you so
23 much. You may proceed.

24 WILL PLUMLEY: I'm here representing
25 Friends of the Presumpscot River regarding the lower

1 Presumpscot River reclassification from C to B. We
2 submitted written testimony on October 3rd. My
3 testimony today will not cover all the details, tables
4 and graphs in our written testimony. Please read the
5 written testimony as well. It includes significant
6 evidence that the lower Presumpscot deserves class B
7 now, including some DEP sonde data from summer 2021.
8 This is all in addition to the evidence we provided in
9 our original proposal dated March 31st, 2020. All the
10 data is fully -- and accepted by the DEP.

11 The gist of our October 3rd testimony to
12 the DEP is to request that the DEP take one or more of
13 four actions. Action one, our primary request, is that
14 you override the DEP's recommendation and ask the
15 legislature to reclassify the lower river to class B.

16 Our second request, if the DEP decides
17 not to approve reclassification of class B at this
18 time, we ask the DEP to further protect the lower river
19 by amending the Maine Statute Section 4679A4 from this,
20 which is from Saccarappa Falls to tidewater class C to
21 this, from Saccarappa Falls to tidewater class C.
22 Further there will be no new direct dischargers to this
23 segment after January 1, 2023.

24 The precedent for this exact action is
25 Section 4679A2, which reads from its confluence with

1 the Pleasant River to U.S. Route 202, class B.
2 Further, there may be no new direct dischargers to this
3 segment after January 1, 1999. So those are our first
4 two requests. Let's go to class B now, or let's leave
5 it at class C until it's decided, but let's give it a
6 little additional protection.

7 Our third request is that if DEP fails
8 to take either action one or action two, we
9 respectfully request that the DEP explain how it will
10 enforce the rule that no new discharge will be allowed
11 that lessens water quality in the lower river. The DEP
12 does not know what the lower river quality is at this
13 time.

14 And our fourth and final request, if the
15 DEP fails to take either action one or action two, we
16 ask that Friends of the Presumpscot River's 2020
17 proposal to reclassify by the lower river to class B
18 remain open until DEP completes its data gathering and
19 analysis and a final determination is made as to
20 whether to approve this reclassification. That is read
21 directly from our October 3rd, our written testimony,
22 and as I said, all the rationale and supporting
23 evidence is in that written testimony.

24 I would just like to say a little bit
25 further about the background in this, and hearing the

1 Androscoggin story, ours pales in comparison. But I
2 want you to know that this project began in 2009 as a
3 project with the Presumpscot River watershed coalition
4 and we have waited until we were convinced that the
5 lower Presumpscot passes muster to be revised by class
6 B. We have waited all this time to submit our
7 proposal. We are convinced that it meets class B at
8 this time, meets the criteria for reclassifying to
9 class B at this time.

10 Let me talk a little bit about the lower
11 river, which is today in better condition in many ways
12 than the upper river. Twenty years ago the Presumpscot
13 was impounded from top to bottom with no rivering
14 habitat except for the (audio interruption) twenty
15 years ago the Presumpscot was impounded from top to
16 bottom with no rivering habitat except for the Bypass
17 Beach near Sebago Lake, which had been recently
18 rewatered in the 1990s as ordered by the State of
19 Maine, and had been dry before that.

20 Today with the removal of Smelt Hill Dam
21 and Saccharappa Dam in the last 20 years, rivering
22 habitat has been restored to 11 of the last 12 miles of
23 the river, which enters the estuary at Presumpscot
24 Falls. The lower river can breathe again. You can
25 hear it breathing, and the extensive rapids that once

1 again exist below Mallison Falls, the restored rapids
2 of Saccarappa's upper falls and the lower Saccarappa's,
3 the lower falls now that all the water flows over the
4 falls in the light of day and dark of night mingling
5 with the air and re-oxygenating rather than plunging
6 through indoor turbines as it holds its breath from
7 Sebago Lake to Casco Bay.

8 Annual spring migration of oleaginous
9 species continues to gain momentum as the rivers are
10 restored and fish passage is ordered through the
11 project licenses. Saccarappa passage opened this
12 spring by late May and early June. YouTube had
13 underwater videos of migratory fish 12 miles above the
14 estuary butting their heads against Mallison Falls Dam.

15 Soon the State will determine if the
16 migrations are sufficient to trigger simultaneous fish
17 passage license requirements from Mallison and Little
18 Falls Dam less than a half mile upstream. Migrating
19 fish will have access to more than half of the
20 Presumpscot River and its tributaries.

21 Chief Poland died for this river in
22 1756. Darkness fell upon its waters. I will surely
23 die before Friends of Presumpscot's River mission to
24 restore and protect the Presumpscot is completed, but
25 now is the time to complete this chapter.

1 I urge you to recommend the legislature
2 to reclassify the lower river from class C to class B
3 in 2022. Let's not put this off. Let's get this done.

4 One other comment on Mr. Rayback's
5 testimony about the study of the eight miles of the
6 6.8-mile lower region of the river, which I don't
7 understand, but the conclusions Mr. Rayback cited are
8 indirect in violent conflict with today's actual
9 empirical data about the health of the Presumpscot
10 River, and I didn't want to let that go unsaid in this
11 meeting.

12 Thank you for your time. I'd be happy
13 to answer any questions.

14 MR. DUCHESNE: Thank you. Looking to
15 the Board for questions. And Mr. Parker, I see none?
16 Nope, okay. And I have no questions, so thank you very
17 much.

18 WILL PLUMLEY: Thank you.

19 MR. DUCHESNE: You're welcome. Next is
20 Aidan McGrory.

21 AIDAN MCGRORY: Hi there, can you guys
22 hear me okay?

23 MR. DUCHESNE: Yes, and I will need to
24 swear you in. Do you swear or affirm that the comment
25 or testimony you are about to give is the truth, the

1 whole truth and nothing but the truth?

2 AIDAN MCGRORY: I do.

3 MR. DUCHESNE: You may proceed.

4 AIDAN MCGRORY: So hello to all members
5 of the Board. Thank you so much for allowing me to
6 speak. My name is Aidan McGrory, and I'm here as a
7 resident of the Presumpscot River and today I will be
8 testifying in opposition to the DEP's recommendation to
9 keep the lower Presumpscot as class C water.

10 So my family has lived directly in
11 Presumpscot estuary for the last 15 years. During this
12 time I've been fortunate enough to grow up alongside of
13 the river. The Presumpscot shaped my childhood and
14 early adult life and I've developed some of my closest
15 friendships along its banks and in its waters.

16 I've also witnessed some probable and
17 remarkable recovery during the time I've lived here.
18 For a kid growing up surrounded by the disheartening
19 effects of climate change and pollutions, I always
20 looked to the Presumpscot as a beacon of hope for how
21 our planet could be restored and protected. Today the
22 river continues to be an inspiration.

23 I've read the DEP's recommendation to
24 keep the lower section of the Presumpscot as class C
25 water. I believe the DEP makes a reasonable argument

1 of wanting extra time to collect more data to confirm
2 the river is healthy enough to be upgraded to class B
3 water. As a scientist myself, I'm always in favor of
4 more data collection. However, I also recognize the
5 significant time that such quality data collection
6 takes. The timeline that the DEP has suggested will
7 most likely keep the lower section of the Presumpscot
8 as class C water for at least another three years until
9 the next triennial review. During this time I am
10 fearful that the health of the ecosystem may become
11 compromised by further irreversible pollution.

12 Furthermore, over the last decade and a
13 half I've seen a number of Portland and Falmouth
14 residents that recreate in the river, swimming,
15 kayaking, fishing, significantly increase. Allowing
16 the river's water quality to decrease over the next few
17 years puts all these residents' health, myself
18 included, in jeopardy.

19 So as such, I side with the Friends of
20 the Presumpscot proposal in asking for the following,
21 one, to ask for the lower section of the Presumpscot to
22 be granted class B status. And two, if this request is
23 not possible, at the very least I ask for a formal
24 mandate granted by the DEP to prevent any point source
25 dischargers to be established into the river while data

1 is still being collected. A formal mandate of this
2 demand would be essential to prevent new permits that
3 may pollute the river's water further endangering the
4 ecosystem and residents such as myself.

5 I believe my request is an essential
6 amendment to the DEP's recommendation. We really
7 cannot stand by and fail to protect the Presumpscot
8 while we spend years collecting more data. A swift
9 recovery is too important to the ecosystem and the
10 health of the residents along its banks. Thank you all
11 so much for hearing me out and I really appreciate all
12 of your time and am open to any questions.

13 MR. DUCHESNE: Thank you. Are there
14 questions from the Board? Seeing none, thank you very
15 much. We'll proceed now to Landis Hudson.

16 LANDIS HUDSON: Hello.

17 MR. DUCHESNE: Hi, Landis. Do you swear
18 or affirm that the comment or testimony you're about to
19 give is the truth, the whole truth and nothing but the
20 truth?

21 LANDIS HUDSON: I certainly do. Thank
22 you. So my name is Landis Hudson. I speak to you
23 today as the executive director of the nonprofit Maine
24 Rivers, and I appreciate the opportunity to speak to
25 you over Zoom. I am actually in Yarmouth.

1 Maine Rivers is a nonprofit with a large
2 mission to protect, restore and enhance the ecological
3 health of Maine's River Systems and we have been deeply
4 engaged in advocacy and restoration efforts throughout
5 the State of Maine for over two decades. We work with
6 individuals, communities, agencies and organizations to
7 foster river restoration and facilitate opportunities
8 for public education and decisionmaking.

9 We're in the final stages of a large
10 restoration project to bring back the run of nearly a
11 million alewives through the China Lake outlet stream,
12 and we're a longtime member of the Kennebec Coalition
13 as well as connected to the Rural River Alliance and
14 the Mousam and Kennebunk Rivers Alliance.

15 So I want to present to you our comments
16 on the triennial review of water quality
17 recommendations from the Department, and note that this
18 is truly an exceptional opportunity for the Board to
19 engage in the process and offer the leadership and
20 direction necessary to solidify hard one restoration
21 games and take advantage of appropriate conservation
22 opportunities.

23 Maine's success in preserving
24 exceptional conditions and incrementally improving
25 conditions stems from the explicit articulation

1 optimizing and preserving high quality waters is the
2 goal of the state and statute 464.1 and 4644F4.

3 Reclassification is vital to this
4 process and we note that reclassification is an action
5 by the Board of Environmental Protection to make
6 recommendations to the legislature. So we wish to make
7 comments in three categories. First, we truly
8 appreciate the Department's success for -- the
9 Department's support for a number of upgrades, most
10 notably the west branch of the Penobscot and east
11 branch tributaries to the Katahdin River Waters
12 National Monument. And we note these upgrades will
13 provide valuable and tangible benefits for further
14 generations. So thank you to the Department for their
15 work and we support those upgrades.

16 Next, however, we want to turn our
17 attention to the proposed Presumpscot upgrade. And we
18 wish to note what a tremendous success the Presumpscot
19 has been, and it truly is an amenity to the State of
20 Maine. After decades of commitment from state and
21 federal agencies, businesses, local communities, civic
22 entities and many, many committed individuals,
23 including some that you're hearing from today. The
24 health of the river has benefited from these
25 partnerships from legal initiatives as well as

1 technical innovations and now the proof that these
2 partnerships and years of focused work have been
3 successful is shown in the reestablishment of viable
4 runs of diagamous species previously extirpated from
5 the river. These fish revitalize local ecology and add
6 to the health of Casco Bay and the Gulf of Maine.

7 We believe that the Presumpscot River
8 should be celebrated as a success story and that
9 success should be carried forward by reclassification
10 of the river section from Saccarappa Falls and tide.
11 All current data indicates that this segment attains
12 class B.

13 Removal of the Smelt Hill Dam fish
14 passage at Cumberland Mills and the significant work
15 done at the site of the Saccarappa Dam are separate
16 connected actions that have acted to improve the
17 habitat and water quality of Presumpscot River.

18 We ask the Bureau to recommend this
19 upgrade noting its importance for the community through
20 which it flows, including Portland, Falmouth and
21 Westbrook. Maine residents would be well-served by a
22 leadership from the Bureau to acknowledge the great
23 story of the Presumpscot and move forward with the
24 recommendation for this upgrade.

25 Next we asked you to consider the class

1 AA upgrades and we find ourselves profoundly dismayed
2 that these upgrades are not recommended by the
3 Department. The DEP's reclassification document
4 explains that DEP is advising the Board not to
5 recommend class AA designation for certain waters,
6 including the south branch of the Sandy River and
7 tributary sections of orbiting stream as well as
8 sections of streams within the Machias and Penobscot
9 River basins.

10 The DEP cites regulatory uncertainty
11 related to EPA's designations that are under
12 consideration as they relate to the development of
13 storm water regulations. Here we urge the Board to
14 propose these waters for upgrade. We note that the
15 proposal contains sound documentation of the ecological
16 importance these waters contain and the clear
17 expectation that they are currently attaining the
18 standards of class AA for ecological, social, scenic or
19 recreational importance.

20 The DEP appears to be preemptively
21 excluding legitimate high quality waters because of the
22 concerns for consideration at some future time with as
23 the unknown future circumstances. We object to overly
24 cautious rationale that mires Maine in inaction rather
25 than move it forward in pursuit of protection and

1 maintenance of water quality.

2 So we urge the Board to propose these
3 waters for upgrade to protect them for their highest
4 value and not shield the Department from future
5 indefinite decisions involving storm water management.

6 We note that DEP's failure to your
7 support water quality upgrades for the Sandy River
8 Stream is out of step with Atlantic salmon recovery
9 plans for the Kennebec. The waters represent excellent
10 spawning and nursery habitat and should be protected.
11 A failure to support this upgrade would run counter to
12 the commendable precedent by DEP for downeast and
13 Penobscot watersheds where DEP has supported upgrades
14 for Atlantic salmon restoration.

15 With that, I thank you for your
16 attention and appreciate the time and ability to speak
17 to you over Zoom. I am here for any questions that you
18 have.

19 MR. DUCHESNE: Are there questions from
20 the Board? Seeing none, thank you very much, Miss
21 Hudson. Still in line I have Kaitlyn Bernard, Pete
22 Stuckey, Ed Friedman and Michael Shaughnessy. We will
23 go next to Kaitlyn Bernard, and I will need to swear
24 you in.

25 KAITLYN BERNARD: Good morning, can

1 everyone hear me okay?

2 MR. DUCHESNE: Good morning, do you
3 swear or affirm that the comments or the testimony
4 you're about to give is the truth, the whole truth and
5 nothing but the truth?

6 KAITLYN BERNARD: Yes, I do, thank you.
7 Good morning all, thank you for the opportunity to
8 comment on the Maine DEP 2021 triennial review water
9 quality standards. My name is Kaitlyn Bernard and I am
10 the natural resources policy advisor for the Nature
11 Conservancy here in Maine. I live in Gray.

12 The Nature Conservancy is a nonprofit
13 conservation organization dedicated to conserving the
14 lands and waters on which all life depends. Guided by
15 science, we create innovative on-the-ground solutions
16 to our world's toughest challenges so that nature and
17 people can thrive together.

18 Reclassification is an essential tool
19 for adjusting the State's water quality management
20 goals to reflect improving conditions on the ground and
21 the value of Maine's waters for people and wildlife.
22 We appreciate the efforts by the staff of the Maine DEP
23 and the Department to solicit input and carefully
24 evaluate recommendations over the last several months.
25 We participated in that process and we were happy to

1 have that opportunity.

2 We understand that there is regulatory
3 uncertainty --

4 MR. DUCHESNE: Kaitlyn, stop for just a
5 second. I need to check with our reporter to make
6 sure that -- it's more difficult to capture all the
7 testimony when somebody is on Zoom than it is when they
8 are in-person, so I just need to make sure that --

9 COURT REPORTER: It's hard.

10 MR. DUCHESNE: Looks like everything is
11 all right and I would ask everybody following you to be
12 a little conscious about speaking slowly so that the
13 comments can be recorded. You may proceed.

14 KAITLYN BERNARD: Sure. I'll slow down
15 a little bit. We understand that there is regulatory
16 uncertainty between the Maine DEP and the federal EPA
17 storm water discharge standards. We appreciate efforts
18 from the Maine DEP staff to work through this issue and
19 understand that some of the initial suggestions are on
20 hold until that issue is resolved. Efforts to resolve
21 this issue are currently in the queue for the 130th
22 short session, and we will work to support that bill as
23 it moves through the legislative front.

24 In the meantime we offer some comments
25 on the Department's proposals and recommendations

1 before you. As noted in the memo, the Nature
2 Conservancy has submitted four specific proposals. I
3 will comment on those proposals and one additional
4 proposal by the DEP.

5 The Nature Conservancy supports and
6 appreciates the Department's recommendation to upgrade
7 the following areas, the tributaries to the east and
8 west branches of the Penobscot River proposed from
9 class A to class AA. This upgrade would make
10 management of all waters within the Katahdin woods and
11 waters national monument consistent and recognize their
12 high values.

13 Additionally we support the upgrade from
14 class A to class AA suggesting from the southwest
15 branch of the St. John River. This area falls one
16 hundred percent within TNC's ownership and conservation
17 management and is thus fully protected. This section
18 was inadvertently designated class A, even though it
19 was always intended as class AA.

20 We support the proposal from class B to
21 class A of the tributaries to Donnell Pond. This
22 upgrade would make management of all waters within the
23 Donnell Pond public reserved land unit consistent. The
24 tributary waters draining into Donnell Pond were
25 inadvertently left in class B and this upgrade protects

1 their natural qualities and the quality of Donnell
2 Pond.

3 TNC recommends that the BEP address the
4 west branch of the Penobscot River and the tributaries
5 all together and recommend a full upgrade rather than
6 splitting the proposal that we submitted originally
7 into two parts. We appreciate the recommendation to
8 upgrade the west branch of the Penobscot River and
9 tributaries --

10 COURT REPORTER: I can't hear.

11 MR. DUCHESNE: Kaitlyn, you're breaking
12 up a little bit, and once again, we need to make sure
13 that the reporter is hearing everything that you're
14 saying.

15 KAITLYN BERNARD: Yeah, I'm hearing a
16 little bit of an echo, I'm not sure if somebody is not
17 on mute.

18 MR. DUCHESNE: The only mic that is on
19 is mine and it's off when you're speaking, so you may
20 proceed.

21 KAITLYN BERNARD: Okay, excellent thank
22 you. So back -- we're talking about the sections of
23 the west branch of the Penobscot River. Despite the
24 ongoing discussions between the DEP and the EPA
25 regarding storm water discharge standards, we believe

1 it is still appropriate to upgrade the section
2 including Nahmakanta Stream and tributaries of the west
3 branch Penobscot River sub watershed.

4 We recommend that the Board take this
5 action. AA waters are defined as those that are
6 outstanding natural resources and which should be
7 preserved because of their ecological, social, scenic
8 and recreational importance, especially where those
9 waters already attain the standards of class AA, the
10 Nahmakanta Stream and its tributaries meet this
11 definition.

12 We understand that the Department is
13 trying to balance their efforts to resolve the
14 discharge issues with the EPA, but this recommended
15 upgrade seems unlikely to cause any issues with that
16 process. The Nahmakanta watershed is unlikely to ever
17 need a storm water permit since it largely falls within
18 state, federal and TNC conservation lands. Even the 13
19 percent of the watershed outside conservation ownership
20 is in the headwaters of the watershed, and therefore,
21 not suitable for any development that would generate
22 storm water management concerns. The watershed
23 includes the Appalachian Trail Corridor, the hundred
24 mile wilderness is home to native brook trout and state
25 listed arctic charr, hosts a small sporting camp

1 business and is accessible to the public for
2 recreation. This recommendation could go ahead without
3 impact to the DEP EPA resolution effort.

4 Finally, TNC recommends the Board of
5 Environmental Protection upgrade the south branch of
6 the Sandy River and tributaries. Again, we understand
7 the suggestion to hold on several upgrades due to the
8 uncertainty and hopefully coming to resolution with
9 EPA. However, this upgrade proposal should move
10 forward in this round because the Sandy River
11 watershed, as many have said before me, is a vital
12 state resource for Atlantic salmon.

13 The upgrade includes areas that are
14 critical for salmon spawning and nursery streams and
15 these upgrades were originally proposed by the Maine
16 Department of Marine Resources and DEP salmon
17 biologists. TNC and other conservation organizations,
18 along with the State, have invested significant
19 resources to the recovery of this watershed and
20 protection by reclassification to AA is consistent with
21 the State's salmon management for the Kennebec
22 watershed.

23 These waters deserve an upgrade. They
24 currently attain the higher AA standards and they are
25 not a threat now or in the future from contemporary

1 storm water management. Thank you again for the
2 opportunity to participate. I'll be submitting written
3 comments for you all to review just in case of any
4 hiccup with the audio and I'm here and happy to answer
5 any questions at this time. Thank you.

6 MR. DUCHESNE: Thank you. Are there
7 questions from the Board? Seeing none, thank you very
8 much. We have the Honorable Peter Stuckey up next.
9 It's nice to see you again, Peter. I will need to
10 swear you in. And are you unmuted and live yet? We
11 cannot yet hear you. You're still muted.

12 PETER STUCKEY: How about now?

13 MR. DUCHESNE: There you go. Do you
14 swear or affirm that the comments or testimony you are
15 about to give is the truth, the whole truth and nothing
16 but the truth?

17 PETER STUCKEY: I do indeed.

18 MR. DUCHESNE: You may proceed.

19 PETER STUCKEY: Thank you. Good
20 morning, my name is Peter Stuckey. I thank you for the
21 opportunity to speak with you this morning. I am a
22 member of the Board of the Friends of the Presumpscot
23 River, and I am a strong supporter of our proposal to
24 raise the lower Presumpscot River water quality
25 classification from C to B. And if you are unable to

1 do that, I urge you to consider the alternatives
2 outlined in the Friends of Presumpscot's written
3 testimony presented earlier this morning.

4 In 1974 my wife Michelle and I bought
5 our starter home right on the Presumpscot River just
6 inside the Martin's Point Bridge on the Portland side.
7 We're still here. We love the river and we really
8 appreciate the improvements to the water quality we've
9 witnessed over the past 47 years.

10 In 1974 there was no public sewer system
11 in our neighborhood. For us all of our sewerage and
12 wastewater connected to a three-house system built
13 years earlier by a plumber who lived next door, and
14 depending on the tides, emptied directly into the river
15 or onto the mud flats behind our neighbor's house. Big
16 chunks of toxic waste would regularly flow down from
17 Westbrook and routinely get left behind on the
18 expansive mud flats by receding tides. On hot summer
19 days the stench was awful and you can sometimes see the
20 toxic gasses. Neighbors told stories about paint
21 turning colors, blistering and peeling off the houses
22 on our street.

23 We had a friend who owned land along the
24 river coming into Portland. Some of that land was
25 taken by eminent domain to build Route 295. In

1 researching his land's value, he discovered that the
2 flats in the river basin could potentially produce an
3 annual clam harvest for a quarter of a million dollars,
4 and that's in the 1950s.

5 Michelle and I raised our family on the
6 river. We've had hundreds of picnics, cookouts, fire
7 pits in our backyard over the years. In the beginning
8 the river's beauty was look but don't touch, then we
9 got small boats, then we started catching stripers,
10 then occasionally we'd take a quick swim on an incoming
11 tide. Now we paddle board and fish sometimes right
12 from shore. Boats are moored in the channel, more on
13 the shore. Lots of boats come to the river to fish,
14 and until recently a tour boat would make regular trips
15 from Portland Harbor up the river to the base of the
16 lower falls. Kayakers and paddle boarders move along
17 the shore up and down the river exercising, exploring.
18 We even see an occasional water skier.

19 Perhaps most importantly we regularly
20 enjoy watching the return of a healthy wildlife
21 population. The recent and steady increase in fish
22 moving up the river as dams have been removed and fish
23 passages being restored bodes well for the whole
24 watershed. The number of rafters nesting along the
25 shore is increasing. We routinely watch bald eagles

1 and ospreys soar overhead fishing or just playing on
2 the winds, heron, including blue, white and an
3 occasional black crown, snowy egrets and small terns
4 join the gulls and cormorants fishing on the flats and
5 nesting on the trees on the shore.

6 Last year a family of fox took up
7 residence in our little neighborhood. The stripers are
8 here and the incredible sturgeons regularly leap out of
9 the water sometimes excitingly close to our shore.

10 Over the past 50 years the Presumpscot
11 River has benefited tremendously from a strong and
12 growing commitment to cleaning up and protecting our
13 environment. Jump started by Senator Muskie's Clean
14 Water Act in 1972, the collective efforts of
15 individuals, community businesses, advocacy groups and
16 coalitions, municipalities and state agencies have
17 resulted in study improvements to our watershed.

18 I'm asking you to please help us secure
19 the progress we've made and the future we all aspire
20 to. Please promote the lower Presumpscot River to
21 class B now. Thank you.

22 MR. DUCHESNE: Thank you. Are there
23 questions from the Board? Seeing none, thank you, Mr.
24 Stuckey, the Honorable Peter Stuckey. And we will go
25 to Ed Friedman now. I need to swear you in.

1 ED FRIEDMAN: Can you hear me?

2 MR. DUCHESNE: I hear you. Do you swear
3 or affirm that the comment or testimony that you are
4 about to give is the truth, the whole truth and nothing
5 but the truth?

6 ED FRIEDMAN: I do.

7 MR. DUCHESNE: You may proceed.

8 ED FRIEDMAN: Can you activate a share
9 screen for me?

10 MR. DUCHESNE: This is the first time
11 we've dealt with such a request since we've never done
12 this kind of meeting before. I do assume that much of
13 what you're going to be talking about is going to be
14 submitted for us into the record for comment?

15 ED FRIEDMAN: Yup, can you see --

16 MR. DUCHESNE: We do see a slide, yes.

17 ED FRIEDMAN: You do, okay.

18 MR. DUCHESNE: How many slides are
19 there? Don't scare me.

20 ED FRIEDMAN: About 15. I'll be very
21 quick and you can tell me if you need me to slow down.
22 I'm having trouble getting to my little slide show
23 because my little Zoom thing is in the way. I don't
24 know how to make it go away. Can anyone there tell me
25 how to make the Zoom disappear so I can actually get to

1 my menu?

2 MR. DUCHESNE: You should be able to
3 click and drag it.

4 (Off-the-record discussion was held.)

5 ED FRIEDMAN: As some of you know,
6 Friends of Merrymeeting Bay has been working on this
7 river for longer than anybody. We are proposing an
8 upgrade from down Merrymeeting Bay up to -- as an easy
9 point of reference, and that is a section that our data
10 best support. We'd like to see an upgrade further up
11 to the Lewiston, Auburn area, but I'm not sure of the
12 data to support that exactly at the moment.

13 So we left our research over the years
14 and former advocacy and -- there you go, I'm going to
15 whiz through these. I'll get rid of this bar here.

16 So what's new, we've done this many
17 years before. We've got a number of years, number of
18 years of additional data, we've got some additional
19 detail, legal analysis on Exhibit 4 in our proposal.
20 Exhibit 5, conservation law foundations, Mr. Sells,
21 additional partners this year, wonderful improvements
22 in the Lewiston, Auburn CSO situation since 2010. We
23 thank them and Brunswick for doing such a good job.
24 And this year we did a really extensive look at Benthic
25 invertebrates on the section of river, classification

1 that's based on dissolved oxygen, E. coli and aquatic
2 life standard as measured by these -- who colonizes
3 these rock baskets or bags in the river over time.

4 So our work has been done on the EPA
5 quality assurance plans and is currently being done
6 under the DEP quality assurance plans river monitoring
7 program.

8 This is the section of river we're
9 talking about quickly. This is I-95 up here near
10 Auburn and 295 down here in Brunswick, Topsham, Lisbon
11 Falls and here we'll go down, and these red marks are
12 where we had our rock bags or baskets this season and a
13 couple of older DEP sites in blue there.

14 I'd encourage you to go to our website,
15 FOMB.org, and if you go to the electronic library, the
16 chemical page, and a few items down you'll see the
17 current proposal, 40 exhibits worth of material here in
18 support, obviously not going to cover those all today.

19 Mr. Sells spoke to this, key statute
20 here, the classification is distinction from discharge
21 legislation standards classification is based actual
22 land and water quality. That water quality must be
23 protected and the Board has a nondiscretionary duty to
24 act when that is the case. Here's another picture of
25 water testing sites, the green being where the bug

1 sampling, the firefly samples were taken this summer,
2 the red historical and sometimes and often present at
3 water quality sites of ours over the years, including
4 going up the Kennebec and down to the Bath area and a
5 couple of DEP sites for the bug sampling 2010 and a
6 couple of these this year.

7 This slide tells it all about E. coli
8 really. The green line is the class B standard of 64
9 parts or 64 colonies per hundred mills. The blue bars
10 are all data inclusive of heavy rain, which the DEP
11 discounts. The yellow bars are levels of bacteria
12 excluding the heavy rain.

13 The graph only goes up to 2015 and this
14 year subsequent down here in tabular form. We'll
15 update this before giving you updated written comments
16 here as well, but you can see that all of these levels
17 are -- the bacteria are well below the class B
18 threshold, so we're really in good shape in that
19 regard, the geometric means.

20 And I think I missed -- there we go,
21 dissolved oxygen, similar situation, but the bars are
22 reversed, class B being the green bar at five parts per
23 million -- I'm sorry, seven parts per million, class C
24 being the five parts per million red, well above class
25 C and well above class B, and a couple of years here

1 that aren't graphed, 8.6 and 8.4 this year to date in
2 keeping with what we're seeing here. So, again we're
3 talking actual water quality surpassing class B for
4 many years.

5 This is a sample form used in a rapid
6 bio assessment of the aquatic invertebrates working
7 with vocational aquatic biologists on this, worked for
8 many years in the DEP, certain organisms present or
9 common and his best professional opinion, does it meet
10 class B, yes, at this station. So we have these --
11 these will be filled out in much more detail this
12 winter when Paul uses microscopes to further
13 investigate what are in the samples, but I just wanted
14 to show you how this is done.

15 And we talked about flows, and DEP looks
16 at critical flows, again, that's a separate situation
17 and classification, but just to show you that this
18 summer, for example, where the actual flows were in
19 relation to the median flows. They're running, you
20 know, maybe a third below medium, and this is when we
21 did our deployments. We have this one storm that
22 recently hit.

23 And again, Lewiston, Auburn, the blue
24 lines representing the flows over the years and the red
25 lines showing how the CSOs have dropped primarily from

1 2010, which is just awesome. This a slide of -- again,
2 it's a little hard to read, it's in our exhibits, but
3 this is showing the difference between actual and
4 licensed dischargers. It's from DEP data here down on
5 the -- I lost my cursor, there it is, kind of on the
6 left.

7 So just for an example here, this is the
8 Brunswick waste water plant in milligrams -- sorry, in
9 millions of gallons a day, actual discharge, two
10 million gallons a day, this is during 2012, 2013. But
11 the actual -- the license discharge is 3.85 million.
12 So that means they're discharging at 52 percent of the
13 licensed flow. The license allowed for a 48 percent
14 buffer. If you look at it on the chart, the huge
15 buffer, 69 percent, 77 percent, they're up in the 80s
16 in some places. So these licenses have huge, huge
17 buffers built into them and that's what the DEP is kind
18 of confusing with the reclassification statute when
19 they deal with the discharge notes.

20 Anyway, other people mentioned all these
21 supporters here, the towns, cities, sewer districts, we
22 did not go upstream, and I know that upstream
23 communities are concerned because upstream communities
24 have very little, if any, bearing on what's happening
25 this far down the river. The river is getting

1 reoxygenated as it goes. Gulf Island Pond acts like a
2 trap in your sink, it's catching a lot of the toxins
3 and problems and E. coli is sort of immaterial as well.

4 So we didn't exclude Skowhegan or Mexico
5 for any nefarious reason, it's because they're really
6 not very relevant. You'll notice that MMA is a
7 supporter of the Lewiston, Auburn Maine Chamber of
8 Commerce and all of us normal, you know, fishy folks.

9 Why upgrade? This is the intent of the
10 legislature to restore and maintain the quality of the
11 rivers, improve them. The anti-degradation language
12 prohibits backsliding. A gentleman from Pierce Atwood
13 suggested that even without an upgrade that there's no
14 backsliding, but without the codification, I challenge
15 him to produce a viable method of documenting where the
16 rivers are and where they've gone to. So the upgrade
17 mechanism and classification mechanism is how we do
18 that. The upgrade locks in the water quality
19 improvements right now, for example, in the lower
20 Andro, and I'm almost done, the, you know, the C
21 classification allows for five parts per million DO.
22 There could be added dischargers to the river now that
23 could bring it down from its actual eight and a half
24 down to five and it would still meet the classification
25 it is locked into right now. Cleaner river has many

1 benefits that we all know about, economic, quality of
2 life and for wildlife, and lastly, it is the law.

3 Thank you very much. And so that's my
4 little spiel today. Again, we will be submitting
5 written comments, and I can't even figure out how to
6 get off this screen, but I'm happy to answer any
7 questions. Thank you. If you have any, and -- well,
8 we'll go from there and hope that you do take a
9 leadership role, as you're entitled to, and should, and
10 move this off the dime where it's been for many years.
11 Thank you.

12 MR. DUCHESNE: Thank you, Mr. Friedman.
13 Are there questions from the Board? I see none from
14 the Board. Mr. Parker, I'm just looking up, Jim?

15 MR. PARKER: No.

16 MR. DUCHESNE: I have none, so I
17 appreciate your testimony and we'll go to, I believe it
18 is our last from testimony from Michael Shaughnessy.
19 I'll swear you in first. Do you swear or affirm that
20 the comment or testimony that you're about to give is
21 the truth, the whole truth and nothing but the truth?

22 MICHAEL SHAUGHNESSY: I do.

23 MR. DUCHESNE: You may proceed.

24 MICHAEL SHAUGHNESSY: Thank you. I'm
25 Michael Shaughnessy. I live in Westbrook and I'm on the

1 Board of the Friends of the Presumpscot River. Thank
2 you for hearing our thoughts relative to the DEP's
3 recommendations towards the reclassification of the
4 lower Presumpscot from a C to a B. I am in strong
5 support of the Friends of the Presumpscot River's
6 position.

7 The Presumpscot is only 25 miles long;
8 however, around 10 percent of the entire state
9 population reside in its adjoining municipalities, and
10 three municipalities, Portland, Westbrook and Falmouth
11 that border this section that we're considering there
12 is a population of approximately a hundred thousand.
13 For many people the first experience and where they
14 developed an appreciation and capacity to care for a
15 river may well be the Presumpscot.

16 Public attitudes towards the Presumpscot
17 River have changed greatly. Where it once ran brown
18 with the foam of industrial and human waste, it was
19 used as dump, it could be smelled far into Casco Bay,
20 it was shunned. Now in all the river, but specifically
21 the lower river where we're considering, there is
22 abundant swimming, paddling, tubing and fly fishing.
23 There are also a number of preserves with walking
24 trails along this section.

25 Within the area proposed for

1 reclassification, the river runs through the center of
2 downtown Westbrook. It has had a number of mills and
3 historically it has looked away from the river.
4 Westbrook now has a river walk. It is planning an
5 extension to that river walk. There are public docks
6 and a businesses are now beginning to face the river,
7 even restaurants have outdoor tables along it. A
8 recent public survey ranked the river as the greatest
9 asset to downtown Westbrook. Down river, the long
10 abandoned river trolley park in Portland has plans to be
11 reactivated as a park.

12 In the past 20 years this section of
13 river has seen multiple major restorations. Small Tail
14 Dam was removed at Presumpscot Falls, a major fish way
15 installed at Cumberland Mills Dam and recently
16 Saccarappa Dam was removed and a fish way installed.

17 It appears this year for the first time
18 in hundreds of years thousands of heron and possibly
19 shed have made it up to the base of the next dam,
20 Mallison Falls. Because of this, the water quality and
21 biodiversity continue to improve. But this is a
22 pivotal period in the life of this river. Currently
23 much of the river is undeveloped due to its past use
24 and reputation as a sewer, but as the river revives,
25 that perception is changing, along with it, pressures

1 from growth are increasing.

2 The river will continue to come back,
3 but it's our concern that the work accomplished can be
4 reversed if greater protections are not afforded it.
5 The river has worked hard for humanity and taken a lot
6 of abuse for nearly 300 years. It will serve our
7 people and the communities around it and the reputation
8 of this state far better as a well-protected river than
9 it will suffering a future degradation.

10 The river once had millions of fish and
11 it sustained the Abenaki people that lived along it.
12 The river gave itself freely because it had much to
13 give and it was used wisely. It was within the ensuing
14 decades of columnization that it was nearly killed.

15 When the journey of this river's
16 restoration began in the early 1990s and post the Clean
17 Water Act, it was felt by many to be too heavily used
18 and abused to even waste time on. People however
19 persisted.

20 The Presumpscot continues to improve,
21 but its water quality needs protections. We feel it is
22 meeting class B standards, but even if it does not, if
23 as the state statute states, quote, upgrades may be
24 proposed where there is a reasonable expectation for
25 higher uses and quality to be attained and that it is,

1 quote, socially and ecologically desirable to attain
2 higher standards and that reclassification can be made.

3 If those words are true and the
4 sentiment of the statute, then there are few better
5 examples of what these words were written for than this
6 section of the Presumpscot River.

7 If you have any questions, I would be
8 happy to answer them. Thank you very much.

9 MR. DUCHESNE: Are there questions from
10 the Board? Seeing none, thank you very much. I
11 believe we have one more person who has asked to
12 testify and that should conclude the testimony. George
13 O'Keefe, are you with us?

14 GEORGE O'KEEFE: Yes, sir.

15 MR. DUCHESNE: I will swear you in. Do
16 you swear or affirm that the comment or testimony you
17 are about to give is the truth, the whole truth and
18 nothing but the truth?

19 GEORGE O'KEEFE: I do.

20 MR. DUCHESNE: You may proceed.

21 GEORGE O'KEEFE: Thank you for the
22 opportunity to address the Board today. My name is
23 George O'Keefe. I'm the economic development director
24 for the town of Rumford testifying on behalf of the
25 town. The town is testifying in support of the DEP's

1 recommendation to leave the Androscoggin River's
2 classifications unchanged, and we would note that we
3 strongly object to the adversarial nature of proposals
4 from other parties.

5 The progress on the Androscoggin River
6 has been achieved through a longstanding collaborative
7 process certainly more recently, including
8 municipalities, industry, agriculture and numerous
9 voices from the advocacy community.

10 No community is more invested in the
11 health of Androscoggin River than Rumford. No
12 community has benefited more from its improved health.
13 And no community has more interest in improved
14 recreational opportunities on the river than Rumford.
15 No community has contributed more to the improvement
16 and conservation of the Androscoggin River through the
17 efforts of our residents, most especially the late
18 Edmund Muskie, born and raised in Rumford and author of
19 the Clean Water Act of 1972, as I'm sure everybody is
20 well aware.

21 Rumford is extremely proud of Secretary
22 Muskie's service to our community, Save the Nation, and
23 we think it's important for the Board to be aware that
24 in spite of all this, we continue to be excluded or
25 ignored, perhaps brushed off by other parties who make

1 proposals concerning our river without any apparent
2 regard for our stewardship of it.

3 We believe this competitive approach is
4 not beneficial to the continued public consensus in
5 favor of improvements to water quality as our residents
6 watch outsiders continually submit proposals without
7 any regard to their potential impact on our community.

8 With the changes to energy and trade
9 over the past 40 years, our community has paid dearly
10 for the prosperity of others. We intend to and are
11 rebuilding the prosperity that has been lost and look
12 forward to seeing a river that continues to experience
13 a revitalization of recreation and habitat for fish and
14 wildlife.

15 In short, the state of the river as it
16 is today has been critical to our ability to promote
17 economic diversification and improve recreation and we
18 really appreciate the efforts that have been made to
19 date to get it to where we are now.

20 I would just finally note that I feel
21 that we had a moment ago where unfortunately another
22 party failed to mention the name of our town, which is
23 Rumford, and Skowhegan is most definitely not on the
24 Androscoggin River, never has been. And I think that
25 lack of geographic awareness speaks exactly to our

1 point, and it's very, very hard to be in a public
2 hearing and have our community not properly named, and
3 I think it really speaks to the idea that we really are
4 not listened to very well at all.

5 So we hope that you have heard us. We
6 trust that you have heard us, and we certainly believe
7 and appreciate the opportunity to speak to you today.
8 Thank you very much.

9 MR. DUCHESNE: Thank you. Are there
10 questions from the Board? I see none, so thank you
11 very much, and I believe that's all the testimony we're
12 expecting. I know of no other people online or in the
13 room who are intending to speak, and if that is the
14 case, I believe we can close the hearing.

15 So, again, written comments on proposed
16 revisions to Maine's water quality standards may be
17 submitted until 5:00 p.m. on October 25th, 2021. This
18 concludes today's hearing. Thank you.

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20 (The hearing concluded at 11:45 a.m.)

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CERTIFICATE

I, Lorna M. Prince, a Court Reporter and Notary Public within and for the State of Maine, do hereby certify that the foregoing is a true and accurate transcript of the proceedings as taken by me by means of stenograph.

and I have signed:

/s/ Lorna M. Prince

Court Reporter/Notary Public

My Commission Expires: February 6, 2026

Dated: October 19, 2021