

Update on the Lake Anasagunticook Dam  
April 1, 2008

Obviously through this snowy winter there has been no physical progress made on repairing the dam. There seems to be a change, however, in the dam owner's resolve to meet the State's demands.

On March 11, 2008, Phyllis Gardiner, Assistant Attorney General handling the DEP and MEMA case against the dam owner, filed her official complaint with the Oxford County Superior Court and sent it to the Sheriff's Office for service on Mr. Fortier. Ray has 20 days from the date the complaint is served on him, in which to file an answer or other response in court. This deadline is April 14<sup>th</sup>. The AAG does not anticipate filing anything further on behalf of the State until after Mr. Fortier responds or the deadline passes. The full complaint, "State, DEP, MEMA v. Fortier", is posted on the lake association website [www.lakeanasagunticook.org](http://www.lakeanasagunticook.org) under Dam Updates. Clearly, there are only two options the State is offering Mr. Fortier: make the ordered repairs or abandon the dam.

A year ago purchase of the dam was not seriously considered because the price suggested by the dam owner was seen by many as being far from reasonable. Letting the MEMA dam safety orders and the subsequent actions by the Attorney General's office play out was the only course of action for us to support. Taking the property by eminent domain leaves too many uncertainties and has always been considered a means of last resort. Mr. Fortier has faced increased engineering costs and fewer options for doing the work himself. The State has carefully prepared their case against the dam owner and fines have accumulated.

The State's case against the dam owner could take some time to work its way through the courts and logically would result in abandonment of the dam. The abandonment process, as spelled out by the State law, also takes time. In the meantime, the dam is not repaired and the gates must remain open. Therefore, the Town of Canton is considering making a one-time offer to purchase all three of Ray Fortier's properties, which would include the dam. The purchase/sale agreement would also include the immediate sale of Mr. Fortier's flowage rights (the right to flood or dam waters upstream in Whitney Brook and the lake) to the Canton Water District upon the payment of earnest money, probably \$2,000. Mr. Fortier will probably want some assurance from the Town that the State's court action will go away. This matter, however, is between the State through the AG's office and Mr. Fortier to resolve. There are indications that the State would consider Mr. Fortier's signing and closing on the sale of his property to the Town as a positive step on his part.

The State will require a proposal from any new owner of the dam property detailing a plan to meet the current dam safety order requirements for a safe and permanent resolution of the dam situation. If these plans are deemed adequate, MEMA would issue a new dam safety order to the new owners, which would specify what must be done, set deadlines to be met and any other expectations the State has of the new owners. Knowing this, and if Mr. Fortier agrees to sell the property to Canton, the Core Group will use the 180 days being proposed for closing on to sale to prepare the required plan for MEMA.

There is an increased urgency for plans to stabilize summer water levels in Whitney Brook and Lake Anasagunticook. The dam owner holds the "flowage rights", the right to flood the lake and brook as regulated by the 1996 Water Level Management Plan, and these rights are needed to complete an application for a NRPA permit required to build a temporary dam. An applicant for a permit must also

own the property on which the structure is built or secure a lease or easement from the property owners to build such a structure and be able to access it. The applicant and owner of this temporary structure would be the Canton Water District and, as a quasi-municipal agency, would have limited liability on Maine laws. The engineering plans for a temporary dam determines the appropriate design for the location to ensure the safety of the structure and indicates the length of time the temporary structure can remain in place. The height of the proposed structure has a direct bearing on the hazard status and what approvals of the engineering plans are required. For this reason, the height of a temporary dam is being limited to four feet or less to eliminate the need for an engineering stamp and a licensed contractor which would be required by MEMA for a high hazard dam.

Three locations have been considered in the past and each has its limitations as follows:

**Mouth of the lake at the entrance to Whitney Brook** – Canton Water District has the flowage rights, secured with Mr. Fortier's signature, and property rights may be securable. However, the engineering plans would require driving sheet piling six to seven feet through the sand bar into bedrock and the equipment needed to do the job cannot access this location because of the soft and sandy shorelines. For this reason, this location is no longer being considered.

**Mid-way point where the brook is narrowest** – Flowage rights and property rights may be securable and engineering reviews indicate that a sand bag dam is possible because it "looks" like rock and gravel are on, or close to, a bedrock base in this area of the stream. This is the narrowest location and seems to incur the lowest costs to install. Closer consideration of property rights may dictate moving the exact location at the mid-way point a few feet downstream.

**Bridge abutments upstream of the current dam** – The property on both sides belongs to Mr. Fortier and the water district and the Turnbolls own property a bit further upstream of the abutments, which has also been considered. However, the dam owner was verbally adamant that he would not grant the flowage rights at this location. The engineering issues involved here include what appears to be three feet of muck and mud covering bedrock on the stream bottom. Sheet piling could be driven through it into bedrock below. If a sandbag dam were deemed possible, the soft layer covering the bedrock would first have to be removed. The costs of building at this location appear to be considerably more than that of the mid-way point.

Because of costs involved, the need to limit the height of a temporary structure to four feet and the urgency with which an application must be made if this temporary dam is to raise water levels for this summer, the Core Group is considering the mid-way point only. Those whose access is cut off to the lake by a temporary dam can and may raise objections, which would be considered by DEP when reviewing the application. Canton Selectmen and Canton Water District officials are preparing a legal document assuring Mill Pond Association members that this structure is temporary and a permanent dam will be constructed in no other place than on the dam property currently owned by Raymond Fortier. Because possession of flowage rights is required for a NRPA permit, Mr. Fortier must first sign the purchase/sale agreement selling these rights to the Canton Water District. An application is currently being prepared to expedite its submission to DEP if and when the purchase agreement is signed.

Negotiations are underway and an offer is expected soon by Canton to purchase Mr. Fortier's Canton properties. A short deadline will be given for the dam owner to respond to the offer. If a purchase/sale agreement is signed, other tasks will be initiated and we are prepared to move toward meeting goals that are rapidly becoming clearer. If Mr. Fortier refuses Canton's offer, we will be forced to let the State's case run its course, which would take months and possibly years, to gain possession of

the dam property if it is abandoned.

To acquire the dam properties, build a temporary dam and meet the State's requirements for a permanent dam, a yet undetermined amount of money needs to be raised. Canton voters appropriated \$22,000 at the March 15<sup>th</sup> town meeting "for the acquisition of the dam property in conjunction with other government entities or take any other action relative thereto." A petition is being circulated to place a similar article on Hartford's June 12<sup>th</sup> Town Meeting Warrant with a dollar amount to come from the floor at that meeting. The lake association has \$2,500 in a Dam Fund and the newly formed Mill Pond Association has an undisclosed amount of dam funds as well. A \$5,000 pledge has recently been received from a lakefront property owner in Canton. The one hundred eighty days, proposed for the closing on a purchase/sale agreement, would allow time for a Hartford vote to determine if and what amount would be appropriated, the lake association membership could approve contributing other funds, and solicitation of private donations and other fundraising schemes to occur.

With several proposals in process, I expect to be writing another update for the public in the near future. In the meantime, the Core Group is asking for a pledge of financial support from the public. These pledges made as a specified donation based on Mr. Fortier's signing of a purchase/sale agreement and the proposals described in this update, can be sent to me as Secretary of the Core Group and Treasurer of the Lake Anasagenticook Association. If and when Ray Fortier sells his Canton properties to the Town, the Core Group will have details worked out for collecting these pledges and other donations needed to move forward. At this point, we will be able to begin seeking grants and other funding. Offers from those with expertise needed to complete anyone of the proposals mentioned in this update would also be gratefully considered.

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