

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date October 22, 1975

To Michael Barrett
Maynard Marsh

LURC
Dept. Inland Fisheries and Wildlife

From Sarah Redfield, Assistant SR

Dept. Attorney General

Subject Flagstaff Lake

This is in response to your request for an opinion as to whether Flagstaff Lake is a great pond. It is clear from the deeds, maps, and other documents which you have provided that Flagstaff Lake is a great pond pursuant to Title 38 M.R.S.A. §422.

"Great pond" is defined as including "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 two or more persons, firms, corporations or other legal entities."

It appears that the statute contemplates State regulatory control over two classes of ponds: (1) ponds which have a surface area in excess of ten acres in their natural state; (2) ponds which have a surface area less than ten acres in their natural state which are artificially increased to a surface area greater than thirty acres where the shore is owned by more than one person.

In its natural state, Flagstaff Lake had a surface area in excess of ten acres and, accordingly, is a "great pond" pursuant to the statutory definition. The fact that the natural area of the pond has been artificially increased does not remove it from this great pond classification; the deciding aspect of the statutory definition is a ten acre size in its natural state, regardless of subsequent enlargement.

Even assuming for the sake of argument that Flagstaff Lake, as it currently exists, did not fall within the first class of great ponds, it would satisfy the statutory criteria for the second. It is an artificially increased lake which has a surface area in excess of 30 acres, the shore of which is owned by two or more persons, corporations, or legal entities including the following:

- 1) The owner of the majority of Flagstaff Lake is Central Maine Power Company which claims title to all of the lake bottom and shore up to the 1150 foot contour line.
- 2) It appears that the State of Maine also owns part of the shore of Flagstaff Lake; see location of public lot on the General Map of Long Falls Storage, Central Maine Power Co., #238-130, July 20, 1947, a copy of which is attached.

- 3) Mr. David Guernsey, who is applying to the Land Use Regulation Commission for a permit to construct a road across the lake bottom, is the owner of a parcel of land on an island in Flagstaff Lake. Besides owning shore frontage on this island, Mr. Guernsey has an easement to "pass and repass on foot and with teams, log haulers, or other means of conveyance, for the purpose of transporting logs, lumber or pulp wood along and across land of the Grantor (CMP) lying between the premisses herein conveyed and Flagstaff Lake, so-called. . . ." see letter from Charles E. Monty, Vice President of Central Maine Power to David Guernsey, April 25, 1975; also, deed from Flagstaff Corporation to David Guernsey, recorded in the Somerset County Registry of Deeds, Book 851, Page 700, copies of which are attached.

Guernsey's interest in the shore and bottom of the lake, even though he holds this right in common with Central Maine Power, makes it clear that this situation is covered by the definition of "great pond". That definition is intended to exclude from regulation those persons who have complete ownership or control of an artificial pond. Where these rights are not held by a single entity, the purpose of the exclusion is no longer applicable.

cc: Bureau of Public Lands

enc.

SR/cmb