

September 29, 2023

Sent by mail

Melanie Loyzim, Commissioner
Department of Environmental Protection
17 State House Station
32 Blossom Lane
August, Maine 04333

Re: *Maintenance of Thomas Pond Dam and Enforcement of Maine Department of
Environmental Protection Order #L-010896-37-A-N*

Commissioner Loyzim:

This firm serves as counsel to Steven Kelsey Hazen, Robert Long Murch, and C. Dana Watkins (collectively the “**Principals**”),¹ holders of riparian rights in Thomas Pond (the “**Pond**”) in the Towns of Casco and Raymond, County of Cumberland, and State of Maine, which is impounded by the Thomas Pond Dam (State I.D. No. 1324) (the “**Dam**”). By order dated April 25, 1990 (#L-010896-37-A-N) (the “**Order**”),² the Maine Department of Environmental Protection (the “**Department**”) imposes a series of substantive criteria (the “**Criteria**”) on the management of the Dam by the Thomas Pond Improvement Association (the “**TPIA**”).³ When the State of Maine, through the Department, conveyed the Dam to the TPIA, it incorporated the Order by reference and as an exhibit to the Deed. Since taking ownership of the Dam in 1990,⁴ the TPIA has either failed to satisfy or establish adequate Dam and water flow controls to demonstrate compliance with several of the Criteria, including, but not limited, to the following:

1. The TPIA has not implemented sufficient safeguards to prevent parties other than a designated reprehensive(s) of the TPIA from changing the water level of the Pond.⁵
2. The TPIA has failed to maintain a minimum flow of water of 2.4 cubic feet per second to Dingley Brook at all times.

¹ The Principals sent two prior letters to you concerning this matter, which were dated April 12, 2023 and May 8, 2023.

² The Order is recorded at the Cumberland County Registry of Deeds (the “**Registry**”) in Book 9240, Page 21.

³ The Criteria are listed on pages 5–6 of the Order.

⁴ The TPIA took title to the Dam by virtue of a deed from the State of Maine to the TPIA recorded at the Registry in Book 9240, Page 21.

⁵ The TPIA has erected a chain-link fence enclosing the Dam. However, it is still possible to reach and take operational control of the Dam from an unprotected direction: the water.

3. The TPIA has not maintained regular, reliable records of the operation and maintenance of the Dam, which are essential for the Department to assess compliance with the Criteria during the period of TPIA's ownership of the Dam.⁶
4. The TPIA has never developed a written "Water Level Management Plan" governing the operation of the Dam and the setting of water levels for the Pond.
5. The TPIA has not maintained a liability insurance policy for the Dam.
6. The TPIA has failed to prevent the water flow over the Dam from exceeding 12 inches for 12 consecutive days in August, even though the TPIA could have avoided that by proactively increasing flow over the Dam in excess of 2.4 cubic feet per second but well less than the 12 inch maximum set forth in an attachment to the Order bearing an attestation from the Bureau of Land Quality Control and identified as a "Thomas Pond Dam Management Plan."⁷

The owners of real property on the Pond and those with rights in the Pond, including, but not limited to, the Principals,⁸ are the intended beneficiaries of the Order. The mismanagement of the Dam directly impacts their pecuniary and property interests, and it was with these parties in mind that the Department obligated the TPIA to satisfy the Criteria. The direct result of the TPIA's failure to satisfy the Criteria (and of the Department failing to enforce them) has been, and will continue to be, serious harm not only to the Principals and similarly-situated parties, but to the ecology of the Pond and Sebago Lake, including, but not limited to, the species reliant on those waterbodies to survive.

By virtue of the foregoing, the DEP is obligated to enforce the Order and require the TPIA to comply with the Criteria. The Principals therefore request that the Department act immediately to remedy the violations listed above. Should the Department not act within a reasonable period of time after receiving this demand for Agency action, the Principals intend to prosecute legal action against the Department pursuant to Subchapter 7 of the Maine Administrative Procedures Act, 5 M.R.S.A. § 11001 *et seq.*

⁶ In August 2022, the TPIA agreed, after the Principals' prodding, to maintain a written log for the Dam. But the TPIA maintains that log by relying on observations of the Dam from a camera mounted nearby. Thus, despite this change in practice, the TPIA continues to fail to take regular and reliable measurements of the water levels of the Pond. The TPIA's negligent record-keeping practices prevents the Department from assessing the TPIA's compliance with several of the Criteria, including those related to the securing of any applicable federal, state and local permits and the taking of emergency remedial actions that constitute a temporary violation of the Order. Given this information deficit, the Principals and all other parties benefited by the Order are denied notice regarding the TPIA's compliance with the Order, generally, and the Criteria, specifically.

⁷ According to that Thomas Pond Dam Management Plan, it takes 24 hours maintaining 12" water flow over the Dam to lower the level of the pond by 1 inch. Even the records maintained by the TPIA on its website show instances of meteorological events after which the water level has increased over a 24-hour period by orders of magnitudes greater than that 1 inch mark.

⁸ The holders of riparian rights downstream of the Dam, including the owners of real property along Dingley Brook and the northeasterly quadrant of Sebago Lake, are also intended beneficiaries of the Order.

We look forward to your timely response. Please feel free to call or email with any questions.

Sincerely,



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