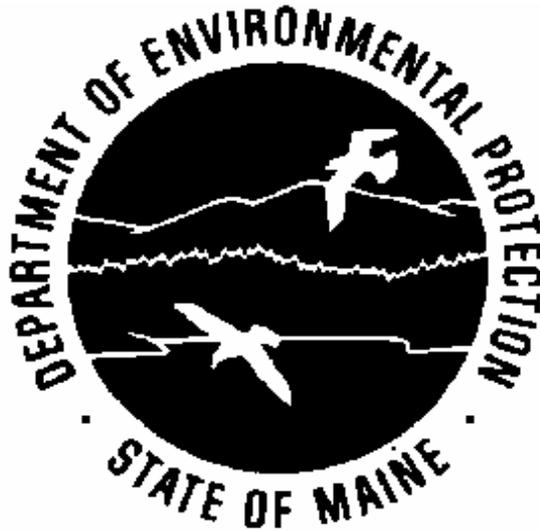


STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
REGULATION OF WATER LEVELS AND MINIMUM FLOWS



**THIS PACKET INCLUDES
A WATER LEVEL PETITION FORM**

Bureau of Land and Water Quality

Revised: March 2003

DEPLW0418 – C2003

DEPARTMENT OF ENVIRONMENTAL PROTECTION QUESTION AND ANSWER SUMMARY

REGULATION OF WATER LEVELS AND MINIMUM FLOWS

Background

Water levels and flows on many ponds, lakes, streams and rivers in Maine are controlled by dams. These water bodies are subject to ever increasing public and private development and use, and provide valuable habitat for fish and wildlife.

How dams are maintained and operated has a significant impact on the use and value of the affected waters. In addition, competition between uses can lead to conflict between shoreland property owners and dam owners.

For these reasons, there has long been a procedure for State involvement in water level disputes. This summary explains how this involvement works, and discusses a new option for local control of water levels.

Can water levels and flows be regulated?

Yes. Upon petition, the DEP will hold a public hearing and issue an order establishing a water level regime and minimum flow requirement for the body of water impounded by a dam.

For the purpose of setting water levels, a dam must be a (1) man-made structure that impounds or diverts a river, stream or great pond that is (2) at least 2 feet high and that is (3) capable of impounding at least 15 acre-feet of water. (Note: Acre-feet is a measure of volume and is the product of the surface area of an impoundment multiplied by its average depth.) Old log driving dams whose maintenance and use have been discontinued are not subject to water level regulation.

What factors are considered in setting a water level?

In making its decision, the DEP is required to gather and consider evidence on the water levels and flows necessary to:

- maintain public rights of access to and use of state waters;
- protect the safety of shoreline landowners and the general public;
- maintain fish and wildlife habitat and water quality;
- prevent excessive shoreline erosion;
- accommodate rainfall and surface water runoff (including snow melt);
- maintain public and private water supplies; and
- maintain any existing use of the dam for power generation.

Who can petition for a water level hearing?

Any of the following people can petition for a water level hearing:

- The owner of a dam.
- The State Commissioner of Inland Fisheries and Wildlife.
- The State Commissioner of Marine Resources.
- A required number (25% or 50, whichever is less) of the landowners on the shore of the impoundment created above the dam or on the banks of the waterway below and affected by the dam.
- A chartered public water company having withdrawal rights from the impoundment created by a dam.

Can anyone besides DEP set water levels?

Yes. A municipality may adopt a local ordinance to regulate water levels and flows for dams and impoundments located entirely within its corporate boundaries. In cases where a dam or its impoundment are located in more than one town or city, each municipality must adopt an ordinance and then enter into an interlocal agreement to regulate the dam.

Do towns and cities have to regulate their dams?

Local control of water levels and flows is entirely voluntary, not mandatory. Municipalities are not required to adopt a dam ordinance--they simply have the option of doing so if they choose. If a municipality does choose to adopt an ordinance, then DEP will no longer have water level authority in that town/city. However, any local ordinance must first be reviewed and approved by DEP as meeting the requirements of state law.

Can water levels be set by petition for all dams?

No. A number of dams are exempt from the water level petition process. These include hydropower dams subject to the jurisdiction of the Federal Energy Regulatory Commission, dams on boundary waters regulated by the International Joint Commission, and dams otherwise regulated under state law (such as the dams within the Cobbossee Watershed District).

How can I petition for a water level hearing?

You must send a completed petition to the DEP, along with the required certification of petitioners from the appropriate town or city clerk(s) and a filing fee of \$100.

When should a water level hearing be requested?

DEP should be viewed as the last resort for settling water level disputes. Once the DEP acts, local control of the situation will be lost. Therefore, landowners should first try to work out a cooperative solution with the dam owner. As a second step, you can get local officials (for example, town manager or selectman or Code Enforcement Officer) involved in settlement discussions. As a third step, you can seek the help of a professional mediator.

Will DEP set the water level where I want it?

Maybe. Maybe not. Water level proceedings often involve finding a balance between competing public and private uses and resources. For example, high water may benefit boating, but may erode the shoreline, affect nesting loons, and put beaches under water. Similarly, low water may reduce flooding, but may also reduce fish spawning, make docks unusable, and cause water lines to freeze in the winter. Often, water level needs and expectations conflict, making it impossible to satisfy everyone all of the time.

The balance that the DEP finds may be different from your or your neighbor's. For this reason, affected landowners are again encouraged to seek a settlement locally.

Don't lakefront or riverfront landowners have a right to certain water levels?

Generally speaking, no. Property ownership extends to the land only, not to the waterbody that abuts or runs through your land. Unless specifically provided by deed or legal charter, shoreline property owners do not have a right to a certain water level being maintained by a dam. In fact, many dam owners have flowage rights to abutting land (these are easement rights to flood lands owned by other people, usually to a set elevation).

Keep in mind that many dams do not generate any kind of direct benefit or income for their owners. Often, a dam's main value is maintaining stable water levels for the benefit of upstream property owners. It seems only fair that those who directly benefit from a dam either buy or operate the dam themselves or share in the cost of its maintenance. However, the DEP cannot force this to happen.

Don't dam owners have the right to operate their dams as they see fit?

Again, generally speaking, no. DEP's authority to set water levels is not limited by a dam owner's property rights or by an owner's current or future use of a dam. Rather, the DEP may set water levels that limit the extent to which a dam owner can exercise his/her property rights, where necessary to serve the larger public interest.

How are water level decision enforced?

Water level orders are enforceable against the owner or operator of the dam that controls the water. DEP will first seek voluntary corrective action to resolve any violation of the conditions of an order. Failing that, the DEP can seek a court order stopping the violations and imposing fines of up to \$10,000 a day. DEP also has the authority to enter onto the dam property to carry out the terms of a water level order.

Shorefront property owners are also able to go to court to get the dam owner to comply with a water level order.

Any municipal order is enforceable by the issuing town or city in the same way as a DEP order.

Once a water level is set, can it be changed?

Yes. There are two ways a water level can be changed. The first is if the DEP finds that the water level set is having unintended consequences or that there has been a change in conditions requiring modification of the water level order. The second way involves a dam owner's petition for release from water level maintenance. After a petition is filed, if no new owner is found for the dam among affected shorefront property owners, municipalities, state agencies or public interest groups, the DEP must order the dam owner to release the water from the dam. This water release order will supercede any water level order that was previously issued for the dam.

How are water levels set for hydropower dams?

Water levels are set for hydropower dams either through a state permitting process or through a federal licensing/relicensing process. A state permit is required for the construction, reconstruction or structural alteration of any project that uses the flow of water to generate power (either mechanical or electrical) or that stores water to benefit downstream power generation. A federal license is required for most dams located on a navigable waterway or affecting interstate commerce.

Where can I get more information?

A copy of the state laws dealing with municipal and DEP regulation of water levels and flows is included in this packet, along with a water level petition form.

For more information, call or write the Bureau of Land and Water Quality at the DEP office nearest you:

- Augusta 17 State House Station, Augusta, ME 04333 (207-287-3901)

- Bangor 106 Hogan Road, Bangor, ME 04401 (207-941-4570)

- Portland 312 Canco Drive, Portland, ME 04103 (207-822-6300)

- Presque Isle 1235 Central Drive, Presque Isle, ME 04769 (207-764-0477)

MAINE REVISED STATUTES ANNOTATED

**TITLE 30-A
MUNICIPALITIES AND COUNTIES**

**CHAPTER 187
PLANNING AND LAND USE REGULATION**

**SUBCHAPTER VI
MUNICIPAL REGULATION OF WATER LEVELS
AND MINIMUM FLOWS**

30-A § 4454. Municipal regulation

Pursuant to the provisions of this subchapter, a municipality may adopt an ordinance under its home rule authority to regulate water level regimes and minimum flow requirements for impounded bodies of water and dams that are entirely within its corporate boundary.

30-A § 4455. Registration for authority to regulate

Prior to regulating a water level regime or minimum flow in any impounded body of water, a municipality shall adopt an ordinance and submit that ordinance to the Commissioner of Environmental Protection for review and approval. An ordinance adopted under this section must include:

1. Substance of state law. All substantive provisions of Title 38, chapter 5, subchapter I, article 3-A. The ordinance may not allow a municipality to establish a water level regime or minimum flow requirements for any dam listed in Title 38, section 840, subsection 1, paragraphs A to D; and

2. Commissioner as petitioner. Provisions allowing the Commissioner of Environmental Protection and any municipality downstream of the impoundment to petition the municipality for an adjudicatory hearing.

An ordinance adopted under this subchapter may establish a fee for adjudicatory hearings conducted by the municipality.

30-A § 4456. Interlocal agreements

Two or more municipalities may enter into an interlocal agreement under this section to regulate water level regimes and minimum flow requirements for impounded bodies of water and dams that are entirely within the corporate boundaries of those municipalities only if each municipality has adopted an ordinance that has been approved by the Commissioner of Environmental Protection pursuant to this subsection.

30-A § 4457. Assumption of authority

Immediately upon the commissioner's approval of an ordinance submitted under this subchapter, all powers and duties of the Commissioner of Environmental Protection set forth in Title 38, chapter 5, subchapter I, article 3-A, vest in that municipality.

MAINE REVISED STATUTES ANNOTATED

TITLE 38
WATERS AND NAVIGATION

CHAPTER 5
GENERAL PROVISIONS RELATING TO RIVERS AND STREAMS

SUBCHAPTER I
MILLS AND DAMS

Article 3-A
WATER LEVELS

38 § 817. Definitions

As used in this Article, unless the context otherwise indicates, the following terms have the following meanings.

1. REPEALED

2. REPEALED

3. Dam. "Dam" means any man-made artificial barrier, including appurtenant works, the site on which it is located and appurtenant rights of flowage and access, which impounds or diverts a river, stream or great pond and which is 2 feet or more in height and has an impounding capacity at maximum water storage elevation of 15 acre-feet or more. Any such artificial barrier constructed solely for the purpose of impounding water to allow timber to be floated downstream in a logging operation shall not be considered a dam for the purposes of this article, unless it has been repaired, modified or maintained by or with the knowledge of the owner, lessee or person in control since the discontinuance of its use in connection with logging operations. Any adjacent property, easements, roads, bridges or works not necessary for the operation or maintenance of a dam or access to the dam shall not be included under the provisions of this article.

4. REPEALED

5. Height. "Height" means, in reference to a dam, the vertical distance in feet from the natural bed of the stream or watercourse measured at the downstream toe of the barrier, or from the lowest elevation of the outside limit of the barrier, if it is not across a stream channel or watercourse, to the maximum capable water storage elevation.

6. Littoral proprietor. "Littoral proprietor" means an owner or lessee of property on the shore of a lake impounded by a particular dam.

7. Person. "Person" means any individual, firm, association, partnership, corporation, trust, municipality, quasi-municipal corporation, state agency, federal agency or other legal entity.

8. REPEALED

9. Riparian proprietor. "Riparian proprietor" means an owner or lessee of property on the bank of a river or stream or shore of a pond or other small body of water impounded by a particular dam.

38 § 818. Miscellaneous

1. Other laws. Except as specifically provided in this Article, nothing in this Article shall be construed as relieving any person from duties, responsibilities or liabilities imposed by any other statute, regulation, municipal ordinance or any rule of law.

2. Rights of others. Except as specifically provided in this Article, nothing in this Article shall be construed as denying any person any rights he may have under any other statute, regulation, municipal ordinance or any rule of law.

3. Other powers. No provision of this article may be construed as limiting the powers of the Maine Emergency Management Agency under Title 37-B, chapter 24.

4. Damages. No action may be brought against the State, the board, the commissioner or their agents or employees for the recovery of damages caused by any order of the board or commissioner or by the partial or total failure of any dam or through the operation of any dam upon the ground that the State, the board, the commissioner or their agents or employees are liable by virtue of any order or determination of the board or commissioner.

38 § 840. Establishment of water levels

1. Power. The commissioner may on the commissioner's own motion and shall at the request of the owner, lessee or person in control of a dam, the Commissioner of Inland Fisheries and Wildlife, or the Commissioner of Marine Resources, or upon receipt of petitions from the lesser of at least 25% or 50 of the littoral or riparian proprietors or from a water utility having the right to withdraw water from the body of water for which the water level regime is sought, conduct an adjudicatory hearing for the purpose of establishing a water level regime and, if applicable, minimum flow requirements for the body of water impounded by any dam that is not:

A. Operating with a license or exemption issued by the Federal Energy Regulatory Commission or determined by the Federal Energy Regulatory Commission to be subject to the jurisdiction of that commission;

B. REPEALED

C. REPEALED

D. Operating with a permit setting water levels issued under the protection of natural resources laws, sections 480-A to 480-S; the site location of development laws, sections 481 to 490; the small hydroelectric generating facilities laws, sections 631 to 636; the land use regulation laws, Title 12, sections 681 to 689; or any other statute regulating the construction or operation of dams;

E. A dam regulated by one or more municipalities by ordinance or interlocal agreement pursuant to Title 30-A, chapter 187, subchapter VI; or

F. Regulated by the International Joint Commission.

Notwithstanding the provisions of this subsection, after an order establishing a water level regime or minimum flow requirement has been issued pursuant to this section or former Title 12, section 304, the commissioner is not required to hold a hearing to establish a new water level regime or minimum flow requirement for the same body of water in response to a petition from littoral or riparian proprietors unless the commissioner determines that there has been a substantial change in conditions or other circumstances materially affecting the impact of water levels and minimum flows on the public and private resources identified in subsection 4 since the order was issued.

2. Notice. The commissioner shall provide written notice of any hearing held pursuant to this section to the owner, lessee or person in control, if known, of any dam on the body of water and to any petitioner who has petitioned for a hearing with respect to the body of water. The commissioner shall give public notice of the hearing under Title 5, section 9052 and shall also file notice of the hearing in the municipal office of any municipality and in the clerk's office of any county in which the body of water is located.

3. Conduct of hearing. The hearing shall follow the procedures for an adjudicatory hearing under Title 5, chapter 375, subchapter IV and the procedures specified in this section.

4. Evidence. At the hearing, the commissioner shall solicit and receive testimony, as provided by Title 5, section 9057, for the purpose of establishing a water level regime and, if applicable, minimum flow requirements for the body of water. The testimony is limited to:

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;

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

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

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

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

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

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

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.

5. Order. Based on the evidence solicited at the hearing, the commissioner shall make written findings and issue an order to the owner, lessee or person in control of the dam establishing a water level regime for the body of water impounded by the dam and, if applicable, minimum flow requirements for the dam. The order must, insofar as practical, require the maintenance of a stable water level, but must include provision for variations in water level to permit sufficient drawdown of the body to accommodate precipitation and runoff of surface waters, minimum flow requirements and to otherwise permit seasonal and other necessary fluctuations in the water level of the body of water in order to protect public health, safety and welfare and the public and private resources identified in subsection 4. The commissioner shall deliver a copy of the order to the owner, lessee or person in control of the dam, the municipal officers of any municipality in which the dam or the body of water it impounds is located and each petitioner, if any, and shall file a copy of the order in the registry of deeds in the county where the dam is located.

6. Appeal. The commissioner's order may be appealed to the board. The appeal is governed by the provisions of section 341-D, subsection 4.

38 § 841. Maintenance of dams

1. Prohibition. After issuance of an order under section 840, subsection 5, establishing a water level regime for any body of water, no owner, lessee or person in control of any dam impounding the body of water, nor any subsequent transferee, may operate or maintain the dam or cause or permit the dam to be operated or maintained in any manner that will cause the level of water to be higher or lower than that permitted by order of the board or commissioner or to otherwise violate the terms of the order of the board or commissioner.

2. Exception. An owner, lessee or person in control of a dam may not be in violation of subsection 1 when the water level fluctuation not permitted by the order was caused by unforeseeable and unpredictable meteorological conditions or operating failures of the dam or any associated equipment or by valid order of federal, state or local authorities, including an order issued pursuant to Title 37-B, section 1114, subsection 2, and when the person could not have avoided the fluctuation by promptly undertaking all reasonably available steps to regulate water flow through or over any dam under the person's control. The burden of proof is on the owner, lessee or person in control of the dam to demonstrate the applicability of this subsection.

3. Enforcement. The commissioner or any littoral or riparian proprietor may commence an action to enjoin the violation of any provision of this subarticle. The commissioner may enforce any order issued under section 840, subsection 5 or subsection 6 by any other appropriate remedy, including, but not limited to, entering the dam premises to carry out the terms of the order.

The violation of any order issued under section 840, subsection 5 or subsection 6, is punishable by a forfeiture of not less than \$100 and not more than \$10,000. Each day of violation is considered a separate offense.

4. REPEALED.

5. Appeal. Any person aggrieved by an order of the board or commissioner under section 840, subsection 5 or 6 may appeal to the Superior Court under Title 5, chapter 375, subchapter VII.

38 § 842. Transition provision

All orders of the State Soil and Water Conservation Commission or the Commissioner of Agriculture, Food and Rural Resources issued under former Title 12, section 304 continue in effect and must be enforced by the commissioner until they expire or are rescinded or amended under this subarticle.

38 § 843. Municipal authority

The commissioner shall review an ordinance submitted pursuant to Title 30-A, chapter 187, subchapter VI for consistency with this article. If the commissioner determines that the ordinance includes all substantive provisions of this article and includes all provisions required by Title 30-A, chapter 187, subchapter VI, the commissioner shall approve that municipality for authority to establish water level regimes and minimum flow requirements for impoundments and dams.

SUMMARY OF LEGISLATIVE HISTORY

- P.L. 1983, Chapter 417 An Act Concerning Inspection, Registration and Abandonment of Dams: repealed existing laws dealing with abandoned dams (12 MRSA §§ 251-254), neglected dams (12 MRSA §§ 301-308), and the inspection of dams (38 MRSA §§ 811-814), all administered by the Department of Agriculture, Food and Rural Resources; enacted the Maine Dam Inspection, Registration and Abandonment Act (38 MRSA §§ 815-842), to be administered by DEP. [Effective date: September 23, 1983]
- P.L. 1987, Chapter 118 An Act Concerning Inspection, Registration and Abandonment of Dams: make various technical amendments to the 1983 law; amended the dam inspection, access and notification provisions of 38 MRSA §§ 823 and 825. [Effective date: September 29, 1987]
- P.L. 1989, Chapter 545 An Act Concerning the Inspection of Dams: amended 38 MRSA § 815 to change the title of law to Maine Dam Registration, Abandonment and Water Level Act; repealed the dam inspection provisions of the 1983 law (38 MRSA §§ 820-829); and enacted a new dam inspection law (37-B MRSA §§ 1061-1070), to be administered by the Maine Emergency Management Agency. [Effective date: July 10, 1989]
- P.L. 1989, Chapter 323 An Act to Regulate Water Flowage Over Dams: amended 38 MRSA § 840 to allow the Commissioner of Inland Fisheries and Wildlife or the Commissioner of Marine Resources to petition for a water level hearing and to clarify DEP authority to establish minimum flows. [Effective date: September 30, 1989]
- P.L. 1989, Chapter 569 An Act to Clarify Which Parties May Petition the Board of Environmental Protection for a Water Level Hearing: amended 38 MRSA § 840 to allow certain water utilities to petition for a water level hearing. [Effective date: September 30, 1989]
- P.L. 1989, Chapter 890 An Act to Clarify the Role of the Board of Environmental Protection: made various technical amendments to the law; amended the law to transfer decision-making authority from the Board to the Commissioner. [Effective date: July 14, 1990]
- P.L. 1991, Chapter 528 An Act Making Unified Appropriations and Allocations for the expenditures of State Government...for the Fiscal Years Ending June 30, 1991, June 30, 1992, and June 30, 1993: enacted 38 MRSA § 815-A to require that the DEP report to the Legislature on an appropriate mechanism to transfer the functions of the Maine

Dam Registration, Abandonment and Water Level Act out of DEP; amended 38 MRSA § 830(2) to increase dam registration fees until January 1, 1994; enacted 38 MRSA § 830(2-A) to reduce dam registration fees, effective January 1, 1994. [Effective date: July 8, 1991]

P.L. 1993, Chapter 370

An Act Regarding Dam Registration Fees: enacted 30-A MRSA §§ 3354-4457 to allow municipalities to adopt an ordinance to regulate water levels and minimum flows; repealed the title (§ 815-A), legislative findings and purpose (§ 816), dam registration provisions (§§ 830-831), and abandonment provisions (§§ 835-837) of the Maine Dam Registration, Abandonment and Water Level Act; amended 38 MRSA § 840(1) to remove dams regulated by one or more municipalities under 30-A §§ 4454-4457 from DEP's water level setting authority; enacted 38 MRSA § 843 to require that the DEP approve municipal water level ordinances. [Effective date: October 13, 1993]

P.L. 1995, Chapter 630

An Act to Create a Process for Identifying New Owners for Dams or Releasing Current Owners from Water Level Maintenance Obligations: amended the Maine Tort Claims Act (14 MRSA § 8104-A) to exempt governmental entities from any claim for damages resulting from the construction, ownership, maintenance or use of dams; amended 38 MRSA § 840(1) to extend DEP's water level setting authority to federally "grandfathered" hydropower dams; enacted 38 MRSA §§ 901-908 to create a process for a dam owner to petition DEP for release from dam ownership or water level maintenance. [Effective date: July 4, 1996]

P.L. 1999, Chapter 71

An Act Relating to Transfer of Ownership of Dams: amended 37-B MRSA § 1065 to require that MEMA inspect and reevaluate the hazard classification after receiving a notice of transfer of ownership of any significant or high hazard dam; enacted 37-B MRSA § 1071 to require that the owner of a significant or high hazard dam provide notice to MEMA prior to any change in ownership of the dam. [Effective date: April 16, 1999]

P.L. 1999, Chapter 243

An Act to Amend Certain Laws Administered by the Department of Environmental Protection, Bureau of Land and Water Quality: amended 38 MRSA § 840(1) to eliminate the requirement for a repeat hearing where there has been no substantial change in conditions since the original water level decision. [Effective date: September 18, 1999]

P.L. 1999, Chapter 782

An Act to Establish the Dam Repair and Reconstruction Fund and Reconstruct 2 Small Dams in Whiting: enacted 38 MRSA § 844 to create a dam repair and reconstruction fund. [Effective date: August 11, 2000]

P.L. 2001, Chapter 460

An Act to Promote Dam Safety: repealed 38 MRSA § 844 and transferred the dam repair and reconstruction fund to MEMA (37-B MRSA § 1130); repealed the 1989 dam inspection law (37-B MRSA §§ 1061-1070) and enacted a new dam safety law (37-B MRSA §§ 1111-1129); and amended 38 MRSA § 818(3) and § 841(2) to make reference to MEMA's authority under the new dam safety law. [Effective date: September 21, 2001]

DEPARTMENT OF ENVIRONMENTAL PROTECTION
Bureau of Land and Water Quality
17 State House Station
Augusta, ME 04333

FOR DEP USE
AIS # L- _____
Fees Paid: \$ _____
Date Fees Rec'd: _____
ATS # _____

PETITION TO SET WATER LEVELS/MINIMUM FLOWS

PLEASE TYPE OR PRINT

GENERAL INFORMATION

The undersigned PETITIONERS hereby petition the Department of Environmental Protection to hold a public hearing and establish a water level regime and/or minimum flows for the water body described below.

NAME OF WATER BODY: _____

LOCATION OF WATER BODY- TOWN(S): _____

COUNTY(IES): _____

The undersigned PETITIONERS hereby represent that, to the best of their knowledge, the water body named above is impounded by or receives flows from the man-made dam described below.

LOCATION OF DAM: _____

NAME OF DAM OWNER: _____

ADDRESS OF DAM OWNER: _____

The undersigned PETITIONERS hereby agree to have all official correspondence and notices regarding this petition served in their behalf on the spokesperson identified below.

NAME OF SPOKESPERSON: _____

MAILING ADDRESS: _____

TELEPHONE NUMBER(S): HOME: _____ BUSINESS: _____

The undersigned PETITIONERS hereby represent and aver that they are littoral or riparian proprietors on the water body impounded by or receiving flows from the dam described above.

CERTIFICATION OF FILING

By signing below, the spokesperson agrees to: (1) serve as an intermediary between other petitioners and the DEP; (2) share information, correspondence, notices, draft orders and other official documents with other petitioners; and (3) send comments on behalf of other petitioners to the DEP.

SIGNATURE OF SPOKESPERSON
DEPLW0864

DATE

PETITION TO SET WATER LEVELS/MINIMUM FLOWS

FILING INSTRUCTIONS AND PROCEDURES

1. The petition form is to be filled out completely and submitted along with all the required information.
2. A filing fee must accompany the completed petition form. Please contact the DEP for current fee schedule information. Fees are payable to treasurer, State of Maine.
3. Any incomplete petition, or one without the filing fee, will be returned by the DEP.
4. You are encouraged to make a copy of the completed petition for your records.
5. You will be contacted once a DEP analyst has been assigned to review your petition.
6. After gathering available information and comments from the dam owner, the affected towns, and other state agencies, the DEP will schedule a public hearing on your petition.
7. Hearings are usually held in the general area of the water body that is named in a petition, or may be held in Augusta.
8. Following the hearing, the DEP will issue an order establishing a water level regime and, if applicable, minimum flow requirements for the water body named in the petition.
9. Any DEP order can be appealed to the Board of Environmental Protection or subsequently to Superior Court.

PETITION TO SET WATER LEVELS/MINIMUM FLOWS

REQUIRED INFORMATION

The following information must be provided for this petition to be complete. Please be as accurate as possible, and attach as many additional pages as necessary to describe the situation that has led to the petition.

1. Describe the nature of the problems you wish to have resolved through the setting of water levels and/or minimum flows by the DEP. Try to quantify the extent of these problems.

Thinking about your answers to the following questions may be helpful: Is the problem high water? Is the problem low water? Is the problem high water at one time of the year and low water at another? Is the problem lack of flows from the dam? What impacts are being caused (examples include erosion, reduced water quality, flooding, unusable docks)? Do all petitioners have the same problem? What is the cause of the problem? How does the dam affect the problem? Has the operation or maintenance of the dam changed recently? Has this made the problem better or worse?

2. Provide a map of the water body in question with locations of impacts marked and types of impacts (erosion, flooding, exposed dock, etc.) labeled.
3. Describe any attempts that have been made by you or others to resolve your problems with the dam owner or operator.
4. Provide any historical information (for example, records of water levels) you believe will be useful in the DEP's evaluation of the cause, duration, and extent of your problem.
5. Describe your proposal for a water level regime and/or minimum flows that will resolve the problems you have identified.
6. Provide the signatures, printed names, location (town) of shoreland property, and mailing addresses of at least 25% or 50, whichever is less, of the landowners around the pond or lake impounded by the dam in question or along the river or stream receiving flows from the dam in question.

Blank petition signature sheets are attached and may be reproduced as necessary.

7. Provide a certification from the appropriate town/city clerk(s) of the number of valid petition signatures from each affected municipality; a fill-in-the-blank page for certification of petitioners is attached.

CERTIFICATION OF PETITIONERS

The undersigned town/city clerk(s) hereby certify the number of valid petitioners from each affected municipality who have signed the attached petition to set water levels/minimum flows.

To be a valid petitioner, a person (including individuals, partnerships, corporations, governmental entities, associations, and public or private organizations of any character) must own or lease property on the shore of the pond or lake impounded by a dam or on the banks of the river or stream receiving flows from a dam.

If the number of valid petitioners from a given municipality is less than 50, the appropriate town/city clerk(s) also hereby certify the total number of land owners in that municipality on the shore of the pond or lake impounded by a dam or on the banks of the river or stream receiving flows from to dam.

Name of Town/City	Number of Valid Petitioners	Total Number of Riparian/ Littoral Landowners	Signature of Town/City Clerk
Name of Town/City	Number of Valid Petitioners	Total Number of Riparian/ Littoral Landowners	Signature of Town/City Clerk
Name of Town/City	Number of Valid Petitioners	Total Number of Riparian/ Littoral Landowners	Signature of Town/City Clerk

PETITION FOR ESTABLISHMENT OF WATER LEVELS

_____ IN _____
Name of Waterbody Name of Town(s)

TOWN WHERE PROPERTY
IS LOCATED

SIGNATURE

PRINTED NAME OF SIGNER

MAILING ADDRESS

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____
13. _____
14. _____
15. _____