

MAINE STATE LEGISLATURE

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February 28, 1961

Governor John H. Reed
James G. Frost, Deputy

Executive
Attorney General

Proposed Flood Control Project - Narraguagus River

This is in response to your request that we give you our comments on the letter of Karl F. Eklund, Colonel, Corps of Engineers, dated 21 February 1961, re the flood control project proposed for the Narraguagus River in Cherryfield, Maine. The plans call for construction of a dam and reservoir for retention of ice.

The Army Engineers question the application of Chapter 141, Section 16, Revised Statutes of 1954, to the project. In essence, the said section of law provides that, with an exception relating to dams created solely for log driving purposes (a purpose not related to the instant problem) whoever erects a dam on any of the public waters of this State shall, within three years after a head of water is held and flowage created thereby, remove from the flowed area all trees, bushes and stumps to a certain specified height.

In our opinion, the statute applies to the proposed project and within the time limit mentioned, three years after a head of water is held, the obstacles would have to be removed. The fact that the dam is to be built at a site previously used as a dam built for log driving purposes would not, in our opinion, bring it within the exception.

We would note that if the old stumps and trees have a beneficial effect, then perhaps our statute should be amended to include an exception from removing such trees and stumps in cases of dams built for flood control purposes.

If the present plans are carried to completion, the statutory three-year period provides ample time for the legislature to enact a proper amendment whereby it would not be necessary to remove such matter from the flowed area in cases of dams built for flood control purposes.

James Glynn Frost
Deputy Attorney General

JGF:H