

# MAINE STATE LEGISLATURE

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No

December 3, 1953

To Roland H. Cobb, Commissioner, Inland Fisheries and Game  
Re: Bartlett Brook Fishway

This is in response to your question: "Do we have any authority to require the people who put in the dam (between Rattlesnake Pond and Bartlett Brook) to open it up so that a trout fishery may be maintained in Bartlett Brook?"

Bartlett Brook is a small brook running between Rattlesnake Pond and Crescent Lake in Cumberland County. On August 4th of this year a bulldozer threw up an earth dam at Rattlesnake Pond, shutting off the flow of water from the lake.

Helen A. Lengyel owns property in East Raymond and used the water from Bartlett Brook for various purposes. The shutting off of the flow of water from the lake has resulted, according to her, in considerable damage to her. She has asked your department if you or any of our State agencies can assist her in this matter.

You state in your memo that it is the opinion of your biologist that Rattlesnake Pond is a warm-water pond, so that you would not be justified in requiring a fishway, and you have therefore asked the above quoted question, if the dam could be opened up so that a trout fishery might be maintained in the brook.

We answer your question in the negative. A trout brook is a brook from four to six feet wide, and even at flood stage Bartlett Brook is not a navigable stream. Owners on either side of it have title to the thread of the brook. The brook is therefore privately owned in every respect. At present the land is even posted.

Where a stream or brook is entirely privately owned, fishing rights in such stream are exclusive to the owner. The State has no jurisdiction to require that such private property be made into a public fishery.

We are returning herewith the papers attached to your memo.

James Glynn Frost  
Deputy Attorney General

jgf/c