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JOHN ELIAS BALDACCI  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF CONSERVATION  
22 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0022

PATRICK K. MCGOWAN  
COMMISSIONER

January 17, 2007

Senator John M. Nutting, Chair  
The Joint Standing Committee on  
Agriculture, Conservation & Forestry  
1 State House Station  
Augusta, Maine 04333

Representative Wendy Pieh, Chair  
The Joint Standing Committee on  
Agriculture, Conservation & Forestry  
1 State House Station  
Augusta, Maine 04333

Dear Senator Nutting and Representative Pieh,

Pursuant to LD 2077, (PL 2006, Chapter 598), "*An Act To Make Adjustments to the Allagash Wilderness Waterway*", I have enclosed the Maine Department of Conservation, Bureau of Parks and Land's report on the Allagash Wilderness Waterway. This report addresses the issues of management planning, and private bridge construction rights, specifically addressed in LD 2077.

We understand that the Department will have an opportunity to brief the Committee on this and other issues on January 29. We welcome your questions at that time, or, if after reviewing the report, committee members have any questions, please contact me or Director of Operations & Maintenance, Tom Morrison, respectively at 287-4961 or 287-4717. We would be happy to answer any questions you may have.

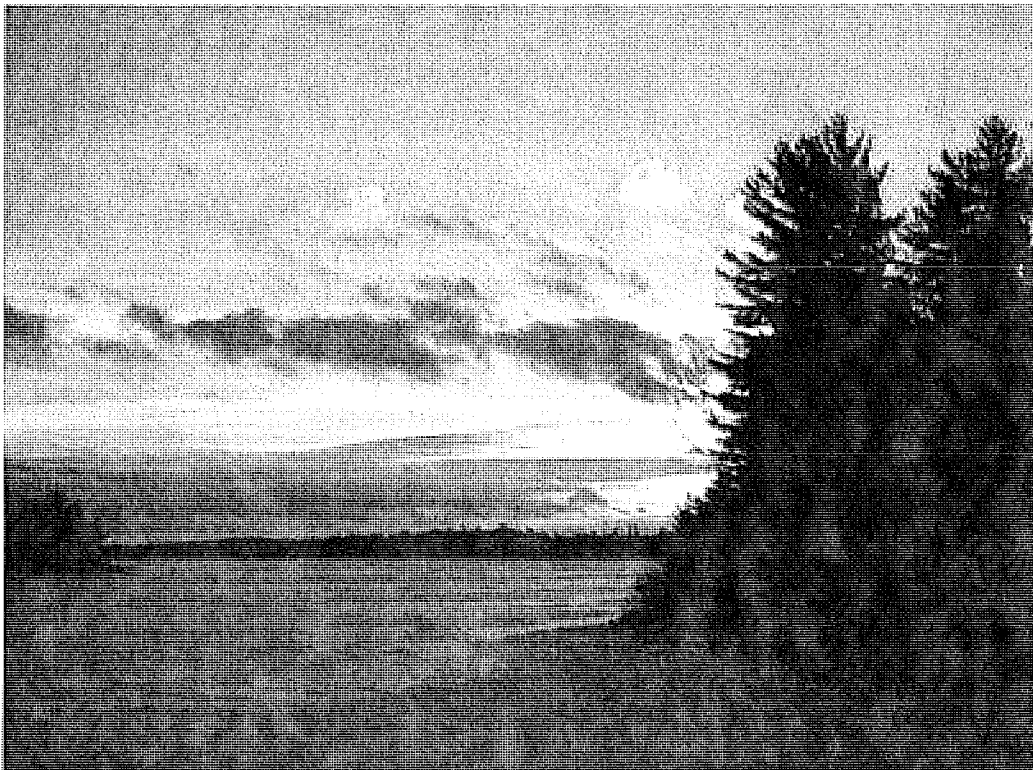
Very truly yours,

Willard Harris  
Director

Cc: Members, Joint Standing Committee on Agriculture, Conservation & Forestry



Report  
To The  
Joint Standing Committee For  
Agriculture, Conservation, and Forestry  
Regarding The  
Allagash Wilderness Waterway



Specifically Addressing  
Management Planning  
And  
Private Bridge Construction Rights

Prepared by the Bureau of Parks and Lands  
Department of Conservation  
December 31, 2006

## Introduction: The Purpose of this Report

This report is offered in fulfillment of two specific requirements set forth in a law enacted last year that made important changes to the Allagash Wilderness Waterway Act.<sup>1</sup> This law addressed four issues:

- vehicle access to the watercourse;
- snowmobile access to the watercourse;
- watercourse crossings (bridges), especially Henderson Brook Bridge; and
- management planning for the Allagash Wilderness Waterway.

The law addressed vehicle access to the watercourse by establishing specific places where vehicles may go to gain access to the Waterway. (The Waterway Act previously did not specify vehicle access points, but left this within the discretion of the Bureau of Parks and Lands<sup>2</sup>, which had established access points by rule). The new law defined vehicle access in two ways: vehicle access either to the water's edge, or to existing short trails to the water's edge. Six waters-edge access points were established, and five short-trail access sites were established. The access points established by law were identical to existing access in the Waterway as had been established by rule at the time the law was enacted.

The law addressed snowmobile access to the watercourse by requiring nineteen unspecified access points. (The Waterway Act previously did not specify snowmobile access points, but left this within the discretion of the Bureau of Parks and Lands<sup>3</sup>, which

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<sup>1</sup> S.P. 811-L.D. 2077 (Chapter 598)

<sup>2</sup> 12 M.R.S.A. §1882

<sup>3</sup> 12 M.R.S.A. §1875(3)

had established access points by rule). The number of snowmobile access sites required by law was identical to the number of snowmobile access sites that had been specified by rule at the time the new law was enacted.

The law addressed bridges over the watercourse by establishing six permanent bridge crossings over the Allagash River. Previously, the same six crossings existed, but they were not "permanent" crossings. The number and location of bridges over the watercourse was within the authority of the Bureau of Parks and Lands, although the issue had not been addressed by rule.<sup>4</sup> The law also specifically addressed Henderson Brook Bridge. It directed the reconstruction of a bridge at the site of the existing bridge, and set up a committee, "The Commission to Study the Henderson Brook Bridge in the Allagash Wilderness Waterway," to study design options and to make a recommendation regarding design of a replacement for the dilapidated Henderson Brook Bridge. The law also directed that the Bureau of Parks and Lands shall "identify any private right, title or interest held by any person to construct or maintain a bridge at the locations of the former Schedule Brook Bridge or the former Bissonette Bridge<sup>5</sup>, or at any other point within the Allagash Wilderness Waterway, and shall make every effort to enter into agreements with those persons to convey all such rights to the bureau on behalf of the state." The Bureau was directed to report to the Joint Standing Committee for Agriculture, Conservation, and Forestry no later than January 15, 2007, regarding this effort. This report is offered in fulfillment of this directive.

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<sup>4</sup> 12 M.R.S.A. §1882

<sup>5</sup> Schedule Brook Bridge and Bissonette Bridge both were in place in 1966, at the time the Allagash Wilderness Waterway was created, but both washed out shortly after 1966 and were not rebuilt. Some landowners have claimed a "grandfathered" right to reconstruct these bridges because they existed at the time of the creation of the Waterway. This claim is addressed in the body of this report.

Finally, the new law addressed management planning affecting the Allagash Wilderness Waterway. At the time the new law was enacted, the Bureau of Parks and Lands was receiving public comment on proposed changes to the 1999 Management Plan for the Waterway. The new law required that any proposed changes be submitted to the Joint Standing Committee For Agriculture, Conservation, and Forestry for review no later than January 15, 2007. This report is offered in fulfillment of this directive as well.

## Background Information Regarding the Allagash Wilderness Waterway

The story of the Allagash Wilderness Waterway, like the river itself, is long, twisted, and sometimes turbulent. Any attempt to summarize the history of the Waterway in a short few paragraphs will inevitably oversimplify or omit many important facts and issues. Yet some introductory historical background is necessary to frame current issues and to appreciate them in context. This particular rendition of history focuses on access, bridges, and dams, because these issues have been foremost in recent Allagash controversies. With that disclaimer, the following timeline of significant events is offered.<sup>6</sup>

- **1841-1842:** Dams are constructed on Telos and Chamberlain Lakes in the Allagash. Telos Cut, "the Big Ditch," is opened below Telos Dam. The dams and the Cut alter the watershed of the Allagash River by redirecting the natural river flow so that the southerly portion of the Allagash watershed runs down the East Branch of the Penobscot River rather than northerly down the Allagash River. This huge feat of engineering is accomplished to drive pine logs south to Bangor, rather than north (with the river's natural flow) to the St. John River and into Canada. Today, this water diversion scheme is largely intact.
- **1903-1907:** The tramway, a unique contraption to move logs from Eagle to Chamberlain Lake, is constructed and operates, in conjunction with steam-powered boom tow boats, to move wood on Eagle and Chamberlain Lakes to the East Branch of

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<sup>6</sup>The Bureau gratefully acknowledges the Waterway History prepared by Professor Dean B. Bennet, from which portions of this presentation were drawn.



the Penobscot. The tramway is replaced by Lombard Log Haulers after 1907.

- **1926-1933:** The 13-mile Eagle Lake-West Branch Railroad is constructed and operated to continue the movement of wood to Bangor via Umbazooksus Lake and Chesuncook Lake and the West Branch of the Penobscot.
- **1955:** A federal interagency committee formed in 1950 at the request of President Truman to survey the natural resources of the New England-New York region identifies the Allagash region for recreational and wilderness values. At about the same time, the federal government proposes the Passamaquoddy Tidal Power Project at Eastport, including a major power dam at Rankin Rapids on the St. John River in northern Maine. The impoundment created by this dam would flood almost 98% of the main river course of the Allagash River, as well as the St. John River. These contradictory proposals set up a seismic conflict between proposed huge hydroelectric projects that would impound vast sections of the Allagash and St. John Rivers, and flood many tens of thousands of acres of woods in northern Maine, and equally vast conservation proposals to conserve the Allagash region for its wilderness and recreation values. Much of the later history of conservation of the Allagash River flows directly from attempts to find a compromise between these conflicting visions for the Allagash and St. John Rivers.
- **1956:** A planning document prepared by Maine's Park and Recreation Commission recommends preservation of the Allagash River and its immediate surroundings.
- **1961:** The National Park Service proposes an Allagash National Recreation Area encompassing 246,500 acres.

Senator Muskie and Stewart Udall, the Secretary of the Interior, visit the Allagash region to discuss high dam proposals for the St. John River and preservation of the Allagash River, including the option of moving the high dam on the St. John River upstream so that the Allagash is not impounded.

- **1963:** The State of Maine forms the Allagash River Authority and Advisory Committee to plan for the protection of the region. A federal agency, the Bureau of Outdoor Recreation, proposes an Allagash National Riverway.
- **1965:** The Army Corps of Engineers receives Congressional authorization to study Dickey-Lincoln Dam. Dickey-Lincoln Dam would flood the St. John River in a massive impoundment, but unlike Rankin Rapids Dam, it would flood only five miles of the Allagash River – to Twin Brooks, which later would become the official end point of the Allagash Wilderness Waterway. A bill for Allagash preservation flowing from the work of the Allagash River Authority fails in the Maine Legislature.
- **1966:** The Legislature passes the Allagash Wilderness Waterway Act, protecting the Allagash from its headwater lakes to Twin Brooks in the Town of Allagash. The voters of Maine approve a \$1.5 million bond issue. The bond proceeds, together with a \$1.5 million grant awarded under the federal Land and Water Conservation Fund<sup>7</sup>, are used between 1967 and 1975 to purchase approximately 23,000 acres of the "restricted zone" within the Allagash Wilderness Waterway. The restricted zone is now owned by the State of Maine, and extends between 400 and 800 feet on either side

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<sup>7</sup> The Land and Water Conservation Fund money is not directly connected to the federal Wild and Scenic Rivers Act and the requirements of that Act.

of the watercourse. The Waterway, by definition in law, extends out to one mile from the watercourse, but state regulatory control of land beyond the restricted zone is tightly restricted to limited control over construction of structures within a zone of 1/4 mile, and limited review of harvesting activities within a zone of 1 mile.

- **1968:** Congress passes the Wild and Scenic Rivers Act. This law is intended to preserve designated rivers in a "free flowing condition," meaning that such designated rivers shall be free from further dams and impoundments. The Act creates three categories of rivers: "wild," "scenic," and "recreational," depending upon the level of development (especially roads and dams) existing on the river at the time of designation. The Allagash River is specifically referred to in the Act as a potential "state administered" river under the Act, if the Governor requests such a designation.
- **1970:** Governor Curtis asks the Secretary of the Interior to designate the Allagash Wilderness Waterway as a "wild" river under the federal Wild and Scenic Rivers Act - - the most restrictive of the three designations available. Later that same year, the designation is published in the *Federal Register*. The Allagash Wilderness Waterway is officially designated as the first state-administered waterway in the National Wild and Scenic River System. Addressing the "wild" designation, both the State's application for designation and the federal designation as published in the *Federal Register* refer to vehicle access to the Waterway. The *Federal Register* states that  
*Public access over private roads will be permitted to and along a portion of Telos Lake at the southern end of the waterway and to the northern boundary at West Twin Brook. Existing private roads within the waterway which have been developed for logging*

*purposes will be closed to public use. . . . As new timber management plans are prepared, most of these roads will be removed from the immediate river area.*

Addressing existing dams on the river, the *Federal Register*, quoting from Maine's application for designation, noted

*There are three small dams within the Allagash Wilderness Waterway:*

- *(1) Telos Dam  $\pm$  5 feet of Head.*
- *(2) Lock Dam  $\pm$  5 feet of Head.*
- *Churchill Dam  $\pm$  8 feet of Head.*

*These existing structures do not form impoundments which distract from or disrupt the wilderness character of the waterway and are of historic significance in that they portray the development of the logging industry in the northeast United States. . . . The operation of all three dams is governed by the policy established by the State of Maine in the Allagash Wilderness Waterway, "to preserve, protect and develop the maximum wilderness character of the watercourse.*

Finally, with respect to bridges over the Allagash, the *Register*, again referencing material submitted by the State in its application, noted

*Temporary bridges for short-term logging purposes may be authorized by the State. Any such crossing is designed to provide minimum impact on the wilderness character of the waterway.*

- **1973:** A "Concept Plan" for the Allagash Wilderness Waterway prepared by an Advisory Committee of seven respected individuals, representing all stakeholders, and including a major landowner, a private pilot, a conservationist, a member of the Maine Legislature, a sporting camp owner, and a guide, is adopted by the State Park and Recreation Commission. The Concept Plan provides broad management guidelines for the Allagash

Wilderness Waterway, including, as its first policy declaration, the following:

*1. Discontinuance of all private woods roads as their usefulness ceases to the woods operator except at the two ends of the Waterway, Telos Lake and Allagash Village.*

- **1976:** "The massive Dickey-Lincoln Dam, a \$227 million hydroelectric project proposed on the upper St. John River, is halted by the discovery of the Furbish lousewort, a plant believed to be extinct." (Story number 38 of the Portland Press Herald's "Stories of the Century.")
- **1997-1998:** Churchill Dam on the Allagash, a dam used solely to regulate water flow for canoeing on the Allagash River, formerly a timber-crib structure, is reconstructed as a concrete and steel structure, following approval by the voters of Maine of a bond issue to fund the construction. The proposed dam reconstruction has broadly-based support from Maine voters and interested stakeholders, including the environmental community.
- **1997-1999:** A ten-year Management Plan for the Allagash Wilderness Waterway is drafted, debated publicly, and adopted by the Bureau of Parks and Lands, although some provisions of the Plan are controversial. In particular, vehicle access to the watercourse becomes a fiercely debated issue, especially a proposal, ultimately adopted, that would allow vehicle access at John's Bridge.
- **2000:** Discord surrounding vehicle access to the Waterway overflows into LURC hearings regarding a Bureau of Parks and Lands' permit request to construct a vehicle access site at John's Bridge, in accordance with the newly adopted Management Plan. LURC approves construction of a vehicle

access site and parking lot after contentious hearings, but the approval is challenged in court, with environmentalists arguing that the proposed vehicle access site violates the federal Wild and Scenic Rivers Act.

➤ **2000:** The Bureau of Parks and Lands is unable to locate a required permit from the Army Corps of Engineers for the reconstruction of Churchill Dam. Environmentalists seize upon this apparent permitting failure, arguing that this is further evidence of the State's failure to manage the river as it promised it would when it requested "wild" designation under the federal Wild and Scenic Rivers Act. They request, as a condition for the granting of an after-the-fact permit, that the 1999 Management Plan be reopened, in particular to revisit the number and location of vehicle access sites approved in the Plan, including John's Bridge, and generally to require the Management Plan to address the requirements of the federal Wild and Scenic Rivers Act.

➤ **2002:** The DOC/Bureau of Parks and Lands enters into a Memorandum of Agreement with the National Parks Service in order to receive an after-the-fact permit from the Corps of Engineers to reconstruct Churchill Dam. The MOA requires, among other things, that the Bureau reopen the 1999 Management Plan to address vehicle access sites to the Allagash Wilderness Waterway, and also to address the status and future disposition of dams and bridges on the Waterway, all within the context of the Allagash's designation as a state-administered "wild" river under the federal Wild and Scenic Rivers Act.

➤ **2002:** The Maine Legislature directs the Bureau of Parks and Lands to maintain and repair, as necessary, the rapidly deteriorating Henderson Brook Bridge pending review of this and other bridges under the Memorandum of Agreement, and

directs that "if the recommendations developed during the review advise and the department concludes that Henderson Brook Bridge should not remain in use," the decision should be reported to the ACF Committee "a minimum of six months prior to taking any action to remove the bridge."<sup>8</sup>

- **2002-2003:** The Allagash Advisory Council, a broadly-based advisory group set up by the Bureau of Parks and Lands to assist with management planning for the Allagash Wilderness Waterway, meets several times to try to hammer out modifications to the Management Plan that meet the requirements of the Memorandum of Agreement. The focus of their efforts is on the controversial issue of vehicle access sites. With much hard work, including facilitated retreats held at the Bigelow Lodge in the Bigelow Preserve, the group makes significant progress. Substantial agreement is reached regarding vehicle access sites for most of the river, on a conditional basis, but the stakeholders are stalemated with regard to vehicle access at John's Bridge and vehicle access at the most northerly segment of the river.
- **2003:** Stakeholders in a slightly reconfigured group convene at the River Driver's Restaurant in Millinocket in a last-ditch effort to reach consensus regarding vehicle access points on the Waterway, all pursuant to the Memorandum of Agreement. Over the course of two days, a compromise is reached regarding access at John's Bridge. The group then adopts the "consensus agreements" negotiated by the Advisory Council at the Bigelow retreats, and goes on to reach consensus regarding vehicle access in the final, most northerly, section of the river. In the end, a comprehensive agreement is concluded, dubbed the "River Drivers

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<sup>8</sup> S.P. 703 – L.D. 1905, "An Act To Clarify the Status of Henderson Brook Bridge," Chapter 58 of the Private and Special Laws, 2002.

Agreement," which in its preamble highlights two legitimate values guiding Allagash Waterway management: "the desire to preserve the special wilderness character of the Allagash, while honoring the culture and traditional uses of the river by Maine sportsmen." The Allagash Advisory Council unanimously endorses the River Drivers Agreement.

➤ **2003-2005:** The Bureau of Parks and Lands begins implementation of the specific agreements consolidated into in the River Drivers Agreement. These include:

- Permitting for reconstruction of the Taylor Camps;
- Inventory of structures in the restricted zone, and removal of structures where feasible;
- Commencement of work with IF&W to improve wild fisheries in the Allagash River;
- Employment of landscape architect to improve character of campsites;
- Visual screening of structures visible from the watercourse;
- Adoption of an "Insider's Guide" to the Waterway;
- Closure of Cunliffe campsite to vehicle camping and access;
- Retirement of a small portion of Old Michaud Farm Road south of Ramsey Ledge campsite (formerly used for access to Cunliffe campsite);
- Exploration of opportunities to acquire a take-out site and a historical interpretation site in the Town of Allagash; and
- Implementation of limited, seasonal vehicle access at John's Bridge.

The Bureau drafts amendments to the 1999 Management Plan to incorporate the River Drivers Agreement provisions, and also to address the status of bridges and dams, as required under the Memorandum of Agreement. With respect to dams and bridges, the draft Plan does not attempt to



resolve the issue right away, but rather proposes to (1) "comprehensively study alternatives" for all bridges and dams requiring major repairs or reconstruction; (2) consult with the Army Corps of Engineers and the National Park Service in this process; and (3) obtain all necessary permits before starting any repair, modification, reconstruction, replacement, or removal of a bridge crossing or dam. This review process would take place in a public setting. Drafts of the proposed changes to the 1999 Management Plan are reviewed extensively and in detail in meetings of the Advisory Council, with very little negative comment received. Management Plan changes are submitted for public comment in the Fall of 2005.

- **2005-2006:** The Bureau of Parks and Lands receives overwhelming negative public comment from residents of northern Maine and from forest landowners to its proposed Management Plan changes. Comment focuses on limitations of vehicle access at Umsaskis, where vehicle access is to be converted from a waters-edge site to a short trail site (a River Drivers provision that had not yet been implemented because of technical difficulties in designing and constructing an ADA-accessible trail), and loss of vehicle access at Cunliffe (another River Drivers Agreement provision). Forest landowners express concern about the review process for bridges, and particularly about whether reconstruction of Henderson Bridge will be guaranteed. Forest landowners also express anxiety about references in the proposed Plan to the Wild and Scenic Rivers Act and the Allagash's "wild" designation under the Act. They argue that the river should have been designated as "scenic" or "recreational" because of the presence of bridges and dams. They claim the Bureau is trying to "rewrite history" by making reference to the River's "wild" status. The Bureau also receives much heated comment on issues not changed or addressed in the proposed

Management Plan amendments (such as allowed use of motorized canoes, snowsled access, closure of other roads, and vehicle access at other sites). The Bureau extends the time period for public comment twice, and holds additional rounds of public comment sessions, to permit a more complete airing of the issues,

➤ **2006:** The 122<sup>nd</sup> Maine legislature enacts S.P. 811-L.D. 2077 (Chapter 598) in response to the public controversy in connection with the proposed Management Plan amendments, and in response to other issues raised in the discussion of the proposed amendments. As noted in the Introduction, this law addressed four issues:

- vehicle access to the watercourse (the law essentially adopted the River Drivers Agreement with respect to this issue, but with a substantive modification to the Umsaskis access provision, and minor modifications at Ramsey Ledges and Henderson Brook);
- snowmobile access to the watercourse (the law enacted the *status quo*);
- watercourse crossings (bridges), especially Henderson Brook Bridge (the law made major changes to the status of these bridges); and
- management planning for the Allagash Wilderness Waterway (the law required ACF Committee review and approval of proposed changes).

## Proposed Amendments to the 1999 Management Plan Pursuant to the Memorandum of Agreement

The Memorandum of Agreement entered into between the National Parks Service and The Department of Conservation included many specific requirements, most of which have been fully addressed since the Agreement was signed. A key provision of the Agreement, and the most difficult one, is the requirement that the 1999 Management Plan be reopened to address specific issues. Here is what the Agreement requires:

*Within two years of the date the Corps issues a permit to the DOC for Churchill Dam, the department will review its 1999 Management Plan according to the following provisions and understandings:*

- a. Background. The parties recognize that the 1999 Management Plan is generally consistent with the preservation of outstanding resource values under the state Allagash statute and the Wild and Scenic Rivers Act (WSRA).*
- b. Review Process. The review process will produce recommendations to the DOC for revisions to the 1999 Management Plan. The parties agree to explore conducting the review through a neutral facilitator. The review shall be conducted through a process that provides for public comment and full involvement of the Allagash Wilderness Waterway Advisory Council, landowners, NPS, and interested groups. Before beginning the review, a proposal for the review process will be made in consultation with the Allagash Waterway Advisory Council.*
- c. Purposes. The purposes of the review are to:*
  - 1. Develop recommendations for additions to the 1999 Management Plan on how the WSRA and*

*federal guidelines on WSRA rivers should be interpreted and applied to the Allagash Wilderness waterway, specifically dams, bridges, and buildings and the type and number of access points, with the understanding that a number of vehicle access points will remain and that access in some areas of the waterway will be less than 500 feet.*

*2. Make recommendations to incorporate the intent of the federal "wild" river designation into the 1999 Management Plan.*

*3. Consider the use of the Allagash Wilderness Waterway by Maine citizens when examining the relationship between the state Allagash statute and the WSRA.*

Note that the MOA requires a review *process* leading to a set of *recommendations*. It does not require any specific outcomes or results. It only requires a process of review that includes adequate consideration of relevant criteria and provisions of the Maine Allagash Wilderness Waterway Act and the federal Wild and Scenic Rivers Act. The MOA requires that certain questions be asked, but it does not dictate the answers to those questions – that is solely the province of the Waterway's manager – the State of Maine.

The Bureau of Parks and Lands has conducted a thorough review process since the MOA was signed, including the public debate about the Memorandum of Agreement itself, the Advisory Council deliberations about vehicle access over the course of two years (at the Bigelow retreats and elsewhere), the River Drivers meeting and Agreement, the subsequent Advisory Council discussions about Management Plan changes, the public comment regarding those changes, and the Legislature's public hearings and debate leading up to the enactment of S.P. 811-L.D. 2077 (Chapter

598). This extensive review fully satisfies the Memorandum of Agreement's requirement of a review process. The result of this process went well beyond a set of recommendations to amend the 1999 Management Plan. The process resulted in a set of new laws addressing vehicle access points, bridges, and other related issues as well. This legislative intervention rendered most of the Management Plan proposals as moot, having addressed the issues in a far more definitive way than a management plan would have.

★ The legislation did not, however, address two areas specifically highlighted in the Memorandum of Agreement: how the WSRA and federal guidelines on WSRA rivers should be interpreted and applied to *dams* and *buildings*. Although not addressed in the legislation, these issues have been thoroughly reviewed and discussed over the course of the past four years, and recommendations have been made in full compliance with the MOA. The buildings issue was specifically addressed in the River Drivers Agreement, followed by significant efforts at implementation of the River Drivers provisions regarding buildings. The dams issue was also extensively discussed in the intervening years since the MOA was signed, with the Bureau committing to an open, public review process that considers all alternatives, consults with the Corps of Engineers and the National Park Service as appropriate, and obtains all necessary permits before starting any repair, modification, reconstruction, replacement, or removal of a dam. Further implementation of these commitments or adoption of amendments to the Management Plan has been halted by the legislative direction in the new bill, S.P. 811-L.D. 2077 (Chapter 598), as follows:

*The Department . . . may not begin improvements proposed in the [Amended Management] plan until the committee completes its review.*

In addition, the Governor's Working Group is now reviewing the management authority of the Bureau of Parks and Lands and

the Department of Conservation with respect to the Allagash. The pendency of this review process has made progress by the Bureau with respect to unresolved Allagash issues problematic. The thorough discussion over the past several years since the Memorandum of Agreement was signed, and the development of detailed recommendations, fully meets the MOA requirement for review and recommendations. The Legislative action in response to that process renders Management Plan amendments moot.

In view of the foregoing, the Bureau does not propose any changes to the Allagash Wilderness Waterway Management Plan at this time.

## Report Regarding Private Rights to Construct or Maintain Bridges at the Location of the So-Called "Ghost Bridges," Schedule Brook Bridge and Bissonette Bridge.

The Legislature directed the Bureau to study privately-held legal rights to construct and maintain bridges within what is now the restricted zone of the Allagash Wilderness Waterway. In particular, the Legislature requested the Bureau to assess and review private rights, if any, to construct and maintain the former Bissonette Bridge below Chase Rapids and the former Schedule Brook Bridge below Round Pond. The Bureau lacks sufficient legal expertise in-house to definitively address this legal inquiry, and will refer the matter to the Attorney General's office for further review. In an effort to address this issue as thoroughly as possible, however, the Bureau has conducted a review of the deeds and statutes affecting the State's ownership of the Waterway in order to further define the issue.

### **A Review of Allagash Waterway Act Provisions Regarding Roads and Bridges in the Restricted Zone**

Several provisions of the Allagash Wilderness Waterway statute address roads and bridges within the restricted zone. They are briefly reviewed below:

- 12 M.R.S.A. §1879, setting out the initial plan for acquisition of the Allagash Wilderness Waterway, directed the state to *"proceed to acquire title in fee simple within the restricted zone. The [bureau] shall acquire within the restricted zone any other rights the [bureau] determines necessary or convenient to accomplish the purposes of this subchapter."*
- 12 M.R.S.A. §1881(2), addressing use of roads, provides that *"Existing private roads within the waterway remain privately*

owned as existing. The [bureau] may direct the discontinuance or relocation of any portion of such a road that is within the restricted zone at the expense of the Bureau."

- 12 M.R.S.A. §1882 clearly vests authority over the location of watercourse crossings in the bureau by stating *"the bureau may determine the location of access points, control stations and watercourse crossings within the waterway."*
- 12 M.R.S.A. §1876, addressing control of land areas, provides with respect to structures (which necessarily includes bridges) that *"New structures or expansions of existing structures are not permitted within the restricted zone, except those structures essential to state service agencies, those structures determined by the bureau to be essential in maintaining water level controls, and temporary structures determined by the bureau to be necessary for watercourse crossing and access. All existing structures must be removed except those determined to be necessary by the Bureau to carry out the intent of this subchapter."*

At no other place in the statute creating the Waterway are bridges specifically addressed [prior to last year's enactment of S.P. 811-L.D. 2077 (Chapter 598)]. Read together, these statutory provisions seem to rule out construction of new bridges on the river, except for *temporary* structures determined by the Bureau to be *necessary* for watercourse crossing. The statute also can be fairly read to continue private ownership of bridges existing on the effective date of the creation of the Waterway, to the extent that the landowner retains ownership of the private road leading to the bridge on either side of the river. But like the roads, may the crossings also be discontinued by the State?

All of this was changed, of course, by last year's enactment of S.P. 811-L.D. 2077 (Chapter 598), which established six permanent waterway crossings.



## **A Review of Deed Provisions Regarding Roads and Bridges in the Restricted Zone**

A review of the deeds from the various land owners to the State of Maine conveying the land within the restricted zone of the Waterway shows that some deeds contain reservations of "all roads and bridges existing on December 28, 1966, the effective date of the Act creating the Allagash Wilderness Waterway." The Bureau has reviewed aerial photos and mapping to assess the status of bridges over the Waterway on December 28, 1966. Bureau research to date shows that bridges existed on that date at Chamberlain Thoroughfare, Allagash Stream, Churchill Dam, Bissonette, Realty/Umsaskis, and Schedule Brook. Poulin Bridge, at the site of present-day John's Bridge, existed prior to the creation of the Waterway, but it burned at some time prior to the construction of John's Bridge in 1967, and may not have been in existence at the creation of the Waterway. Based upon the best information currently available to the Bureau, John's Bridge and Henderson Brook Bridge were constructed after the creation of the Waterway, and Bissonette Bridge and Schedule Brook Bridge were destroyed after the creation of the Waterway.

### **May Private Landowners Construct New Bridges at Bissonette or Schedule Brook?**

Construction of a new bridge at Bissonette or Schedule Brook by a private landowner presumes, initially, that the landowner retains fee ownership of the private roads leading through the restricted zone to and from the bridge site. It is not clear, however, that any of the landowners retained a *fee interest* in the land underlying any of the private roads existing in the restricted zone, as opposed to an easement or right of way. The nature of the interest retained is not specified in either the deeds of the Waterway statute. In case, the roadway at the site of former

Schedule Brook Bridge, which is located in Round Pond Township (T 13 R12 W.E.L.S), was conveyed to the State of Maine together with the rest of the township as a consolidated public lot.

A very small ( $1/144^{\text{th}}$ ) interest in the Round Pond Township is held by Irving Woodlands. This minority interest does not, however, necessarily give the minority owner in common a right to build a bridge on its own, in defiance of the majority owner's wishes. In the event of a disagreement regarding management of the commonly held land, the traditional remedy of a minority owner of a common undivided interest in real estate is to partition the land.

Some adjacent or neighboring landowners in the region of Round Pond Township have asserted that they have a legal right to bridge the river by virtue of general crossing rights that they hold across Round Pond township. Since the river divides the township, it is argued that crossing rights imply by necessity a right to bridge the river. At best, however, this argument would only hold true if no other reasonably convenient crossing existed. Henderson Brook Bridge, which is located in the same township and is a mere three miles  $\pm$  upstream from the former Schedule Brook site, is one of the permanent bridge crossing created in the last Legislative session. Assuming the continued existence of this convenient crossing, holders of crossing rights would have no cause, and no legal right, to build another bridge.

Even assuming private ownerships on both sides of the river, the private ownership is limited by statute and by deed to the road "as existing," and in appropriate cases, and bridge "as existing" on the effective date the Act creating the Waterway. At the time of the creation of the Waterway, many of these roads existed as very narrow ways, in only a very primitive state, with some of them unsuitable for four-season travel, and many of them unsuitable for modern woods traffic. It is not clear, from either the statutory

provisions or from the deed reservations, whether these roads could be widened and improved to be useful as modern bridge ramps. The bridges that existed at Schedule Brook and Bissonette on the effective date of the Waterway Act are long gone.

Finally, and perhaps definitively, the right to construct a new bridge requires more than ownership of land on either side of the river. Other legal requirements must be met, and required approvals from regulatory authorities must be obtained. In light of the Allagash Wilderness Waterway statute's clear prohibition of new structures in the restricted zone (except for the bridges authorized in last year's enactment), and the statute's unambiguous vesting of authority to determine bridge crossings in the bureau, and the newly enacted law's prohibition against a watercourse crossing at former Bissonette Bridge and former Schedule Brook Bridge, a private landowner would not be successful in obtaining required permits to construct a new bridge without the State's consent.

### **Discontinuance of Private Rights in the Restricted Zone**

The Allagash Wilderness Waterway statute grants authority to the bureau to discontinue private roads within the restricted zone, as noted above. 12 M.R.S.A. §1881. The statute does not specify a procedure for such discontinuance. It is not clear if any private rights in roads retained by private landowners, either by statute or by deed, are fee interests or merely easements in the nature of a right of way. The Legislature could prescribe a process to accomplish a discontinuance of private roads no longer in use in the restricted zone, clarifying that following this process, private rights in roadways so discontinued would be extinguished, and the property would be owned in fee simple by the State of Maine. Such a process, properly prescribed and employed, would be an effective and efficient method to eliminate any "ghost" or vestigial rights in the restricted zone.

## Summary

For all the foregoing reasons, the Bureau submits that private landowners may not, as a matter of legal right, construct new bridge crossings over the Waterway except as specified in the law enacted during the last session of the Legislature, where permanent watercourse crossings were established. Because this issue requires legal analysis beyond the capacity of the Bureau, however, the Bureau will submit the issue to the Attorney General for further, more thorough legal analysis and review. *when?*

The issue highlights the possible existence of vestigial, so called "ghost" rights within the State-owned restricted zone. The very existence of these rights is highly uncertain. It is difficult, if not impossible, for the State to negotiate for conveyance of rights that are at best highly uncertain and hypothetical, and in all likelihood do not exist. A legislatively-prescribed process to extinguish such rights would provide an efficient and effective means to eliminate any remaining uncertainty surrounding these issues.