

March 23, 2021

Lucerne-in-Maine Board of Overseers

Summary of Testimony concerning LD 909

The Lucerne-in-Maine Village Corporation Board of Overseers is unanimously opposed to changing Private and Special Law Sec. 1. P&SL 2005, c. 17, §1 as proposed in LD909. The bill proposes to modify the language in the current law regarding management of the level of Phillips Lake. The need to revise the language in the current Private and Special law did not originate with Lucerne-in-Maine elected officials or the State Representative for House District 131 who represents the community. The current Private and Special Law regarding the Phillips Lake dam has been effective in meeting the needs of the Lucerne-in-Maine community for the last 16 years.

Lucerne-in Maine is a community in Dedham, Maine in Hancock County located on Route 1A east of Bangor. With the exception of a small number of Dedham property owners, the shoreline property surrounding Phillips Lake, including the dam, is located in Lucerne-in-Maine. Phillips Lake is an 828-acre lake with over 14 miles of shoreline that provides excellent habitat for cold water sport fish and supports numerous summer and winter recreational activities. The shoreline is heavily developed with summer camps and year-round residences.

The Lucerne-in-Maine Overseers have the following concerns with the language of LD909 which would potentially allow increases in the water level of Phillips Lake:

1. Integrity of the dam: The current dam was constructed in 1961. Working with officials from the Maine Department of Environmental Protection, an informal inspection of the dam was conducted in the late 1990's. Based on those observations it was recommended that a thorough engineering evaluation be conducted to determine the structural integrity of the dam and propose appropriate repairs. This was never done. The Overseers have recently begun discussions with the State Dam Inspector to begin those evaluations. Before subjecting the dam to higher water levels, stability, hydraulic and breach analysis are needed to ensure dam safety. The Overseers view it as unwise to contemplate raising water levels and increasing pressure on the dam until its structural integrity has been evaluated, needed repairs accomplished, and safety ensured.
2. Impact on lake habitat: Conversations with the Department of Environmental Protection have confirmed that periodic artificial adjustments to lake levels have a significant negative impact on natural aquatic life resources, wildlife habitats, and water quality. With the fixed dam height mandated by the current Private and Special Law the lake level is subject to dynamic fluctuations in water level that occur seasonally and which are desired and prescribed by the Department of Environmental Protection for Great Ponds. This natural variation in lake level is desired to provide habitat conditions for all life stages of indigenous aquatic organisms, provide water levels sufficient to support important physical processes including thermal stratification, temperature moderation, wetland replenishment, sediment erosion and deposition, maintenance of biological processes for ingress and egress of habitats, maintenance of primary production, migration and movement of organisms, organic matter and nutrient cycling and wetland maintenance. Subjecting the level of Phillips Lake to the subjective and changing decisions of the Board of Overseers annually is not desired or requested.
3. Impact on lake infrastructure: The Phillips Lake waterfront has been heavily developed. Homeowner lake access systems have been developed that accommodate the natural variation in lake level that has existed for decades. Changes in the normal high-water level might lead to modifications in dock and access systems and other modifications within the 25-foot resource protection buffer mandated by the Lucerne-in-Maine Land Use Ordinance. Neither outcome is desired.
4. Lucerne-in-Maine liability: The Private and Special Law dealing with Phillips Lake has undergone several modifications since its inception. Some of those past versions of the law created liability on the part of Lucerne-in-Maine. In 1999 the village was sued in Penobscot County Superior Court (Albert Heber vs

Lucerne-in-Maine Village Corporation #CV-99-149) as a result of water damages which occurred during a high-water condition. The suit was initially dismissed by the court due to changes in the Private and Special Law that were taken after the flooding event but prior to the suit. The plaintiff appealed to the Maine Supreme Court (Docket #PEN-00-06) and prevailed. The suit was returned to the Penobscot County Superior Court where the plaintiff again prevailed. The proposed language in LD 909 allows the Lucerne Board of Overseers to take actions at an annual meeting to set the height of the dam that would affect lake level. The establishment of arbitrary lake levels through manipulation of dam height by annual action of the Board of Overseers not only subjects the lake to the negative effects discussed in preceding paragraphs but might also subject Lucerne-in-Maine to undesired and costly legal action.

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