

**EXHIBIT A**

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

PENOBSCOT NATION,	)	
	)	
	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 1:12-cv-00254-CZS
	)	
JANET T. MILLS,	)	
Attorney General for the State of Maine,	)	
<i>et al.</i> ,	)	
	)	
Defendants	)	

Defendants Janet T. Mills, Chandler Woodcock and Joel T. Wilkinson, by and through their undersigned attorneys, hereby amend their answer to the Plaintiff’s Second Amended Complaint as follows:

1. Paragraph 1 of the Second Amended Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 1 of the Second Amended Complaint includes factual allegations, they are denied.

2. Paragraph 2 of the Second Amended Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 2 of the Second Amended Complaint includes factual allegations, they are denied.

3. Paragraph 3 of the Second Amended Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 3 of the Second Amended Complaint includes factual allegations, they are denied. In addition, the August 8, 2012, opinion speaks for itself.

4. Deny.

5. Deny.

6. Deny.

7. Paragraph 7 of the Second Amended Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 7 of the Second Amended Complaint includes factual allegations, they are denied.

#### **PARTIES**

8. Admit the first sentence. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in second sentence of Paragraph 8 of the Second Amended Complaint, and therefore deny the same.

9. Admit.

10. Admit.

11. Admit.

12. Admit.

13. Admit.

#### **JURISDICTION**

14. Paragraph 14 of the Second Amended Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 14 of the Second Amended Complaint includes factual allegations, they are denied.

#### **VENUE**

15. Admit.

## **BACKGROUND**

16. Paragraph 16 of the Second Amended Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 16 of the Second Amended Complaint includes factual allegations, they are denied.

17. Paragraph 17 of the Second Amended Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 17 of the Second Amended Complaint includes factual allegations, they are denied.

18. Paragraph 18 of the Second Amended Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 18 of the Second Amended Complaint includes factual allegations, they are denied.

19. Paragraph 19 of the Second Amended Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 19 of the Second Amended Complaint includes factual allegations, they are denied.

20. Paragraph 20 of the Second Amended Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 20 of the Second Amended Complaint includes factual allegations, they are denied.

21. Paragraph 21 of the Second Amended Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 21 of the Second Amended Complaint includes factual allegations, they are denied.

22. Paragraph 22 of the Second Amended Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 22 of the Second Amended Complaint includes factual allegations, they are denied.

23. Paragraph 23 of the Second Amended Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 23 of the Second Amended Complaint includes factual allegations, they are denied.

24. Paragraph 24 of the Second Amended Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 24 of the Second Amended Complaint includes factual allegations, they are denied.

25. Paragraph 25 of the Second Amended Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 25 of the Second Amended Complaint includes factual allegations, they are denied.

26. Paragraph 26 of the Second Amended Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 26 of the Second Amended Complaint includes factual allegations, they are denied.

27. Paragraph 27 of the Second Amended Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 27 of the Second Amended Complaint includes factual allegations, they are denied.

28. Paragraph 28 of the Second Amended Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 28 of the Second Amended Complaint includes factual allegations, they are denied.

29. Deny.

30. Defendants are without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 30, and therefore deny.

31. Defendants are without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 31, and therefore deny.

32. Paragraph 32 of the Second Amended Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 32 of the Second Amended Complaint includes factual allegations, they are denied.

33. Paragraph 33 of the Second Amended Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 33 of the Second Amended Complaint includes factual allegations, they are denied.

34. Paragraph 34 of the Second Amended Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 34 of the Second Amended Complaint includes factual allegations, they are denied.

35. Paragraph 35 of the Second Amended Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 35 of the Second Amended Complaint includes factual allegations, they are denied.

36. Paragraph 36 of the Second Amended Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 36 of the Second Amended Complaint includes factual allegations, they are denied.

37. Paragraph 37 of the Second Amended Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 37 of the Second Amended Complaint includes factual allegations, they are denied.

38. Paragraph 38 of the Second Amended Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 38 of the Second Amended Complaint includes factual allegations, they are denied.

39. Paragraph 39 of the Second Amended Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 39 of the Second Amended Complaint includes factual allegations, they are denied.

40. Admit that a letter was sent by Attorney General Tierney dated February 16, 1988. The letter speaks for itself. Otherwise, defendants deny.

41. Paragraph 41 of the Second Amended Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 41 of the Second Amended Complaint includes factual allegations, they are denied.

42. Paragraph 42 of the Second Amended Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 42 of the Second Amended Complaint includes factual allegations, they are denied.

43. Admit that the opinion issued. Otherwise, Paragraph 43 of the Second Amended Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 43 of the Second Amended Complaint includes factual allegations, they are denied. In addition, the opinion speaks for itself.

44. Admit that the opinion issued. Otherwise, Paragraph 44 of the Second Amended Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 44 of the Second Amended Complaint includes factual allegations, they are denied. In addition, the opinion speaks for itself.

45. Admit that the opinion was sent to Chief Francis. Otherwise, Paragraph 45 of the Second Amended Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 45 of the Second Amended Complaint includes factual allegations, they are denied. In addition, the opinion and letter speak for themselves.

46. Admit that the letter was sent to Chief Francis. Otherwise, Paragraph 46 of the Second Amended Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 46 of the Second Amended Complaint includes factual allegations, they are denied. In addition, the letter speaks for itself.

47. Paragraph 47 of the Second Amended Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 47 of the Second Amended Complaint includes factual allegations, they are denied. In addition, the opinion speaks for itself.

48. Admit that Chief Francis responded to Attorney General Schneider. Otherwise, Paragraph 48 of the Second Amended Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 48 of the Second Amended Complaint includes factual allegations, they are denied. In addition, the letter speaks for itself.

49. Admit.

50. Admit that there has been no change in the interpretation of the law, and that the laws of the state will be enforced as appropriate. Otherwise, deny.

51. Admit that there has been no change in the interpretation of the law, and that the laws of the state will be enforced as appropriate. Otherwise, deny.

#### **REQUEST FOR RELIEF**

52. Defendants repeat and re-allege their responses to Paragraphs 1-51 of the Second Amended Complaint.

53. Paragraph 53(a)-(d) of the Second Amended Complaint contains claims legal conclusions not requiring a responsive pleading. To the extent that Paragraph 53(a)-(d) of the Second Amended Complaint includes factual allegations, they are denied.

54. Paragraph 54 contains legal conclusions not requiring a responsive pleading. To the extent a response is required, they are denied.

55. Paragraph 55 contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 55 of the Second Amended Complaint includes factual allegations, they are denied.

56. Deny.

57. Deny.

58. Deny.

59. Deny.

60. Paragraph 60 contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 60 of the Second Amended Complaint includes factual allegations, they are denied.

Prayer for Relief. Pages 15-17 of the Second Amended Complaint contain claims and requests for relief, to which a response is unnecessary. To the extent a response is required, Defendants deny the claims and that Plaintiff is entitled to the relief requested.

#### AFFIRMATIVE DEFENSES

First Affirmative Defense. Plaintiff's Second Amended Complaint should be dismissed for failure to join indispensable parties, in particular the riparian owners who own the bed of the Main Stem (1) at least to the thread of the River under Maine's common law, and (2) as a result of transfers confirmed by 25 U.S.C. § 1723(a)(1) & (b).

WHEREFORE, Defendants deny that Plaintiff is entitled to the relief requested, and demand judgment in its favor against Plaintiff, together with interest, costs and fees, and judgment for such other relief as is appropriate.



**COUNTERCLAIM FOR DECLARATORY RELIEF**

1. The terms of the settlement are set forth in the State Settlement Act, 14 M.R.S. §§ 6201, *et seq.*, and the Federal Indian Claims Settlement Act of 1980, 25 U.S.C. §§ 1721, *et seq.*
2. A primary concern of the State was jurisdiction and the uniform application of state law.
3. Of particular import is that the Federal Indian Claims Settlement Act of 1980 adopted and confirmed the State Settlement Act's jurisdictional provision:

The Passamaquoddy Tribe, the Penobscot Nation, and their members, and the land and natural resources owned by, or held in trust for the benefit of the tribe, nation, or their members, shall be subject to the jurisdiction of the State of Maine to the extent and in the manner provided in the Maine Implementing Act and that Act is hereby approved, ratified, and confirmed. 25 U.S.C. 1725(b)(1).

4. The key provision from the State legislation which was ratified by Congress is:

Except as otherwise provided in this Act, all Indians, Indian nations, and tribes and bands of Indians in the State and any lands or other natural resources owned by them, held in trust for them by the United States or by any other person or entity shall be subject to the laws of the State and to the civil and criminal jurisdiction of the courts of the State to the same extent as any other person or lands or other natural resources therein. 30 M.R.S. § 6204.

5. Regarding the Penobscot Nation, there are specific provisions dealing with such issues as fishing, hunting, law enforcement and the Penobscot tribal courts. 30 M.R.S. §§ 6206, 6207, 6209-B, & 6210.

6. Regarding hunting and fishing,

[The] Penobscot Nation ... shall have exclusive authority within [its] ... Indian territories to promulgate and enact ordinances regulating:

- A. Hunting, trapping or other taking of wildlife; and
- B. Taking of fish on any pond in which all the shoreline and all submerged lands are wholly within Indian territory and which is less than 10 acres in surface area.

Such ordinances shall be equally applicable, on a nondiscriminatory basis, to all persons regardless of whether such person is a member of the ... nation provided, however, ... such ordinances may include special provisions for the sustenance of

the individual members of ... the Penobscot Nation. In addition to the authority provided by this subsection, the Passamaquoddy Tribe and the Penobscot Nation, subject to the limitations of subsection 6, may exercise within their respective Indian territories all the rights incident to ownership of land under the laws of the State. 30 M.R.S. § 6207(1).

7. The Maine Indian Tribal-State Commission “shall have exclusive authority to promulgate fishing rules or regulations on:”

- A. Any pond other than those specified in subsection 1, paragraph B, 50% or more of the linear shoreline of which is within Indian territory;
- B. Any section of a river or stream both sides of which are within Indian territory; and
- C. Any section of a river or stream one side of which is within Indian territory for a continuous length of 1/2 mile or more. 30 M.R.S. § 6207(3).

8. “Notwithstanding any rule or regulation promulgated by the [Maine Indian Tribal-State Commission] or any other law of the State, the members of ... the Penobscot Nation may take fish, within the boundaries of [its] respective Indian reservation[] for their individual sustenance ....” 30 M.R.S. § 6207(4).

9. The Penobscot Indian Reservation does not include the waters or bed of the Penobscot River.

10. Neither the State of Maine nor any of its officials or employees, however, have prevented or attempted to prevent a member of the Penobscot Nation from taking fish from the waters of the Main Stem of the Penobscot River for individual sustenance.

11. The controversy here exists because the Penobscot Nation warden service has confronted non-members on the waters of the Main Stem of the Penobscot River and demanded or stated the Penobscot Nation will demand that non-members purchase or otherwise obtain Penobscot Nation permits for access to the Penobscot River, including for boating, fishing, hunting, trapping, and taking water and fish samples for government or government-permitted studies.

12. The Penobscot Nation has no jurisdiction or authority to demand permits from non-tribal members or the State of Maine for access to the Penobscot River.

13. In addition, upon information and belief, Plaintiff's game wardens have summonsed at least one non-tribal member to Penobscot Nation Tribal Court for failure to have a Penobscot tribal permit for hunting on the Main Stem. Summoning a nontribal member to Tribal Court is in contravention of the 1980 Settlement Acts. 30 M.R.S.A. §6209-B(1).

14. Finally, upon information and belief, the demand that non-tribal members purchase Penobscot Nation permits and pay for Penobscot Nation guide services violates 30 M.R.S. § 6206(1) as being discriminatory because tribal members do not pay for hunting or fishing permits nor pay for Penobscot Nation guides.

WHEREFORE, Defendants respectfully ask this Court to enter judgment in their favor and against the Penobscot Nation and its members and declare that:

The waters and bed of the main stem of the Penobscot River are not within the Penobscot Nation reservation;

Plaintiff Penobscot Nation has no authority or jurisdiction under the State and Federal Settlement Acts or any other law or provision to regulate access, boating, hunting and fishing by non-tribal members on the waters of the Main Stem of the Penobscot River;

Penobscot Nation members are subject to the authority and jurisdiction of the State of Maine when navigating, hunting, trapping or fishing on all of the waters of the Main Stem of the Penobscot River, other than when fishing within the Penobscot Nation reservation for sustenance purposes;

Plaintiff has no authority or jurisdiction to summons nontribal members to the Penobscot Nation Tribal Court for any reason, including failure to have permits for access to, boating, navigating, hunting, fishing and/or trapping on the Main Stem;

Plaintiff has no authority or jurisdiction to regulate sampling by employees or permittees of the State of Maine when they are engaging in sampling of water, fish or any living organism in the Main Stem;

Plaintiff Penobscot Nation has discriminated and will discriminate in violation of 30 M.R.S. § 6206(1) by demanding that non-tribal members purchase a Penobscot Nation permit and pay for a Penobscot nation guide while Penobscot Nation members do not pay for such a permit or guide; and

Together with interest, costs and fees, and judgment for such other relief, including injunctive, as is appropriate.

Dated: August 26, 2013

Respectfully submitted,

JANET T. MILLS  
Attorney General

/s/ Paul Stern  
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CERTIFICATE OF SERVICE

I hereby certify that on this, the 26<sup>th</sup> day of August, 2013, I electronically filed the above document with the Clerk of Court using the CM/ECF system which will send notification of this filing to all parties.

Dated: August 26, 2013

/s/ Paul Stern  
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