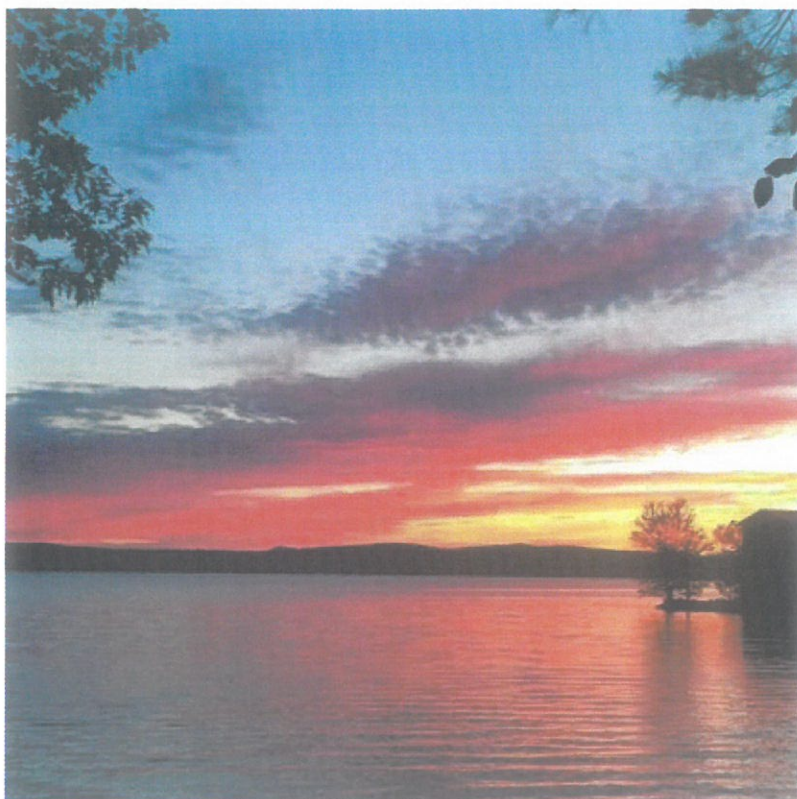




## **Water Level Petition-North Pond (Smithfield, Mercer Rome)**

### **Pre-hearing Testimony**

**Submitted January 24, 2025**

**By Tim Downing, Petitioners Spokesperson**

#### **1. Basis of Petition**

The newly established North Pond Association received formal authorization on October 22, 1987 to construct a dam within the banks of the Great Meadow Stream which leads from North Pond to Great Pond with the intended purpose of maintaining historic water levels while insuring a steady water flow. For the

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first few years of the dams' existence the dam was maintained in a way consistent with the original order. However, with the passing of time there appeared to be a belief within the governing body of the North Pond Association (NPA) that higher water levels and complete restriction of water flow was desirable. The thought and expressed position was "the higher the water the better!" By the early '90's this position became more extreme as a 2<sup>nd</sup> beam was added to the dam without permission from or notice to Maine DEP. Despite expressions of concern from property owners that their shorelines were being eroded by the high water and they were losing banks and experiencing damage to their property, high water levels were maintained for longer periods of time during the summer months and fall drawdowns were shorter in duration to the point where fall "draw-downs" withheld water levels that were even higher than what had been the mid-summer historical norm. Therefore, a grassroots effort of frontage owners of not only North Pond but also adversely impacted property owners of great meadow stream and Harlow Stream (the portion of the East Pond Serpentine below Coffin Dam) to petition the intervention of Maine Department of Environmental Protection to review the practices of the maintainers of the dams in order to have the organization within our state responsible for the oversight, preservation, and protection of our environment to review, assess, and provide guidance on best practices for dam maintenance and guidance for the most beneficial water flows and water level practices. It was only yesterday (January 23, 2025) that the we petitioners received a copy of the original order despite numerous requests of the NPA to share this document. One must assume that their copy was lost over time as if it were available for reference and guidance, the water flow and water levels would not have been managed in such a disruptive and damaging way. This is most unfortunate as irreparable damage has occurred to shore frontage trees lake and stream ecosystems and wetlands. Waterfowl nesting areas have been severely reduced and community traditions have become extinct. While our testimony will outline and document the adverse affect that the last decades of mismanagement has caused, the fact that the DEP is even holding these hearings is the best evidence that review and intervention is necessary. We make this bold assessment due to the fact that, when first submitted, our petition was denied as we were told that the structure restricting and holding back the water did not meet the definition of a dam as defined in "*The Maine Dam Registration, Abandonment and Water Level Act*". However, this initial decision was reversed after the petioners submitted evidence that the NPA had added a 2<sup>nd</sup> beam without informing our receiving permission from the DEP to do so. By doing so, NPA created a state defined dam based on the height of the dam and the volume of water that this dam was holding back.

## 2. Department Order-October 22, 1987

This department order allowed for the construction of a dam restricting the flow of the Great Meadow Stream provided:

- “The historical water level of the pond will be maintained by the dam”
- “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.” The Department order goes on to confirm the petitioners contention that “...High water levels cause increased erosion and lower water quality. North Pond is a sensitive lake.” It further contended in the conclusions of this order that the dam, once constructed, “will not unreasonably interfere with or harm the natural environs of the Great Pond, or tributary, river, or stream ... **provided** that a minimum flow of 14.5 cfs is maintained through the dam.”

## 3. Water Level

Despite the condition of the original department order to maintain the historic level of the pond, the practice of the NPA for at least the last 35 years has been to maintain the water level of North Pond anywhere from 12 – 18 inches above historical levels. This has been common knowledge easily confirmed by the extent to which “Whale Rock” has been exposed, or more accurately, not exposed for decades now,



Whale Rock

#### 4. Water Flow

Despite what NPA might want to lead folks to believe based on the pictures submitted, water flow is has been pretty much non-existent for the majority of the season from Prior to May 1 to October 15. This is a difrect violation of the department order of October 22, 1987 where 14.5cfs minimum water flow was mandated.



Dam, May 29, 2023 (Early Spring and already holding back full capacity of Dam at the unapproved higher level!

#### 5. Erosion

- The Department order of 1987 warned of the negative impacts of erosion due to maintaining water levels well in excess of historical levels. This has certainly been the case around the entire perimeter of North Pond but most especially on the East shore of the pond in the village area where bank and beach erosion has resulted negatively impacting water quality along with significant property damage.



Bank erosion to the extent that steps no longer have footing. Picture to right are concrete steps built in 1961 and remained in good stead until late '90's when high they began to succumb due to high water level erosion.

#### 6. Loss of Canopy

The trees along the shores of North Pond have been irreparably damaged and lost due to high water level erosion. During the October wind event 6 years ago, over 100 trees were lost as high winds and undermined root systems due to decades of erosion. None of these trees were replaced resulting in significant reduction of the shoreline canopy that is so critical to a pond's ecosystem. Many more trees are precariously close to being uprooted and lost forever.

#### 7. Damage to wetlands

Decades of maintaining high water levels has accelerated the destruction of the lake's delicate wetland and bog ecosystem. The opening depicted in the picture below is between North Pond and Little North. 45 years ago, this opening did not exist. Over time we've witnessed erosion making this opening wider and wider each year. What once was a peninsula is now an island!



#### 8. Increased Water Temperatures & reduced Dissolved Oxygen Levels

Item 11 in the Department Order from 1987 warned how precarious the water quality of North Pond was and the negative impact maintaining high water levels has on a lake's water quality. Our group shared more detailed documentation of this phenomenon during a Smithfield Selectman's meeting in the Spring of 2023.

#### 9. Impact to Stream Ecosystems

Maintaining high water levels on North Pond and essentially stopping the flow of water for the majority of the summer not only adversely affects water quality and results in erosion but doing so also negatively impacts the ecosystems of the streams below the dam. Stagnant water as well as significantly shallower water levels in these streams has resulted in dirty, nasty water virtually eliminating the use of these areas for recreational use. Many of our petitioners primary concern is of these stream areas that they used to enjoy as kids to cool of in the stream swimming holes. They are saddened by the fact that their children and grandchildren have not been able to experience this "rite of summer" as they were able to. Kayaking, canoeing and fishing opportunities have been non-existent for decades now due to the way the great meadow stream dam has been managed.

#### 10. Impact to Waterfowl Nesting

When North Pond was maintained at historic water levels, nesting area in the form of several feet of shore depth existed allowing for safe and plentiful nesting areas for the area's waterfowl population. It is interesting that the same people that are adamant in enforcing wake speed to minimize erosion and negative impact to waterfowl are the same individuals, groups and

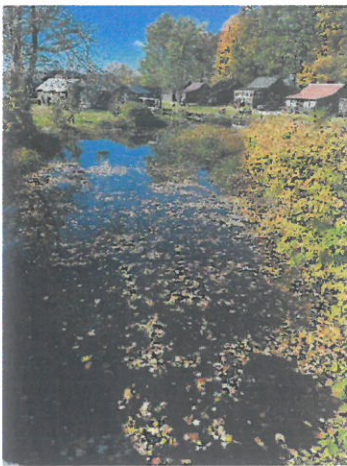
organizations that advocate for the highest water levels in our lakes. I was shocked to learn when I attended a Belgrade lakes dam committee meeting that Great Pond and Messalonskee Lake dam attendants' target level is and I quote "3 inches over high water level" for these lakes! How does that even make sense?

## **Coffin Dam Flow-East Pond Serpentine**

Despite the belief that the Coffin Dam is not optimally managed for water quality, soil erosion, etc. this was not a focus of our petition. However, the DEP response included it in their review so we will touch on items that are most important to our petitioners.

### **1. Water Flow**

Just as the DEP mandated a minimum, steady water flow for the Great Meadow Stream, we have to believe that East Pond, The Serpentine, and Harlow Stream ecosystems would also benefit from an established minimum water flow. While the East Pond Association has, in recent years, had periodic water releases during the summer months unlike NPA that practices holding water back to the greatest extent possible all summer long, there are still times in the summer when EPA has decided to hold water back and the Harlow Stream begins to look unsightly with a distinctly noticeable stench. This is not pleasant for the camp owners along the stream and passers by in the Smithfield Village.



Sunset Condos, and Harlow Stream (October 2024) No water flow

## 2. Smithfield Tradition/ Impact to Perch

A rite of spring in Smithfield every year for the last 100 years is when the “Perch are Running” and anglers young and old jockey for position on the bridge so you can fill your bucket with white perch to bring home to family and friends for a perch feed. This picture is from 2014 when the perch were running. This was posted on Facebook and literally people from coast to coast (One from Washington State) that commented on the fond memories they had as kids to fish off the Smithfield Village Bridge when the perch were running. The perch don’t run if the water does not flow and more often than not, sadly, it is the exception rather than the rule for a perch run to occur as a direct result of the way Coffin Dam is being managed. East Pond Association membership try to Explain that the Perch population is surviving just fine. Maybe it is but that misses the point—the point is we do not want the white perch population to just survive, we want to see and experience it thriving! The Smithfield Village is not what it used to be. The stores are gone, Sunset Beach and camps are no longer public, the Town office and fire departments are no longer in the village and the Smithfield Central School has been closed for years. Most of these were inevitable, however there is no reason that the Coffin Dam could not be managed in a way that would create ideal conditions for the white perch to run and, in doing so, preserving a meaningful Smithfield tradition that allows the community to come together and share a special “sense of place”!



In closing, it is our hope that we can approach in a holistic way the management of our watershed bodies of water, tributaries, streams and their associates ecosystems. We may be naïve however, the solution seems quite simple. Let's manage our dams, water levels, and water flows as called for in the DEP Department order of October 22, 1987 and, in doing so, give credence and be respectful of all the watershed property owners, not just those that own lake frontage properties. We look forward to the opportunity for all parties to come together at these hearings and come up with environmentally sound solutions that also take into account and respect the rights and interests of all property owners and our communities. Finally, I leave you with a long-time homeowner communication explaining very respectfully the impact of his three (3) pieces of property on North Pond and an historic perspective of what the water level used to be, what it now is, and how it has adversely affected his properties along with his opportunities to fully enjoy his families North Pond Properties.



Shoemaker to  
NPR.pdf

Respectfully submitted, this 24<sup>th</sup> day of January, 2025 @ 2:00am

*Timothy Downing*

Spokesperson

Sworn to and subscribed  
before me this

24<sup>th</sup> day of January, 2025

A handwritten signature in black ink, appearing to read 'Derek Downing'.

Derek Downing  
Notary Public  
Exp. 04/08/2030

