



STATE OF MAINE

DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE
GOVERNOR

PATRICIA W. AHO
COMMISSIONER

January 30, 2014

Mr. Jeffery LaCasse, General Manager
Kennebec Water District
PO Box 356
6 Cool Street
Waterville, Maine 04903-0356

RE: Water Level Order Application, East Vassalboro, DEP #L-7912-36-E-M

Dear Mr. LaCasse:

Please find enclosed a signed copy of your Department of Environmental Protection Water Level Order Minor Revision permit. You will note that the permit includes a description of your project, findings of fact that relate to the approval criteria the Department used in evaluating your project, and conditions that are based on those findings and the particulars of your project. Please take several moments to read your permit carefully, paying particular attention to the conditions of the approval. The Department reviews every application thoroughly and strives to formulate reasonable conditions of approval within the context of the Department's environmental laws. You will also find attached some materials that describe the Department's appeal procedures for your information.

If you have any questions about the permit or thoughts on how the Department processed this application please get in touch with me directly. I can be reached at (207) 446-2642 or at Kathy.Howatt@maine.gov.

Sincerely,

Kathy Davis Howatt, Hydropower Coordinator
Division of Land Resource Regulation
Bureau of Land and Water Quality

pc: File

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
(207) 941-4370 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769
(207) 764-0477 FAX: (207) 760-3143



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

IN THE MATTER OF

KENNEBEC WATER DISTRICT) REGULATION OF WATER LEVELS
Vassalboro, Kennebec County) AND MINIMUM FLOWS
CHINA LAKE WATER LEVEL) MINOR REVISION
L-7912-36-E-M (approval)) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S.A. §§ 341-A and 840, the Department of Environmental Protection has considered the application of the KENNEBEC WATER DISTRICT with the supporting data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

- A. History: In Board Order #L-9177-26-B-X, dated June 13, 1984, the Board established water level and minimum flow requirements for China Lake, located in the Towns of Vassalboro and China. Water levels on China Lake are controlled by an outlet dam in East Vassalboro. In Board Order #L-9177-26-C-X, dated November 12, 1986, the Board approved a reduction in the minimum flow rate from 25 cfs to 10 cfs at the China Lake outlet dam. In Board Order #L-7912-36-B-N, dated November 12, 1997, the Board established a new water level and minimum flow regime for China Lake. In Board Order #L-7912-36-C-M, dated April 20, 2000, the Board approved a modification in the minimum flow regime. In addition to these approvals the Board has heard various petitions and appeals of Department actions related to China Lake which did not result in changes to the China Lake Water Level Order.
- B. Summary: The applicant proposes to change Condition #1 of Board Order #L-7912-36-B-N from beginning the annual lake drawdown process on November 1 each year to beginning the annual drawdown process upon fall destratification, which occurs on or about October 1 each year. The applicant proposes to further change Condition #1 of Board Order #L-7912-36-B-N from a drawdown target of 1½ feet below spillway level to a drawdown target of 2½ feet below spillway level.

1. Condition #1 of Board Order #L-7912-36-B-N reads as follows:
“Beginning November 15 each year, the lake shall be drawn down to a target level of 1½ feet below spillway level. The drawdown shall occur as gradually and consistently as possible to achieve the goal of reaching the target drawdown level by ice-in.”

The applicant proposes to modify Condition #1 as follows:

“Withdraw water from China Lake during fall destratification (on or prior to October 1 on an annual basis) until the lake is drawn down to a target level of 2½ feet below spillway level. Drawdown will occur at a rate not to

exceed 200 cubic feet per second (cfs) and will continue for a maximum of eight (8) weeks. Changes in stream flows will be coordinated with downstream stakeholders.

When the lake water level reaches the target of 2½ feet below spillway level, outlet flow will be reduced to a rate not less than the permitted minimum flow rate, to allow the water level to rebound to a winter target level of 1½ feet below spillway level.”

C. Public Participation: Several interested parties indicated support for the proposed minor revision to the China Lake Water Level Order by letter and by electronic mail. One interested party had concerns about impacts to China Lake’s wetlands. Those concerns were noted by the Department and material presented by that party was reviewed and considered, and was included in the project record. No new site specific information was presented of a nature to change the Department’s findings.

2. FINDING:

China Lake currently experiences nuisance algae blooms due to phosphorus concentrations. Lakeshore and watershed remedial projects designed to address and reduce external loading of total phosphorus are in place, however those actions cannot address phosphorus cycling from sediments. An increase in fall drawdown depth, timed to capture and remove phosphorus liberated from sediment during destratification, is expected to decrease the environmental impact of phosphorus on China Lake and is expected to have a positive effect on water quality over time. No additional detrimental effect is expected in the outlet stream or wetlands from the removal of phosphorus from the lake.

The proposed project is a minor change and will not significantly affect any issues identified during previous Department reviews of the project site. The project application with supporting materials was reviewed by the Department’s Division of Environmental Assessment and was found to meet Department standards. Consultation was sought from the Maine Department of Inland Fisheries and Wildlife; no comments or conditions were received for inclusion into this approval.

Based on its review of the application, the Department finds the requested minor revision to be in accordance with all relevant Departmental standards. All other findings of fact, conclusions and conditions remain as approved in Board Order #L-7912-36-B-N, and subsequent Orders.

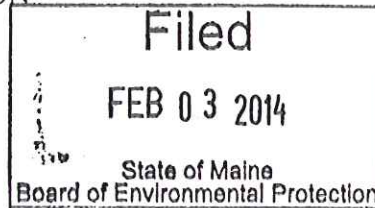
THEREFORE, the Department APPROVES the application of APPLICANT to modify Condition #1 of Board Order #L-7912-36-B-N for China Lake, SUBJECT TO THE FOLLOWING CONDITIONS and all applicable standards and regulations:

1. The Standard Conditions of Approval, a copy attached.
2. Limits of Order. This Order is limited to and includes the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. All variances from the plans and proposals contained in said documents are subject to the review and approval of the Department prior to implementation.
3. A sampling protocol for total phosphorus shall be developed and followed, and shall include collection and analysis of a minimum of one non-contaminated subsurface grab sample each week at the outlet dam during the phosphorus removal drawdown. Chemical analysis shall be performed by a laboratory certified to analyze for low concentrations of phosphorus (reporting limit of 1 part per billion) by acceptable methods. Sample results shall be reported (Total Phosphorus values in parts per million) annually (prior to January 1) to the Department's Division of Environmental Assessment for review.
4. All other Findings of Fact, Conclusions and Conditions remain as approved in Board Order #L-7912-36-B-N, and subsequent Orders, and are incorporated herein.

DONE AND DATED IN AUGUSTA, MAINE, THIS 31st DAY OF January, 2014.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Keenan
 For: Patricia W. Aho, Commissioner



PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES...

KH/L7912EM/ATS#76840

STANDARD CONDITIONS FOR WATER LEVEL ORDERS

THE FOLLOWING STANDARD CONDITIONS SHALL APPLY TO ALL WATER LEVEL ORDERS ISSUED UNDER THE ESTABLISHMENT OF WATER LEVELS STATUTE, TITLE 38 M.R.S.A SECTION 840, UNLESS OTHERWISE SPECIFICALLY STATED IN THE ORDER.

1. Noncompliance. Should the dam be found, at any time, not to be in compliance with any of the conditions of this Order, or should the owner or its designee operate this dam in any way other than specified by the conditions of this Order, then the terms of this Order shall be considered to have been violated.
2. Compliance with all Applicable Laws. The owner of the dam shall secure and appropriately comply with all applicable federal, state and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during operation.
3. Inspection and Compliance. Authorized representatives of the Board, Department or the Attorney General shall be granted access to the premises by the owner of the dam at any reasonable time for the purpose of inspecting the operation of the project and assuring compliance by the owner of the dam with the conditions of this Order.
4. Severability. The invalidity or unenforceability of any provision, or part thereof, of this Order shall not affect the remainder of the provision or any other provisions. This Order shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
5. Transfer. Unless otherwise provided in the Order, the owner of the dam may not sell, lease, assign, or otherwise transfer the dam or any portion thereof without submitting written notification to the Department for review and approval where the purpose or consequence of the transfer is to transfer any of the obligations of the owner of the dam as incorporated in this Water Level Order. Prior to any transfer of property subject to this Order, the Department shall be notified of the new owner of the dam and be provided with a signed letter from the new owner of the dam agreeing to comply with the terms of the Water Level Order. In addition to the requirements outlined in the Department's Chapter 2: Rules Concerning the Processing Applications and Other Administrative Matters, the owner of the dam shall provide the Department with evidence that public notice of the transfer of ownership has been sent to all littoral and riparian landowners (Section 21(C)), and provide sufficient evidence of title, right, or interest (Section 11(D)).



DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: March 2012

Contact: (207) 287-2811

SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's ("DEP") Commissioner: (1) in an administrative process before the Board of Environmental Protection ("Board"); or (2) in a judicial process before Maine's Superior Court. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

A judicial appeal of final action by the Commissioner or the Board regarding an application for an expedited wind energy development (35-A M.R.S.A. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S.A. § 480-HH(1)) or a general permit for a tidal energy demonstration project (38 M.R.S.A. § 636-A) must be taken to the Supreme Judicial Court sitting as the Law Court.

This INFORMATION SHEET, in conjunction with a review of the statutory and regulatory provisions referred to herein, can help a person to understand his or her rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

The laws concerning the DEP's *Organization and Powers*, 38 M.R.S.A. §§ 341-D(4) & 346, the *Maine Administrative Procedure Act*, 5 M.R.S.A. § 11001, and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 CMR 2 (April 1, 2003).

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written appeal within 30 days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days of the date on which the Commissioner's decision was filed with the Board will be rejected.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by the Board's receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner a copy of the appeal documents and if the person appealing is not the applicant in the license proceeding at issue the applicant must also be sent a copy of the appeal documents. All of the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

Appeal materials must contain the following information at the time submitted:

1. *Aggrieved Status.* The appeal must explain how the person filing the appeal has standing to maintain an appeal. This requires an explanation of how the person filing the appeal may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.
5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing on the appeal is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered by the Board in an appeal only when the evidence is relevant and material and that the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2.

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.
3. *The filing of an appeal does not operate as a stay to any decision.* If a license has been granted and it has been appealed the license normally remains in effect pending the processing of the appeal. A license holder may proceed with a project pending the outcome of an appeal but the license holder runs the risk of the decision being reversed or modified as a result of the appeal.

WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will formally acknowledge receipt of an appeal, including the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as supplementary evidence, and any materials submitted in response to the appeal will be sent to Board members with a recommendation from DEP staff. Persons filing appeals and interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, a license holder, and interested persons of its decision.

II. JUDICIAL APPEALS

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2; 5 M.R.S.A. § 11001; & M.R. Civ. P 80C. A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. Failure to file a timely appeal will result in the Board's or the Commissioner's decision becoming final.

An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S.A. § 346(4).

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board's Executive Analyst at (207) 287-2452 or for judicial appeals contact the court clerk's office in which your appeal will be filed.

Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.