

MAINE STATE LEGISLATURE

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November 14, 1972

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Quality Control
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Environmental Protection
Attorney General

Artificially Enlarged Great Ponds

SYLLABUS:

When great ponds, as defined in Title 38 M.R.S.A. § 422 (the "Great Ponds Act") have been dammed up or otherwise artificially increased in size, the Board of Environmental Protection has jurisdiction under the Great Ponds Act over the area of increase, or newly flowed areas, notwithstanding the fact that the State may not own, in fee simple, the beds of the areas of increase.

FACTS:

Great ponds are defined, in the Great Ponds Act, to include any inland body of water which in its natural state has a surface area in excess of 10 acres and any body of water artificially formed or increased which has a surface area in excess of 30 acres, the shore of which is owned by 2 or more persons, firms, corporations or other legal entities. The question has been raised as to whether or not the Great Ponds Act gives jurisdiction to the Department of Environmental Protection to regulate the deposit of fill or the erection and maintenance of causeways, bridges, marinas, wharves, docks and other permanent structures in, on, over or abutting (or the dredging or removal of materials from) those areas of great ponds, as defined in the Great Ponds Act, resulting from a dam or other artificial increase in the surface area of the great pond.

QUESTION:

When a great pond, as defined in the Great Ponds Act is increased in surface area by a dam, does the area of increase (the newly flowed area) fall within the jurisdiction of the Board of Environmental Statute under the Great Ponds Act?

ANSWER:

Yes.

REASONING:

While the State owns the beds of naturally occurring great ponds, it seems clear that ownership of the beds of those bodies of water falling within the definition of "great pond" set forth in the Great Ponds Act, is irrelevant for purposes of determining the extent of jurisdiction of the State under the Great Ponds Act. Instead of the regulation of lands owned in fee simple by the State, the Great Ponds Act is an exercise of the police power of the State for the purpose

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of protecting the public's health, safety and general welfare, and, like the Site Location of Development Act (Title 38 M.R.S.A. §§ 481, et seq) and the Wetlands Control Act (Title 12 M.R.S.A. § 4701, et seq) is in the nature of zoning. This conclusion seems particularly compelling because, as reflected in the examples noted in your inquiry, the environmental harm which the Great Ponds Act seeks to prevent and the criteria set forth in the act for the issuance of a permit logically apply to an entire lake, including areas flowed by an artificial increase in the surface area of the lake, and are not limited to that portion of the lake falling within its original or natural boundaries.

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