Submerged Lands/ Ownership of Logs
Logs on River Bottoms: Ownership
38 MRSA §971 et seq.

JOSEPH E. BRENNAN
ATTORNEY GENERAL

RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

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Mr. Lee M. Schepps, Director
Bureau of Public Lands
Department of Conservation

Mr. Kenneth Stratton, Director
Land Use Regulation Commission

Re: Sunken Logs

Dear Sirs:

You have requested an opinion on two questions. First, does the Bureau of Public Lands (BPL), as owner of submerged land on which there are sunken logs, have, or may it acquire, any proprietary interest in logs lying upon publicly owned submerged lands? Second, may the Land Use Regulation Commission (LURC) issue a permit to dredge submerged lands for logs solely on the basis of an applicant's intent to dredge when he has no rights in the submerged land?

Pursuant to statute, an owner of submerged land may obtain ownership of logs deposited thereon, provided that reasonable notice is given to the original owner of the logs to allow him an opportunity to claim said logs.

LURC may not issue a permit to dredge for logs without proof of the applicant's right, title and interest in the submerged land to be dredged. As part of the information included in a LURC application, a lease or other grant of right of the owner of the submerged land must be included with the application. The applicant need not, however, show any interest in the logs themselves.

We understand the facts are as follows. There are large numbers of logs (for the purpose of this opinion, "logs" shall mean logs, timber and lumber) on the beds of rivers, ponds and lakes of the State. A party has requested BPL and LURC to notify it of State permits, leases and licenses that are necessary prior to commencement of dredging for these logs in various ponds, lakes, and rivers. BPL, in turn, asks to what extent it, as an owner in places of lake or river bottom, may assert ownership of the logs. LURC asks what must an applicant to dredge for logs show in the way of right, title and

interest in the submerged land on which he proposes to dredge before it may act on his application.

For the purpose of this opinion, it will be assumed that there is no unwritten, established practice, as evidenced by long experience and general acceptance in the community, which would regulate the disposition of such logs. If it is shown otherwise, the legal principles discussed below may require modification.

In regards to the first question, Maine adopted a comprehensive scheme regulating floating logs in 1831, 2 Public Laws of Maine, 1822-1831, ch. 521 (1831). Today, these laws, found in Title 38, Chapter 7, Sections 971-979, regulate, among other things, conversion of logs, forfeiture of logs on adjoining lands, and rights of the owner to search for logs at mills. 1/ More significantly, Section 976 provides a procedure to determine who owns abandoned logs as between the original owner and the owner of riparian land on which they may lie.

> "Logs or other timber carried by freshets or otherwise lodged upon lands adjoining any waters are forfeited to the owner or occupant thereof, after they have so remained for 2 years, if such lands during that time were improved; otherwise after 6 years; provided such owner or occupant, within one year after the same were found so lodged, advertises, as nearly as practicable, the number of pieces of timber, the time when lodged, together with the marks thereon and the place where found, 3 weeks successively in some newspaper in the county, if any, otherwise in the state paper."38 M.R.S.A. §976

1/ The Legislature has also enacted Private and Special Laws specifying the rights of log driving companies. For instance, Section 4 of the Act to Incorporate the Kennebec Log Driving Co., 2 Special Laws of Maine, ch. 590 (1835) provides that any stray logs found on the Kennebec shall be the property of the company and shall be sold by it, with the proceeds of the sale, less the expenses of driving and sale, to be returned to the original owner upon request. It seems clear, however, that provisions such as this were not intended to address the question of the rights of riparian owners, which are dealt with in the 1831 Public Law, but were rather aimed at adjusting the rights of various persons driving logs. Section 4 of the 1835 Special Law, for example, provides that violations of its terms shall be punishable under the section of the 1831 Public Law (now 38 M.R.S.A. §971) which deals with conversion. Since riparian owners pursuing their rights under Section 976 of that Act would not be subject to Section 971, their rights cannot, therefore, be affected by Section 4 of the 1835 Special Act.

The principal difficulty with applying this statute to present day fact situations is whether logs on the bottom of a river or lake should be considered "lodged upon lands adjoining any waters." In construing this language, consideration should be given to the purpose of the Act.

> "The purpose of this statute was to give those using the waters of the state to float the wood products of our forests, suited for manufacture, to market, equal rights and a convenient remedy under circumstances and conditions, where the common law was inadequate, ... [The statute] is remedial and must be most liberally construed when necessary to work out the purpose of the legislation." Bearce v. Dudley, 88 Me. 410, 417, 34 A. 260 (1896).

An example of such broad construction may be found in State v. Adams, 16 Me. 67 (1839), a larceny prosecution pursuant to the predecessor of Sections 971 and 972. There, the Law Court, in dictum, stated that if logs had been found in the "ordinary bed of the river, at a point from which the water receded, at a dry season of the year, or had been lodged on a rock or islet of the river, we should have regarded it as a case within the statute [the predecessor of Section 971]" 16 Me. at 68. Section 971 provides that a finder is a converter if he removes logs "lying in any river, pond, bay, stream or inlet." (Emphasis added). If the Court, in a criminal case, felt that logs lying on land from which water had receded were "in" the river, it may be assumed that it would find the converse true in a civil action: that logs lying on the bottom of a lake or river should be considered as lying on land "adjoining" the water, in view of the purpose of the statute.

We conclude, therefore, that the procedures of Section 976 should be followed in resolving the question of ownership of sunken

logs. 2/ This conclusion means that a third person (that is, one who is neither an original owner nor an owner of submerged land) has no interest in any sunken logs and must, therefore, secure the permission of whoever does own such logs under the statute before taking them. This result is probably consistent with the common law, since a trespasser who finds abandoned property cast upon riparian land may have no right as against the riparian owner to appropriate such property to his own use. Rogers v. Judd, 5 Vt. 223, 26 Am. Dec. 299 (1833); Mitchell v. Oklahoma Cotton Growers Ass'n, 235 P. 597, 108 Okla. 200 (1925); see 41 ALR 1051.

2/ This result is consistent with the common law, where the original owner had a reasonable time to claim property found on the land or sea, usually a year and a day. Constable's Case, 5 Coke 106a 77 Eng. Reprint 218 (1807); Dunwich v. Sterry, 1 B. & Ad. 831, 109 Eng. Reprint 995 (1831).

In reaching this conclusion, we have considered whether the law of admiralty might apply. We conclude that it does not. While the logs may be found within navigable waters, Admiralty does not have jurisdiction because stray logs are not vessels, and vessels are the subject matter of the law of admiralty. See Cope v. Vallette Dry-Dock Co., 119 U.S. 625, (1887). A review of salvage cases does not uncover any cases involving stray logs. The only cases which discuss logs are those involving rafts of logs, and there the results are ambiguous. In Fifty Thousand Feet of Timber, 9 Fed. Cas. 47 (D.Mass. 1871), an admiralty court did apply admiralty principles to a "raft" of logs in Boston Harbor, but in Tome v. Four Cribs of Lumber, 24 Fed. Cas. 18 (Cir. Ct. D. Md. 1853), another court held that one who saved a raft of logs on the Susquehanna River had rights only as a "finder" under the common law. See Cope v. Vallette Dry-Dock Co., supra.

Beyond this, even if a federal court did somehow find it had the jurisdiction over ownership claims in such logs, it might well apply state law (Title 38, M.R.S.A., Chapter 7, in this case), to resolve the question. This would be so because the Maine statute does not conflict with any federal law on the point and the question of ownership rights in logs is not one which requires national uniformity. Wilburn Board Co. v. Fireman Fund Ins. Co., 348 U.S. 310, (1955); Askew v. American Waterways Operators, Inc., 411 U.S. 325 (1973). But see Kossick v. United Fruit Co., 365 U. S. 731, (1961). See generally, Gilmore & Black, Law of Admiralty, §1-17 (1975).

Beyond this conclusion, two practical difficulties remain in applying the statute. First, how can a landowner determine how long a particular log has remained lodged? Section 976 provides that a landowner may only assert a claim to logs if they have remained lodged for a period of up to six years. Determining how long a log has remained lodged may be an impossible task since all logs may have a homogenious appearance. J. A. Bel Lumber Co. v. Stout, 134 La. 987, 64 S. 881 (1914). We would advise that in view of the fact that logs have been floated and sunk in the State of Maine for well over a hundred and fifty years, a landowner may reasonably assume logs have lodged the requisite period. 3/ Second, how detailed must the landowner's advertisement of claim of ownership be? The statute provides that once logs are found, the information listed in the statute must be included in the advertisement, "as nearly as practicable." We would suggest that only a good faith effort to provide this information is necessary. It is not necessary to inventory each log. Rather, the purpose of notice should be served simply by identifying the location of the logs claimed to be forfeited.

We should also add that in making a determination whether to claim certain logs, BPL should consider the consequences which may follow an assertion of ownership. For instance, if the logs present a pollution or other hazard, BPL could conceivably become liable for compliance with the applicable law.

Finally, with regard to logs lying on land owned by the Bureau of Public Lands, if a party seeks to dredge for such logs and BPL does not want to claim them, the Bureau may, provided it acts in accordance with the principles of multiple use, issue a lease, which is expressly limited to whatever rights BPL has in the submerged land itself. Since it has not claimed the logs, it should not grant the right to remove them but only the right to dredge on State lands. The lessee would, in that instance, take the logs subject to the original owner's rights. It should be noted that if BPL does not claim the logs, it should not consider the value of the logs in computing the lease rental, since otherwise

3/ For instance, long logs have not been floated down the Kennebec River since 1939. United States v. Kennebec Log Driving Co., 356 F. Supp. 344, , 346 n.3 (D. Me. 1973), rev'd on other grounds 491 F. 2d 562, cert den. 417 U.S. 910 remand 399 F. Supp. 754.

it would derive the benefits of ownership without meeting the notice requirements of Title 38, Chapter 7.

In regard to the second question, no person shall commence the operation of any development within LURC's jurisdiction without a permit from LURC. 12 M.R.S.A. §685-B(1)(C). An individual applying for a permit to develop must have right, title or interest in the land to be developed. Walsh v. City of Brewer, 315 A. 2d 200 (Me. 1974). 4/

An application to dredge must therefore include information showing the applicant has right, title or interest in the land to be dredged. If the land is under a pond or lake (other than a natural great pond) or non-tidal portion of a river, the riparian owner must give the applicant sufficient rights in the land to enable LURC to grant the applicant a permit. When the State is the owner of the submerged land involved, the applicant must obtain a lease or similar right from BPL. The applicant need not, however, show any interest in the logs themselves, and the existence of any dispute between him and the original owner as to ownership would not prevent his obtaining a dredging permit from LURC.

Sincerely,

Joseph E. Brennan

JOSEPH E. BRENNAN
Attorney General

JEB/bls

4/ Where the dredging operation requires a change in district boundaries under the LURC statute, the applicant must be an owner or lessee of the land involved, rather than merely a party possessing right, title or interest therein. 12 M.R.S.A. § 658-A(8).