

United States Court of Appeals  
For The District of Columbia Circuit

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No. 23-1291

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AMERICAN WHITEWATER

Petitioner

v.

FEDERAL ENERGY REGULATORY COMMISSION

Respondent

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*On Petition for Review of Orders of the Federal Energy Regulatory Commission*

**DECLARATION OF SKIPPER MORRIS**

April 29, 2024

I, SKIPPER MORRIS, declare and state as follows:

1. My name is Skip Morris. I am over 21 years of age, do not suffer from any impairment or disability affecting my ability to give truthful testimony and make

this declaration based upon my personal knowledge and my review of publicly available information.

2. I reside in Nashua, New Hampshire in Hillsborough County. My residence is within an hour to an hour and fifteen minute drive of the Somersworth Hydroelectric Project. This is well within the range I would typically drive for a recreational day trip.

3. I have been employed in the Information Technology Sector for almost ½ century. Currently a Senior Engineer for Akamai Technologies. Previously I was employed by Elliot Hospital, Hewlett-Packard, Compaq, and Digital Equipment Corporation (aka “DEC”). Prior to that I was a member of the United States Navy, my rank on separation was Cryptologic Technician Second Class. I studied Electrical Engineering at Stevens Institute of Technology (Hoboken, NJ), Computer Science at Old Dominion University (Norfolk, VA), and EMT-A Certification at Tidewater Community College (Virginia Beach, VA). Additionally, I attended two years of US Navy Technical Training.

4. I am a longtime paddler with a particular interest in Maine and New Hampshire rivers. I am currently 69 years old and have been paddling canoes and kayaks since I was a child; over 60 years. I own multiple whitewater and flatwater canoes and kayaks, and currently go paddling about 25 times a year. Though I have

paddled in Ontario, Quebec, Colorado, and Texas, most of my paddling has been in the Northeast.

5. I first experienced whitewater boating in 1975. I choose to paddle on whitewater because of the thrill, excitement as well as the exercise it offers. I have paddled on almost all the available and accessible whitewater rivers in Maine and New Hampshire (within my skill level), including the Deerfield, Winnipisaukee, Lamprey, Contoocook, Dead, and Kennebec Rivers.

6. I have been a member of American Whitewater (AW) since 1999. I initially joined American Whitewater for the community, to meet fellow paddlers, and to get information about whitewater paddling. I prefer to paddle with others for social as well as safety reasons.

7. Beyond boating, I am actively involved in the American Whitewater community. Giving back to the sport is important to me. When I was a beginner whitewater paddler, the older and more experienced paddlers in the local clubs gave freely of their time to teach and help the newer ones joining the sport. Now that I am older and more experienced, I feel it is important that I carry on the tradition by helping others and contributing to the sport by volunteering where I can uniquely contribute.

8. I am active in the broader rafting and paddling community. In addition to American Whitewater, I am a member of the American Canoe Association,

Appalachian Mountain Club, Merrimack Valley Paddlers, Vermont Paddlers Club, Penobscot Paddle and Chowder Society, (all organizations which are American Whitewater affiliated paddling clubs), and the White Mountain Swiftwater Rescue Team. I join these groups and actively participate to support the work they do and to bring awareness of paddling information, issues, and safety to more people.

9. I am involved in advocating for rivers and river access in the New Hampshire legislature. I attend public hearings dealing with river and boating issues approximately 10-15 times over the past 20 or so years. Most recently I provided testimony at the state legislature 2 years ago on requiring boat sticker fees for river access.

10. I have found that the New Hampshire State Legislature is happy to receive public input and receptive to my comments on pending legislation, both for making minor changes I suggest, as well as influencing their vote. The Legislature is especially happy to hear from individuals with specific knowledge of issues addressed in pending bills. For example, during discussion of river levels and dam releases, there were questions on what was the proper amount of water in some rivers to enable boating. I was able to respond and provide dates and river levels along with my opinion of how useful and enjoyable that particular level was for boating. During discussion of a bill regulating access points to rivers, I pointed out



that the pending bill widely defined access points on all rivers, not just state-owned access points, and the language of the bill was changed accordingly.

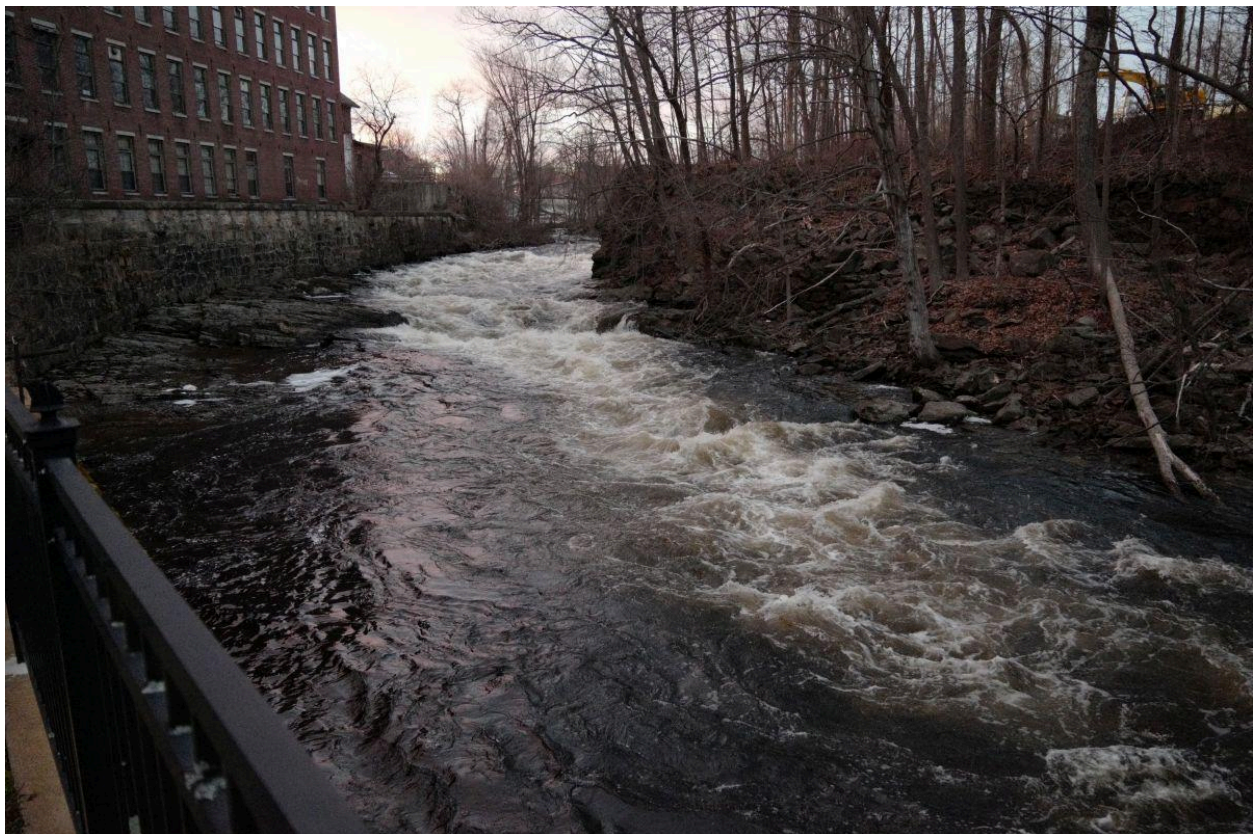
11. In my capacity as an American Whitewater Regional Streamkeeper, I have been an active contributor to AW's national whitewater inventory for 25+ years. This entails writing river descriptions, identifying river features and safety hazards, river flows, calculating river gauge algorithms, identifying access locations for put-in and take-out (ie, entering and exiting the river), attaching photographs of river features, and assigning a river classification under the "International Scale of River Difficulty" (ranging from Class I to Class IV).

12. The AW Whitewater Inventory is critically important to educate the paddling community so that they may safely enjoy rivers. The inventory is the primary resource that provides information to other paddlers nationwide. Devoting time and effort in this way helps make the sport both safer and more enjoyable for other paddlers. I have personally created or enhanced the river entries for over 100 of New England rivers in AW's whitewater inventory. I take personal pride in seeing people using a river I've added to the inventory where previously the river was unknown to the general public.

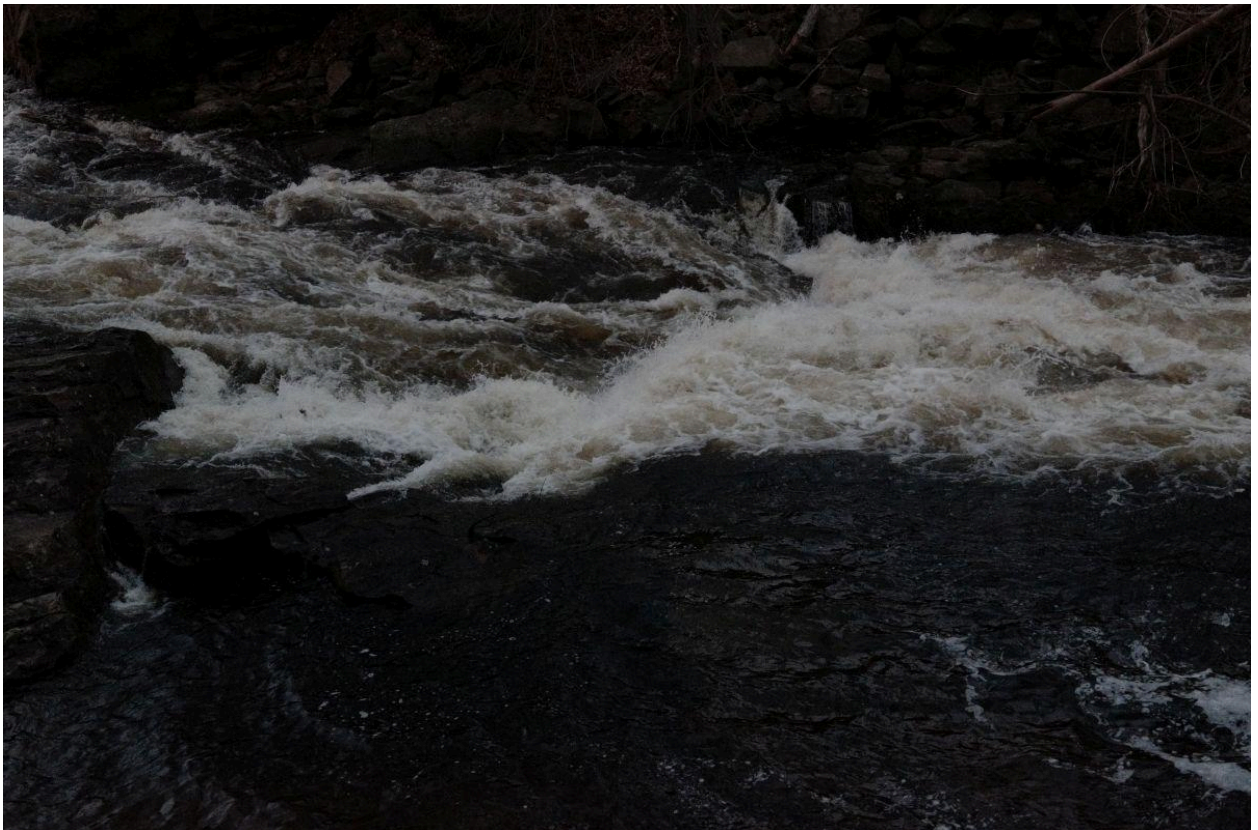
13. I have personally examined the section of the Salmon Falls River where the Somersworth Hydroelectric Project is located between Somersworth, New Hampshire and Berwick, Maine. Based on my observations, I note continuous

challenging Class III whitewater rapids starting from the first project dam (just below the Route 9 bridge between Somersworth, NH and Berwick, ME), and extending to the downstream side of the Aclara Technologies Plant. The length of this section is approximately 0.6 miles. This section of the Salmon Falls River contains hydraulic features such as waves, holes, and eddies that would provide excellent recreation location for whitewater boating opportunities if the project dams were removed.

14. This river section is the closest whitewater to the cities of Dover, Rochester, and Portsmouth, NH, and could easily draw individuals from those areas for canoeing, kayaking and commercial rafting. (See photos I took in April 2024.)







15. Access to this river section is upstream of the rapids at the Berwick Kayak Launch, and downstream below the rapids at the Somersworth Riverwalk (west side of river), and the Newichawannock Woods Preserve and Trail (east side of river). These access points could be used to enter and exit the river by anyone paddling the whitewater rapids and all are open to the general public.

16. This river section where the Somersworth Project dams are located has ***NOT*** been added to the AW Whitewater Inventory since it currently cannot be safely navigated due to the presence of the dams on the river and the danger they represent. If the dams were removed, I would ensure that the river was added to the river inventory to include information about boating that stretch of the river because it would be a worthwhile, safe and fun place for American Whitewater members and the public to engage in recreation.

17. The upper dam (Stone Dam) contains a dangerous river-wide recirculating hydraulic (also called a “drowning machine”) making it too dangerous for anyone to paddle over it. Portaging this dam is difficult due to high walls, fencing, thick vegetation, and private property along the river (see below photo taken April 2024).





18. The lower dam (Back Dam) likewise contains a river-wide recirculating hydraulic which also is too dangerous to paddle over. Portaging around this dam is not possible since it is a small gorge with the Aclara plant on one side and a steep cliff on the other side with no river access (see photo below). This dam is also hidden from public view unless you hike thru the woods or inside the Aclara building, so anyone trapped in the river might not be noticed for a long time.





19. While it is possible to paddle over some dams, this is limited to individuals with advanced skills, and only after closely examining the dam and river currents to determine if it is safe. Though there are instances in which I have paddled over dams, it always depends on the dam and river conditions below the dam. I have seen people trapped or otherwise put in danger when attempting to paddle over dams on some rivers incorrectly. Based on my personal observations of the Somersworth dams, this river section is too dangerous to paddle. Low-head dams, such as these at the Somersworth Project pose a potential drowning hazard if not removed. Even the wearing of a PFD (aka life jacket) does not help as individuals

trapped in a dam hydraulic eventually become too exhausted to keep their heads above water and drown. I was witness to one such accident on the Dead River in Maine where an individual was trapped in a hydraulic and unable to escape for over fifteen minutes before losing consciousness. They were underwater for an estimated seven minutes before being pulled out by a passing raft with rescue equipment. The person was airlifted to Bangor Medical and spent a week in the hospital before fully recovering.

20. As an active member of the White Mountain Swiftwater Rescue Team (WMSWRT), I am especially cognizant of the dangers to the general public. Anyone from fisherman, children playing along the river edge, or people floating in inner tubes could easily misjudge the current and be swept away and trapped in a dam hydraulic. And just this month, the WSMRT participated in a joint training exercise with several government agencies practicing various search and rescue techniques for just such an accident. Agencies participating in the training included New Hampshire Fish & Game, Lakes Region Search and Rescue, NHF&G Drone Team, and the Conway Village Fire Department.

21. Other issues: distance from my home is a major factor in choosing which rivers I paddle. If a river is more than two-and-one-half-hours from my home, I do an overnight trip. Generally, I prefer to do day trips. As I get older, I find I do not have the energy to paddle two days in a row. With Salmon Falls River

approximately an hour and fifteen minutes from my home meaning it is well within the range that I would consider for a day trip.

22. Safety is an important concern when I choose where to raft, kayak and canoe. Based on my personal observations of the Salmon Falls River and the dams at the Somersworth Hydroelectric Project, I would not currently paddle there or encourage anyone else to do so. Low-head dams, such as the lower dam at the Somersworth Project pose a definite drowning hazard if not removed. Additionally, these dams cannot be portaged (i.e., carry around) due to the lack of river access points above and below the dams.

23. Aside from safety concerns, the presence of dams necessarily shortens length of runs because paddlers must put in below dams and exit the river prematurely to avoid going over dams. Dam removal provides access to rivers which may not have been accessible previously. Removing these two dams would extend the river trip to one-and-a-half miles.

24. A similar situation existed almost 20 years ago on the Contoocook River in Henniker, New Hampshire. When a dam was removed near the bottom of rapids it provided much easier river access, and a longer and more enjoyable trip. Prior to removal of the dam, the river take-out was difficult and required a long carry up a hill with my heavy open boat. This discouraged me and others from going because of the difficulty, and resulted in me driving further to other rivers that provided



easier access and/or longer river trips. Once the dam was removed, I paddled that section of the Contoocook River more often and was able to use an easier take out where there was better access to parking instead of choosing not to go boating or drive further to another river. This made the boating experience more enjoyable. Since then, I've noticed that river use has increased due to improved river access.

25. In addition to the above issues, I look for variety in selecting the rivers that I paddle, including variety between big, wide rivers and narrow creeks. I also look for variety in terms of whitewater versus flatwater opportunities. I boat on whitewater because it is exciting. I boat on flatwater because it is peaceful, pleasant to be outside, and provides beneficial exercise.

26. Unfortunately, the existence of the Somersworth dams makes this area too dangerous to paddle. Removing them would provide plenty of opportunities for river recreation and enjoyment, which I would definitely take advantage of, and I would travel here to paddle this section as well as the flatwater sections on the Salmon Falls River above and below the rapids.

27. Removal of the Somersworth Dam serves my deeply held recreational and aesthetic interests, and the dams remaining in place harms those interests and prevents me from using and enjoying the Salmon Falls River to its full extent. FERC's refusal to properly consider the alternative of dam removal after Aclara surrendered its license harms my interests because if FERC had properly

considered it and weighed the public interest, there is at least a chance that it might have ordered the dams removed. At a minimum, I would have felt like my interests in this river were not being ignored or overlooked. If the court were to order FERC to consider conditioning the approval of the dam license surrender plan on removal of the dams, it would go a long way toward redressing the harm to my interests that FERC's failure to consider removal has caused.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 29, 2024.

By: \_\_\_\_\_  
Skipper Morris