

**From:** Biff Atwater  
**Subject:** Notes from a COLA Bd. Meeting  
**Date:** July 17, 2007  
**To:** LAA Directors  
**Cc:** Dana Murch

Greetings,

Judy and I attended a COLA meeting last Thursday. Dana Murch, Dams and Hydropower Supervisor, State of Maine, DEP., was the guest moderator of a small panel regarding Maine Lakes that are dammed. It turned out to be a very interesting series of random discussions about all kinds of lake issues focused mostly on but not exclusively related to DEP and dam issues.

Comments specific to Lake Anasagunticook appear at the end.

There are approximately 750 dams in the state of Maine. 125 are federally regulated because they are for major hydropower or storage. The State plays a minimum role to make sure they meet standards for fish passage, boat ramp, water quality and loons.

625 dams are non-hydropower. There are no legal requirements that these dams be operated or maintained in any particular way. Property owners on the lakes do not own rights to the water. Since property owners do not "own the water" they are getting a free ride if they don't help pay to maintain the dam. Laws regarding lakes are designed to protect the status quo.

29 dams are under the supervision of the DEP where Water Level Management Plans are in effect because citizens around the lakes complained, requested a hearing, and it was determined that the dam was not being managed for the best of all concerned. Without complaint the dam owner is free to raise, lower, or maintain whatever water level the dam owner wants. The owner is also under no obligation to maintain the dam.

The laws concerning the right to build dams are based on MA law from approximately 300 years ago. The law is considered "settled" and gives the right to property owner who owns property on both sides of a river to build a dam. The property owners own land under the river to the center. A note of importance - everyone below the dam has reasonable rights to flowing water. Property owners who are affected by the dam may have a right to some compensation. (Nothing was mentioned about navigation rights)

Most of the dams in Maine were built for direct power at saw, grist, paper, weaving and then indirect to make electricity for the same or other mills. Dams are permitted to be closed at night and opened in the morning.

Maine industry was possible because it had waterpower and hemlock bark for tanning. When the demand for wood for ship building dams became important to "ship logs" to saw mills and then paper mills.

Dams are not managed the same way today as they were 20 years ago. In the past the owner was usually a mill and the water levels and flows were for the owners benefit. Now with the mills closing or closed, camp and homeowners are gaining more influence. Environmental issues may be considered.

Emerging issues:

1. Dam owners no longer benefit from owning dams. They have all the maintenance and liability costs while the people enjoying the water behind the dam gain all the benefits of recreation and property values. As dam owners default or abandon their property people are looking to the state to resolve the issues. The State has no money to maintain the dams it currently owns and there is no legislative to make changes.
2. Insurance Liability for dams is prohibitive. The State Legislature did give municipalities exemptions of liability so they can own dams.
3. Request for tax abatements. As more dams are told by MEMA to remain open, shoreline owners will request tax abatements. With less tax revenues coming in the mil rate will go up or services will go down.
4. Invasive plants are coming.

5. Alewives are part of the natural ecosystem in Maine and there is increasing pressure to introduce them into lakes where they have disappeared. Their benefits include cover for salmon fingerlings headed to the ocean, feed stock for larger game fish and as phosphate removers as they feed on small critters that feed on the phosphate using plants thus absorbing the phosphate and carrying out to sea.

#### NOW THE INTERESTING PART

Prior to the meeting Judy and I had the opportunity to visit with Dana and talk specifically about our lake situation.

He indicated that permits were being applied for this week (approx. July 18th) and if complete, are subject to a no less than 20 calendar day period for approval and public comment. The waiting period could be longer.

Further, he indicated that a question of flowage or flood rights had come up from another issue he was working to resolve (not concerning our lake). Flood or was it flow, rights go with the dam. These give the owner of the dam the right to flood property if so desired. The owner can also lower water to any level possible without permission. Property owners flooded or left dry can complain to the DEP and after a hearing a Water Level Management may be issued restricting the dam owner to certain guidelines as is the case with Lake Anasagunticook.

Property owners on whose property a temporary dam is built may not have or gain flood rights. Those rights might stay with the permanent dam owner. The DEP is researching the dilemma and will make a determination.

Property owners behind the dam do not have a right to the water or a specific water level.

Current law, because it favors dam owners, allows a dam owner to abandon his dam even if swamps or bogs on the lake go dry when the dam is left open. Because of the single focus of purpose in legislation, it is illegal to fill a wetland but not illegal to have one go dry.

MEMA took over the dam because of a safety issue. If the AG pursues the case against the owner, it may be that the Judge decides what will happen to the dam.

One other item of note. According to Dana, municipalities can create their own water level management plans that can supersede DEP if they own the dam. FERC (hydro-power dams) are exempt.

Submitted and with the hopes that this is mostly accurate by  
Biff Atwater