

Testimony of Michael Belliveau
Executive Director, Environmental Health Strategy Center
before the Joint Standing Committee on Environment and Natural Resources
regarding the nomination of Gerald D. Reid
for Commissioner of the Maine Department of Environmental Protection
30 January 2019

Good morning, Senator Carson, Representative Tucker, Ranking Member Campbell, and members of the Environment and Natural Resources Committee.

My name is Michael Belliveau and I live in Hudson, Maine. I am the founder and executive director of the Environmental Health Strategy Center, a public health organization that works to ensure that all people have access to safe food and water, and everyday products that are toxic-free and climate-friendly. We have offices in Bangor and Portland, and about 10,000 supporters in Maine. We work nationally with partners based in Washington, DC.

We support the nomination of Jerry Reid as Commissioner of the Maine Department of Environmental Protection (DEP). However, we remain very concerned about one policy he's advocated that has effectively denied environmental justice to Maine's tribal nations by opposing water quality standards necessary to restore sustenance fishing rights. We support the nominee, but not that policy, which we urge the Legislature to change.

Qualifications. Mr. Reid is highly qualified for this position. As an experienced environmental attorney, he has extensive working knowledge of many of the laws and regulations the DEP is responsible for implementing and enforcing. In his role in the Attorney General's office, he and his team represented and defended DEP in policy and legal matters. He has long-standing professional relationships with senior DEP staff, and management experience as Director of the Natural Resources Division in the AG's Office.

Character. In my limited direct experience, Mr. Reid has demonstrated professional integrity, honesty, and even-handedness. He's approachable and you can reason with him. He freely shares information and is a good listener. I've not participated in or observed Mr. Reid in an adversarial legal proceeding, so I can't comment directly on either his strength as an advocate on behalf of his client or his fairness in the treatment of his legal opponents.

Policies. With one exception, Mr. Reid has repeatedly defended and advanced enforcement of state and federal laws to protect Maine's environment and public health. He assisted us once in challenging the LePage Administration's abuse of discretion in implementing Maine's Kid Safe Products Act. We look forward to working with the new Administration to better protect Maine children's environmental health from toxic chemicals in products.

Our one policy disagreement stems from Mr. Reid representing Maine in litigation opposed to water quality standards necessary to restore sustenance fishing for Maine tribes.

Beginning fifteen years ago, as a result of government-to-government dialog between the U.S. Environmental Protection Agency (EPA) and Maine tribes over sustenance fishing rights, the federal agency stopped approving Maine water quality standards for Indian waters. Five years ago Maine sued the Obama EPA for inaction. EPA then rejected Maine's standards because they failed to adequately protect human health. (See attached Timeline).

After the State failed to take corrective action, the Obama EPA adopted water quality standards for Maine Indian waters that are nearly ten times more protective of human health for methylmercury in fish than the State's, for example. Many fish from Maine waters remain unhealthful to eat because of methylmercury, which harms brain development during pregnancy and childhood, and increases the risk of deadly heart disease.

The State of Maine has since petitioned the Trump EPA to overturn the more protective health standards for Maine tribal waters. The court has allowed EPA a year to reconsider. The federal water quality standards remain in effect while the litigation continues.

The State views this as a jurisdictional dispute over its ultimate authority to decide who to protect and what water quality standards to adopt. However, through its aggressive legal advocacy, Maine has effectively denied environmental justice to the Penobscot Nation and other Maine tribes, which never surrendered their sovereign right to fish for sustenance.

Reading the State's Motion for Judgment,¹ which has Mr. Reid's name on it, one is struck by the voracity of its attack on the history, culture, and self-governing status of Maine tribes:

"EPA wrongly claims that the right to take fish ... is a reserved aboriginal right "rooted in treaty guarantees that were upheld through the settlement acts."" (page 47)

"The new requirement that tribes comprise the "target" population of any fishing use in Indian Waters is also contrary to EPA's guidance recognizing the authority of states to define the populations that they choose to protect." (page 50)

"EPA may not require that Maine adopt any special rights, protections, or WQS (water quality standards) for members of the Maine Tribes or for Maine's Indian Waters based on uniquely tribal considerations." (page 60)

It's easy to understand how the State's relentless legal advocacy has been widely construed as environmentally unjust. Tribal people in Maine and elsewhere suffer from hundreds of

¹ ECF 118, *State of Maine v. McCarthy*, U.S. District Court of Maine, Case No 1:14-cv-00264

years of racism, poverty, ill health, and lack of access to resources. As a result of the combined effects of all these stressors, tribal people are more susceptible to the effects of the toxic pollutants in fish. And with greater cultural dependence on those resources for sustenance, the tribes face much higher health risks than the general population.

CONCLUSION

We urge this Committee and the Legislature to both support this nominee AND to change the policy that's in dispute. Although you can't directly resolve or settle a legal conflict, you can make state law. You are the policymakers for the State of Maine.

We need a new state policy that designates "sustenance fishing" as a beneficial use of Indian waters in Maine, and that requires adoption of health-protective water quality standards for mercury and other toxic pollutants based on historic fish consumption rates.

Thank you for your consideration. I'd be happy to answer any questions.

Enclosure:

TIMELINE of Legal Conflict over Water Quality Standards in Maine Indian Waters

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2004 – The U.S. Environmental Protection Agency (EPA) begins to withhold federal approval of Maine’s water quality standards for Indian waters.

July 2014 – The State of Maine sues EPA to force a federal decision on pending water quality standards for Indian waters.

February 2015 – The Obama Administration EPA disapproves Maine’s water quality standards for toxic pollutants. EPA determines that Maine’s human health criteria are based on fish consumption rates that are far too low to protect sustenance fishing.

October 2015 – The State of Maine amends its lawsuit against EPA arguing that the federal disapproval of water quality standards for Indian waters should be overturned.

April 2016 – EPA formally determines that sustenance fishing is a designated use of Indian waters in Maine and proposes new water quality standards including human health criteria to protect sustenance fishing based on much higher fish consumption rates.

December 2016 – After responding to public comment, EPA adopts the final water quality standards for Maine Indian waters, with only minor changes, which remain in effect today.

February 2017 – The State of Maine petitions the Trump Administration EPA to reconsider its disapproval of Maine’s water quality standards for Indian waters, delaying the litigation.

December 2017 – The Trump EPA initially decides *not* to reverse previous EPA disapprovals of Maine’s water quality standards for Indian waters.

February 2018 – Maine’s motion for judgment in the lawsuit argues that EPA wrongly acted and that the tribes have no sustenance fishing rights and have no special right to more protective water quality standards than anyone else in Maine.

July 2018 – The Trump EPA asks the court to remand the issue, because the agency now wants to reconsider its disapproval of Maine’s water quality standards for Indian waters.

December 2018 – The court remands back to EPA the reconsideration of its disapproval of state-adopted water quality standards, with the federally adopted standards remaining in place in the interim, and with litigation over the State’s legal claims delayed for one year.

December 2018 – The court also rules that the Penobscot Nation may proceed with a counter-claim to determine whether it has a statutory right to engage in sustenance fishing, which carries with it a right to water quality that ensures that there will be fish of sufficient quality and quantity to safely sustain the tribe. (Such right would require Maine to adopt water quality standards that protect sustenance fishing within Indian waters.)