

MAINE STATE LEGISLATURE

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November 6, 1973

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Director
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Soil and Water Conservation Comm
Attorney General

Water Level to be Maintained in Androscoggin Lake

This is in response to your October 10, 1973, memo inquiring whether two laws affecting the Androscoggin Lake Dam are in conflict, and if so, which one prevails. The law which authorized the construction of the dam, Chap. 127, P. & S. Laws of 1931, states that the dam was to be constructed so as to prevent ingress of the Androscoggin River waters into the Lake, but it "shall not prevent the normal egress of the waters of Androscoggin Lake into the Androscoggin River," nor was it to cause flooding of the lands around the Dead River and Androscoggin Lake. The other law, Chap. 114, P. & S. Laws of 1973, provides for operation, maintenance and repair of the dam and states that the dam is to be maintained and operated to provide an optimum water level of Androscoggin Lake so as to provide for the protection of property, water quality, flood control, and wildlife."

The original purpose of the dam was to prevent the occasionally higher river waters from intruding into and polluting the Lake (see 1931 Act, and Statement of Fact in L.D. 806, 1971). It was to be only a one-way dam. The 1973 law, from Chap. 130, P. & S. Laws of 1971, allows for an "optimum water level" on the Lake. Optimum means the best under the circumstances and this suggests that the dam is to be operated in a two-way fashion: (1) by using the dam to keep river water out of the Lake when the river is higher than the Lake, and (2) by using the dam to maintain an optimum water level when the Lake is higher than the river. Operation of the dam per number one would be consistent with the original 1931 law, but the second manner of operation would not be consistent with the 1931 Act since it would prevent the normal egress of lake waters into the river.

To the extent your agency is capable of operating the dam in a two-way fashion to provide an optimum water level for the Lake, it is your duty to do so. This may, at times, mean blocking the "normal egress," and therefore be contrary to the 1931 law, but the older law (1931) is repealed by implication to the extent it conflicts with the newer law (1973) State v. Taplin, 247 A.2d 919.

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NOT A FORMAL OPINION