May 30, 2025

Laura Paye
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017

Re: Petitioner's Closing Brief

IN THE MATTER OF:
TIMOTHY DOWNING,) REGULATION OF WATER LEVELS
SMITHFIELD, MERCER, ROME) AND MINIMUM FLOWS
KENNEBEC AND SOMERSET COUNTIES)
NORTH POND)
L-30629-36-A-N

Sent via email to service list with original sent via US Mail.

The following is the Petitioner's Closing Brief in the above-referenced matter per terms and conditions of the Second Procedural Order, the Maine Department of Environmental Protection (Department), pursuant to the Maine Dam Registration, Abandonment, and Water Level Act, 38 M.R.S. § 840(1), 19. Pursuant to the Maine Dam Registration, Abandonment, and Water Level Act, 38 M.R.S. § 840(4). In addition to the above orders and acts, this brief will focus on the facts and findings of DEP Department Order #L-14807-02-A-N dated October 22, 1987 which outlined the NPA dam construction, water levels, and water flow requirements. We will provide comment on each applicable item pertinent to water levels and water flow requirements and conclude with the Petitioner's proposal for the provisions of a water level order and potential minimum flow rates.

We appreciated all the input provided by interested parties and stakeholders. From this testimony, one can see the love folks have for North Pond and yet it is clear that people have different priorities that are driven by their location on the lake, the contour of the lake and their frontage, the way they utilize the lake, the length of time they have lived on the lake, and their involvement with NPA and other supporting organizations. However, sometimes one learns more about an issue by what is not being said than by what is being said. The Petitioner's believe this is the case in this matter as all those testifying in opposition of our petition failed to acknowledge or reference the main focus of our petition—that being the DEP department order #L-14807-02-A-N dated October 22, 1987. Why is this the case? The Petioner's believe that it is clear from the testimony provided by past and present NPA officials, people involved with the build of the dam, and resulting build itself that there was a blatant disregard for the directives of the DEP department order

and, as such, this Dam has not been compliant at any time since this build. Specifically, there was never any accommodation for the minimum water flow the department required and the Dam's capacity to hold back water and the utilization of this capacity violated the directive to maintain the historical water level of the pond. This should be remedied as soon as possible.

Per the Maine Dam Registration, Abandonment, and Water Level Act, 38 M.R.S. § 840(4).

A. The water levels necessary to maintain the public rights of access to and use of the water for navigation, fishing, fowling, recreation and other lawful public uses;

Petitioner Comments: *While these items were highly emotional topics of discussion during public testimony, the facts are that North Pond has been a recreational-friendly body of water for as long as people have been utilizing it for such purposes. Maintaining pre-1987 (historical) water levels will not compromise any of these public rights to access or recreation. The public boat launch has been so constructed that it allows for use at these lower water levels. As evidence of this, bass fisherman regularly fish North Pond right up to Lake-freeze date in the fall at which time the fall/winter, water-level draw down has been in play for well over a month.*

B. The water levels necessary to protect the safety of the littoral or riparian proprietors and the public;

Petitioner Comments: *No issues compromised these rights either prior to the dam 1987 dam construction or since.*

C. The water levels and minimum flow requirements necessary for the maintenance of fish and wildlife habitat and water quality;

Petitioner Comments: *Heightened water levels have reduced beach areas adversely affecting water fowl nesting and the extreme restriction of water flow in violation of the 1987 department order has adversely affected both the water quality, wildlife habitat, and recreational opportunities of the meadow stream below the dam.*

D. The water levels necessary to prevent the excessive erosion of shorelines;

Petitioner Comments: *The decision to raise the water levels of North Pond above historical levels and maintain these high water levels throughout the seasons has caused excessive erosion all along the shoreline of North Pond. Land owner, John Clyde's written testimony dated April 24, 2025 is the most comprehensive, all-inclusive testimony provided on the negative impact to shore properties and recreational use caused by the excessively high water levels. This was a main topic of discussion during public testimony and the Petitioner's take exception to the testimony of Stuart Cole with respect to the erosion experienced along the shorelines of North Pond. His testimony is in direct conflict with the cautionary comments by The Division of Environmental Evaluation and Lake Studies in the 1987 order where they recommended: "... historical...water levels are maintained in the pond.* ***High water levels cause increased erosion and lower water quality. North Pond is a sensitive lake."***

E. The water levels necessary to accommodate precipitation and run off of waters;

Petitioner Comments: *We have no comment on this item*

F. The water levels necessary to maintain public and private water supplies;

Petitioner Comments: *This is another emotional issue as many testified of their concern that reverting back to historical water levels of pre-1987 would adversely impact their ability to draw water for their camps. However, all the parties testifying on this issue had sufficient water both before 1987 and since that time with the exception of one party, Claire Marshall, that testified that in 1971 or 1972 her family needed to leave camp early because the water got so low. Interestingly, her husband testified that the family camp was one of the*

first to be built on the lake and yet, over all those years, they only mentioned the one event in the early 70's. No mention of issues in the period between 1984 and 1986 (Pre-dam) would seem to imply that they had no issues in these years which were, admittedly by all, the "low-water mark" that led to the decision to have a more robust dam built in order to stabilize water levels.

G. The water levels necessary for any ongoing use of the dam to generate or to enhance the downstream generation of hydroelectric or hydromechanical power; and

Petitioner Comments: *This item is not applicable to the NPA Dam*

H. The water levels necessary to provide flows from any dam on the body of water to maintain public access and use, fish propagation and fish passage facilities, fish and wildlife habitat and water quality downstream of the body of water.

Petitioner Comments: *There has never been an accommodation to maintain the department order required minimum water flow of 14.5 cfs and this has adversely affected the ecosystem downstream and compromised recreational activities downstream. This needs to be addressed.*

The following are items of concern and Petitioner comments on the items from the "Rebuild Dam #L-14807-02-A-N DEPARTMENT ORDER" from October 22, 1987.
Items of NPA non-compliance from Department Order dated October 22, 1987:

Minimum water flow: No accommodations were made during the dam construction for the required minimum water flow.

From Department Order #L-14807-02-A-N:

- *4. Three steel beam flash boards will be stacked on an existing wooden log and attached to the vertical beams. They will be installed seasonally from May 1 to October 15.* ***The bottom flashboard will have a permanent hole to release a minimum flow.***

- *11. The Division of Environmental Evaluation and Lake Studies recommended that* ***a minimal flow of 14.5 cfs be maintained through the dam*** *and historical water levels are maintained in the pond. High water levels cause increased erosion and lower water quality. North Pond is a sensitive lake.*

- *The proposed activity will not unreasonably interfere with or harm the natural environs of the Great Pond or tributary, river, or stream provided all disturbed soil areas are mulched immediately following construction and reseeded next spring, and a temporary coffer dam is constructed to divert water flows away from the work area and* ***provided that a minimum flow of 14 .5 cfs is maintained through the dam .***

- *The proposed activity will not unreasonably interfere with the natural flow of any waters* ***provided that a minimum flow of 14.5 cfs is maintained through the dam****.*

5. ***The permanent hole in the flashboards shall be sized to maintain a minimum flow of 14.5 cfs.***

Petitioner's Comments: *Our point here is that the original rebuild dam order has five(5) separate line items where the minimum flow rate of 14.5 cfs is mentioned and yet no accommodation for the minimum flow; or any flow for that matter beyond what flows over the flashboards. A few of those testifying in opposition to the petition questioned where the 14.5 cfs minimum flow rate came from like it was something the petitioners made up and yet this rate actually came from DEP and The Division of Environmental Evaluation and Lake Studies. It seems apparent that NPA never intended to comply with these sections of the order!*

- ***Historical Water Levels:***

- *7. The historical water level of the pond will be maintained by the dam.*

- *11. The Division of Environmental Evaluation and Lake Studies recommended that a minimal flow of 14.5 cfs be maintained through the dam and* ***historical water levels are maintained in the pond.*** *High*

water levels cause increased erosion and lower water quality. ***North Pond is a sensitive lake.***

- *6. In addition to any specific erosion control requirements set forth in the order,* ***the applicant shall take all necessary measures to ensure that his activities or those of his agents do not result in noticeable erosion of soils*** *on the site during the construction* ***and operation of the project covered by this approval.***

Petitioner's Comments: *Point being the original rebuild dam order has two(2) line items requiring that historical water levels be maintained. To now claim that this historical water level was not known is more than a little disingenuous. The DEP scientists and The Division of Environmental Evaluation and Lake Studies knew what these levels were and all involved with NPA at the time knew these as well. Through testimony, it was divulged that the dam, as it exists today has one(1) permanent 12" flashboard and two (2) removable 12" flashboards with the capacity to hold back three (3) feet of water. Everybody knows this is well in excess of the historical water level. Truth be known, the build of the one (1) permanent 12" flashboard would have been sufficient to fulfill the historical water levels as this new dam was more sound than the old "ad hoc" dam with little to no seepage—especially since no accommodation for the required minimum water flow was made. We believe the evidence suggests that NPA had every intention of increasing the water levels above historical levels which, in fact they have done since 1987.*

The evidence shows that the rebuild dam order was disregarded in multiple ways by NPA. The required minimum water flow and the maintaining of historical water levels that were called out repeatedly in the build order were ignored. One might think that a decision was made by NPA that it would the easier to ask for forgiveness rather than ask for permission to revise the original rebuild and operation order. This has had irreversible, negative impact to the North Pond shorelines and stolen for decades the ability for many to enjoy their shore frontage in ways they were able to prior to the dam build. Were a private citizen to egregiously violate a DEP order to such a degree, one can be sure that local and state Code Officials would issue sanctions to the fullest extent of the law.

Petitioner's proposal for the provisions of a water level order and potential minimum flow rates.

The Petitioner's proposal for provisions are as follows:

1. **2nd removable flashboard permanently removed**
   Through testimony it was clarified, after some discussion during the public hearing that, the dam consists of three (3) 12" flashboards—One (1) fixed, and two (2) removable. We propose that going forward, NPA eliminate the 2nd removable flashboard from the operational plan. Testimony revealed that the intent of this 2nd removable flashboard would hold water back to the historical high water mark. We contend that there is no reason to ever hold this much water back. This is inconsistent with the original order and the use of this flashboard should permanently cease immediately.

2. **Shim accommodation for water flow**

   The petitioners have no desire to have major alterations made to the existing dam. We believe there is a solution that would take into account the spirit and intent of the original 1987 order regarding water flow that would be easy to implement and simplify the dam management. We propose that 2" shims be placed between the fixed flashboard and permanent bottom flashboard. This 2" dimension was arrived at assuming a flow rate of 3 feet/second and the dam being 30 feet wide. This would allow for a continuous water flow for as long as there were more that 12" of water at the dam improving the ecosystem and recreational use below the dam. If the water level were to recede below 12" this water flow would stop and the only additional loss of water the lake would experience would be through evaporation. As stated earlier, we believe this permanent 12" flashboard is "in the neighborhood" of historic water levels and, with the removable flashboard installed through the summer, will provide "water security"

for those who rely on the lake for camp water. It should also provide for the return of some beach for those that have lost this in front of their property for recreation activities. It will also singnificantly reduce shoreline erosion and provide more favorable water fowl nesting area.

3. *Dam Management*

In light of the testimony by East Pond Association that they it is their practice to have water flow through the Coffin Dam through Memorial Day, we propose that the dates that the removable flashboard and proposed shims be in place from Memorial Day until October 15 and that these dates be adhered to as close as is practical.

In closing, the Petitioner's proposals are intended to reduce erosion, reclaim some beachfront lost by the increased water levels, while preserving all boating, fishing and swimming activities. Additionally, it provides for "water security" that may camp owners require.

Respectfully submitted,

Timothy P. Downing
Petitioner Spokesperson

Enclosures

STATE OF MAINE
COUNTY OF SOMERSET
MAY 30, 2025

SIGNED BEFORE ME THIS DATE TIMOTHY P. DOWNING OF HIS OWN FREE WILL.

NOTARY PUBLIC
STATE OF MAINE

Joni M. Gould
Notary Public - Maine
My Commission Expires
October 21, 2029

Joni M. Gould NOTARY PUBLIC STATE OF MAINE EXP OCTOBER 21, 2029

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STATE HOUSE STATION 17 AUGUSTA, MAINE 04333

DEPARTMENT ORDER

October 22, 1987

IN THE MATTER OF

NORTH POND ASSOCIATION, INC. Smithfield, Maine Rebuild Dam #L-14807-02-A-N	)	Great Ponds Permit and Water Quality Certification FINDINGS OF FACT AND ORDER

Pursuant to the provisions of Title 38, M.R.S.A., Section 391 and Section 401 of the Federal Water Pollution Control Act, the Department of Environmental Protection has considered the application of NORTH POND ASSOCIATION, INC. with its supportive data, staff summary, agency review comments, and other related materials on file and finds the following facts:

1. The applicant proposes to rebuild a flashboard dam at the outlet of North Pond and on Great Meadow Stream, Smithfield.

2. The dam located on this site have been vandalized several times in the past. To restore the water level of North Pond and reduce further vandalism, the dam will be rebuilt using 12 inch wide steel beams and 1/4 inch wide steel plates.

3. Approximately 5 cubic yards of material will be excavated from a 10 foot long, 10 foot wide, and 6 foot deep section of each bank using a rubber tire backhoe. A 4 foot by 10 foot steel plate will be installed below grade on each side. These plates will be welded to two vertical, 12 foot long steel beams imbedded 6 feet below ground level at the base of the bank.

4. Three steel beam flashboards will be stacked on an existing wooden log and attached to the vertical beams. They will be installed seasonally from May 1 to October 15. The bottom flashboard will have a permanent hole to release a minimum flow.

5. All excavated material will be replaced.

6. No equipment will be operated from below the high water line.

7. The historical water level of the pond will be maintained by the dam.

8. The adjacent properties are seasonal residential and recreational in use.

9. The shoreline consists of gravel, rocks, shrubs and small trees.

10. The Department of Inland Fisheries & Wildlife recommended that water be diverted from around the work area to prevent siltation and the flashboards be removed prior to October 15, 1987 to allow aquatic furbearers to adjust to lower water levels before ice forms.

October 22, 1987

NORTH POND ASSOCIATION, INC.
Smithfield, Maine
Rebuild Dam
#L-14807-02-A-N

2 Great Ponds Permit and Water Quality Certification

FINDINGS OF FACT AND ORDER

11. The Division of Environmental Evaluation and Lake Studies recommended that a minimum flow of 14.5 cfs be maintained through the dam and historical water levels are maintained in the pond. High water levels cause increased erosion and lower water quality. North Pond is a sensitive lake.

BASED on the above findings of fact, the Department makes the following conclusions,

A. The proposed activity will not unreasonably interfere with existing recreational, navigational, scenic or aesthetic uses.

B. The proposed activity will not unreasonably interfere with or harm the natural environs of the Great Pond or tributary, river, or stream provided all disturbed soil areas are mulched immediately following construction and reseeded next spring, and a temporary coffer dam is constructed to divert water flows away from the work area and provided that a minimum flow of 14.5 cfs is maintained through the dam.

C. The proposed activity will not cause unreasonable soil erosion provided the disturbed soil areas are mulched immediately following construction and are reseeded next spring.

D. The proposed activity will not unreasonably interfere with the natural flow of any waters provided that a minimum flow of 14.5 cfs is maintained through the dam.

E. The proposed activity will not unreasonably harm fish or wildlife habitat provided temporary coffer dams are constructed to divert waterflow around the work area and prevent siltation of the water.

F. The proposed activity will not unreasonably lower the quality of waters and will not violate applicable Water Quality Standards provided temporary coffer dams are constructed to divert water flows away from the work area and prevent siltation of the stream.

THEREFORE, the Department APPROVES WITH THE ATTACHED CONDITIONS the application of NORTH POND ASSOCIATION, INC. to rebuild a dam in Smithfield, Maine, in accordance with the following conditions:

1. The Standard Conditions of Approval, a copy attached.

2. All disturbed soil areas shall be mulched and anchored immediately following construction and maintained until vegetation becomes established.

3. The disturbed soil areas shall be reseeded with standard conservation mix next spring.

4. A temporary coffer dam shall be constructed to divert water flows away from the work area.

5. The permanent hole in the flashboards shall be sized to maintain a minimum flow of 14.5 cfs.

NORTH POND ASSOCIATION, INC. Smithfield, Maine Rebuild Dam #L-14807-02-A-N	)	3 Great Ponds Permit and Water Quality Certification FINDINGS OF FACT AND ORDER

6. In addition to any specific erosion control requirements set forth in the order, the applicant shall take all necessary measures to ensure that his activities or those of his agents do not result in noticeable erosion of soils on the site during the construction and operation of the project covered by this approval.

DONE AND DATED AT AUGUSTA, MAINE, THIS 22 DAY OF OCTOBER, 1987.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Dean C Marriott
Dean C. Marriott, Commissioner

PLEASE NOTE ATTACHED SHEET FOR APPEAL PROCEDURES....

Date of initial receipt of application 9/14/87

Date of application acceptance 10/1/87

NORHTPOND

From: CLYDE9200@roadrunner.com
To: Briggs, Claire
Subject: North Pond water levels and flowage
Date: Thursday, April 24, 2025 10:16:24 AM

Ms. Claire Briggs,

I was unable to be present at the hearing on April 14 regarding the North Pond water levels and flowage. I thank you for the opportunity to express my thoughts online.

I have lived year-round on the east side of North Pond for over 65 years both as boy and man. I have observed several changes to the lake during that time. I have little knowledge about the operation or protocols of dam management on this lake or other lakes in the Belgrade chain. However, I am very observant about changes around the North Pond and especially changes to my water frontage happening over many years.

When my parents purchased the property in 1957, we always had 8-10 feet of beach in front of our camp during warmer months of the year. We often put lawn chairs on the beach to relax in the sun. We could pull our boats up on the beach leaving them overnight instead of using the mooring if we wished, and we could walk on the beach to Sunset Camps, the store, or to the roller rink. The beach offered a buffer to the shoreline. Sometime in the 1970's or 1980's the powers that be thought it might be a good idea to raise the lake level two or more feet. Since then, I have observed that the large reed bank at the northerly end of the lake has slowly diminished by about three quarters of its original size. The entrance to Little Pond used to be relatively narrow with vegetation on both sides. Now it is wide with no vegetation left. Keeping the water level artificially high with reduced flowage must also be a contributing factor in the numerous algae blooms the lake has had over several years.

Since we have no more beach to act as a buffer to our shoreline, considerable damage has been done every year. The lake level stays high sometimes into November before the dam is opened to drain down the lake before freezing. This means that the ice freezes higher up on the shoreline, and as the winter progresses the ice bulldozes up our bank displacing our rip rap. When the ice starts melting in the spring, displaced rip rap falls into the lake.

But that has been only half of the problem for our shorefront. We get very strong northwest winds. I have an anemometer that regularly records wind in the 20-35 mph range, often with higher gusts. Our shorefront is all steep banks perpendicular to the shore. In the spring and fall the northwest wind pounds the banks with considerable force. That coupled with displaced rip rap and high-water causes considerable erosion. We often see brown, silty water 25 feet or more in front of our house when high winds are battering the shoreline. Tree roots are undercut, and some areas are carved concave.

For many years part of my summer and fall chores is to roll rip rap back into place in an attempt to save my shorefront from more damage. I am in my late 70's now and am just about ready to give up that chore. It seems to be a futile effort.

The dam should be wide open no later than October 15. The lower the water level is before freezing up, the less damage it can do. And in the spring, immediately when the ice goes out, or even before, the dam should be wide open to draw the lake down before significant damage can be done.

Sincerely,