

# MAINE STATE LEGISLATURE

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March 27, 1945

To Lewis E. Parlin, District Conservationist, Department of Agriculture, Orono  
Subject: Irrigation - Using Water from Streams

I have received a letter from Lucius D. Barrows, Chief Engineer of the State Highway Commission enclosing a memo from your office, dated March 14, 1945, requesting legal advice about using water from streams, especially for irrigation purposes.

I will state that the provisions for regulation of mills or dams, and right of flowage, are contained in Chapter 166, R. S. 1944. About the only thing relating to irrigation is Section 35 of that chapter, which provides:

"When dams are erected and maintained on streams not navigable, for the purposes of cranberry culture, and lands are flowed thereby and injured by such flowage, the owners thereof shall proceed for the recovery of damages for such flowage in the same manner as in case of flowage by dams erected and maintained for mill purposes."

You will note that most of the provisions of Chapter 166 of the Revised Statutes relate to users of water power for mills and reservoirs. Apparently, under this chapter, the owners would have an action for damage if there was any injury caused by the development of farm ponds as sources of water for irrigation systems, as we seem to lack legislation in Maine on this subject.

You state in your memo to the Highway Commission that in your work on individual farms you are often confronted with the problem of disposing of the water from diversions or terrace systems constructed on tilled land, and that it often happens that the only logical outlet for such systems is a road ditch along the main highway; and you ask for the law on this subject.

Section 156 of Chapter 84, R. S. 1944, provides that no ditch or drain shall pass under or within 20 feet of any dwelling-house without the consent of the owner thereof. "Such ditches or drains shall be under the control of the municipal officers and wilful interference therewith shall be punished as is provided by statute for obstruction in a traveled road." A reading of Section 156 will give you some idea of the law on highway ditches and drains; but when it comes to irrigation purposes, that is another matter, which is not covered by statute.

Ralph W. Farris  
Attorney General

RWF:c  
cc: Lucius D. Barrows, Chief Engineer SHC