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Land and Water Resources Council 1984 Annual Report



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STATE OF MAINE
AUGUSTA, MAINE

STATE OF MAINE
EXECUTIVE DEPARTMENT
STATE PLANNING OFFICE

JOSEPH E. BRENNAN
GOVERNOR

RICHARD E. BARRINGER
DIRECTOR

October 1, 1985

The Honorable Joseph E. Brennan
Governor, State of Maine
State House
Augusta, Maine 04333

Dear Governor Brennan:

I am pleased to transmit to you the 1984 Annual Report of the Maine Land and Water Resources Council.

During 1984, the Council was the forum for consideration of several important natural resource issues requiring interagency coordination. Most notably, it responded to your directive to review the State's ground water activities and make recommendations for further steps to protect this vital State resource. The work of the Council's Ground Water Policy Committee, building on the foundation of the earlier Ground Water Protection Commission, served to maintain ground water as a high priority within your Administration. The Policy Committee's Final Report of Recommendations, issued in January of 1985, outlines a comprehensive program for protecting and managing Maine's ground water resources.

The Council's Executive Secretary, Mark Sullivan, proved an able, effective, and diplomatic leader in all of the Council's policy development and coordination tasks. His excellent communication skills have been a tremendous asset to the Land and Water Resources Council, assuring its continuance as a focal point for consideration of complex natural resources issues.

The Council is proud of its accomplishments in your service, and ready to assist you in matters of concern to you, this State, its people, and their natural resources.

Sincerely,

Handwritten signature of Richard E. Barringer in black ink.
Richard E. Barringer, Chairman
Land & Water Resources Council

REB:nv

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HIGHLIGHTS OF 1984 ACTIVITIES

Maine's ground water resources, their effective protection and management, were the focus of renewed scrutiny by the Land and Water Resources Council during 1984.

At Governor Joseph E. Brennan's direction, the Council conducted a thorough review of State ground water policies, programs, and technical information. The Council's report, completed in January 1985, recommended additional legislative, budgetary and administrative actions to assure continuing ground water quality and availability, to protect public health, and to improve the efficiency of government ground water-related programs.

In response to an Executive Order issued by Governor Brennan in October 1984, the Council further established a Standing Committee for coastal zone management affairs. This Coastal Advisory Committee will enhance the coordination of State coastal laws and programs, advise the Governor and the Legislature on Maine coastal policy, and serve as a high-level forum for the discussion of coastal issues.

During 1984, the Council also oversaw the further implementation of the Maine Rivers Policy, sought improvements to the State's involvement in federal hydropower proceedings, and pursued initiatives to strengthen the State's role in federal

rivers decision-making. In addition, the Council Executive Secretary, with assistance from members' staff, worked with the U.S. Army Corps of Engineers to begin the first phase of a basin-wide water flow assessment of the Kennebec River watershed.

The following three sections describe, in greater detail, the Council's activities during 1984 in its three major fields of endeavor: policy formulation, resource management system development, and high priority problem response. The last section describes the creation and organization of the Council.

I. POLICY FORMULATION

Background

Governor Joseph E. Brennan has written that "clearly, the future health and security of Maine's people and the continued vitality of our economy depend greatly upon abundant, clean ground water."

Ground water supplies the drinking water for more than half of Maine's people and is virtually the only source available to the State's rural residents. Since the late 1970s, Maine has made tremendous strides in identifying and responding to ground water pollution problems, eliminating threats to public health from ground water contamination, and gaining a better understanding of the character of the State's vast ground water resource.

In 1979, a Land and Water Resources Council report on the status of the State's ground water management activities led to the Legislature's creation of a special Ground Water Protection Commission in 1980. That Commission's recommendations resulted in significant legislative actions during 1981, to restrict potentially damaging activities from occurring in close proximity to sensitive ground water supplies. The Ground Water Protection Commission also recommended an expanded State effort to identify important ground water sources through an ambitious Maine Geological Survey (MGS) program to map sand and gravel aquifers statewide.

Ensuing activities provided State agencies with a greater understanding of contamination effects, both on ground water quality and on human health. The new information provided by the MGS mapping program increased knowledge not only of the location of valuable ground water supplies, but also of the interrelationship among ground water, surface waters, and the natural and human influences upon them.

These efforts also heightened government and public awareness of threats to of Maine's ground water resource. The MGS estimates that about ten percent of Maine's ground water may already be contaminated in some degree. Leaking underground storage tanks, buried wastes, pesticides, road salt, and other contaminants threaten to degrade more of the resource. In some areas, especially along the coast, increased usage, combined with natural phenomena like saltwater intrusion, have given rise to ownership conflicts over local ground water supplies.

Ground Water Policy Committee

These new concerns led Governor Brennan to ask the Land and Water Resources Council to conduct a thorough review of the State's various ground water protection and management activities. In December 1983, the Governor directed the Council to assess progress toward full implementation of the Ground Water Protection Commission's recommendations. He further requested recommendations for additional measures needed to assure continued ground water quality and availability, to protect public health, and to improve the efficiency and cost-effectiveness of government's role in ground water protection and management.

The Council created a special Policy Committee, under the chairmanship of Department of Environmental Protection Commissioner Henry Warren, to conduct the necessary investigations and to report findings and recommendations to the full Council. The Council also invited representatives from a variety of interest groups to participate on an Advisory Committee to this review process.

With staff support from the State Planning Office and the Departments of Conservation, Environmental Protection, and Human Services, these Committees conducted an exhaustive examination of available scientific information and related policies, programs, and resources of the federal, State, and local governments. This work resulted in extensive background reports and a final report of recommendations to the Council in January 1985. In February, the Council transmitted this report to the Governor.

Committee Findings and Recommendations

In brief, the Committee found that the agencies assigned responsibility for ground water protection are fulfilling their objectives, and generally doing their jobs well. The Committee reported that the recommendations of the Ground Water Protection Commission have, for the most part, been fully implemented.

The one area where the Commission's goals have not been reached, due largely to budget and manpower constraints, is the swift completion of the MGS sand and gravel aquifer mapping program. The Committee reaffirmed the importance of this program; urged additional manpower resources to effect its timely

conclusion; and recommended specific new programs to map Maine's bedrock aquifers, to expand the State's capacity to monitor trends in ground water quality, and to study the effects of agricultural chemicals and practices on ground water sources.

The Committee expressed its concern that the many State ground water programs, dispersed under separate statutory authorities among several agencies, suffer from a lack of clearly stated goals and objectives. The Committee found that this absence of guidance impedes the State from assuring that program staff, resources, and regulatory activities are targeted toward the highest priority needs. The Committee recommended that the Governor issue an Executive Order with a clear, comprehensive statement of ground water policy that will direct and coordinate all State agency programs. The Committee further recommended that the Council establish a Standing Ground Water Committee to oversee implementation of this policy.

Finally, the Committee made specific recommendations for new legislation and increased funding and manpower within individual agencies to improve ground water programs and identified several research and policy development initiatives for assignment to the Standing Committee. These include development of a pilot project as a model for a statewide ground water classification and land use control system and review of current and foreseeable use trends to determine the need for a State ground water supply and allocation policy.

II. RESOURCE MANAGEMENT SYSTEM DEVELOPMENT

Coastal Advisory Committee

By Executive Order of June 12, 1984, Governor Joseph E. Brennan established a Coastal Advisory Committee as a Standing Committee of the Land and Water Resources Council. The Committee, staffed by the Maine Coastal Program Manager, is to provide interagency and intergovernmental coordination for the Maine Coastal Program, and, acting through the Council, to advise the Governor, the Legislature and State agencies on sound coastal management actions. In 1984, the Committee reviewed funding of projects for Maine's local coastal program and developed background papers for the first Coastal Priorities Statement, for implementation in 1985.

Kennebec Watershed Flow Assesment

In November 1983, the Council's special Water Flow Management Committee reported a series of findings and recommendations to improve the State's existing flood prediction, response, and prevention programs and policies.

The Committee's major recommendation called for a cooperative effort by the Council, the U.S. Geological Survey, and the Army Corps of Engineers to conduct a detailed hydrologic assessment of water flow routing, including the design of computer forecasting models, for the State's major river basins. The Committee recommended an in-depth analysis of the Kennebec River watershed as a prototype for similar studies of other rivers.

As a result of deliberations among the various agencies, with strong cooperation from the private companies operating dams within the Kennebec River basin, the first phase of this program began in the Fall of 1984. In conjunction with other federal and State agencies and with critical data supplied by dam operators, the Army Corps of Engineers has undertaken a comprehensive review and analysis of existing information on precipitation and flows in the Kennebec watershed. The Corps will analyze this data and make recommendations for additional substantive research and for specific options available to the State for developing a computer model. The Corps report is scheduled for completion in the Fall of 1985.

Water Flow Advisory Committee

Also as a result of the Water Flow Management Committee's recommendations, the U.S. and Maine Geological Surveys have formed a permanent Water Flow Advisory Committee. This Committee, consisting of representatives from State and federal agencies and major dam operators throughout Maine, meets semi-annually to exchange information on precipitation, snow pack, and seasonal storage levels; to discuss flooding potentials; to issue a seasonal flood advisory; and to plan for measures to abate excess flows. In the Spring of 1984, this Committee determined the potential for isolated but potentially damaging flood episodes and coordinated efforts to issue timely flood warnings and avert possible floodplain property damage.

III. HIGH PRIORITY PROBLEM RESPONSE

Maine Rivers Policy Implementation

Passage of the landmark Maine Rivers Act in June 1983, accompanied by other related legislation, budget allocations, and administrative measures, completed development of the Maine Rivers Policy pursued by the Council since 1981. In July 1983, Governor Brennan directed that the Council, through the Executive Secretary, closely monitor the progress of State agencies to assure the timely implementation of their various individual responsibilities.

During 1984, State agencies reported a number of significant accomplishments in this on-going implementation process. These include:

- The Department of Environmental Protection (DEP) and the Land Use Regulation Commission (LURC) cooperated to draft a set of hydropower permitting regulations pursuant to their authority under the 1983 Maine Waterway Development and Conservation Act (MWDCA). DEP and LURC plan to adopt regulations following public review and comment during the Spring and Summer of 1985.
- DEP and LURC had issued eleven permits under the MWDCA as of April 1985, and had over a dozen additional permits pending.
- The Departments of Marine Resources and Inland Fisheries and Wildlife completed management plans for

improving important sport and commercial fisheries on ten Maine rivers.

- State agencies awarded more than a dozen State and federal grants, totalling over \$300,000, for waterfront improvement projects in communities along Maine rivers.
- The Bureau of Parks and Recreation completed an assessment of public access, recreation facilities, and the potential for additional conservation easements along 26 outstanding river segments identified in the Maine Rivers Study. As a result of this report, the Department of Conservation established a new State Rivers Coordinator position to improve the management of recreation facilities. This coordinator will also administer a special Maine Rivers Grants Program, established by the 112th Legislature, and funded through donations primarily from the sale of promotional decals to recreationists.

FERC Coordination Procedure

In March 1982, Governor Joseph E. Brennan, by Executive Order, directed the Council to establish a process for coordinating State agency comments to the Federal Energy Regulatory Commission (FERC), on its notices of preliminary permits and licenses for hydropower projects. The Council established a Standing Committee to administer this procedure and to assure effective communication among the affected agencies.

Enactment of the MWDCA in June 1983 resulted in the consolidation of State hydropower permitting authority under the DEP and LURC. Because of the potential for conflict between the State hydropower permitting decision and the FERC licensing action, the importance of the Council's coordination procedure expanded to assure a consistent assertion of a single State position before FERC.

In October 1984, Governor Brennan directed the Council to review the 1982 Executive Order and recommend any additional measures to achieve this objective. The Council's review resulted in the issuance of a supplementary Executive Order in June 1985 clearly directing that all State agency comments to FERC must reflect the official State position arrived at through the MWDCA.

Federal Hydropower Policy

In October 1982, Governor Joseph E. Brennan directed the Office of Energy Resources (OER) to submit the State of Maine Comprehensive Hydropower Plan to the Federal Energy Regulatory Commission (FERC). Section 10(a) of the Federal Power Act requires FERC to make its decisions in accordance with accepted comprehensive river resource plans. Maine hoped to receive FERC acceptance of its plan as a guide for federal hydropower licensing decisions.

FERC has stated that it does not adhere to any single plan and that Maine's plan will be but one piece of evidence it will use in making its licensing decisions. Federal court decisions have held that FERC may override a State's decisions and issue

pre-emptory federal licenses for projects that have not received the necessary State permits. This situation raises grave concerns about the efficacy of the Maine Rivers Policy, or similar policies of other States, in federal proceedings. Governor Brennan, therefore, asked the Council, through the Executive Secretary, to work with the Maine Congressional delegation, other members of Congress, and interested parties nationwide to devise legislation to address this concern.

In February 1984, Maine Senator George Mitchell, at Governor Brennan's request, introduced the "State Comprehensive River Planning Act" as an amendment to the Federal Power Act. This bill would clarify the comprehensive plan provision of the federal law to require FERC compliance with an accepted State hydropower plan, except for clear reasons of national interest. The National Governors' Association has endorsed the concept embodied in Senator Mitchell's bill. On April 3, 1985, Senator Mitchell introduced this legislation in the 99th Congress.

IV. PURPOSE AND ORGANIZATION OF THE COUNCIL

The Land and Water Resources Council was created by Executive Order of Governor James B. Longley in March of 1976. In May of 1979, Governor Joseph E. Brennan issued a new Executive Order re-establishing the Council under this Administration. The new Executive Order maintained the same basic direction for the Council and added the Office of Energy Resources to the Council's membership.

The Executive Order directs the Council to provide for a substantially improved land and water resources information base for planning purposes; to develop a program to interpret and analyze this information base; to evaluate Maine's land use regulatory system periodically and to recommend necessary improvements; to study and recommend solutions to specific land and water resource management problems; to encourage inter-agency coordination of land and water resources programs, through review of relevant agency work programs; to recommend coordinated State policies for major proposals that transcend the concerns of any one agency; and to seek cooperation of federal agencies to assure that their programs are in the best interest of the State.

The Council consists of: the Director of the State Planning Office, who is Chair; the Commissioner of the Department of Agriculture, Food and Rural Resources; the Commissioner of the Department of Conservation; the Commissioner of the Department of Environmental Protection; the Commissioner of the Department of Inland Fisheries and Wildlife; the Commissioner of the Department of Marine Resources; the Commissioner of the Department of Transportation; the Director of the State Development Office; the Director of the Office of Energy Resources; the Vice President for Research and Public Services, University of Maine at Orono; and the Chairman of the Regional Planning Commissions Directors' Association.