

STATE OF MAINE  
CUMBERLAND, ss

BUSINESS AND CONSUMER COURT  
BCD-APP-2021-00009

JEFFREY MABEE, et al., )  
)  
Petitioners, )  
)  
v. )  
)  
BOARD OF ENVIRONMENTAL )  
PROTECTION, )  
)  
Respondent. )

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)  
UPSTREAM WATCH, )  
)  
Petitioner, )  
)  
v. )  
)  
BOARD OF ENVIRONMENTAL )  
PROTECTION, )  
)  
Respondent. )

**COMBINED ORDER ON MOTIONS**

Before the Court are two motions brought by Petitioners that were still pending before the Waldo County Superior Court when these consolidated cases were transferred to this Court.

The first seeks leave to exceed page limits set by M.R. Civ. P. 7(F). The second is a Motion to Amend Petition, Permit Discovery and for an Order Specifying the Course of Future Proceedings.

The Court has reviewed the filings of the parties and for the reasons stated, denies both the Motion to Exceed Page Limits as well as the Motion to Amend, Permit Discovery and to Specify the Course of Future Proceedings.

With respect to the motion regarding page limits, which is opposed, the Court has reviewed the motion as well as the many pages of attachments to what is usually presented as an unopposed procedural motion. Because the many documents attached are directly pertinent to the second, more substantive

motion, the outcome of the first motion is controlled by the Court's analysis and conclusion as to the second.

The second motion is captioned as Motion to Amend Petition, Permit Discovery and to Specify the Course of Future Proceedings, and it seeks three things. First, it seeks to clarify that the proper Respondent in this case should be the Department of Environmental Protection (DEP) and not the Board of Environmental Protections (BEP). Second, it seeks to add independent claims. Third, the motion seeks to conduct discovery on those claims.

As to the motion to have the Respondent designated as the DEP instead of the BEP, that request is denied. As current Respondent BEP points out, it was BEP that issued the permitting decisions that are under appeal by Petitioners. The BEP is therefore the proper party. The Board acted as fact-finder in this case and it will be the Board's findings and conclusions that will be reviewed.

With respect to the motion to add independent claims and conduct discovery, the Petitioners argue that materials outside the record in the form of email communications made in the first few weeks of 2019 provide a basis for independent claims. These emails can fairly be described as emails between members of the Governor's Office, the DEP Acting Commissioner, Nordic and other third parties including the Governor's brother who was also during this time frame working as a member of the Governor's Transition Team. All the emails, along with a meeting that took place involving some of these individuals, pre-date the formal application process before the agency. They do support the proposition that the project at issue was one that was favored by the Administration. However, these preliminary discussions are not enough, in the Court's view, to overcome the presumption of good faith this Court is obligated to apply to the decision makers at the BEP. *See Beal v. Town of Stockton Springs*, 2017 ME 6, ¶ 19, 153 A.3d 768 (quoting *Mr. & Mrs. V. v. York Sch. Dist.*, 434 F. Supp. 2d 5, 12-13 (D. Me. 2006)) (administrative agency officer "enjoys a presumption of honesty and integrity"). At the time of these communications, the BEP had not yet asserted jurisdiction over the application at issue here, and no part of the adjudicatory process had yet begun. And as pointed out by Respondent BEP, there is no indication

at all that the BEP was ever made aware of these very preliminary inquiries or communication described in the emails at issue. The Court is also unpersuaded that because the BEP is permitted to rely upon DEP staff during the BEP process, the administrative proceeding was somehow defective or was inappropriately affected by political influence.

For these reasons, the Court will deny the motion to add independent claims or to conduct discovery on those claims. This decision obviates the need to consider the third part of the motion which seeks to obtain an Order specifying the course of future proceedings, and it determines the outcome of the motion seeking to exceed page limits.

The entry will be: The Motion to Exceed Page Limits is DENIED. The Motion to Amend Petition, Permit Discovery, and for on Order Specifying the Course of Future Proceedings is also DENIED. The Clerk shall note this Combined Order on the docket by reference pursuant to Rule 79(a) of the Maine Rules of Civil Procedure.

11/18/2021

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**DATE**



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**M. Michaela Murphy  
SUPERIOR COURT JUSTICE**

Entered on the docket: 11/18/2021