

Department of Environmental Protection
c/o Ms. Laura Paye, Hydropower Specialist
Bureau of Land Resources
17 State House Station
32 Blossom Lane
Augusta, Maine 04333-0017

April 12, 2023

VIA PRIORITY MAIL

re: Thomas Pond Dam (aka Dingley Brook Dam; the "Dam")

Dear Ms. Paye:

The undersigned hold rights of access to Thomas Pond in Casco Township, Cumberland County, Maine that qualify each of them as members of right in the Thomas Pond Improvement Association (the "TPIA") and/or hold proxies/powers of attorney from other such TPIA Members with riparian rights to Thomas Pond. The TPIA is a not-for-profit corporation organized under the laws of the State of Maine. This letter is provided in connection with the Order of the Department of Environmental Protection (the "DEP") dated April 25, 1990 (with attachments thereto, the "DEP Order") pursuant to which the TPIA was authorized to operate (and directed to take responsibility for operation of) the above-referenced Dam.¹

Prior to his death in 1988, Clyde Stanley Murch had been in negotiations with the TPIA for transfer to it of the ownership rights to and responsibilities for operation of the Dam.² In what the undersigned believe may have been a lack of intergenerational testamentary clarity as to ownership of the Dam following the death of Clyde Murch in 1988,³ the TPIA subsequently petitioned the DEP for authority to operate the Dam, ultimately resulting in the DEP Order.

¹ One of the undersigned, Robert Long Murch, is the grandson of Clyde Stanley Murch. Another of the undersigned, Steven Kelsey Hazen, is the son of the person believed to have been the first person designated by the TPIA to be responsible for monitoring the water level at the Dam and for adjusting the Dam's drop-logs/spillway in accordance with the DEP Order, continuing in that capacity until about 2007 or slightly earlier (Franklin G. Hazen). The third signer, Dana Watkins, resides on property with riparian rights to Thomas Pond that has been in his family from the early 1800s and was possibly the earliest year-round residential structure on Thomas Pond. Mr. Watkins was appointed by overwhelming vote of the TPIA members at its annual meeting in August 2022 to take up certain of the record-keeping obligations of the TPIA specified in the DEP Order. Mr. Murch lives in Greene, Maine and the business he owns and manages maintains its offices in Lewiston, Maine. Mr. Murch is also joint owner of approximately 21 acres of property on Murch Point Road with riparian rights to Thomas Pond. Mr. Hazen resides year-round in Los Angeles, CA and is a seasonal resident on Thomas Pond, including at a facility built by Frederic and Madeline (Watkins) Dingley.

All three signatories are cousins of one degree or another, tracing common ancestry to Captain Samuel and Keziah (Proctor) Dingley. The Annic Susan Murch Kelsey Family Camp Thomas LLC (of which Mr. Murch serves as Manager) is the owner of record of what is believed to be the oldest seasonal residence on Thomas Pond ("Camp Thomas"), built in 1901 by Mr. Hazen's great-grandfather, Arthur Woodman Kelsey, on property given to his wife as a wedding present by her parents George F. and Mary Jane (Nutting) Murch at what is now 70 Murch Point Road, Casco, ME. Mr. Hazen was the Manager of the LLC and primary occupant of Camp Thomas until he transferred that authority over the LLC to Mr. Murch.

² This information is taken from statements in the organizational documents of the TPIA. The DEP Order recites that the DEP attempted to identify ownership of the Dam but was unable to do so. As some point, it will be important to determine whether the TPIA disclosed that fact to the DEP when the TPIA petitioned the DEP to take ownership of the Dam.

³ The undersigned believe that ownership of the Dam would have traced to the grandparents of Clyde Stanley Murch from his grandfather's grandmother, Sally (Dingley) Murch through her parents, Captain Samuel and Keziah (Proctor) Dingley. The undersigned do not waive their rights to assert that the DEP was knowingly misled with the TPIA petition.

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[Signature]

[Signature]

REQUEST FOR MEETING

opinion -
This letter highlights certain actions and procedures of the TPIA that do not comport with the clear and unambiguous terms of the DEP Order. That jeopardizes the sufficiency of Thomas Pond water flow arising from the drain field emptying into it and pond floor springs, supplemented sporadically (and less predictably) by rain fall, ice/snow melt, and resulting runoff. Those restrictions risk the habitat of the fish and wildlife dependent on Thomas Pond. In turn, that adversely impacts the water quality, fish, and wildlife of Sebago Lake into which Thomas Pond flows downstream from the Dam. *an adverse effect on the pond - not just the lake*

an adverse effect on the pond - not just the lake
The undersigned hereby request an opportunity to meet with you or such other senior official(s) of the DEP as you may determine hold(s) the responsibility and authority to monitor full and faithful implementation of the DEP Order. All of the undersigned will be in the Casco area during the week of April 24-28, 2023 and available for such meeting.⁴

NON-COMPLIANCE WITH THE DEP ORDER

The DEP Order specifies (award condition no. 3) as follows: "A minimum flow of water, 2.4 cfs (=Aquatic Base Flow) *shall be maintained at all times* [emphasis added]." Among the materials included in the DEP Order are documents entered into by the DEP and the TPIA with certain landowners adjacent to the Dam, to which is attached a "Thomas Pond Dam Management Plan" that includes the following requirement: "4. Minimum flow over dam or through dam must be maintained at $\geq$ [greater than, or equal to] $2.4 \text{ ft}^3 / \text{sec.}$ " The DEP Order contemplates that the "Management Plan" could be modified with approval of the DEP but the documents first referencing it clearly specifies, however, that the "2.4 cfm minimum flow requirement" may NOT be so modified.

To be sure, the Management Plan includes the following: "1. Maintain level of Thomas Pond at 17-20" below the concrete top of the dam as measured in the weir slots." That provision could cause some confusion as to whether it supersedes the minimum flow requirement. The President of the TPIA has asserted that it does, but has backed off that assertion when challenged. Among other things the Management Plan clarifies any ambiguity with the following provision: "Summertime control ... will preclude flows over the dam or through the dam of less than 2.4 cubic feet/second."

As shown on the attached excerpt from a journal maintained by Franklin G. Hazen, attempts to circumvent the requirements of the DEP Order arose early when one of the landowners abutting the Dam inserted an extra board on the Dam, resulting in what that neighbor estimated was no more than approximately .5 cubic feet per second water flow. The undersigned have been unable to locate records showing how that was resolved, but they do know from family history that (1) shortly thereafter, Franklin G. Hazen was designated as the sole person authorized to operate the Dam for the TPIA, and (2) during his tenure in that role, riparian owners seemed to be unified in support of how the water level was being maintained in

⁴ Mr. Hazen has given his commitment to do his best to be in Maine to hold the requested meeting at a time convenient for the DEP. He can assure you that he would be able to do so if at least 30-days' advance notice of such meeting is given by the DEP. All of the undersign agree on the importance of completing that meeting prior to the next annual meeting of TPIA Members, even if that means Mr. Hazen would not be able to attend. If past customs prevail, that annual meeting would normally be held in or about-August 2023.

accordance with the DEP Order and did not self-divide between "high water advocates" and "low water advocates" as some TPOA Members now do.

The undersigned respectfully submit that such division (indeed, the basis of it) would be neutralized and maybe even eliminated when the focus is kept on making timely and *pro active* adjustments to water flow volume reflecting (essentially in real time) forecasted meteorological changes, as the DEP Order itself contemplates: "5. The association shall develop a written Water Level Management Plan designating who is responsible for operating the dam and describing how the dam is to be operated under a variety of water level/meteorological occurrences." On the face of the DEP Order, it appears that the "Thomas Pond Dam Management Plan" and the "Water Level Management Plan" are not the same document. If a separate "Water Level Management Plan" was ever created (much less submitted to the DEP for approval), that does not appear to be in the records of the TPIA.⁵

At the annual meeting of TPIA Members held in August 2022 (at which all of the undersigned were present and entitled to vote), the President of the TPIA reported that the liability policy required under the Order was not in force and had been abandoned. He also reported that the record-keeping requirements of the Order had not been discharged for the past couple of years. At the vote of the members, however, the decision was made to renew the record-keeping and to accept the offer of Mr. Watkins to keep a record of the water level at a slightly less frequent basis that set forth in the Order. He subsequently offered to include in those records his measurement of water flow over the Dam if he be granted entry to the enclosure restricting access to the stop logs. That offer has not been taken up.

TPIA CLAIMS OF AUTHORITY TO VIOLATE THE DEP ORDER

After the 2022 TPIA Annual Meeting, the TPIA installed a remote camera that is accessible from the Web (see the "Dam Logs (BETA)" tab at the TPIA home landing page: <https://www.thomaspond.org/>). Attached is a screen-shot of the table linked from that tab. It incorrectly identifies the water flow as a "target" and purports to rely on that same camera as proof that water flowing over the dam exceeds that. That is no more possible to determine from a camera than it is by in-person visual inspection rather actual manual measurement from inside the cage. Water refraction makes both in-person visual assessment and photographic assessment equally unreliable.

The TPIA President was asked to provide copies of the email messages from the DEP referenced in the attached table as allowing water flow less than specified in the DEP Order, but the documents provided by him do not do that. Given that the DEP Order is clear beyond credible question that the minimum water flow of 2.4 cubic feet per second could not be changed, even the DEP could not authorize less water flow without breaching the contractual rights of other parties to the DEP Order and the third party beneficiaries thereof.

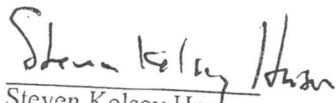
⁵ It is possible that such plan was developed by Franklin G. Hazen after he was designated by the TPIA as being responsible for operating the Dam. The President of the TPIA has confirmed he knows who is in possession of the records of the TPIA maintained by Franklin G. Hazen, but has declined to take any step to take possession of them even though one of the signatories to this letter, Steven Kelsey Hazen, has repeatedly requested that he do so, copying those TPI Members who were at the 2022 Annual Meeting on such request. Mr. Hazen believes it is possible that his father (Franklin G. Hazen) actually did develop the requisite Water Level Management Plan, whether or not it was ever submitted to the DEP for approval. Mr. Hazen individually confirms that on numerous occasions he assisted his father in adding or removing stop logs when the weather forecast indicated it would be necessary, making multiple trips in any one day based on actual meteorological events.

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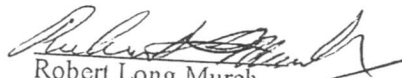
As with all volunteer organizations, it cannot be surprising that the TPIA has had insufficient resources to be sure that all obligations imposed on it by external forces (including by a governmental authority such as the DEP, through enforcement of the DEP Order⁶) are being fully and faithfully discharged. But also like all other volunteer organizations, the TPIA has to accept an obligation to improve its performance when shortcomings have been identified to it. That is particularly true where, as here, failures have an environmental impact that extends well beyond the TPIA itself and even its Members, and to all bodies of water for which Dingley Brook is in the upstream watershed (including Sebago Lake).

In that spirit, the undersigned respectfully request prompt attention to this letter and the request of a meeting set forth in it. We look forward to meeting with you and/or other appropriate senior officials of the DEP.

Sincerely,



Steven Kelsey Hazen
149 Barrington Avenue
#245
Los Angeles, CA 90049-3310



Robert Long Murch
c/o Combined Management, Inc.
520 Main Street
Lewiston, Maine 04240



Dana Watkins
P.O. Box 6
South Casco, ME 04077

Attachments (copy of Journal entry from Franklin G. Hazen dated June 15, 1991; screen-shot of table appearing on the TPIA website)

cc: Mr. Seth Garrison
General Manager
Portland Water District
225 Douglass Street
PO Box 3553
Portland, Me 04104-3553

Ms. Judy A. Camuso
Commissioner
Maine Department of Inland
Fisheries and Wildlife
284 State Street
Augusta, ME 04330

Ms. Kyla Hastie
Acting Regional Director
Northeast Region
U.S. Department of
Fish and Wildlife
300 Westgate Center Drive
Hadley, MA 01035

Mr. Robert Chapin
President, TPIA
35 Pulpit Rock Road
Raymond, ME 04071-6560

All TPIA Board Members
(envelopes addressed separately)

⁶ At various times since its formation, the TPIA has failed to satisfy its annual reporting requirements to the Maine Secretary of State and as a result has been administratively dissolved. The most recent instance of that was from September 2018 through October 2022, which failure was brought to the attention of the TPIA Members at the 2022 Annual Meeting and has since been corrected.

Saturday June 15, 1991
Calvin Ketting, President of the Tamas
Pond Improvement Association, and
Mr. Cohen (so it is reported) have added
a 10" board to the dam spillway. I
called Calvin & enquired about it last
evening and his response was that
the level of the pond had fallen below
that which the TPIA Board set as
a standard to follow: 17" to 21" below
the top of the dam. He reported that
the level is presently 22½" below (numbers as
recalled may be only close). I told him
that I was extremely disappointed that
a board had been added.

After talking with Calvin I called
Alan Cohen to ask whether or not, as an
engineer, he would estimate the water
passing the dam continues at 2.4 cfs.
Mrs. Cohen answered the phone was
insistent that she respond to any
questions or comments I had - she
estimated the flow over the dam at 0.5 cfs.
It looks like there may be trouble
ahead: Why was a 10" board added
to raise the pond level an inch and
a half (or even 5½")?

Dam Management Information (Responses)

Graphic Data

Thomas Pond Dam - Water Level & Water Flow Over the Dam

