

**WORKING DRAFT 2/13/01**

**DRAFT**

# **RIVER OF BROKEN PROMISES**

A REPORT ON STATE MANAGEMENT  
OF THE ALLAGASH WILDERNESS WATERWAY  
UNDER THE NATIONAL WILD AND SCENIC RIVERS ACT OF 1968

BY W. KENT OLSON

COPYRIGHT © 2001 BY ALLAGASH PARTNERS

February 13, 2001

AN ALLAGASH PARTNERS MONOGRAPH

*“From Telos to the junction of the Allagash and the St. John it is a bit over a hundred miles. There are no hundred miles in America quite their equal. Certainly none has their distinctive quality. They will, I pray, be preserved for all time as a roadless primitive waterway.”*

-- SUPREME COURT JUSTICE WILLIAM O. DOUGLAS,  
*My Wilderness: East to Katahdin* (1961)

*“As you know, both Secretary [of the Interior] Udall and I have felt from the very beginning that the key issue on the Allagash is the preservation of the riverway as a free-flowing stream and, insofar as possible, unspoiled forest area. To be meaningful such preservation must be made in perpetuity... .As I see it, the burden is on the State to develop a meaningful program which will truly insure preservation of the area in perpetuity.”*

-- LETTER FROM U. S. SENATOR EDMUND S. MUSKIE TO HONORABLE  
AUSTIN H. WILKINS, FORESTRY COMMISSIONER, STATE OF MAINE,  
(November 18, 1964)

---

**RIVER OF BROKEN PROMISES:** State Management of the Allagash Wilderness Waterway under the National Wild and Scenic Rivers Act of 1968. An Allagash Partners Monograph. Copyright © 2001 by Allagash Partners, P.O. Box 341, Bar Harbor, ME 04609-0341. Permission is expressly given to reprint in whole or in part, in any medium, free of charge, with proper attribution.

For David R. Brower  
1912 - 2000

*Long live the yak*

*Acknowledgments:* Allagash Partners thanks the many attorneys, conservation professionals and other readers for their contributions to successive drafts. You know who you are. Any errors of fact or interpretation are those of Allagash Partners.

# RIVER OF BROKEN PROMISES

Copyright © 2001 by Allagash Partners

<b>Contents</b>	<b>CONTENTS</b> ... ..	<b>3</b>
	<b>LIST OF NINETEEN EXHIBITS</b> ... ..	<b>4</b>
	<b>EXECUTIVE SUMMARY</b> ... ..	<b>5</b>
	<b>GENERAL CHRONOLOGY</b> ... ..	<b>9</b>
	<b>Chapter One THE SIX INTERLOCKING DOCUMENTS</b> ... ..	<b>15</b>
	<b>Chapter Two THE WILD AND SCENIC RIVERS ACT OF 1968:</b>	
	<b>THREE DISTINCT CLASSIFICATIONS</b> ... ..	<b>18</b>
	<b>Chapter Three THE GOVERNOR CURTIS LETTERS</b> ... ..	<b>22</b>
	<b>Chapter Four THE 1970 FEDERAL</b>	
	<b>RIVER MANAGEMENT GUIDELINES</b> ... ..	<b>27</b>
	<b>Chapter Five “FULL ACCORD”: DOC’S 1970 ALLAGASH REPORT</b> ....	<b>29</b>
	<b>Chapter Six THE FEDERAL-STATE DEAL IS SEALED</b> ... ..	<b>33</b>
	<b>Chapter Seven DOC AS SOLE MANAGER OF THE ALLAGASH:</b>	
	<b>“THE BURDEN IS ON THE STATE”</b> ... ..	<b>36</b>
	<b>Chapter Eight DOC’S 1973 ALLAGASH CONCEPT PLAN</b> ... ..	<b>39</b>
	<b>Chapter Nine DOC’S 1999 ALLAGASH PLAN</b> ... ..	<b>42</b>
	<b>Chapter Ten PROLIFERATING ACCESS BY ROADS</b> ... ..	<b>49</b>
	<b>Chapter Eleven JOHN’S BRIDGE ROAD-AND-BOAT DEVELOPMENT</b> ... ..	<b>55</b>
	<b>Chapter Twelve DOC’S 1998 DE-DESIGNATION MEMO</b> ... ..	<b>58</b>
	<b>Chapter Thirteen THE MODERN CONCRETE DAM</b>	
	<b>AT CHURCHILL LAKE</b> ... ..	<b>61</b>
	<b>Chapter Fourteen ILLEGAL OPERATIONS AT CHURCHILL DAM</b> ... ..	<b>68</b>
	<b>Chapter Fifteen “NO ROOM FOR MISUNDERSTANDING”:</b>	
	<b>SENATOR MUSKIE SPEAKS ON ORIGINAL INTENT</b> ... ..	<b>75</b>
	<b>Chapter Sixteen AN AGENCY ADRIFT:</b>	
	<b>DOC IN PATTERN AND PRACTICE</b> ... ..	<b>86</b>
	<b>Chapter Seventeen VIOLATIONS OF THE ACT</b> ... ..	<b>95</b>
	<b>Afterword POTENTIAL VIOLATIONS OF STATE ADMINISTRATIVE</b>	
	<b>PROCEDURE ACT BY DOC, BPL AND LURC</b> ... ..	<b>101</b>
	<b>Appendix EXHIBITS 1 - 19</b> ... ..	<b>104</b>

**List of Nineteen Exhibits in Appendix**

*Nineteen exhibits, including numerous primary sources, appear in the Appendix in the order of their relevant introduction in chapters one through seventeen:*

**Exhibit 1:** List of the 18 rivers designated under Section 2(a)(ii) of the National Wild and Scenic Rivers Act.

**Exhibits 2, 3, 4 & 5:** Prof. Dean Bennett- Gov. Kenneth Curtis correspondence, June 10-July 6, 2000 (Bennett-Curtis correspondence).

**Exhibits 6 & 7:** Application letters from Governor Kenneth M. Curtis to Interior Secretary Walter J. Hickel (Curtis, 4/10/70 & 5/4/70).

**Exhibit 8:** 1970 “Guidelines for Evaluating Wild, Scenic and Recreational River Areas Proposed for Inclusion in the National Wild and Scenic Rivers System Under Section 2, Public Law 90-542, Reprint - February 1977” (1970 Guidelines).

**Exhibit 9:** “The Allagash Wilderness Waterway, April 1970” (1970 Report).

**Exhibit 10:** *Federal Register* notice, July 17, 1970 pp. 11525, 11526 (1970 Fed. Regis.).

**Exhibit 11:** “Rules and Regulations for the Allagash Wilderness Waterway,” 1/1/96 (1996 Rules).

**Exhibit 12:** Memo from DOC planner Tom Cieslinski to various recipients (Designation Memo, 8/10/98).

**Exhibit 13:** Letter from Sen. Edmund S. Muskie to Hon. Edward P. Cyr (4/11/63).

**Exhibit 14:** Letter from Sec. of the Interior Stewart L. Udall to Gov. John H. Reed (draft 12/16/63).

**Exhibits 15:** Letter from Sen. Edmund S. Muskie to Hon. Austin H. Wilkins (11/18/64).

**Exhibit 16:** Letter from Sen. Edmund S. Muskie to Mr. Malcolm Stoddard (6/11/65).

**Exhibit 17:** Letter from Sen. Edmund S. Muskie to Sen. Henry M. Jackson (6/8/65).

**Exhibit 18:** Letter from Donald E. Nicoll, Admin. Asst. to Sen. Muskie, to Glenn Mahnken, Antioch College student (11/5/65).

**Exhibit 19:** “Maine’s Allagash: A river wild, or is it?” by Beth Daley, *The Boston Globe*, November 28, 2000, pp. E 1-4. (Globe, 11/28/00).

Other cited materials are documented in the text or in numbered footnotes.

# RIVER OF BROKEN PROMISES

A REPORT ON STATE MANAGEMENT  
OF THE ALLAGASH WILDERNESS WATERWAY  
UNDER THE NATIONAL WILD AND SCENIC RIVERS ACT OF 1968

Copyright © 2001 by Allagash Partners

## *Executive Summary*

*“ . . . maximum wilderness character . . . . ”*

-- ALLAGASH WILDERNESS WATERWAY STATE STATUTE, 1966

**O**n May 11, 1966, the Maine Legislature passed the Allagash Wilderness Waterway statute (AWW Statute) to protect the Allagash as a wilderness river, contingent upon passage of a state bond issue “to develop the maximum wilderness character of the Allagash Waterway.”

On November 8, 1966, Maine citizens passed a referendum question authorizing a bond of \$1.5 million “to Develop the Maximum Wilderness Character of the Allagash Waterway.” The vote was 184,937 in favor (68%), vs. 85,454 against (32%).

Four years later, in 1970, the state sought and was granted a federal designation for the Allagash under the National Wild and Scenic Rivers Act of 1968 (the Act), as amended. At the state’s request, the Allagash was permanently classified as a federal Wild river, for 92.5 miles, the most protective of river conservation categories. The Act granted the state the right to manage the Allagash.

The U.S. Congress defines Wild rivers as “generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted. These are vestiges of primitive America” (Act, section 2(b)). The Allagash Wild classification, and/or binding agreements associated with the federal designation, require among other things that the state 1) protect and enhance the Wild characteristics of the river and its adjoining landscape, 2) limit the number of roads and road accesses, and 3) administer the river permanently in its assigned classification – i.e., without allowing it to decline to the lesser

classifications of Scenic or Recreational, which allow more vehicular access and more development generally.

Between 1970 and 2000 the Maine Department of Conservation (DOC) and the Bureau of Parks and Lands (BPL)<sup>1</sup> repeatedly violated the Act and ignored their responsibilities to the people of Maine and the United States by improperly developing and over-developing the Allagash River Waterway, and failing to carry out several Act mandates, such as limiting public road accesses. This pattern of violations continues today.

In the *Federal Register* in 1970, the U.S. Secretary of the Interior, Walter J. Hickel, granted the Allagash designation and permitted two road accesses, at Telos Landing and Twin Brooks.

However, DOC has so far authorized and/or allowed at least fourteen automobile accesses, twelve more than the Secretary grandfathered:

1. Chamberlain Bridge Thoroughfare (which replaced the grandfathered Telos Landing access)
2. Twin Brooks (grandfathered)
3. Churchill Dam (not permitted)
4. Bissonnette Bridge (not permitted)
5. Umsaskis Lake Thoroughfare (Umsaskis I, along Realty Road, not permitted, in fact was excluded by Secretary Hickel)
6. Henderson Brook Bridge (not permitted)
7. Michaud Farm (not permitted)
8. Cunliffe (not permitted)
9. Ramsay (not permitted)
10. Indian Stream (not permitted)
11. Finley Bogan (not permitted)
12. Drake Road (Umsaskis II, not permitted)
13. Upper Allagash Stream (not permitted)
14. John's Bridge (authorized by LURC 11/1/00, not permitted, to replace a pre-existing illegal access in the vicinity)

Each access beyond the grandfathered two comprises a violation, and severally they make up a large cumulative violation.

---

<sup>1</sup> In this report, the terms "DOC," for the Maine Department of Conservation, and "BPL," for its Bureau of Parks and Lands, are used almost interchangeably. Except in quotations or other direct references, the terms are also used as substitutes for the names of their predecessor agencies. The Land Use Regulation Commission, though part of DOC, is principally referred to as "LURC."

DOC has allowed sixteen parking lots in the river corridor, of which at least eleven must also defy the Act because they are affiliated with illegal accesses:

1. Chamberlain Thoroughfare parking lot (which replaced the grandfathered Telos Landing parking lot)
2. Twin Brooks parking lot (grandfathered)
3. Churchill Dam parking lot (not permitted)
4. Umsaskis Lake Thoroughfare parking lot (Umsaskis I, not permitted)
5. Henderson Brook parking lot (not permitted)
6. Michaud Farm parking lot (not permitted)
7. Cunliffe parking lot (not permitted)
8. Ramsay parking lot (not permitted)
9. Indian Stream parking lot (not permitted)
10. Finley Bogan parking lot (not permitted)
11. Drake Road parking lot (Umsaskis II, not permitted)
12. Upper Allagash Stream parking lot (not permitted)
13. John's Bridge (not permitted)

The legal status of the three other DOC parking lots is unknown at this writing:

14. Zieglar parking lot
15. Nugent's parking lot
16. Jalbert's parking lot

In sum, twelve road accesses and eleven parking lots exist above what the Secretary permitted under the Act, and some others are questionable. DOC has plainly and severely breached the "generally inaccessible except by trail" standard.

From 1986 to 1999, DOC authorized at least twenty-nine miscellaneous developments within  $\frac{1}{4}$  mile of the river, including some of the aforementioned accesses. Among the 29 developments, others doubtless breach the Act because they may not meet the Act's standard of appropriateness for constructions within the  $\frac{1}{4}$ -mile corridor.

In so violating the Act and the management agreements affirmed by the U.S. Secretary of the Interior in the *Federal Register*, DOC also violated the federal river management guidelines of 1970 established by the Interior and Agriculture departments, which the state agreed to uphold when it applied for the designation and classification.

DOC's and BPL's actions downgraded the Allagash from a *de jure* Wild river as classified under federal law, to a *de facto* Scenic or Recreational river. Such downgradings are illegal under the federal Act. Because these actions occurred over just thirty years and continue today, they have shattered the Act's central mandate that the river shall be kept Wild in perpetuity.

DOC's actions repudiated those of the U.S. Congress, which duly enacted the Wild and Scenic Rivers law on behalf of the people of the United States. In particular, DOC repudiated the original intent of Maine's own Senator Edmund S. Muskie, who authored the section of the Act that allowed Maine and other states to obtain permanent federal designations for state-protected rivers.

DOC, which is an administrative agency not a legislative body, also broke faith with its own chief executive, Governor Kenneth M. Curtis, by ignoring binding agreements the Governor made when he petitioned for and received the National Wild and Scenic River designation and its permanent Wild classification in 1970. DOC is wholly without authority to do so.

Also, in 1997 DOC failed to obtain a permit from U.S. Army Corps of Engineers to build and operate a new concrete dam and to develop wetlands at Churchill Lake, as required under Section 404 of the federal Clean Water Act. The Corps failed to issue said permit to DOC, and also failed to obtain clearance from the National Park Service, contrary to Section 7 of the Wild and Scenic Rivers Act. Further, the modern dam, which was not grandfathered in the Allagash Wild classification, impairs the outstanding historic values for which, in part, the Allagash was federally designated in the first place. Completed in 1998, the dam is an illegal structure under both federal acts.

DOC's state permit for the dam, issued by LURC in 1997, is invalid because it is conditioned on the existence of the federal permit. DOC today continues to operate the dam in breach of both federal and state law. Federal fines for such violations can reach \$25,000 a day, or \$9.1 million a year. State fines can reach an additional \$10,000 a day, or \$3.6 million a year. Penalties are retroactive to when construction began. Both in fact and in respect to their possible consequences, the violations are serious.

*River of Broken Promises* enumerates the violations of the Act and other binding agreements. The report does not investigate why DOC has executed a continuing pattern of noncompliance, but five general possibilities exist: honest ignorance of the Act, institutional indifference to the Act, hostility toward the Act, political influence, or some combination of the above. The report does not suggest ways the Allagash can be restored, but they are legion.

## ***General Chronology***

*“[T]he burden is on the State to develop a meaningful program which will truly insure preservation of the area in perpetuity.”*

-- EDMUND S. MUSKIE TO HONORABLE AUSTIN H. WILKINS, FORESTRY COMMISSIONER, STATE OF MAINE (November 18, 1964)

**T**his chronology summarizes some key events since 1964. Specific dates are supplied if known:

**November 18, 1964.** United States Senator Edmund S. Muskie of Maine, responding to “distorted” reports about his position on protecting the Allagash River, declares “[T]here can be no room for misunderstanding ... .[T]he key issue is preservation of the riverway” in “primitive” condition in an “unspoiled forest area... [S]uch preservation must be in perpetuity... .[T]he burden is on the State [to] truly insure preservation of the area in perpetuity.”

**May 27, 1965.** Senator Muskie introduces an amendment to the proposed federal Wild Rivers Act, a compromise to reconcile state-federal conflicts about protecting the Allagash River and to grant federal protections to it and other qualified state-managed rivers in the U.S.

**May 11, 1966.** Allagash Wilderness Waterway Statute is passed by Maine Legislature, contingent upon passage of “a bond issue in the amount of \$1,500,000 to develop the maximum wilderness character of the Allagash Waterway.”

**November 8, 1966.** \$1.5-million state bond referendum is passed by Maine citizens, 62% to 38%, “to Develop the Maximum Wilderness Character of the Allagash Waterway,” purchase corridor lands, develop plans.

**April 4, 1967.** \$1.5-million matching grant from federal Land and Water Conservation Fund is approved by Bureau of Outdoor Recreation, U.S. Department of the Interior.

**October 2, 1968.** National Wild and Scenic Rivers Act, Public Law 90-542, is passed by U.S. Congress (the Act). Allagash specifically mentioned in Section 2 as eligible for inclusion “upon application of the Governor,” the terminology of the Muskie compromise amendment. Act grants permanent protections for qualified rivers, especially against road development and dam building.

**February, 1970.** “Guidelines for Evaluating Wild, Scenic and Recreational River Areas Proposed for Inclusion in the National Wild and Scenic Rivers System Under Section 2, Public Law 90-542” is published by Department of the Interior and Department of Agriculture (reprinted February 1977). Translates Act requirements into specifics a state must follow.

**April, 1970.** “Allagash Wilderness Waterway” report and plan is completed by DOC as part of state’s imminent application for federal designation of Allagash as permanent Wild river. Report conforms with Act and federal river management guidelines. Specifies, among other things, that state will develop two (possibly three) road accesses and will keep the river “forever in its wild condition” if the Allagash is federally designated. Seeks grandfathering of the “existing structure” of Churchill Dam, a timber crib construction of “historic significance.”

**April 10, 1970.** First application letter from Governor Kenneth M. Curtis to Secretary of the Interior Walter J. Hickel petitions for permanent federal designation of part of the Allagash Wilderness Waterway as a Wild river under the National Wild and Scenic Rivers Act of 1968.

**May 4, 1970.** Second application letter from Governor Curtis to Secretary Hickel requests that “entire waterway,” not just part, be classified as single Wild segment in perpetuity. Timber crib Churchill Dam (“existing structure”), deemed “of historic significance,” is incorporated into requested designation.

**July 17, 1970.** *Federal Register* notice is published, with Secretary Hickel accepting state’s petition for permanent Wild river area classification of entire Allagash, effective July 19. Allagash is to be “generally inaccessible except by trail . . . essentially primitive,” and state to “protect and enhance” Wild conditions, according to Act. Hickel agrees to most of state’s 1970 plan and self-imposed development limits. Hickel permits

public access over two roads (not three). All other private roads to be closed to public. Churchill and other wooden dams (“existing structures”) grandfathered in designation for historic reasons. Allagash becomes first state-administered Wild river in national system.

**July 17, 1970 - Present.** In a pattern and practice of breaches over three decades, DOC allows fourteen road accesses, seven times (i.e., 700% of) the number permitted by Secretary Hickel and agreed to by the state, contravening the Act. Sixteen parking lots approved by DOC, eleven more than permitted for public access. Some private roads are allowed to remain open to public, illegally. DOC allows Allagash *de-jure* Wild classification to decline to *de-facto* Recreational classification, breaching Act. DOC repeatedly breaches Act’s inaccessibility standard, its “protect and enhance” (i.e., non-degradation) requirements, and its mandate for permanence within the designated classification, amounting to dozens of individual counts and a massive cumulative violation.

**October 6, 1972.** Inter-Office Memorandum, “Subject: Allagash Waterway-Realty Road,” is sent from John M. Patterson, Assistant Attorney General of Maine, to Lawrence Stuart, Commissioner of the Department of Parks and Recreation, opining that “Public roads would obviously be inconsistent” with the wilderness purpose of the 1966 AWW statute.

**November 1973.** “Allagash Wilderness Waterway Concept Plan” is published by DOC. Promotes wilderness but reveals incipient deviations from Act requirements.

**February 1977.** U.S. Interior and Agriculture departments reprint the 1970 federal river management guidelines that set specific requirements states must follow on federally designated rivers, and to which DOC had agreed in 1970.

**September 7, 1982.** “National Wild and Scenic Rivers System; Revised Guidelines for Eligibility, Classification and Management of River Areas” is published in *Federal Register* by Department of the Interior and Department of Agriculture. Replaces February 1970 federal guidelines.

**1986 – January 27, 1999.** Twenty-nine miscellaneous development projects within ¼ mile (1320 feet) of river are approved by DOC, some impermissible in Wild river corridor.

**April 14, 1997.** DOC applies to LURC for state permit to construct new concrete-and-steel dam at Churchill Lake, at site of grandfathered timber

crib dam (the “existing structure” of “historic significance”). DOC application is silent on Act and federal Allagash designation.

**June 17, 1997.** LURC approves permit for concrete-and-steel dam conditioned on, among other things, compliance with all applicable federal and state laws, permits, etc. Permit is silent on Act and federal Allagash designation.

**1998.** For safety and other reasons, DOC demolishes wooden Churchill Dam, the “existing structure” that Secretary Hickel grandfathered for its historic values. DOC builds new, non-grandfathered concrete dam of no historic value, breaching the Act. DOC develops riverine wetlands for access ramp and dock. Although not revealed at the time, DOC fails to obtain, from U.S. Army Corps of Engineers, the 404 permit required under federal Clean Water Act, and Corps fails to consult with NPS as required by Section 7 of Wild and Scenic Rivers Act. DOC’s 404 permit application, identical to its LURC application, is devoid of references to Act.

**August 10, 1998.** Memorandum, “Subject: AWW de-designation,” is published within Maine Department of Conservation. Agency discusses idea of removing river from National System.

**January 27, 1999.** “Allagash Wilderness Waterway Plan” is published by DOC. Includes proposal to develop another access for vehicles, at John’s Bridge. Engineering drawings show new one-way loop road and new parking lot, both impermissible, to replace a pre-existing illegal access in the vicinity. Plan proposes to allow vehicular access at Finley Bogan too. Plan admits state is managing Wild river as “combination of Scenic and Recreational,” an illegal classification and downgrading. Plan is misleading and incomplete on Act requirements throughout.

**August 17, 2000.** Maine Land Use Regulation Commission (LURC) passes non-binding recommendation to itself that John’s Bridge access proposal be denied because alternative site may be better. LURC staff director instructs commission to ignore Wild and Scenic Rivers Act because it is irrelevant to a commission decision, and he makes no reference to permanent Wild classification. Staff to draft denial language. Issue to be revisited by Commission on September 21.

**September 17, 2000.** Finley Bogan vehicular access is quietly authorized by DOC rule.

**September 21, 2000.** LURC reverses itself, rejecting staff's draft denial of John's Bridge proposal. Denial contains no reference to Wild and Scenic Rivers Act. Staff is instructed to draft a John's Bridge approval for next meeting, scheduled for November 1.

**Late September 2000.** Prompted by questions, DOC admits it cannot find 404 permit that was required under federal Clean Water Act (CWA) for DOC to build new Churchill Dam and develop wetlands in 1998, but insists permit nevertheless exists. U.S. Army Corps of Engineers finds no record of permit in its data base, admits it doesn't exist. National Park Service finds no record of permit, and finds that Corps did not seek NPS review of project as required under Section 7 of the National Wild and Scenic Rivers Act. Under both laws, Churchill concrete dam is illegal as it stands, and DOC has been illegally operating dam for three years. CWA infractions can bring federal fines of \$25,000 per day for such violations, or \$9.1 million year. DOC does not notify Maine Attorney General's Office that 404 permit is missing.

**Late September 2000.** DOC and Corps initiate process for DOC to apply for retroactive 404 permit. Consistent with Section 7 of the Act, Corps informs NPS that DOC reapplication process is starting. DOC's 2000 404 application, a photocopy of the 1997 LURC and 404 application, is devoid of references to Act.

**Late September 2000.** U.S. Environmental Protection Agency (EPA), which has authority for enforcing the CWA, initiates phone inquiries to DOC and Corps regarding the missing 404 permit.

**October 2, 2000.** Memo from Corps to NPS, preferring Churchill Dam reapplication via "programmatic general permit," a process that does not involve public participation. "Another option could be that the activity [building the 1998 dam] was exempt . . .," meaning a 404 permit might not be required now.

**October 4, 2000.** Gate prohibiting private vehicles on part of Umsaskis Road (Drake Road) is discovered to have been removed by DOC sometime earlier. Total access road count reaches thirteen, eleven more than Secretary Hickel permitted.

**October 4, 2000.** 1997 LURC permit issued to DOC to construct and operate Churchill Dam is discovered to be null and void because its issuance was conditioned on compliance with all federal permits (e.g., 404 permit), laws, agreements, etc. State fines for such infractions can reach

\$10,000 per day, or \$3.6 million a year. Possible combined federal and state fine exposure for DOC: \$35,000 per day, or \$12.7 million a year.

**October 12, 2000.** Letter is sent from NPS to Corps, calling for “individual permit application process” for Churchill Dam re-application, a process that involves public comment. “[T]here is no question that the dam replacement project represents a significant undertaking with the potential for direct and adverse impacts to the Allagash National Wild and Scenic River.”

**November 1, 2000.** LURC votes 4-2 to approve John’s Bridge road-and-boat development, the fourteenth vehicular access, twelve above the permissible number.

**November 8, 2000.** Writing on behalf of Secretary of the Interior Bruce Babbitt, NPS Associate Director reaffirms “our strong opinion that the Corps must run the State’s application [for a Churchill Dam permit] through its individual permitting process rather than seeking an exemption or a review under a general permit.” Copies are sent to DOC’s BPL director and the EPA.

**November 30, 2000.** A coalition of conservationists, guides and river users sues to overturn LURC in state superior court for violations in the permitting of John’s Bridge road-and-boat access. Among the procedural errors alleged is that LURC did not consider Wild and Scenic Rivers Act.

**January 3, 2001.** EPA, in letter to Army Corps, writes that building Churchill Dam was not an “exempt activity” and needed a 404 permit. If Corps “is unable to issue” one, “EPA may reevaluate the need for an enforcement action for injunctive relief and/or penalties.”

**January 9, 2001.** Army Corps reverses position and announces that written public comment will be allowed until February 9 on DOC’s 404 permit reapplication for the modern Churchill Dam. Corps notifies NPS as required under Section 7 of Act.

## ***Chapter One***

### **THE SIX INTERLOCKING DOCUMENTS**

*“It is my belief that the Allagash Wilderness Waterway Act of Maine is in full accord with the National Act and the guidelines developed by your Department, and the Department of Agriculture, in February 1970, for permanent administration as a Wild River Area.”*

-- LETTER OF APPLICATION FROM GOVERNOR KENNETH M. CURTIS TO SECRETARY OF THE INTERIOR WALTER J. HICKEL, MAY 4, 1970

**R***iver of Broken Promises* presents the Allagash designation in narrative form and therefore does not necessarily discuss the many relevant documents in chronological order.

Six of those documents interlock. Together they make up the binding federal-state agreement that the Allagash would be administered by the state as a federally designated Wild and Scenic River, classified and managed as Wild in perpetuity.

The first interlocking document is the Wild and Scenic Rivers Act itself. It is the legal foundation that binds the state under federal law and gives the Allagash its formal federal protections.

The Act spells out the legal definition of Wild as “generally inaccessible except by trail, with watersheds or shorelines essentially primitive . . .” (Act, Section 2(b)). It sets standards for river management, including the requirement for permanent protection and management of a river within its assigned classification. The Act contains grandfathering provisions. In the Allagash case, these apply to some existing historic structures, such as Churchill, Telos, and Lock dams, timber crib dams that visibly and directly relate to the logging history of the area.

The second interlocking document is titled “Guidelines for Evaluating Wild, Scenic and Recreational River Areas Proposed for Inclusion in the National Wild and Scenic Rivers System Under Section 2, Public Law 90-542, Reprint - February 1977,” originally published in 1970 (1970 Guidelines). These river

management guidelines present Interior Department and Agriculture Department criteria that the state must meet for a federal Wild classification under the Act.

The third and fourth documents are the two letters by which Governor Kenneth M. Curtis petitioned the Secretary of the Interior for a single Wild classification for the entire river (Curtis, 4/10/70 and 5/4/70).

Governor Curtis certifies that DOC has done its due diligence in qualifying the river pursuant to the 1970 federal river management guidelines, that the AWW Statute is in full accord with the Act, and that DOC will permanently manage the Allagash as a Wild river according to the Act and the guidelines.

The fifth interlocking document is DOC's report, "The Allagash Wilderness Waterway, April 1970" (1970 Report). It accompanied Governor Curtis' letters as part of the application. It makes the case that the Allagash meets the Wild criteria of the Act and of the 1970 federal river management guidelines. The DOC report presents a plan specifying the policies and philosophy by which the state will manage and develop the Wild river. It also establishes that the river will have two accesses, but it is ambiguous about a third. The DOC report affirms the 1966 AWW statute's intent, saying that the legislation "sets forth that this watercourse shall forever be maintained in its wild condition."

DOC's 1970 report proposes management policies that stay within the compass of the Act and within the federal river management guidelines. In doing so, the report specifies limits beyond which DOC promises it will not go (such as not exceeding a maximum number of road accesses, for example).

The sixth interlocking document is a July 17, 1970 notice in the official record of the U. S. Congress, the *Federal Register* (1970 Fed. Regis.). This document is the Interior Secretary's formal acceptance of the Governor's petition to include the AWW in the National Rivers System.

The Secretary carefully analyzes and approves the state's plan point by point as presented in the Curtis letters and DOC's 1970 report. He also acknowledges that the application complies with the terms of the 1970 federal river management guidelines. The Secretary's notice repeats the policy commitments that the state made, specifies what development is grandfathered, limits road accesses to two, and grants the permanent Wild classification.

The six documents are congruent on all key points. Together they form a well fitting, six-part jig-saw puzzle consisting, in the end, of a single, indivisible,

legal and moral agreement that the Allagash shall forever be managed and protected as a national Wild river by the State of Maine.<sup>2</sup>

---

<sup>2</sup> The Act is available at the National Park Service (NPS) web site, [www.nps.gov/rivers](http://www.nps.gov/rivers). Note, esp., Secs. 1(a), 1(b), 2(a), 2(b), 7(a), 10(a), 13(d), 16(b). Copies of the five other interlocking documents plus some additional exhibits are located in the appendices of “River of Broken Promises” in the order in which they are introduced in the main text, chapters one through seventeen. Most of the exhibits are primary sources, many of which show the original intent of the people who brought about the federal designation of the Allagash.

## ***Chapter Two***

### **THE WILD AND SCENIC RIVERS ACT OF 1968: THREE DISTINCT CLASSIFICATIONS**

*“Wild river areas [are] generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America.”*

-- THE NATIONAL WILD AND SCENIC RIVERS ACT OF 1968, 16 U.S.C., P.L. 90-542, SECTION 2(B)

**T**he National Wild and Scenic Rivers System, established by Congress in 1968, consists today of 156 rivers, totaling 10,931.2 river miles. Only 4/10 of one percent of the nation’s estimated three million river miles have so far qualified for inclusion under the Act. Federally designated rivers are a statistical rarity.

The system comprises portions of the nation’s most celebrated rivers, including, for example, Montana’s upper Missouri of Lewis and Clark fame, the Merced River of John’s Muir’s Yosemite, Idaho’s fabled Salmon, also known as “River of No Return,” the southwest’s Rio Grande, and Maine’s spectacular Allagash, parts of which Thoreau canoed and which he wrote about in *The Maine Woods*. Wild and Scenic Rivers have special qualities, features and landscapes. These watercourses and their adjacent lands are the icons of our national riverine heritage.

There are two ways to designate a river or a river segment under the Act. One is for Congress to pass a law incorporating the river into the national system. The second way is for a state to apply to the Secretary of the Interior for federal designation of a river that already has formal protection under state law. The Allagash received its permanent designation and Wild classification in this manner.

Such federally protected state-administered rivers are sometimes called Section 2(a)(ii) rivers. That is federal jargon for the section of the Act under which qualified state rivers are incorporated into the system. Senator Edmund S. Muskie of Maine authored the Act’s 2(a)(ii) provisions.

No matter how a river gains inclusion in the national system, whether via Congressional designation or via 2(a)(ii) application, it enjoys the same federal legal protections as other designated rivers -- in perpetuity.

The Wild and Scenic Rivers Act is the strongest statutory tool for protecting rivers. Inappropriate streamside development is prohibited. Dams and other structures are forbidden, except those grandfathered for special reasons. Non-degradation standards are in force. Essential non-utilitarian values are maintained and enhanced by mandate. Levels of accessibility or inaccessibility are established.

Rivers or river segments protected under the Act are classified as Wild, or Scenic, or Recreational, depending primarily upon the degree of existing streamside development:

Every wild, scenic or recreational river in its free-flowing condition, or upon restoration to this condition, shall be considered eligible for inclusion. . . and, if included, shall be classified, designated, and administered as one of the following: (1) *Wild river areas* – Those rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America. (2) *Scenic river areas* – Those rivers or sections of rivers that are free of impoundments, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads. (3) *Recreational river areas* – Those rivers or sections of rivers that are readily accessible by road or railroad, that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the past (Act, Section 2(b)) [emphasis added].

National Wild rivers like the Allagash comprise a special subset of all federally designated rivers. Among this nationwide suite of what the Act calls, in an awkward term, “outstandingly remarkable” rivers, the Wilds are the most remarkable (Act, Section 2(b)). The Allagash and other waterways holding this top classification are the rarest of the rare. They make up only eleven percent of designated rivers or river segments.

The Allagash Wilderness Waterway is Maine’s only federally protected watercourse, and its 92.5 Wild miles account for only 0.3 percent of the state’s complement of 31,806 miles of “permanently flowing rivers and streams” (*Maine Rivers Study*, Maine Department of Conservation and National Park Service, U.S. Department of the Interior, 1982, p. 1.).

Wild classification is the most stringent. Yet that classification, like the other two, is subject to the grandfathering of some development projects (Act, Section 16 (b)). In that sense it is reasonably flexible. The law, not the riverscape, dictates what is *de jure* Wild and what is not.

After the law sets the baseline for what constitutes a Wild river, a managing agency must then not only prevent the decline of the baseline conditions, it must also affirmatively “protect and enhance” them (Act, Section 10(a)). About this, the Wild classification is inflexible.

Overall, the Act declares a national policy

that certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations. The Congress declares that the established national policy of dam and other construction at appropriate sections of rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes (Act, Section 1(b)) [emphasis added].

The Act defines “free-flowing” precisely:

‘Free-flowing’. . .means existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway. The existence, however, of low dams, diversion works, and other minor structures at the time any river is proposed for inclusion in the national wild and scenic rivers system shall not automatically bar its consideration for such inclusion (Act, Section 16(b)).

In other words, some constructions can be grandfathered on a federally designated river without affecting the requested classification. Expressly for historic reasons, Telos, Lock, and Churchill dams, constructed of wood and ballast of rock, and some other structures, were grandfathered when the Allagash was permanently made a Wild river.

The Act then adds an important provision to the grandfathering clause:

*Provided*, That this shall not be construed to authorize, intend or encourage future construction of such structures within components of the national wild and scenic rivers system (Act, Section 16(b)).

Existence of some development does not mean certain other development is therefore permissible. This is a warning to river management agencies.

The Act goes farther in Section 10, “Management direction,” expressing river managers’ responsibilities in the affirmative:

Each component of the national wild and scenic rivers system shall be administered in such manner as to protect and enhance the values which caused

it to be included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values. In such administration primary emphasis shall be given to protecting its aesthetic, scenic, historic, archaeological, and scientific features. Management plans for any such component may establish varying degrees of intensity for its protection and development, based on the special attributes (Act, Section 10(a)), [emphasis added].

Management direction in the above section is plainly expressed in “shalls.” Most important is the phrase “shall be administered to protect and enhance.” As manager of the Allagash, DOC is subject to an absolute stewardship responsibility. The law is plain and imperative.

Managers must not allow a river to decline in classification. At a bare minimum, the river must be kept in the condition it was in when the river was, in the Act’s language, “proposed for inclusion” (See Act, Section 16(b)). This is a straightforward non-degradation standard. Managers have no choice.

In a section titled “Composition of system; requirements for state-administered components,” the Act expressly imposes on state managers of federally designated rivers an enduring affirmative obligation: protected rivers “are to be permanently administered” as Wild, Scenic or Recreational (Act, Section 2 (a)(ii)) [emphasis added].

Nor is a state at liberty to undertake actions affecting the watercourse that contravene the Act:

The jurisdiction of the States over waters of any stream included in a national wild, scenic or recreational river shall be unaffected by this Act to the extent that such jurisdiction may be exercised without impairing the purposes of this Act or its administration (Act, Section 13(d)) [emphasis added].

To summarize, the Act requires river protection and enhancement by agencies, it countenances no slippage in a designation, classification or administration over time, and the obligation is permanent under federal law.

## ***Chapter Three***

### **THE GOVERNOR CURTIS LETTERS**

*“As Governor of the State of Maine, I do hereby request that . . . the Allagash . . . be designated a ‘Wild River’ under this Act. . . .for permanent administration [by the state] as a Wild River Area.”*

-- LETTERS OF APPLICATION FROM GOVERNOR KENNETH M. CURTIS TO SECRETARY OF THE INTERIOR WALTER J. HICKEL, APRIL 10, 1970 & MAY 4, 1970

**T**he Allagash was the first state-protected river to be granted federal protections and earn a Wild classification. Today only 18 state-protected rivers, totaling 1,773 miles, are in the national system. Of them, just eight bear the Wild classification. The Allagash designation is historic and precedential. (See list of designated 2(a)(ii) rivers (Exhibit 1).)

The federal designation established a national interest in the Allagash Wilderness Waterway. Unlike any other river at the time, the Allagash benefited from concurrent protection, under the 1966 AWW statute and under the federal Act. The dual protections constituted a guarantee that the legal Wild status of the river is doubly impregnable to degradation.

Another guarantee is the 1966 state bond for \$1.5 million to develop the “Maximum Wilderness Character” of the Allagash. The sum was matched by an equal amount from the federal Land and Water Conservation Fund, administered by the Interior Department, for land acquisition by the state.

Governor Kenneth M. Curtis, now a private attorney in Portland, Maine, was a primary architect of the federal Wild river designation for the Allagash. It is significant to the Allagash narrative and the history of the federal designation that Governor Curtis today supports the intervenors in opposing the development of the proposed John’s Bridge road-and-boat access.

In a June 21, 2000 letter to Dean Bennett, Professor Emeritus, University of Maine at Farmington, who served on the Allagash Wilderness Waterway Advisory Committee, Governor Curtis writes,

I agree with you. The Allagash Wilderness waterway was created as something unique. It would seem that we could strike a balance between meeting public need and the preservation of a few wilderness areas such as the Allagash Waterway. . . . Instead of any direct intervention on my part, I would be pleased to be included as a supporter of those intervening in this decision. (See Bennett-Curtis correspondence (Exhibits 2, 3, 4 & 5).)

On July 1, 2000, Governor Curtis e-mailed his permission to Professor Bennett -- "YES PLEASE FEEL FREE TO INCLUDE MY NAME" — and Prof. Bennett forwarded the letter to Maine's Land Use Regulation Commission (LURC) for inclusion in the record concerning the proposed development.

Governor Curtis' current opposition to John's Bridge is completely consistent with his official role in having secured the Wild designation thirty years earlier.

In 1970, Governor Curtis, acting on the state's behalf, had written two letters of application to the Secretary of the Interior, Walter J. Hickel (Curtis, 4/10/70, & 5/4/70 (Exhibits 6 & 7)).

The Governor noted that "the Allagash is specifically mentioned in section 2(a)(ii) of P.L. 90-542, the National Wild and Scenic Rivers Act" of 1968:

The national wild and scenic rivers system shall comprise rivers . . . that are approved by [the Secretary of the Interior] for inclusion in the system, including, on application of the Governor of the State concerned, the Allagash Wilderness Waterway . . . (Act, Section 2(a)(ii)).

Maine's Senator Muskie, who wrote the 2(a)(ii) section, was deeply involved in the Act and the eventual Allagash designation.

Governor Curtis then says, "As Governor of the State of Maine, I do hereby request that the Allagash be designated a 'Wild River' under this Act." (Curtis, 4/10/70.)

He explains that Director Lawrence Stuart of the Maine State Park and Recreation Commission "examined carefully" the federal river management guidelines (*infra*) for eligibility, that an Interior Department official accompanied Mr. Stuart on an inspection trip, and that the federal official "should be well qualified to advise of the Riverway's eligibility."

Governors Curtis notes with pride that the Allagash Wilderness Waterway would become the "first Wild River in the National System." (Actually, five federally administered Wild rivers or segments were designated by Congress on October 2, 1968, the day the Act passed. However, the Allagash

would become both the first state-administered river of any classification to be admitted into the system, and the first state-administered Wild river admitted, representing two important national precedents.)

The Governor's second letter expanded on his first by extending the state's application to cover the whole Allagash Wilderness Waterway, not just the section from Churchill dam north, which was the sole subject of the first letter. The second letter repeats some of the general content of the first but specifies that "the entire waterway is now included" (Curtis, 5/4/70).

Note the word "entire."

The Governor says, "[T]hat is as it should be considering the character of the area and our [the state's] understanding of the intent of the National Act."

The second letter thereby establishes that the state desires a single long Wild segment, not a series of shorter segments each having its own classification. Either approach would have met the requirements of the Act.

Several designated rivers are in fact categorized in multiple segments, each segment differing in classification. For example, the designated 203 miles of California's Trinity River are permanently classified as Wild for 44 miles, Scenic for 39, and Recreational for 120 (See list of 2(a)(ii) rivers). But Maine wanted the "entire waterway," in the Governor's words, to be Wild.

In choosing *one* classification consisting of *one* segment, the Governor adhered precisely to the Act's prescription that a river or segment "shall be classified, designated, and administered as one of the following" – Wild or Scenic or Recreational – not as an admixture of two or more classifications within a given segment (Act, Section 2(b)) [emphasis added].

Note the command "shall."

Further, in "A Compendium of Questions & Answers Relating to Wild & Scenic Rivers," an undated section of *The Wild & Scenic Rivers Reference Guide*, published by the federal Interagency Wild and Scenic Rivers Coordinating Council, February, 1999, this specimen Q & A exchange appears:

Q. *Can a WSR have more than one classification?*

A. . . . [T]here are three classifications . . . which may exist on a particular river segment [meaning a whole reach of designated river]. Distinct segments along the designated reach may contain differing and non-overlapping classifications . . . e.g., a 100-mile designated WSR may be classified as wild for 50 miles, scenic for 30 miles, and recreational for 20 miles (p. 20) emphasis added].

Note, segment classifications are “non-overlapping” – only one classification applies per distinct segment.

The single Allagash classification would by law encompass the river’s “immediate environments” (Act, section 1(b)). The continuous Wild segment would extend undivided for 92.5 miles and be “generally inaccessible except by trail . . . with watersheds or shorelines essentially primitive. These [rivers] represent vestiges of primitive America” (Act, Section 2(b)).

The word “primitive” appears twice, in adjacent sentences.

Also in the second letter, Governor Curtis builds on his prior case for Wild classification, saying:

It is my belief that the Allagash Wilderness Waterway Act of Maine is in full accord with the National Act and the guidelines developed by your Department, and the Department of Agriculture in February 1970, for permanent administration as a Wild River Area (Curtis, 5/4/70) [emphasis added].

The Governor elaborates that

the Maine State Park and Recreation Commission has been working closely with the [federal] Bureau of Outdoor Recreation [in the Interior Department] to provide suitable information to meet the review requirements of the Act (Curtis, 5/4/70).

Governor Curtis provided the “suitable information” in a state report that accompanied, and was an integral part of, the application, titled “The Allagash Wilderness Waterway, April 1970” (1970 Report, *infra*).

Finally, Governor Curtis invited Secretary Hickel to join him and others “to officially dedicate the Allagash and designate it as a Wild River under P.L. 90-542, if you find it so qualifies.”

The Allagash qualified for Wild designation, and the Interior Secretary incorporated it in the National River System, effective July 19, 1970.

Speaking for the State of Maine, Governor Curtis had expressly, precisely, and repeatedly called for a federal Wild designation and on the terms specified in the Act.

He noted the state’s due diligence in the matter of the designation. He promised “permanent administration” as a Wild River, his phrase exactly paralleling the Act’s requirement that protected rivers “are to be permanently administered as wild, scenic or recreational rivers by an agency or political

subdivision of the State or States concerned... ” (Act, Section 2(a)(ii)) [emphasis added].

There is no statute of limitations on *permanent*.

The Governor could have proposed breaking the river into two or three discrete segments, but he did not.

The Governor could have called for a customized classification for each of several segments – Scenic or Recreational, for example, for a John’s Bridge segment – but he did not.

The Governor understood the distinct classifications. He had no difficulty comprehending that “generally inaccessible except by trail . . . essentially primitive . . . vestiges of primitive America” did not equal “accessible in places by roads” (i.e., Scenic) and did not equal “readily accessible by road” (i.e., Recreational)(Act, Section 2(b)).

No logic permits such equations. Wild equals Wild.

The Governor’s pledge was as solemn as Percival Baxter’s on giving Katahdin irrevocably to the people of Maine. But Governor Curtis’s pledge reached even farther: On behalf of the people of Maine, he had struck a permanent covenant with the Congress, the Secretary of the Interior, and the citizens of the United States.

Thus was a lawful promise made by the State of Maine.

## ***Chapter Four***

### **THE 1970 FEDERAL RIVER MANAGEMENT GUIDELINES**

*“‘Generally Inaccessible’ means there are no roads or other provisions for overland motorized travel within a narrow incised valley, or if the river valley is broad, within ¼ mile of the riverbank.”*

-- FEDERAL GUIDELINES FOR EVALUATING WILD, SCENIC AND RECREATIONAL RIVER AREAS, 1970

**I**n his two letters, Governor Curtis refers to 1970 implementation guidelines developed by the Interior and Agriculture departments, “Guidelines for Evaluating Wild, Scenic and Recreational River Areas Proposed for Inclusion in the National Wild and Scenic Rivers System Under Section 2, Public Law 90-542, Reprint - February 1977” (1970 Guidelines (Exhibit 8)).

The guidelines “define minimum criteria [for] the classification and management” of state-protected rivers proposed for federal designation (1970 Guidelines, p. 1.) [emphasis added]. The criteria also apply to the “administration of river areas” and are “prescribed by the Act” (1970 Guidelines, p. 5.). The guidelines specify, among other things, that

“Generally Inaccessible” means there are no roads or other provisions for overland motorized travel within a narrow incised valley, or if the river valley is broad, within ¼ mile of the river bank. The presence, however, of one or two inconspicuous roads leading to river area will not necessarily bar wild river classification (1970 Guidelines, p. 6.).

Reinforcing this minimum standard, the federal river management guidelines cite a “management objective” for Wild rivers: state agencies must “restrict or prohibit motorized land travel, except where such uses are not in conflict with the Act” (1970 Guidelines, p. 7.). The guidelines also prohibit “improvements or new structures unless they are clearly in keeping with the overall objectives of the Wild river area classification and management” (1970 Guidelines, p. 8.). And,

As with shorelines, developments within the boundaries should emphasize a natural-like appearance so that the entire river area [i.e., the designated segment with its immediate environments] remains a vestige of primitive America (1970 Guidelines. pp. 6-7.).

Governor Curtis certifies that in petitioning for the Wild designation the state has carefully reviewed the guidelines and has found that the 1966 Allagash statute is in “full accord” with them and with the Act (Curtis 5/4/00).<sup>3</sup>

---

<sup>3</sup> It seems reasonable to conclude that the 1970 Federal River Management Guidelines for states were developed because of, and in significant part customized for, the then-expected Allagash designation. This seems evident in: a) the fact that the Allagash was the first 2(a)(ii) river proposed; b) the timing of the publication (Feb. 1970), only months before the actual designation; and c) the particulars of the acceptable qualities of wild rivers. In the acceptance of small, conforming dams, and of one or two inconspicuous roads, etc., the guidelines seem to describe the actual characteristics of the Waterway. In other words, the Allagash set the specific threshold (i.e., minimum) standards for what constitutes any wild river.

## ***Chapter Five***

### **“FULL ACCORD”: DOC’S 1970 ALLAGASH REPORT**

*“It is my belief that the Allagash Wilderness Waterway Act of Maine is in full accord with the National Act and the guidelines developed by your Department, and the Department of Agriculture, in February 1970, for permanent administration as a Wild River Area.”*

-- LETTER OF APPLICATION FROM GOVERNOR KENNETH M. CURTIS TO SECRETARY OF THE INTERIOR WALTER J. HICKEL, MAY 4, 1970

“**T**he Allagash Wilderness Waterway, April 1970” (1970 Report (Exhibit 9)) was attached to the Governor Curtis letters as a part of the state’s official submittal to Interior.

The “Foreword” says the report was presented for the purposes of including the Allagash Wilderness Waterway in the National Wild and Scenic Rivers System and “to support the Governor’s application for this purpose” (1970 Report, n.p.).

DOC’s report was a formal part of the inducement that the state used to gain the federal Wild designation and to show state compliance with the federal river management guidelines.

Page one of the 1970 report is titled “The Allagash, A Wild River.” Note the word “Wild.” The report refers to Maine’s AWW Statute and says:

The intent of this [state] legislation sets forth that this watercourse shall forever be maintained and operated in its wild condition to provide a wilderness canoe experience [emphasis added].

Note the words “shall” and “forever.” These are unequivocal in their independent meanings. Used together they gain extra force: the Allagash “shall forever” be “wild,” the state says.

There is no statute of limitations on *forever*.

Clearly DOC's report uses the term "wild" in a manner that is consistent with the federal definition of a Wild river. It would make no sense for the state to proffer a Wild classification that was inconsistent with state's own application or with the federal river management guidelines.

The report says the region "remains a stalwart wilderness forest" (1970 Report, p. 1.). Clearly the "region" includes the river and what the Act calls its "immediate environments" (See Act, Section 1(b)).

The report goes on to discuss the river's natural attributes, its rich history, the state authorizing legislation (1966 AWW Statute), and other matters that make the Allagash unique. This enumeration of qualities directly answers the Act's requirement that the river possess one or more "outstandingly remarkable" values (Act, Section 1(b)) and have "special attributes" (Act, Section 10(a)).

In a section titled "Physical Features," DOC's report says:

There are three small dams [Churchill, Telos, and Lock] of timber crib construction which do no [sic] form impoundments which detract from the wilderness character of the waterway and are of historic significance (1970 Report, p. 7) [emphasis added].

This section can be thought of as a declaration of anomalies. It presents the structures – "of timber crib construction" and "of historic significance" -- that the state proposes for grandfathering.

DOC's report offers additional grandfathering, but with conditions:

Access to the 'Waterway' is limited to automobiles and float planes. The roads leading to the area are privately owned by timber companies. The major access points by automobile are located at Telos Landing and West Twin Brook. The primary use of all other roads is for the transportation of harvested wood. The existing roads will be scarified as soon as practicable and the location of all new roads for these purposes [woods operations] are subject to approval by the state. The policy on these will be to provide minimum impact on the wilderness character of the Waterway (1970 Report, pp. 7, 8.).

The DOC report, then, squarely establishes the baseline conditions to be grandfathered into the Wild classification. It addresses the dams and roads. General automobile access to the river is limited to Telos Landing and Twin Brook. New roads for woods operations are subject to state approval. By limiting road accesses and other development, DOC, as manager of the river, is setting policy boundaries it will not exceed.

It is inconceivable that the DOC's 1970 report would approve of new roads or accesses established in a manner inconsistent with the Act and the Wild classification, since the report tries to make a case for management actions that

are consistent with the Act, the desired Wild classification, and the 1970 federal river management guidelines. DOC would not argue against itself.

Nor, presumably, would the report propose anything disingenuous or that would later embarrass Governor Curtis or the Legislature, whose joint faith and credit stood behind the petition. Like the Governor Curtis letters, then, DOC's 1970 report can only be seen as a firm commitment to actions consistent with the intent and the letter of Act and with the federal river management guidelines. The DOC report is part of the formal agreement the state willingly entered into with the federal government.

In the section called "Policy and Administration," the 1970 report says,

The purposes and philosophy in the [state] Legislation establishing the Allagash Wilderness Waterway clearly indicate that this area is to be forever maintained and operated as a wilderness canoe experience [sic] (1970 Report, p. 13.).

That clause directly seconds Governor Curtis' commitment to "permanent administration" of the Allagash as a Wild river (Curtis, 5/4/70), and complies with the Act's mandate that Wild, Scenic, or Recreational rivers "are to be permanently administered," according to the specific classification of the river or segment (Act, Section 2 (a)(ii)). The report's use of the term "forever maintained" or variants (1970 Report, pp. 1, 13.) reinforces the state's binding commitment to protect the river in perpetuity, as is required by the Act.

The report, adding more boundaries within which DOC will operate, establishes this policy: The state will discontinue

all private woods roads as their usefulness ceases to the woods operator except that [sic] at the two (2) ends of the Waterway, Telos Lake and Allagash Village. If the Realty Road continues to cross the middle of the Waterway as it does now, then strict control or [sic, of?] access at this point will be maintained (1970 Report, p. 13.).

The language concerning this possible third access, at Realty Road (Umsaskis Thoroughfare), is ambiguous. It doesn't say whether "strict control" means *no* public access or *limited* public access. But it promises, at minimum, that DOC will control access.

Finally, the report presents a philosophy: "[I]f users are not willing to take the Allagash trip on the terms and conditions outlined above, then they should not undertake the Allagash trip" (1970 Report, p. 14. See also the "Allagash Wilderness Waterway Plan" January 27, 1999, (1999 Plan) prepared by BPL and DOC, *infra*). The policies to which the 1970 philosophy refers include the restricted access described in the DOC report. Again, the report cannot be

inconsistent with the Act here lest the state weaken its own case for Wild. The state is binding itself to a policy of restricted access.

After the Interior Department has accounted for and absorbed the appropriate grandfathering of three existing timber crib dams, other historic structures, the aforementioned two auto accesses and possibly the ambiguously referenced controlled access at Realty Road (Umsaskis Thoroughfare), and the float plane accesses, the Department now must not “authorize, intend or encourage further construction of such structures within components of the national wild and scenic rivers system” (Act, Section 10(b)).<sup>4</sup>

That is, DOC cannot, in the word used in the Act, “construe” the continued existence of certain prior development to mean that certain future development, especially new dams, is authorized (Act, Section 10(b)). After all, the Act’s central reason for existence, Congress declared, is to complement

the established national policy of dam building and other construction [with] . . . a policy that would preserve other selected rivers . . . in their free-flowing condition (Act, Section 1(b)).

The Wild river must, after any appropriate grandfatherings, be “generally inaccessible except by trail, with watersheds or shorelines essentially primitive” (Act, Section 2(b)). A river and its “immediate environments” (Act, Section 1(b)) must be “administered in such manner as to protect and enhance the values which caused it to be included in said system” (Act, Section 10(a)).

The heart of the state’s commitments, then, as accepted by Interior Secretary Hickel and the federal government, is that no more than two (or possibly three) automobile accesses will be allowed along the 92.5-mile Allagash Wild river. The state has accepted its legal responsibility and imposed on itself clear policy boundaries on this issue.<sup>5</sup>

## ***Chapter Six***

---

<sup>4</sup> Indeed, in the *Federal Register*, July 17, 1970, (1970 Fed. Regis. p. 11526) the Interior Secretary ultimately authorized two road accesses, not three, in formally accepting the state’s application for the permanent Wild classification. He excluded the Realty Road (Umsaskis Thoroughfare) access that the state requested.

<sup>5</sup> For space reasons, this paper does not cite certain readily obtainable memos, minutes, records and other documents from, for example, the Allagash River Authority, written before the 1966 AWW Statute was passed. Such items clearly show that Allagash planners wanted to limit the number of accesses and were advancing policy boundary concepts well before the federal designation occurred. Regarding access, the documents demonstrate prior intent consistent with DOC’s 1970 Report and the state’s Wild river application.

## THE FEDERAL-STATE DEAL IS SEALED

*“The overall character of the Allagash Wilderness Waterway is an outstanding vestige of primitive America.”*

-- WALTER J. HICKEL, SECRETARY OF THE INTERIOR, *Federal Register*, July 17, 1970

**I**nterior Secretary Hickel made the Wild designation official by publishing, on July 17, 1970, a Notice of Inclusion in the *Federal Register* (1970 Fed. Regis., pp. 11525-11526 (Exhibit 10)). It announced that the designation would take effect July 19.

Referring to Governor Curtis' letters and DOC's 1970 report, the Secretary states,

The application which contains the management and development plan for the Allagash Wilderness Waterway submitted by the State of Maine has been evaluated by this Department. It has been determined that the entire Allagash Wilderness Waterway meets the requirements for classification as a wild river area under the provisions of the Wild and Scenic Rivers Act and the supplemental guidelines adopted by this Department and the Department of Agriculture in February 1970 (Fed. Regis., p. 11525.) [emphasis added].

The Secretary plainly understands that DOC's 1970 report was “the management and development plan,” a term he uses twice in the *Register*. He notes that the state's plan complies with the 1970 federal river management guidelines.

Secretary Hickel describes “my evaluation” of the plan, based on the state's AWW Statute: The 400- to 800-foot Restricted zone is “to be maintained in a wild state.” And “The entire Allagash Wilderness Waterway has been designated [by the AWW Statute] in a manner consistent with a Wild River Area.” Further, “The entire Allagash Wilderness Waterway meets the criteria of a Wild River Area established by the [Act] and the [1970 federal guidelines].” Secretary Hickel's statements deliberately echo the binding commitments contained in Governor Curtis' letters and DOC's 1970 Report.

Accepting the recommendation of DOC's 1970 report, Secretary Hickel expressly grandfathers Telos Dam, Lock Dam and Churchill Dam, noting that "These existing structures do not form impoundments which detract from or disrupt the wilderness character . . . and are of historic significance in that they portray the development of the logging industry in the northeastern United States" (Fed. Regis., p 11526.) [emphasis added]. Secretary Hickel is repeating, almost verbatim, the state's reasons for requesting that the dams be grandfathered (1970 Report. p. 7.).

In a section titled "Accessibility," the Secretary presents his understanding that

Public access over private roads will be permitted to and along . . . a portion of Telos Lake and . . . at West Twin Brook. Existing private roads within the waterway which have been developed for logging purposes will be closed to public use. These private roads do not create a substantial impact on the wilderness character of the river. As new timber management plans are prepared, most of these roads will be removed from the immediate river area (Fed. Regis., p. 11526.) [emphasis added].

The Interior Secretary accepts two road accesses, the closure of private roads to public access, and the requirement that most logging roads eventually be removed.

DOC's 1970 report had sought a possible third access along the Realty Road (Umsaskis Thoroughfare), although its language on that point is ambiguous (1970 Report, p. 13.), but Secretary Hickel was more restrictive about general vehicular access and accepted just the two.

A 1972 inter-departmental memorandum from the Maine Attorney General's office to the Department of Parks and Recreation, "Subject: Allagash Waterway-Realty Road," offers a telling opinion about general road access:

Further examination of the purposes of the entire Act [1966 AWW Statute] would lead me to conclude that the provision [about road access] was designed not only to protect private land owners, but also to limit access to the Waterway via public roads. Obviously, state and county roads running through the Waterway would destroy or seriously impair the character and purpose of the Waterway. It seems logical, therefore, to conclude that the legislature desired to prohibit new public roads into and through the Waterway. The legislators were probably aware that existing private roads would likely carry less people to the heart of the Waterway than public roads. The whole purpose of the Act is to preserve the Waterway as a wilderness area. Public roads would obviously be inconsistent with that purpose. ("Subject: Allagash Waterway-Realty Road," from John M. Patterson, Assistant Attorney General, to Lawrence Stuart, Commissioner of the Department of Parks and Recreation, October 6, 1972, p. 2. [emphasis added].)

The Attorney General's 1972 opinion clearly reinforces the state's various application materials of 1970 and the thrust of Secretary Hickel's formal notice.

Secretary Hickel continues: "Temporary bridges for short-term logging purposes may be authorized by the State" (Fed. Regis., p. 11526.) [emphasis added].

The Secretary of the Interior accepts the binding assurances conveyed in Governor Curtis' two letters and DOC's 1970 report, then repeats and codifies them in the *Federal Register*. The Secretary is precise and clear about the Wild designation and the required management prescriptions for the Allagash, matching Governor Curtis's precision and clarity.

Thus was a formal agreement sealed between the State of Maine and the United States Interior Department.

## **Chapter Seven**

### **DOC AS SOLE MANAGER OF THE ALLAGASH: “THE BURDEN IS ON THE STATE”**

*“[The 1966 Allagash Wilderness Waterway Statute provided] permanent and exclusive administration of the entire watercourse by the Maine State Park and Recreation Commission . . . The entire Allagash Wilderness Waterway is permanently administered without expense to the United States.”*

-- WALTER J. HICKEL, SECRETARY OF THE INTERIOR, *Federal Register*, July 17, 1970

**T**o comply with the terms of the Wild and Scenic Rivers Act and the 1970 federal river management guidelines, and to gain approval for its petition to the Interior Secretary, the state made several binding commitments in Governor Curtis’s letters and in DOC’s 1970 Report.

The state expressly and publicly pledged itself permanently to a river management regime that would not – ever – violate the Act. The state Allagash Statute was allegedly in “full accord” with the Act and its guidelines (Curtis, 5/4/70). When the federal government accepted the Allagash as a legally Wild river, it fully relied upon the state’s written commitments. (See discussion of *Federal Register*, Friday, July 17, 1970, *supra*.)

Maine’s DOC was free under the Act and the federal river management guidelines to administer the river on the terms the state itself had formally spelled out. DOC gave itself plenty of latitude to proceed in its visionary 1970 report. DOC had enunciated its own policy boundaries – legal constraints -- which it could not therefore possibly ignore. DOC would know if it breached its own terms. In other words, DOC would police itself.

Moreover, the Act itself encourages the state to proceed on its own, provided the Act’s purposes are unimpaired by state actions (Act Section 13(d)). The Act also states that

Each river designated under clause (ii) [ i.e., state-protected rivers protected under the Act] shall be administered without expense to the United States other

than for administration and management of federally owned lands (Act, Section 2(a)(ii)).<sup>6</sup>

No federal lands are part of the Allagash Waterway, only state and private lands.

DOC staff today note that the National Park Service (NPS) played a negligible role in Allagash affairs over years. (Personal communications. See also De-designation Memo, 8/10/98, *infra*).

Rarely does the National Park Service engage in more than cursory review of any Allagash plans (Personal communications). For better or worse, the Park Service stays almost antiseptically uninvolved.<sup>7</sup>

The National Park Service role in the John's Bridge proposal was limited to: 1) review of whether the access met handicap-accessibility standards; and 2) review "for information and model purposes only" of the plan containing the proposal. DOC did not ask the Park Service whether the access itself was permissible under the terms of the 1970 binding agreements or under the Wild classification, and the Service did not offer comment on same. (Personal communications. See also discussion of 1999 Plan, and of De-designation memo, 8/10/98, *infra*.)

By virtue of its inaction on the John's Bridge access and on other Allagash developments over many years, the National Park Service may be complicit in allowing the river's *de jure* Wild status to be downgraded illegally to *de facto* Scenic or Recreational status. However, that is irrelevant in evaluating the state's sole and independent role in developing illegal accesses and other facilities.

So, the Allagash is, in part, a federally funded river, but is in no part a federally owned river.

Likewise the Allagash is a federally protected river, but is in no way a federally managed river.

---

<sup>6</sup> The state received \$1.5 million from the federal Land and Water Conservation Fund (LWCF), to help purchase some Waterway lands before the river was designated. The federal government is not involved in Allagash lands or in day-to-day management of the Wild river.

<sup>7</sup> However, NPS must get involved, pursuant to Section 7 of the Act, when so-called water resources projects and certain other developments are proposed on a designated river. The proposed construction of a modern concrete dam at Churchill Depot in 1998, for example, required NPS review. The Interior Secretary has authority to, among other things, overrule issuance of permits or grants for proposed dams and other constructions if the project "would have a direct and adverse effect on the values for which such river was established" (Act, Section 7(a)).

Management responsibility belongs solely to the state under the Act, the federal river management guidelines, and the specifications – policy boundaries – that DOC itself developed in its 1970 report.

## ***Chapter Eight***

### **DOC'S 1973 ALLAGASH CONCEPT PLAN**

*“The inclusion of the Allagash under this [National Wild and Scenic Rivers] Act provided little additional protection to the Waterway . . . .”*

-- ALLAGASH WILDERNESS WATERWAY CONCEPT PLAN (November 1973)

**I**n November 1973, DOC produced the “Allagash Wilderness Waterway Concept Plan” (1973 Concept). “Essentially, this plan assures that the intent of those who formulated and established the Waterway will be carried out in the future” (1973 Concept, p. 1.).

The document is strong, even insistent, on the state’s need to keep faith with original intent, and it many times uses the phrase “wilderness experience,” “wilderness character” or the like. For example, the 1973 concept plan

attempts to foresee the day – perhaps 50 years into the future – when the Waterway can be managed to the optimum extent possible as a wilderness corridor ... (1973 Concept, p. 2.).

However, the concept plan contains only a few references to the Act.

Like all other DOC management documents, the 1973 concept plan omits the substance of the federal law or misrepresents it as it pertains to the Allagash:

In July 1970, the Allagash Wilderness Waterway was designated as the first state administered component of the National Wild and Scenic Rivers Act of 1968. The inclusion of the Allagash under this Act provided little additional protection to the Waterway but it did indicate the desire of Maine and the United States to maintain the Allagash as a wilderness waterway (1973 Concept, p. 8.) [emphasis added].

DOC’s 1973 concept plan correctly acknowledges that there exists a *bona fide* national interest in the wilderness river. However, no mention is made of the Wild classification or its meaning.

The assertion that the Act brought “little additional protection” is completely wrong. A Wild classification, if adhered to, prevents the downgradings that DOC has executed and tried to justify as consistent with the state statute. It also prevents certain dams and other water resource projects, forbids inappropriate streamside development, mandates a high degree of inaccessibility, and sets “protect and enhance” as the fundamental management standard.

Put differently, implementing the Act’s mandates would have substantially fortified and advanced DOC’s stated intent to create a wilderness corridor “50 years into the future” (1973 Concept, p. 2.).

It is difficult to know whether the “little additional protection” assertion came from the 1973 plan’s implicit reliance on, and faith in, the putative strength of the 1966 AWW Statute independent of the federal designation.

Or was the state overtly distancing itself from its binding agreements to uphold the Act and the federal river management guidelines?

For example, the 1973 concept plan calls for “at least two publically [sic] controlled access routes in to the Allagash” (1973 Concept, p. 15.). Three years earlier, only two had been permitted. By 1973, DOC was clearly already aiming for more than two.

The plan illustrates that the agency’s successive incremental deviations from the Act’s imperatives began a scant three years after the permanent federal designation occurred. To be sure, the deviations were incipient in 1973, representing but a tiny arc of variance from the true course.

It is unclear whether DOC’s concept plan of 1973 was formally adopted, but its effect as a guidance mechanism appears to have withered to nothing by the early 1980s. The swing of the arc, away from the imperatives of the Act, would lengthen over the decades. Without an Act-relevant plan, DOC had by 1999 long abandoned the core principles and directives of the Wild and Scenic ideal.

In the interim, DOC had allowed or authorized fourteen road accesses and sixteen parking lots, plus other developments, and completed the construction of a modern concrete dam at Churchill Lake. DOC had harnessed the river to an expedient, lesser and stingy vision, opposite from the bold one that Governor Curtis (supported by DOC’s excellent 1970 plan), Senator Muskie and other founders of the Wild Allagash classification had intended.

DOC attempted to justify such deviations, retroactively and prospectively, in a new Allagash plan published in 1999:

[The DOC Commissioner] said his agency should be praised for completing a management plan [in 1999] for the Allagash, the first one in the waterway's more than 30 years of existence. . . . "I am confident the plan will protect the Allagash for a long time" ("Environmentalists sue over Allagash access," by Susan Young, *Bangor Daily News*, December 1, 2000 (Bangor Daily, 12/1/00)).

Here, then, according to the news report, the Commissioner admits that DOC has operated without an Allagash plan for three decades. This in turn suggests that the 1973 concept plan was never implemented.

Unfortunately, the 1999 plan to which he refers sets a course that formally and willfully veers from the Act's imperatives. DOC deserves praise for finally producing a plan, but criticism for the plan's anti-Wild content, the subject of the next chapter.

## Chapter Nine

### DOC'S 1999 ALLAGASH PLAN

*“The entire watercourse was officially designated as ‘wild’ by the Department of Interior, even though, because of the roads, bridges, dams, and other structures present, the watercourse best fits a combination of ‘scenic’ and ‘recreation’ designations to be consistent with the definitions in the National Wild and Scenic Rivers System Act of 1968.”*

-- ALLAGASH WILDERNESS WATERWAY PLAN, January 27, 1999

**T**wenty-nine years after the river was designated Wild, the state adopted, on January 27, 1999, the “Allagash Wilderness Waterway Plan” (1999 Plan), prepared by BPL and DOC.

The 1999 DOC plan is ninety pages plus appendices. Nowhere in the “Executive Summary” is the Wild and Scenic Rivers Act mentioned (1999 Plan, pp. i-iii.).

The “Introduction” acknowledges that the Allagash “became the first-state-administered river to be designated by the United States Department of the Interior as a component of the federal Wild and Scenic River Program” (1999 Plan, p. 1.). But there is no reference to the permanent Wild classification, let alone an explanation of its meaning.

The “Preface” reads in part,

The present plan discusses the policies, objectives, strategies, for the management of the natural, historic, and cultural resources and features of the Waterway . . . to carry out the intent of the [state] enabling statute, as amended. Major statutory directives include, but are not limited to the following . . . (1999 Plan, p. 3.) [emphasis added].

A list of five “directives” then follows. The “major directives” embodied in the Wild and Scenic Rivers Act are nowhere mentioned. Incredibly, there is not even a reference to the Act. Yet the Act itself devotes a full section to “Management direction.” That section plainly states that a designated river

“shall be administered. . . to protect and enhance the values which caused the river to be included in said system. . .” (Act, Section 10(a)).<sup>8</sup>

This constitutes a remarkable exclusion from DOC’s 1999 plan since the Act in its entirety, not just Section 10, is *the* major directive that the state had promised to uphold over the preceding twenty-nine years, and for all time. The state had guaranteed “permanent administration as a Wild River Area” (Curtis, 5/4/70) [emphasis added].

Oddly, the plan’s “Preface” refers directly to the federal Wilderness Act of 1964, and states that “Portions of this [federal Wilderness] definition can be applied to the Allagash” (1999 Plan. p. 4.) [emphasis added].

But the federal Wilderness Act is irrelevant as a legal matter because Congress never conferred a Wilderness designation on the Allagash.

On the other hand, the Wild and Scenic Rivers Act’s definition of Wild not only “can” be applied, it *must* be applied, because the Act is the controlling federal law and the state had affirmatively sought its protections. It nonetheless goes uncited.

This, too, counts as a stunning exclusion.

Moreover, a federal Wilderness designation, which has rigorous prohibitions against development, is the most restrictive preservation measure available under United States law. It is baffling that DOC’s 1999 plan would refer to this least forgiving designation while the agency was simultaneously continuing to reduce the river’s wilderness character.

In the section called “Wild and Scenic Designation,” DOC’s 1999 plan says

The entire watercourse was officially designated as ‘wild’ by the Department of Interior, even though, because of the roads, bridges, dams, and other structures present, the watercourse best fits a combination of ‘scenic’ and ‘recreation’ [sic] designations to be consistent with the definitions in the National Wild and Scenic Rivers System Act of 1968 [sic] (1999 Plan, p. 14.).

DOC has seriously misrepresented and revised the Act here.

---

<sup>8</sup> Likewise, the federal river management guidelines of 1970 cite five specific “Management objectives” for Wild rivers, including that state agencies must “restrict or prohibit motorized land travel, except where such uses are not in conflict with the Act” (1970 Guidelines, p. 7, 8.).

First, DOC has omitted explanation of the Act's grandfathering provisions. The Interior Department allowed some "existing" historic structures and private roads to continue under the original Wild classification, and in return relied on the 1970 report's binding agreement to remove many other structures, limit accesses to two (or possibly three), scarify the roads "as soon as practicable," etc. (1970 Report, p. 8.).

Second, DOC has omitted mention that a specific federal statute is involved, not just federal agency administrative rules. The U.S. Congress established the National Rivers System by law in 1968. Acting pursuant to that law, the Department of Interior affirmed the Wild classification for which the state had petitioned.

Third, DOC erroneously says that a "combination" of Scenic and Recreational classifications on the Allagash is more "consistent" with the Act than is the Wild classification. This totally misinterprets the Act's requirement that a single river segment must carry a single classification only (Act, Section 2(b)). The state had affirmatively sought and received in 1970 the single classification of Wild for a single, unbroken 92.5-mile segment of river.

This section is remarkable for these several misinterpretations of the Act, but more so for the plain admission that DOC had downgraded the river, over three decades, from *de jure* Wild to a "combination" of *de facto* Scenic and Recreational. DOC rationalizes this by saying the river "best fits" those two classifications, and that they are "consistent" with the Act.<sup>9</sup>

---

<sup>9</sup> Various "best fits" assertions show up persistently, sometimes from outside sources who propound DOC's erroneous perspectives. For example, in an August 2000 *Bangor Daily News* op-ed, Donald E. Nicoll, a citizen member of the Allagash Wilderness Waterway Advisory Council, who is also a former aide to Senator Edmund Muskie, repeats the DOC's own misinterpretations of the National Wild and Scenic Rivers Act and defends yet more illegal road access to the Allagash Wilderness Waterway. Mr. Nicoll correctly notes that three classifications exist under the Act: Wild, Scenic or Recreational. But he then says, "There are problems in applying the first two classifications [Wild or Scenic] to the Allagash." The reader can only infer that the Allagash is therefore a Recreational river. He explains that "Those problems are the Telos, Lock and Churchill dams" and other structures. Their existence, he is suggesting, does not allow a Wild classification but does fit a Recreational classification. However, the Act says Recreational rivers are those that are "readily accessible by road or railroad, that may have some development, and that may have undergone some impoundment in the past" (Act, Section 2(b)). The Nicoll piece doesn't explain that the Interior Secretary Hickel grandfathered the three dams or that the Wild classification is permanent. (See "Difficult Waterway Balancing Act Recalled," by Donald E. Nicoll, Op-Ed, *Bangor Daily News*, 8/17/00.) Judging by the documentary evidence, Mr. Nicoll's views seem completely at odds with Senator Muskie's. (See Chapter Fifteen, "'No Room for Misunderstanding': Senator Muskie Speaks on Original Intent," esp. footnote 19, *infra*.)

Curiously, a 1998 draft of the 1999 Plan said the state “had recommended” the combination of Scenic and Wild classifications. In the final plan, the “best fits” terminology appeared instead. Governor Curtis’ two letters and the 1970 Report clearly show that the state formally recommended a single Wild classification. Both the draft and the final plan, then, were incorrect. Both also reveal an inappropriate historical revisionism.

On the face of it, the “best fits” assertions sound reasonable and law-biding. They may even make up an accurate physical characterization of the current Allagash Waterway. But in reality they describe the Allagash after-the-fact of DOC’s *de facto* illegal downgradings to non-Wild over many years.

Any *inappropriate* Allagash developments, which by definition cannot be grandfathered, are the inexorable results of a series of incremental decisions, successive instances of DOC’s violating the formal representations made by Governor Curtis in 1970 in exchange for the federal Wild classification. The Interior Department relied on those binding representations in granting the permanent classification.

The river was in legally Wild condition when admitted into the national system. It is still *legally* Wild today, despite its *de-facto* diminished condition.

Clearly, DOC’s 1999 plan glosses the Wild classification of the Act and indicates that the agency administers the Allagash as Scenic and Recreational. Yet the plan nowhere explains that this constitutes a demotion and violates the 1970 binding agreements to which the state had committed itself.

Instead the plan presents Scenic and Recreational conditions, and Scenic and Recreational management, as if they were standard operating procedure.<sup>10</sup>

DOC had been corrected on this misrepresentation when it appeared in a 1998 draft of the plan. In an eight-page letter, an Allagash user alerts DOC that the draft is incorrect on the dual designation: “The Allagash is officially designated as a ‘wild’ river, as opposed to ‘scenic’ or ‘recreational.’” The writer adds that Governor Curtis’ 5/10/70 letter “specifically requested inclusion of the Waterway as a ‘Wild River.’” The writer further cites the *Federal Register* of July

---

<sup>10</sup> If accepted by an uncritical public, the Scenic and Recreational classifications could become the lowered standards to which DOC could manage the river and could judge all development proposals. Since Scenic classification means, after any grandfatherings, “accessible in places by roads,” and Recreational means “readily accessible by road” (Act, Section 2(b)), DOC could more easily be granted new development approvals under those classifications. The Wild Allagash would be lost. DOC might also gain retroactive permission for many present-day developments prohibited under the Wild classification’s generally-inaccessible-except-by-trail standard.

17, 1970 that legally establishes the Wild classification. (“Re: Draft Management Plan,” Letter to Tom Cieslinski, Bureau of Park and Lands, from Cheryl B. Martin, Environmental Engineer, June 5, 1998.)

In DOC’s final plan of 1999, it is clear that DOC ignored the corrective comments.

Remarkably, then, the only section of the DOC 1999 plan devoted to “Wild and Scenic River Designation” does not explain the Act’s grandfathering provisions. It is silent on the fact that federal law, not just Interior Department administrative procedure, is relevant. It does not enumerate DOC’s obligations under the Wild classification, the 1970 federal river management guidelines, or even the 1970 binding commitments DOC itself made. It does not say that the river must be permanently administered in its Wild classification. It does not say that DOC must maintain and enhance the conditions prevailing at the time of its inclusion in the National Rivers System. It wrongly implies that an unlawful dual classification of Scenic and Recreational is consistent with the Act. And it admits that DOC is managing the Allagash as a combined *de facto* Scenic and Recreational river.

All of this occurs in a single paragraph.

That paragraph is the sole explicative reference to the Wild classification in a plan of ninety pages. The paragraph is wrong, misleading and revisionist throughout. All other references to the Act in the plan are merely bibliographical or just plain vague, or they are presented as historical curios.

The plan even miscounts and understates the number of road accesses and the number of parking lots.

In toto, in respect to the Act, DOC’s 1999 plan gives incomplete, misleading and improper management direction to Waterway staff, or none at all. It misinforms the public. It ignores entirely DOC’s affirmative responsibilities under the Act. It abrogates the state’s own written agreements, made legally binding, to keep the Allagash permanently Wild. It reveals a bureaucracy untethered by law or by history.

Yet the DOC Commissioner insists, “I am confident the plan will protect the Allagash for a long time” (Bangor Daily, 12/1/00).

In a passing reference to the state’s “request to the Department of the Interior for inclusion of the Allagash in the Wild and Scenic Rivers System, ” i.e., DOC’s 1970 report, the DOC 1999 plan lists many of the 1970 policies that were designed “to maintain the wilderness character.” These include the eventual

discontinuance of “all private woods roads” except at Telos Lake and Allagash Village. Despite the intervening development of additional road accesses and parking lots over thirty years, which are inimical to maintaining wilderness character, the 1999 plan betrays no irony when it repeats verbatim the summary philosophy of the 1970 report:

It is the thinking of the Commission and of the Advisory Committee that if users are not willing to take the Allagash trip on terms and conditions outlined above, then they should not undertake the Allagash trip (1970 Report, p. 14, 1999 Plan, p. 15.) [emphasis added].

What is the purpose of repeating the 1970 philosophy in 1999 when DOC has in the interim dramatically revised the aforementioned “terms and conditions,” exceeding its own policy boundaries? DOC today is not managing to the 1970 Wild standard.

Further, DOC has over decades consistently failed to comply with the Wild standard. If DOC had been consistently managing to maintain and enhance the permanent Wild classification – actions akin to developing the river’s “maximum wilderness character,” as mandated by the 1966 state statute - - the number of vehicular accesses to the river, to take just one criterion of the Wild classification, would not have multiplied from the permitted two to the fourteen that exist today (see *infra*), a 700-percent expansion factor.

Repeating in 1999 the 30-year-old promise of the original philosophy rings hollow given DOC’s *de facto* demotion of the Allagash during those years. It begs the question of whether DOC is sincere in offering the 1970-now-1999 philosophy as serious guidance for the future. The Finley Bogan and John’s Bridge road accesses are but recent-day examples of breaches of the 1970-now-1999 philosophy. How many times ahead will DOC repeat the promise and yet continue to devalue the Allagash?

Again, why is the 1970 promise repeated in the 1999 plan, unless as a curio? This is not a question of law so much as a more fundamental and resonant one about agency credibility and issues of public trust. It has to do with diminishing faith in state government, in DOC in particular.

There also exists a question of national precedent here. Not only has DOC failed to exercise its daily jurisdiction over the waters of the Allagash “without impairing the purposes of the Act or its administration” (Act, Section 13(d)), it has also in effect announced that all other 2(a)(ii) rivers in the national system are now in jeopardy. If Maine is allowed to impair the Act in any degree, let alone so extensively, on the first state-protected river admitted into the national system, why shouldn’t the eleven other states feel free to abrogate any of their seventeen lawful federal designations?

Further, if *any* Act-protected river – every one of which is entitled to identical protection -- can be downgraded, what does that mean for the 138 non-2(a)(ii) rivers in the national system, the watercourses that Congress itself designated over 32 years and which are administered by federal land managing agencies?

## **Chapter Ten**

### **PROLIFERATING ACCESS BY ROADS**

*“Recreational development is not a job of building roads into lovely country, but of building receptivity into the still unlovely human mind.”*

-- ALDO LEOPOLD, *A Sand County Almanac* (1949)

**S**ince before the federal designation, roads have permeated the Allagash region, some running near the river in places and even across it on bridges. If a road is not a designated access and if the no-entry status is enforced by managers, perhaps the river can be construed to be, to use the Act’s language, “generally inaccessible” from the road, despite the manifest presence of such a road. A slippery distinction of some sort exists between *access by roads* and *the existence of roads from which access is forbidden*.

However, any private road is undeniably a physical development and is out of place on the Wild-river-of-the-future because the road eventually must be discontinued and scarified, as DOC promised (1970 Report, pp. 8, 13.).

Secretary Hickel is clear, too, in his paraphrase of DOC’s promise: “Existing private roads within the waterway which have been developed for logging purposes will be closed to public use” (1970 Fed. Regis., p. 11526.).

Even if a road were permissible, however, its existence and its proximity to the river would not necessarily make it a legal access. As an illustration, consider an Interstate highway bordered by homes. For the people who don’t live near an on-ramp, the Interstate exists as a backyard feature but offers no permitted access, even if a resident cuts a bootleg road to the Interstate. To develop another on-ramp nearer the homes – to develop an Allagash access using the existing private road near John’s Bridge, for example – is to create a *new* public access.

Every time this is done beyond what was grandfathered along the Allagash -- when road access is created where it is officially impermissible or is allowed by managerial lassitude merely to materialize -- the Act is breached because the *de jure* Wild river is downgraded to a *de facto* Scenic or even Recreational river.

When a road is utilized for public access to the Allagash beyond what is grandfathered, a discrete river segment is created where none existed, dividing the river into parts. The Allagash is no longer Wild for its 92.5-mile entirety.

DOC's 1999 plan notes that

Authorized access sites were established by rule in 1983, when vehicle access was prohibited except at the following [seven] locations: Chamberlain Thoroughfare Bridge; Churchill Dam; Bissonnette Bridge; Umsaskis Thoroughfare [i.e. Realty Road]; Henderson Brook Bridge; Michaud Farm; and Twin Brook (1999 Plan p. 40.).

Note that Telos Landing access, which was grandfathered by Secretary Hickel in 1970, no longer shows as an access. DOC authorized Chamberlain Thoroughfare Bridge instead, which seems permissible since the net number of accesses did not increase.

Note also that DOC authorized Umsaskis Thoroughfare (Realty Road), despite the fact that Secretary Hickel had excluded that access when he permitted the other two (Telos Landing and Twin Brook).

As well as can be determined at this writing, DOC has authorized or allowed fourteen road accesses so far, six more than DOC lists in its 1999 plan, and at least twelve more than DOC's own 1970 report had promised. Today's count:

1. Chamberlain Bridge Thoroughfare (which replaced the grandfathered Telos Landing access)
2. Twin Brooks (grandfathered)
3. Churchill Dam (not permitted)
4. Bissonnette Bridge (not permitted)
5. Umsaskis Lake Thoroughfare (Umsaskis I, along Realty Road, not permitted, in fact was excluded by Secretary Hickel)
6. Henderson Brook Bridge (not permitted)
7. Michaud Farm (not permitted)
8. Cunliffe (not permitted)
9. Ramsay (not permitted)
10. Indian Stream (not permitted)
11. Finley Bogan (authorized September 7, 2000, not permitted)

12. Drake Road (Umsaskis II, discovered to exist 10/4/00, not permitted)
13. Upper Allagash Stream (not permitted)
14. John's Bridge (authorized by LURC 11/1/00, not permitted, to replace a pre-existing illegal access in the vicinity)

On the face of it, the DOC rule has breached the Act by allowing the Allagash Wild river to be made not only "accessible in places by road," a demotion to Scenic status, but also, judging by the numbers alone, "readily accessible by road," a demotion to Recreational status (Act, Section 2 (b)) [emphasis added].

DOC's plan also lists eleven parking areas along the Allagash, five lying within and six beyond the so-called Restricted zone, the 400- to 800-foot-wide corridor bordering either side of the river (1999 Plan, p. 29.). Many of these developments infringe firm boundaries established in the 1970 federal river management guidelines to which the state formally committed itself:

"Generally Inaccessible" means there are no roads or other provisions for overland motorized travel within a narrow incised valley, or if the river valley is broad, within ¼ mile of the riverbank" (1970 Guidelines, p. 6.).

Actually, DOC has allowed sixteen parking lots in the river area, five more than are listed in the 1999 plan. At least eleven parking lots must defy the Act because they are affiliated with impermissible accesses:

1. Chamberlain Thoroughfare parking lot (which replaced grandfathered Telos Landing parking lot)
2. Twin Brooks parking lot (grandfathered)
3. Churchill Dam parking lot (not permitted)
4. Umsaskis Lake Thoroughfare parking lot (Umsaskis I, not permitted)
5. Henderson Brook parking lot (not permitted)
6. Michaud Farm parking lot (not permitted)
7. Cunliffe parking lot (not permitted. DOC lists the Ramsay/Cunliffe campsite parking areas as one, but in reality they are separate)
8. Ramsay parking lot (not permitted)
9. Indian Stream parking lot (not permitted)
10. Finley Bogan parking lot (not permitted)
11. Drake Road parking lot (Umsaskis II, not permitted)
12. Upper Allagash Stream parking lot (not permitted)
13. John's Bridge (not permitted)

The legal status of the three other DOC parking lots is unknown at this writing:

14. Zieglar parking lot

15. Nugent's parking lot
16. Jalbert's parking lot

In sum, twelve road accesses and eleven parking lots exist above what was permitted, and some others are questionable. DOC has plainly and severely breached the “generally inaccessible except by trail” standard of the Act.

The fourteen road accesses alone make the Allagash “readily accessible by road.” When the surfeit of sixteen parking lots is added to the picture, the river's ready accessibility by vehicles skyrockets. Each parking area represents not merely a drop-off point for quick loading and unloading, but a site within the immediate environments of the Wild river area for longer-duration storage of vehicles incompatible with the purposes of the Act.

Additionally, DOC's 1999 plan states that “Since 1986, the Bureau [BPL] has received and approved 29 applications for new construction within ¼ mile of the watercourse” (1999 Plan, p. 32.). That converts to a statistical average of 2.2 developments a year from 1986 to 1999. No mention is made of development approvals before 1986, but surely there were some. These also may have contributed to the demotion of the Allagash from Wild to Recreational.<sup>11</sup>

The net increase of road accesses and parking lots also breaches the Act's imperatives that a Wild river remain *permanently* Wild (Act, Section 2(a)(ii)) and “generally inaccessible except by trail” (Act, Section 2(b)). DOC's allowance of the two permitted vehicular accesses and twelve impermissible ones over thirty years since the Wild designation amounts, statistically, to a new access every 2.1 years.<sup>12</sup>

DOC has broken the federal standard of permanence.

Moreover, DOC is thumbing its nose at the state Attorney General's 1972 opinion:

---

<sup>11</sup> The pre-1986 developments should be investigated to ascertain whether they are Act-compliant.

<sup>12</sup>Note also that Irving Forest Products is reportedly applying to build a new bridge across the Allagash. The BPL director is reported as saying the Bureau's position is “no net increase in crossings.” On the face of it, this statement seems not to comport with Secretary Hickel's formal approval that “Temporary bridges for short term logging purposes may be authorized by the State” (1970 Fed. Regis., p. 11526). Also, DOC and BPL had promised eventual removal of private roads. Instead what is evinced here – “no net increase in crossings” -- is an agency mindset that a certain number of road crossings is somehow allowed. This purportedly private road would likely be subject to calls to open it for general vehicular access, as at Finley Bogan and John's Bridge. (See “Irving Explores New Bridge Across Allagash,” by Phyllis Austin, *Maine Times*, 2/10/00.)

The whole purpose of the Act is to preserve the Waterway as a wilderness area. Public roads would obviously be inconsistent with that purpose. ("Subject: Allagash Waterway-Realty Road," from John M. Patterson, Assistant Attorney General, to Lawrence Stuart, Commissioner of the Department of Parks and Recreation, October 6, 1972, p. 2.)

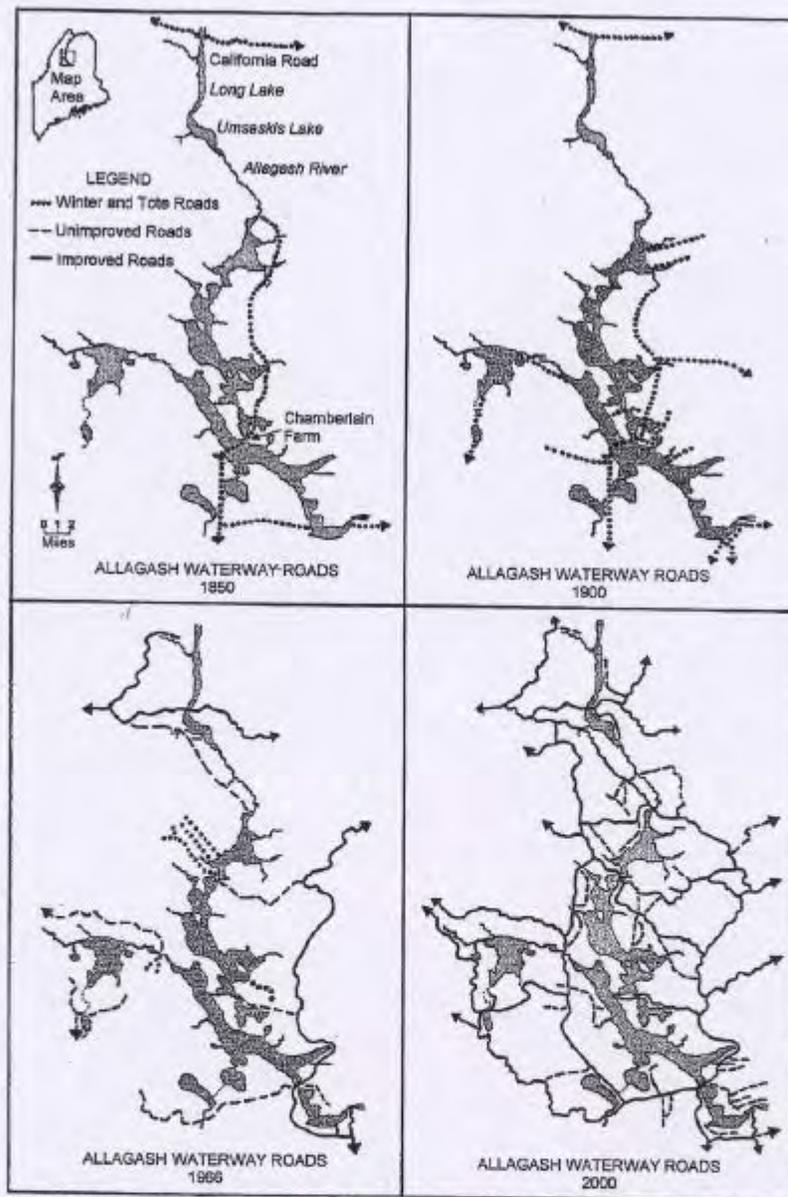
Under DOC's distorted calculus, Wild equals Recreational, permanent means transitory, and generally inaccessible means readily accessible.

The proliferation of vehicular accesses is partly a direct result of a proliferating road network. As illustrated on four maps on the following page, the Allagash region has undergone extensive road development since 1850. Compare especially the 1966 road network, when the AWW statute was passed, to the 2000 network.

As new roads pierced the river environs over three decades, nearing or crossing the river in places, DOC's resistance to them must have dissolved, to the degree such resistance ever existed. Under the 1970 binding agreements and the 1970 federal river management guidelines, private roads were to have been closed to public traffic, moved from the immediate river corridor, and eventually scarified. Absent such DOC actions, the network metastasized. It became easy for DOC to develop or allow physical connections between a road and the watercourse. DOC could also easily rationalize added access and even promote it, as is conspicuous in the recent cases of the Finley Bogan and John's Bridge roads and parking lots.

It may be difficult to determine when exactly in the evolution and proliferation of vehicle accesses the Wild designation was subverted. However, it is fair to say that somewhere between the permitted two and the current fourteen – a sevenfold expansion -- the downgrading to Scenic and Recreational became real.

It became real enough, for example, for DOC itself to declare in 1999 that "the watercourse best fits a combination of 'scenic' and 'recreational' designations to be consistent" with the Act (1999 Plan, p. 14.) [emphasis added]. In 1970, of course, according to both DOC and the Interior Department, the Allagash best fit the permanent Wild category. As the sole manager of the Allagash, DOC is wholly responsible for the mismanagement and *de facto* decline.



Copyright © Dean B. Bennett, "The Wilderness from Chamberlain Farm." In press. To be published by Island Press, fall 2001.

Road development in the Chamberlain Lake-to-Long Lake section of the Allagash Wilderness Waterway. Compare the network in 1966, when the state AWW Statute was passed, to the 2000 network, thirty years after the federal W&S Act designation. Roads led to proliferation of fourteen vehicular riverside accesses authorized or allowed by DOC along the entire Waterway, far exceeding the two agreed to by DOC and the Interior Dept. in 1970, and shattering the Act's permanent Wild classification ("generally inaccessible except by trail, with watersheds or shorelines essentially primitive"). The 700% multiplication of vehicular accesses has downgraded the river to Recreational status ("readily accessible by road"), also breaching the Act. Numerous parking lots and miscellaneous other development within ¼ mile of river contribute to the downgradings. Note the net increase in roads in the restricted immediate environments of the river, expressly forbidden by the 1970 federal river management guidelines to which DOC pledged compliance.

### Time Series Map: Allagash Waterway Roads—1850, 1900, 1966, 2000.

Roads are depicted based on a variety of informational sources. Improved roads are graveled with culverts and are generally passable by two-wheeled-drive vehicles in all seasons, including winter if plowed. Unimproved roads vary in condition depending on vehicle used and periodic upgrading. Winter and tote roads are roads passable by logging trucks and other logging machines during logging operations, usually in winter on frozen ground. Specific roads shown on the map may change from one category to another as use, maintenance, and road conditions change. Additionally, in some cases the categorization of roads may not be entirely accurate due to lack of information.

Map—1850. (Information on the existence of the roads at this time came from Richard W. Judd, *Aroostook: A Century of Logging in Northern Maine* [Orono, Maine: The University of Maine Press, 1989], 59-61; *Journey to the Woods, 1852*, folder C#15, E. S. Coe Chamberlain Farm Papers in Captain Myron H. Avery Collection, Maine State Library, Augusta, Maine; and inferences from historical documentation of the construction of dams and travel to the Grant Farm and Trout Brook Farm.) Map—1900. (See Harry A. Trink, *Map of Northern Maine* [Bangor, Maine: Bangor & Aroostook R. R., 1897]; and Lucius L. Hubbard, *Map of Northern Maine* [Cambridge, Mass.: Lucius L. Hubbard, 1899]; TWP7 R12 W.E.L.S., 1908-1909, file F3-17, courtesy of James W. Sewall Company; and Joel W. Eastman, "An History of the Katahdin Iron Works," [Masters Thesis, University of Maine, 1965], 63-67.) Map—1966. (See R. A. Vigue, Pre-1966 Motor Vehicle Access to the Allagash, Maine Department of Conservation, Bureau of Parks and Lands, photocopy; *Proposed Allagash Wilderness Waterway*, revised 1966, map; A. Allen Murphy, History of John's Bridge, Township 9, Range 13, 17 May 1998, photocopy, courtesy Seven Islands Land Company; 1966 aerial photographs, James W. Sewall Company; and Maine topographic maps, 15 minute quadrangle series, including Chesuncook—1958, Telos Lake—1957, Allagash Lake—1961, Spider Lake—1954, Churchill Lake—1962, Umasakis Lake—1935 [Washington, D.C.: U. S. Geological Survey].) Map—2000. (See *Allagash Wilderness Waterway*, ca. 1990s, base maps, Maine Department of Conservation, Bureau of Parks and Lands; and *Maine Atlas & Gazetteer* [Yarmouth, Maine: DeLorme, 999].) Reprinted by permission of author.

## **Chapter Eleven**

### **JOHN'S BRIDGE ROAD-AND-BOAT DEVELOPMENT**

*“The whole purpose of the [AWW Statute] is to preserve the Waterway as a wilderness area. Public roads would obviously be inconsistent with that purpose.”*

-- “SUBJECT: ALLAGASH WATERWAY-REALTY ROAD,” INTER-DEPARTMENTAL MEMO FROM JOHN M. PATTERSON, ASSISTANT ATTORNEY GENERAL, TO LAWRENCE STUART, COMMISSIONER OF THE DEPARTMENT OF PARKS AND RECREATION, OCTOBER 6, 1972

**O**nly the physical existence of John's Bridge and of its currently private logging road makes a public access and boat launch possible there. That is, the logging road and the road-and-boat access are indivisible.

It is incorrect and misleading for DOC to label only the carry path as the access without so labeling the logging road and the proposed one-way loop road and its parking lot, etc., as DOC has in fact done in order that it not appear to be a “road” access:

[The DOC Commissioner] said the new point of access for canoeists was important to Northern Maine residents and would not dilute the remote character of the river. “This is not a boat ramp, he said at the time” [i.e., when DOC's 1999 Allagash plan and John's Bridge access proposal were published]. “This is a trail to the edge of the water” (“Coalition sues state over new Allagash boat launch,” by Dieter Bradbury, *Portland Press Herald*, December 1, 2000 (online retrieval) (emphasis added)).

The carry path taken in isolation resembles, of course, a wide trail. Such a resemblance might logically lead one to conclude, wrongly, that the John's Bridge project meets the “generally inaccessible except by trail” standard. In fact the distance between the river and the planned one-way loop road is under 250 feet, which is 1,000 feet short of the distance needed to meet the federal river management guidelines agreed to by DOC in 1970:

“Generally Inaccessible” means there are no roads or other provisions for overland motorized travel within a narrow incised valley, or if the river valley is broad, within ¼ mile [1320 feet] of the river bank (1970 Guidelines, p.6.).

Further, even by DOC's own definition of access, the agency cannot plausibly argue that the John's Bridge access consists of the boat path only and excludes the extant logging road and the planned one-way loop. In "Rules and Regulations for the Allagash Wilderness Waterway," dated 1/1/96 (1996 Rules (Exhibit 11)), part of the 1999 plan's appendices, DOC defines access:

For the purposes of this rule, access by motor vehicle shall be defined as the stopping or standing of a motor vehicle and/or a trailer for the purpose of loading or unloading people, watercraft, baggage or provisions.

In other words, wherever DOC allows or authorizes a vehicle to stop and unload, a *de-facto* vehicular access is created -- whether or not a carry path is part of it. Adding a parking lot, which DOC plans to do, only underscores that the John's Bridge project is a vehicular access.

Were the John's Bridge road restricted to private commercial use until its "usefulness ceases to the woods operator" (1970 Report, p. 13.), with no official access, perhaps there would be no breach of the Act on the basis of the inaccessibility standard. Perhaps.

However, the fact that all private roads must eventually be discontinued would seem to overwhelm any right of DOC to open John's Bridge for access under the Act and the 1970 binding agreements.

The John's Bridge road, boat, and one-way loop road access, even if decoupled from prior access developments, alone diminishes the river from Wild to Recreational. That is because its principal function is to provide convenient day use by road -- literally to make the Allagash "readily accessible by road," i.e., Recreational as the Act sees it (See Act, Section 2(b)).

The public wanted otherwise. At LURC hearings,

[P]ublic testimony ran overwhelmingly against including John's Bridge boat launch as... an access point. Internally, the department's staff also recommended against the John's Bridge process.

But [the Commissioner] overruled the staff. He said he made his decision because of pleas from people with camps in the area who wanted access to the river.

[O]ne of those camp owners, said [John's Bridge] would prevent his having to travel an extra 35 miles to reach another launch capable of handling his large, motorized canoe.

"If you're in the area, you end up spending more time traveling around just to get to a place that's not far from where you started," he said.

[He] owns a camp with 4,500 feet of shoreline... east of the waterway. ("The Flavor of Wilderness, by Dieter Bradbury, *Maine Sunday Telegram*, 12/10/00, pp. 10D, 8D.)

In other words, the Commissioner and some local people want easy motorized access – a Recreational river. The main contention is that driving a vehicle with boat in tow is a hardship for some who live nearby. What about for those users who travel hundreds if not thousands of miles to get to one of eighteen state-managed the Wild rivers in the U.S.?

It is simple to visualize the *de facto* Recreational segment that the John's Bridge road-and-boat access automatically creates amid the 92.5 mile *de jure* Wild segment. Picture one motor boater leaving the John's Bridge access and traveling upstream, and a second boater going downstream. After having motored as far as possible, both return that day to drive home. The combined up- and downstream distances – the radius of possible round trips -- equal the length of river segment that has been demoted to Recreational by the new access.

Statistically, two road accesses along the 92.5-mile Wild river equals one access every 46.3 miles – the river is generally inaccessible by road. The sevenfold net of fourteen accesses equals one every 6.6 miles – the river is readily accessible by road. Each intrusion diminishes the river's value as one unbroken Wild segment.

No matter where along the watercourse they may lie geographically, fourteen 6.6-mile segments with roads and thirteen (maybe sixteen) parking lots and up to 29 other developments do not a Wild river make.

The measurable development pattern can be thought of as a disappearance rate for the legally protected capital-W *Wildness* of the Allagash.

In 1970, DOC had accepted a legal responsibility to the nation that it would "protect and enhance" the river's 92.5 miles' worth of outstandingly remarkable values for all time (See Act, Section 10(a)). Today's over-segmented Allagash cannot meet the state's binding agreement that the "entire" river would remain Wild through "permanent administration" by DOC (Curtis, 5/4/70).

DOC's multi-year pattern of anti-Wild and Scenic actions begs the question whether DOC has been trying to de-designate the Allagash.

## **Chapter Twelve**

### **DOC'S 1998 DE-DESIGNATION MEMO**

*"[T]he Park Service has never considered de-designation of a river. . . [A] Wild and Scenic River has never been de-designated. The NPS has been asked this question frequently because individuals occasionally threaten to urge the NPS to de-designate rivers. . ."*

-- "Subject: AWW de-designation," MEMORANDUM, FROM TOM CIESLINSKI, DOC, AUGUST 10, 1998

**T**he 1970 federal river management guidelines mention several times the possibility of declassifying the river if certain breaches of the Act occur. For example, certain "modifications of the waterway"

would not be permitted except in instances where such developments would not have a direct and adverse effect on the values for which that river area was included in the national system, as determined by the Secretary charged with the administration of the area. In the case of rivers added to the national system pursuant to Sec. 2 (a)(ii), such construction could result in a determination by the Secretary of the Interior to reclassify or withdraw the affected river area from the system. (1970 Guidelines, see p. 6., *e.g.*).

However, the Act itself contains no provision for Secretarial reclassification or withdrawal.

Note, in any case, that the federal river management guidelines give the choice of reclassification or withdrawal, if it exists, to the Secretary, not to a state, and manifestly not to an agency of a state. Still, nothing forbids a Governor from applying to the Secretary.

Under both the Act and the federal river management guidelines, then, it is clear that a state, or an agency of that state, has no self-executing option to withdraw from the compass of the federal law, just as no one can unilaterally disobey a law that one feels doesn't apply to him or her.

Moreover, DOC cannot undo a lawful action of a Maine Governor. DOC cannot overrule a Secretary of the Interior. DOC cannot unlegislate an Act of Congress or nullify a federal law. DOC cannot redefine the word permanent to

mean transitory. DOC cannot willy-nilly reward itself with a federal *de jure* Recreational classification for DOC's having broken a permanent *de jure* Wild classification in the first place.

DOC cannot without consequence turn inside-out a section of the Act written by Senator Edmund Muskie, a conservation champion of huge stature in Maine and across the nation.

Nor can the state, or a state agency, jettison the river wholesale from the national system on the basis of the agency itself having *de facto* demoted the river to Scenic or Recreational. Any such determination is solely the Secretary's, say the 1970 Guidelines.

However, the "National Wild and Scenic Rivers System; Revised Guidelines for Eligibility, Classification and Management of River Areas" published in the September 7, 1982, *Federal Register* by Department of the Interior and Department of Agriculture (1982 Guidelines), which replaced the 1970 Guidelines, are silent on de-designation.

Note, in any case, that the Act itself, which is superior to any guidelines, is silent on de-designation, and it clearly makes an existing designation permanently binding on the managing entity.

Indeed, the state has discussed the idea of de-designation. A memo from a DOC planner, "Subject: AWW de-designation" (Designation Memo, 8/10/98 (Exhibit 12)) relates, among other things, a conversation with a National Park Service (NPS) staffer:

She [the staffer] said the Park Service role regarding the designation of the AWW ended when the river was designated in 1970, that the Park Service has never considered de-designation of a river, and that a Wild and Scenic River has never been de-designated. The NPS has been asked this question frequently because individuals occasionally threaten to urge the NPS to de-designate rivers . . . In summary, it appears that the only permissible or authorized request for de-designation would have to come from the authority which requested designation, namely the Governor of the State. (De-designation Memo, 8/10/98. From Cieslinski. To: Tom Morrison, Herb Hartman, Ralph Knoll, Cindy Bastey, Timothy Caverly, Tim Hill.).

The memo omits mention that the Act doesn't speak to de-designation, and that the Secretary, by the guidelines at least, would decide such a question if ever proffered by a governor.

The memo further states that the NPS staffer

says the NPS has no role in reviewing state management plans, although she has reviewed our plan for information and model purposes only. There are no

regulations or guidelines associated with the Wild and Scenic River Act [sic]. Therefore the NPS role is to administer only what is described in the Act, which does not address de-designation of federal or state-administered rivers or review the state prepared management plans for federally-designated state rivers. Their office does not provide comments regarding state-prepared management plans (De-designation Memo, 8/10/98) [emphasis added].

Presumably “our plan” means the one eventually signed in 1999, which contains the John’s Bridge proposal.

Obviously, the memo is wrong about there being no federal guidelines – the 1970 guidelines were reprinted in 1977 and new guidelines were issued in 1982.

But the memo plainly acknowledges the state’s self-proclaimed responsibility for managing the river. The execution of those responsibilities included DOC’s having established, in 1970, its own policy boundaries, which set the limits of access and development it would allow.

Given the national precedent established when the Allagash earned the first federal 2(a)(ii) designation in America, and given the state’s binding commitments to manage to the river as permanently Wild, one can speculate that the public would view any formal state effort to de-classify or de-designate the Allagash as a cynical act of immense irresponsibility.

At least one Maine group appears ready to seek a downgrading or de-designation: “‘Some day we may try to get it changed to a different category,’ said [the executive director] of the Sportsmen’s Alliance of Maine” (The Flavor of Wilderness,” by Dieter Bradbury, *Maine Sunday Telegram*, 12/10/00, p. 8D.).

Were that effort mounted, the whole state apparatus, not just DOC, would be justly discredited, faith in state government once again impaired. The public’s concern would be not only for DOC’s illegalities under the Act, but also for moral and ethical lapses commonly associated with conspicuous and repeated promise-breaking.

DOC cannot have it both ways: it cannot claim for tourism purposes that the Allagash is a Wild river, while simultaneously claiming the river is Scenic and Recreational for management purposes. DOC, a natural resources protection agency, has treated the Wild classification more like an advertising boast than as a legal prescription.

## ***Chapter Thirteen***

### **THE MODERN CONCRETE DAM AT CHURCHILL LAKE**

*“The Congress declares that the established national policy of dam and other construction at appropriate sections of rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes.”*

-- THE NATIONAL WILD AND SCENIC RIVERS ACT OF 1968, 16 U.S.C., P.L. 90-542, SECTION 1(B)

**W**hen the state applied for the federal designation and permanent Wild classification, DOC’s 1970 report – which accompanied Governor Curtis’ application to Interior Secretary Hickel -- responded directly to the Act’s threshold requirements that a proposed river must possess one or more “outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural or other similar values” (Act, Section 1 (b)) [emphasis added]. DOC’s 1970 report cites several outstanding resource values of the Allagash, including its natural attributes, recreational opportunities, and its rich history of logging.

The DOC report called for the grandfathering of Churchill, Lock and Telos dams. It states they are “of timber crib construction,” i.e., squared-beam or round-log boxes holding a ballast of large boulders, and “are of historic significance in the development of the logging industry of the region” (1970 Report, p. 7.) [emphasis added].

Secretary Hickel agreed that “these existing structures did not form impoundments which distract from or disrupt” the river’s wilderness character, and added, in the affirmative, that they “are of historic significance in that they portray the development of the logging industry in the northeastern United States” [emphasis added]. He noted that “Churchill Dam has been rebuilt and is operated for the primary purpose of controlling water flows for optimum canoeing throughout the entire recreation season.” (1970 Fed. Regis., p. 11526.) [emphasis added].

Though the Churchill Dam to which he referred in 1970, and which he expressly grandfathered, had been rebuilt only two years earlier, in 1968, that dam -- the “existing structure” -- was, like its predecessor, a primitive timber crib dam, complete with a log boom typical of the river driving era:

Some 35 men have been clearing the site of the old [i.e., pre-1968] dam, laying the cribwork and baffle-plates of the new barrier . . . Immense logs, producing 12 by 12 and 14 by 14 inch sills for the cribwork were available in the region. . . While modern equipment is being used for its construction the [1968] dam will be basically much the same as the old one. Steel baffle plates will be locked in front of the cribwork which will be filled with rocks. . . (“Recreation, Rather Than Industry, Goal Of Current Allagash Project,” *Maine Sunday Telegram*, 8/25/68.)

At the state’s request, the Secretary declared the 1968 timber crib dam historically significant.

Obviously, the Secretary’s declaration did not arise from the dam’s longevity, which was nonexistent. Rather, the 1968 timber crib dam must have been significant for its rustic architecture, its verisimilitude to the primitive logging dams of old, its consistency with the historic setting of Churchill Depot, and its comportment both with the essentially primitive character of the surrounding Wild river area and with the outstandingly remarkable historic qualities for which, in part, the Allagash was included in the National Rivers System.

In 1998, twenty-eight years after the permanent Wild classification was conferred, the State of Maine, for safety and other reasons, demolished the 1968 “existing structure” at Churchill and erected a modern concrete-and-steel dam on the site. Unlike its timber crib predecessor, which was operated by hand wheels and a portable power wrench, the modern dam is operated by an underground electric line. Unlike its predecessor, the modern dam has a patently industrial look and conspicuous stainless steel railings and catwalk. The log boom is gone. The new boom consists of rope and blue plastic buoys. The modern dam, with its concrete buttresses and footings, is diametrically out of context with Churchill Depot and its historic buildings from the logging era, and is jarring in the natural quiet and in the Wild setting surrounding the depot.

In a nod to history, DOC had briefly considered timber crib construction or a wooden facade, but rejected both because of expense. Timber crib would have a shorter life span than concrete and require greater overall maintenance, and the dam would need to be replaced sooner. Cyclic maintenance would be required to replace a facade after winter ice damage.

But the touted financial benefits and practicality of the modern concrete structure are irrelevant under the Act. DOC has a permanent responsibility to

“protect and enhance the values which caused [the river] to be included in said system” as a Wild segment (Act, Section 10(a)). This includes protecting the outstanding historic values of the Allagash.

It is axiomatic that curation, or affirmative stewardship, is usually more costly than many financially expedient alternatives. This is true not only of conserving historic spots and artifacts along the river, but also of preserving wholesale the river’s generally Wild character, essential and vestigial primitiveness, and other outstandingly remarkable values. Tellingly, it is also true of the conservation of art, culture, biology, scenery, etc. When any public or private institution willingly takes on permanent duties of care, it takes on added costs and responsibilities.

Today, the relatively high-tech dam at Churchill has no connection to “the development of the logging industry” in the Northeast and therefore has no historic significance in and of itself, and is even anti-historic. The only thing the old and new dams have in common is that they impound water.

The modern dam also contravenes a major reason for which the Allagash was granted its Wild classification in the first place, namely that the entire river is outstandingly remarkable in significant part for its historic values. The high-tech dam is by definition not “essentially primitive” or a “vestige of primitive America” (Act, Section 2(b)).

Further the modern dam runs hard against the core reason for which Congress created the Wild and Scenic Rivers System:

Congress declares that the established national policy of dam and other construction at appropriate sections of rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes (Act, Section 1(b))  
[emphasis added].

In grandfathering the 1968 “existing structure,” Secretary Hickel assuredly did not grandfather some dam of indeterminate provenance twenty-eight years out, certainly not one that would also possess no historic value and fail even to be a faithful copy, and absolutely not one that would directly conflict with the glorious logging history of the Allagash and other outstanding resource values of the river. He grandfathered a specific dam, of specific construction, at a specific place, in honor of a specific historical tradition, pursuant to specific sections of the Act, and subject to a specific wilderness policy of the state.

Secretary Hickel writes:

The operation of all three dams [Telos, Lock and Churchill] is governed by the policy established by the State of Maine in the Allagash Wilderness Waterway, “to preserve, protect, and develop the maximum wilderness character of the watercourse” (1970 Fed. Regis., p. 11526).

Clearly, Secretary Hickel places heavy reliance on DOC’s self-imposed legal obligation not to mess with the character of the three grandfathered dams.

The 1970 federal Wild and Scenic River guidelines, to which the state explicitly agreed in applying for the Allagash Wild classification, also make the point:

As with shorelines, developments within the boundaries should emphasize a natural-like appearance so that the entire river area [i.e., the designated segment with its immediate environments] remains a vestige of primitive America (1970 Guidelines. pp. 6-7.) [emphasis added].

And the Act itself imposes a mandate on DOC:

Each component of the national wild and scenic rivers system shall be administered as to protect and enhance the values which caused it to be included in said system without, insofar as is consistent herewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values (Act, Section 10(a)) [emphasis added].

This imperative encompasses outstanding historic values among others.

The modern concrete dam not only fails to meet the “protect and enhance” requirements, but it also harms the river and its “immediate environments,” which breaches Section 1(b) of the Act.

It is important to note that the dam is irrelevant to the outstanding recreation values of the Allagash, because canoeists can negotiate Chase Rapids – a nine-mile whitewater stretch below Churchill -- at many water levels. Even in boney or unrunnable low water, the Allagash is still navigable by canoeists dragging or lining their vessels downstream. That is how it works on the neighboring St. John River, on many other Maine rivers, and on hundreds if not thousands of natural waterways across America.

When in his second letter Governor Curtis requested that the “entire waterway” be classified Wild (Curtis 5/4/70), not just the segment from Churchill Dam north (the subject of his first letter, Curtis 4/10/70), he was clearly incorporating the old dam into the Wild segment to be designated. Hence the ultimate grandfathering language.

That is, the timber crib Churchill Dam, a visible, rustic symbol of logging history, was in essence one of the primitive elements deserving affirmative protection under the Act:

In such administration [of a river] primary emphasis shall be given to protecting its aesthetic, scenic, historic, archaeologic, and scientific features. Management plans for any such component may establish varying degrees of intensity for its protection and development, based on the special attributes (Act, Section 10(b)) emphasis added].

Note the word “historic.” Any plans, as for a new dam, must be “based on the special attributes” of, in this case, the Wild river area.

As an analogy to the timber crib dam situation, consider such historic reconstructions as at Sturbridge Village, Plimouth Plantation or Colonial Williamsburg. These places are significant not merely for any historic artifacts or original structures that may have survived, but also for the faithfulness of any copies and for the rich engendered meanings to which they give rise. These places are of inherent museum quality and function.

The history of the Allagash is equally conservation-worthy, through its literature of course, and artifactually through its logging era relics and various partial reconstructions and refurbishings – the old steam engines, railroad and tramway at Eagle Lake, for example. And also through faithful copies, such as the 1968 timber crib dam, which was a replica of the general type.

Likewise the river itself and its immediate environments are worthy of protection, for they function as an outdoor history museum, a linear environment through which one can pass and gain educational experiences amid the primitive Wild setting.

Had Governor Curtis not wanted to protect the timber crib dam at Churchill, he could have excluded it from the state’s request, and Secretary Hickel would likely have agreed to designation boundaries that stopped, for example, just a few hundred yards above the dam from the south, and a few hundred yards below the dam to the north. Thus unburdened of the Act’s strictures at the actual dam site, DOC would have been free, after appropriate permitting, to build a non-conforming concrete dam in 1998.

The concept of excluding non-conforming dams is explained in part in “A Compendium of Questions & Answers Relating to Wild & Scenic Rivers,” an undated addendum to *The Wild & Scenic Rivers Reference Guide*, published by the federal Interagency Wild and Scenic Rivers Coordinating Council, February, 1999. These specimen Q & A exchanges appear:

Q. *What is the definition of free-flowing?*

A. . . . There are segments in the National System which are downstream from major dams or are located between dams. (p. 14.)

Q. *How can a river below a dam or impoundment be considered “free-flowing”?*

A. . . . [A]ny section of the river with flowing water meets the technical definition of free flowing, even if impounded upstream. (p. 15.)

Q. *Can a river be considered free-flowing even when the flow is dependent on releases from a dam?*

A. Yes, Congress and the Secretary of the Interior have designated many river segments which are above or below dams. (p. 16.)

Furthermore, Churchill Dam functions as a DOC-allowed vehicle access, breaching the “generally inaccessible except by trail” standard (Act, Section 2(b)) and breaching the 1970 Guidelines, which are explicit:

“Generally Inaccessible” means there are no roads or other provisions for overland motorized travel within a narrow incised valley, or if the river valley is broad, within ¼ mile of the riverbank. The presence of one or two inconspicuous roads leading to the river area will not necessarily bar wild river classification (1970 Guidelines, p. 6.) [emphasis added].

The federal river management guidelines clearly comport with the Secretary’s decision to limit accesses to two. Churchill Dam is one of the twelve accesses that DOC illegally authorized beyond the two that Secretary Hickel legally permitted.

At Churchill, DOC appears also to have contravened the Act’s grandfathering provisions themselves by *construing* that building a new dam was automatically allowed, when the Act says differently:

“Free-flowing”. . . means existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway. The existence, however, of low dams, diversion works, and other minor structures at the time any river is proposed for inclusion in the national wild and scenic rivers system shall not automatically bar its consideration for such inclusion. *Provided, That this shall not be construed to authorize, intend or encourage future construction of such structures within components of the national wild and scenic rivers system* (Act, Section 16(b)) [emphasis added].

Likewise, the 1970 federal river management guidelines carry this pointed prescription for a Wild river:

Except in rare instances in which esthetic and recreational characteristics are of such outstanding quality as to counterbalance the disruptive nature of an impoundment, such features will not be allowed on wild river areas. Future construction of such structures that would have a direct and adverse effect on the values for which that river area was included in the national system, as

determined by the Secretary charged with the administration of the river area, would not be permitted (1970 Guidelines, p. 6.) [emphasis added].

A chart called “Attributes and management objectives of the three river classifications for inclusion in the National Wild and Scenic Rivers System,” is part of the guidelines and includes this verbless restriction for Wild rivers: “New structures and improvement of old ones prohibited if not in keeping with overall objectives” (1970 Guidelines, p. 12.) [emphasis added].

At Churchill, as elsewhere on the Allagash, DOC, the sole manager of the waterway, paid no heed to any Act requirements.

## ***Chapter Fourteen***

### **ILLEGAL OPERATIONS AT CHURCHILL DAM**

*“[N]o department or agency of the United States shall assist by loan, grant, license or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration.”*

-- THE NATIONAL WILD AND SCENIC RIVERS ACT OF 1968, 16 U.S.C., P.L. 90-542, SECTION 7(A)

**I**n building the modern concrete dam at Churchill in 1998, DOC impinged the river bed by extending man-made banks into the watercourse on both sides, in order to shorten the motor treadway across the dam. DOC also developed wetlands at the site, for boat and vehicle access.

To have developed the wetlands there and built a new dam legally, DOC needed a permit from the U.S. Army Corps of Engineers, pursuant to the federal Clean Water Act, Section 404. In turn, the Corps needed to consult formally with the National Park Service, which has final decision authority under Section 7 of the Wild and Scenic Rivers Act.

As of the date of this report, neither the DOC nor the Army Corps of Engineers can locate the permit that the Corps was supposed to have issued. Both agencies insisted initially that the permit was issued, but neither could produce the permit or a copy.<sup>13</sup> Additionally, the National Park Service has no record of a Corps 404 permit having been issued.

How could both DOC and the Corps have lost a permit issued just three year earlier? This raises the serious question of whether a permit exists.

---

<sup>13</sup> For its part, the Corps appears to be admitting publicly to a problem: “We are prepared to accept that the original document does not exist,” said Jay Clement, the Corps employee who managed the Churchill Dam 404 permit process. “BPL, however was not conceding that a 404 permit was overlooked . . . ‘It’s really difficult for me to conceive we don’t have a permit, but we haven’t found one yet,’” said BPL Deputy Director Herb Hartman. (“State Can’t Find Permit for Rebuilt Wilderness Waterway Dam,” by Phyllis Austin, *Maine Times*, 10/5/00).

Whether or not the Corps issued the required 404 permit, the Corps did not in either case consult with the National Park Service and the Secretary of the Interior about the Churchill Dam water resources project and wetlands development. How could the Corps, with a project office in Maine, have failed to consult on such a conspicuous project on a Wild river?

Further, because the federal 404 permit does not exist, the state permit issued by LURC on June 19, 1997, "Development Permit DP 4403 by Special Exception and Water Quality Certification," approving the construction and operation of Churchill Dam, is itself null and void on the face of it. It reads in part:

Should the project be found, at any time, not to be in compliance with any of the Conditions of Approval . . . then the terms of this approval shall be considered to have been violated (p. 11.).

The permittee [DOC/BPL] shall secure and comply with all applicable federal and state licenses, permits, authorizations, agreements, and orders prior to and during construction (p. 12.).

This permit is approved only upon the above stated conditions and remains valid only if the permittee complies with all of the above conditions (p. 15.) [emphasis added].

At this writing, then, it appears that the modern Churchill Dam on the Allagash Wild and Scenic River is therefore an illegal construction under both the Clean Water Act and the National Wild and Scenic Rivers Act. It also appears that the state has therefore been operating Churchill Dam for at least three years without a either federal permit, in violation of federal law, or a valid LURC permit, in violation of state law.

The Army Corps of Engineers has stated that depending on a federal infraction's severity, Section 404 violations can result in orders to remove or modify an illegal structure, and/or other penalties. Some private sector infractions can bring fines of up to \$25,000 per discharge day, levied by the Corps or EPA, which translates to \$9,150,000 per 365 discharge days (Personal communications). State penalties for private violations can reach \$10,000 per day, or \$3.6 million a year. Penalties are retroactive to the start of construction.

A violator at DOC's level of offense might, technically speaking, face penalties of \$36 million or more for four years of illegal construction and operation without a federal 404 permit. The LURC violation could, technically speaking, add \$3.6 million per year, or about \$14 million. Total exposure: \$50 million.

Violations of the Wild and Scenic Rivers Act Section 7 can result in a decision by an Interior Secretary to overrule a Corps 404 permit if the Secretary determines that the “water resources project . . . would have a direct and adverse effect on the values for which such river was established” (Act, Section 7(a)) – for example, negative effects on the outstandingly remarkable historic values of the Allagash.<sup>14</sup>

Moreover, to remain intact, DOC’s unilateral jurisdiction over the waters of the stream must also be law-biding under Section 13 of the Act:

The jurisdiction of the States over waters of any stream included in a national wild, scenic or recreational river shall be unaffected by this Act to the extent that such jurisdiction may be exercised without impairing the purposes of this Act or its administration (Act, Section 13(d)) [emphasis added].

One can only speculate on why a dam might have been illegally built, but one thing is clear. DOC’s actions to ensure that it was issued a 404 permit, and that the Corps correctly met all Wild and Scenic River requirements to issue such a permit, were seriously deficient. The Act’s purposes were impaired.

Viewed historically, DOC’s mishandling of the Wild classification as it pertains to the new Churchill Dam follows the agency’s repeated pattern of ignoring the federal Act. Given DOC’s total number of Act breaches, now including likely major illegalities at the new concrete dam, it is hard not to conclude that DOC is a systemic scofflaw in regard to the Act.

Indeed, DOC’s April 14, 1997 letter transmitting its application for the LURC permit carries no mention of the Wild and Scenic Rivers Act. The application itself, “Application for Development Permit for Construction or Reconstruction of Non-Hydropower Storage Dams,” is also barren of Act references. Both omissions constitute yet another inexplicable exclusion, but are consistent with DOC’s many other failures to explain the Act in official Waterway plans and public documents.

Employing language that bears a logical if accidental likeness to the Act’s phrase “the river and its immediate environments” (Act, Section 1(b)) – a resemblance that nonetheless snapped no synapses at DOC -- the LURC application form explicitly asks DOC to complete four questions about the “recreational resources of the project area and its vicinity”:

---

<sup>14</sup> The principle of such Secretarial authority was upheld in a 1998 federal court case concerning the Lower St. Croix Wild and Scenic River, in Minnesota and Wisconsin (*Sierra Club North Star Chapter vs. Pena*).

- A. Describe the existing recreational resources . . . and the methods you used in making these determinations.
- B. Describe the anticipated and other a potential effects . . . on the existing and anticipated recreational resources . . .
- C. Describe the proposed measures for protecting against and mitigating adverse affects on the existing and anticipated recreational resources . . .
- D. Describe the nature, methods, frequency, and location of monitoring the effects of the project on the existing and anticipated recreational resources. . . . (p. 10.)

DOC's answers are silent on the federal designation despite the four specific questions about recreation values. This is doubly curious in light of the DOC's own assertion, legally impermissible as it is, that the Allagash is in part a Recreational river:

[T]he watercourse best fits a combination of 'scenic' and 'recreation' designations to be consistent with the definitions in the National Wild and Scenic Rivers System Act of 1968 (1999 Plan, p. 14.).

Throughout the application (36 pages including appendices), the federal Wild classification goes unmentioned, even though the permanent designation legally protects several outstanding resource values of the Allagash Wilderness Waterway, including but not limited to its outstanding recreational and historic values.

For example, DOC makes no reference to the fact that the dam to be demolished was deemed to be "of historical significance," both by DOC's own 1970 Report (p. 7.) and by Secretary Hickel, and so was grandfathered in the Wild designation (1970 Fed. Regis., p. 11526.).

In other words, DOC never formally explained to LURC commissioners that a permanent federal designation and Wild classification existed. The federal designation therefore played no part in LURC's final decision, on November 1, 2000, to permit a modern concrete-and-steel dam in the "essentially primitive" Wild setting (Act, Section 2(b)).

Such DOC omissions, then, arguably contributed to the Corps' failure to consult with the National Park Service under Section 7 of the Act. In any case, the Corps is legally responsible for its unilateral failure to consult.

DOC's own failure to pay heed to the Act in the permitting, building and operating of the modern dam at Churchill backfired in ironic form: it put the Act front and center before the public, triggered the direct involvement of National

Park Service, and enabled conservationists to highlight the numerous other Act violations along the Allagash.

It is interesting that when Maine citizens voted a \$1.4 million bond referendum in fall of 1996 to build a new dam at Churchill, few objections were raised by conservationists. Some even supported a replacement concrete dam. However, dam supporters very likely assumed DOC would meet *all* legal requirements for permits and would build a structure that complied with *all* applicable laws and fit appropriately into the natural and historic setting.

Given DOC's systematic failure over three decades to explain the meaning of the Wild designation in its public brochures, to refer to it cogently or factually in any of its official planning documents, or to instruct Waterway staff or the Allagash Advisory Committee in the Act's mandates, it is understandable that average citizens probably knew little about the permanent Wild classification, its strictures on development generally, and its ironclad rules on water resource projects specifically. Bond voters operated in an information vacuum created by DOC.

Regardless of public sentiment for, against, or indifferent to a new dam, and regardless of voters' knowledge of the innards of two federal laws (the Wild and Scenic Rivers Act and the Clean Water Act), only DOC is answerable for failing to meet its baseline responsibilities to protect the river from nonconforming construction.

At this writing, DOC is applying for a retroactive 404 permit for the concrete Churchill Dam and wetlands development. On the face of it, this looks like an attempt by the state to avoid possible civil charges, fines and/or other penalties under Section 404, and to avert possible actions by the National Park Service and avoid the attendant publicity. Likewise, the Corps itself has sufficient reason to want to issue a retroactive permit quickly, to minimize its own exposure to public scrutiny and to possible legal action. Applications can take as little as sixty days to be processed.

Not surprisingly, the Corps has made public statements that appear to defend DOC. The *Maine Times* reported:

Section 404 violations can cost a state a lot of money -- up to \$25,000 per day -- if there is willful or knowing intent to violate the law or the violator has a record of illegal activities [emphasis added]. "Here it is the opposite, said [Jay] Clement [a Corps representative in the Winthrop, Maine, office]. The state has "an excellent track record . . . of doing things the right way" ("State Can't Find Permit for Rebuilt Wilderness Waterway Dam," by Phyllis Austin, *Maine Times*, 10/5/00) [ellipses in original].

*River of Broken Promises*, of course, alleges “a record of illegal activities” three decades old and continuing.

In a memo to NPS, the Corps stated its preference that DOC’s Churchill Dam reapplication should qualify for a “programmatic general permit,” a process that does not involve public participation. “Another option could be that the activity [building the 1998 dam] was exempt . . .,” meaning a 404 permit might not have been required in 1998 and might not be required now. (Memorandum, “Subject: Churchill Dam Replacement,” from Jay Clement, Corps, to Jamie Fosburgh, NPS, October 2, 2000.)

To its substantial credit, NPS responded with a call for an “individual permit application process” for the Churchill Dam re-application, a process that involves public comment. “[T]here is no question that the dam replacement project represents a significant undertaking with the potential for direct and adverse impacts to the Allagash National Wild and Scenic River” (Letter from Sandra Corbett, NPS, to Jay Clement, Corps, October 12, 2000.) The “direct and adverse impacts” language derives from the Act, which requires NPS to review water resource projects that may have “a direct and adverse effect” on the values for which the river was designated (Act, Section 7).

The position was reaffirmed by an NPS Associate Director, writing on behalf of the Secretary of the Interior, Bruce Babbitt:

It is our strong opinion that the Corps must run the State’s application [for Churchill Dam permit] through its individual permitting process rather than seeking an exemption or a review under a general permit (Letter from Katherine H. Stevenson, NPS, to W. Kent Olson, Allagash user, November 8, 2000).

Copies were sent to DOC’s BPL director and the U.S. Environmental Protection Agency (EPA).

At this writing, it seems clear that the Corps seeks to avoid a public process and wants to accelerate DOC’s reapplication. This would provide cover for legal violations by DOC and the Corps in respect to the past permit applications.

Beyond any legal violations, the issues at Churchill and in numerous other instances cited in *River of Broken Promises* prompt questions about DOC’s fitness as the institutional trustee of the protected Allagash Wilderness Waterway and of the Wild and Scenic Rivers concept.

Case in point: DOC’s re-application consists so far of a photocopy of the first one. Although the entire re-application process was triggered by a failure of the Corps to adhere to the Wild and Scenic Rivers Act, the term once again

appears nowhere in DOC's application. DOC seems bent on repeating and underscoring its own deficiencies in respect to the Act.

At this writing, the EPA has initiated phone inquiries to DOC and the Corps (Personal communications). EPA has authority to investigate and take legal action for 404 violations.

## **Chapter Fifteen**

### **“NO ROOM FOR MISUNDERSTANDING”: SENATOR MUSKIE SPEAKS ON ORIGINAL INTENT**

*“[T]he key issue on the Allagash is the preservation of the riverway as a free-flowing stream in a primitive and, insofar as possible, unspoiled forest area. To be meaningful, such preservation must be in perpetuity. . . . As I see it, the burden is on the State to develop a meaningful program which will truly insure preservation of the area in perpetuity.”*

-- EDMUND S. MUSKIE TO HONORABLE AUSTIN H. WILKINS, FORESTRY COMMISSIONER, STATE OF MAINE (November 18, 1964)

Senator Edmund S. Muskie of Maine, a motive force behind many of the nation’s pioneering environmental and conservation laws, made possible any state’s right to obtain federal protections for qualified state-administered rivers. The Senator wrote Section 2(a)(ii) of the Wild and Scenic Rivers Act, by which eighteen state rivers have so far gained permanent federal protections. He had been prompted by the fact that the State of Maine and the National Park Service could not agree on how to preserve the Allagash for all time.

The Park Service wanted an Allagash National Riverway, managed as part of the National Park System. The state wanted control to vest in the state itself. Invited to comment on L.D. 115, a 1963 version of what would later evolve into the state’s 1966 AWW Statute, Senator Muskie writes:

Presumably, the establishment of such a wilderness area, if it is to be meaningful, should include the Allagash River and adjacent land areas as a contiguous and well defined entity irrevocably dedicated to its maintenance in a wilderness state. The bill does not clearly embrace such an objective. The language of the bill would appear to suggest the possibility of a patch work system [of] conservation areas not necessarily connected. Also the permanence of the dedication is in doubt in view of the fact that by its terms the bill, if enacted, would terminate June 30, 1965 as proposed (Edmund S. Muskie to Honorable Edward P. Cyr, Maine State Senate, April 11, 1963, U.S. Senate: Senate Office (180-5), Edmund S. Muskie Collection, the Edmund S. Muskie Archives, Bates College, Lewiston, Maine. Letter acknowledging Cyr request to comment upon L.D. 115, An Act Creating an Allagash River Authority for the State of Maine.) [emphasis added] (Exhibit 13).

The Senator clearly believes wilderness is “irrevocably” permanent. He has doubts, even early on, about the state’s commitment to the “permanence of the dedication,” and wants to insure against transitory designations.

Less than a month later, Senator Muskie’s friend Interior Secretary Stewart L. Udall, a co-creator of the National Wild and Scenic Rivers System, writes to Maine Governor John H. Reed:

On the question of control of the area, it is my judgment, and I stand firm on this position, that public ownership and management is the only sure guarantee of the preservation of the Allagash River in perpetuity.

We shall welcome such an opportunity to sit down and discuss our mutual objective of perpetuating and conserving the Allagash Riverway as a free-flowing river in a primitive environment. (Stewart L. Udall, Secretary of the Department of the Interior, to Hon. John H. Reed, Governor of Maine, Augusta, Maine, December 31, 1963, U.S. Senate: Senate Office (228-2), Edmund S. Muskie Collection, the Edmund S. Muskie Archives, Bates, College, Lewiston, Maine. Letter suggesting a three-way meeting between the Allagash River Authority, the landowners, and representatives of the Bureau of Outdoor Recreation.) [emphasis added] (Exhibit 14).

Secretary Udall is, he says, “firm” in his call for a primitive Allagash to be preserved in perpetuity.

A year later, in 1964, Senator Muskie responds to distortions of his Allagash position. He is as firm as his colleague and friend Secretary Udall in the matter:

I have learned that my answers to questions on the Allagash . . . have been distorted in some of the national reports. . . .It is important to reiterate my position so there can be no room for misunderstanding.

As you know, both Secretary [of the Interior Stewart] Udall and I have felt from the beginning that the key issue on the Allagash is the preservation of the riverway as a free-flowing stream in a primitive and, insofar as possible, unspoiled forest area. To be meaningful, such preservation must be in perpetuity.

If the State comes up with a program which will preserve the Allagash as well as the Katahdin area has been protected in Baxter State Park, I shall be delighted to support State action. As I see it, the burden is on the State to develop a meaningful program which will truly insure preservation of the area in perpetuity. (Edmund S. Muskie to Honorable Austin H. Wilkins, Forestry Commissioner, State of Maine, November 18, 1964, U.S. Senate: Senate Office (227-4), Edmund S. Muskie Collection, the Edmund S. Muskie Archives, Bates College, Lewiston, Maine.) [emphasis added] (Exhibit 15).

In Senator Muskie’s eyes, the state’s Allagash proposal is still deficient. Maine, he says, has not “come up” with a satisfactory program for protecting the

river. The Senator acknowledges that Maine's Baxter Park is well managed. He puts the onus on the state – i.e., on DOC -- to match the Baxter Park Authority's preservation program. The Senator challenges the state to give Baxter-quality protections to the “primitive”, “unspoiled” Allagash “in perpetuity.”

Note Senator Muskie's use of the word “must”: the river must be preserved permanently. There is, he says, “no room for misunderstanding” him.

It is important to recognize here that the Baxter Park Authority is a completely independent body, insulated from and manifestly unattached to DOC. Governor Percival Baxter, in granting Katahdin to the people of Maine through successive deeds of trust, had made sure that the mountain wilderness would not suffer the misbegotten politics and the value slippages that would, unfortunately, later characterize DOC's management of the Wild river.

To Senator Muskie, the state's emerging Allagash plan, unlike the Baxter formula, is “weak” and not comprehensive:

With regard to the Allagash, the situation boils down to a situation where we have a comprehensive rather all inclusive federal plan on the one hand and a rather weak State approach on the other. For some time I have been attempting to achieve a compromise between these two extremes (Edmund S. Muskie to Malcolm Stoddard, Hallowell, Maine. June 11, 1965, U.S. Senate: Senate Office (228-1), Edmund S. Muskie Collection, the Edmund S. Muskie Archives, Bates College, Lewiston, Maine) (Exhibit 16).<sup>15</sup>

On May 27, 1965, Senator Muskie introduced his compromise, an amendment to the proposed federal Wild Rivers Act, to reconcile state-federal conflicts about protecting the river. He writes to Senator Henry Jackson, the Act's principal sponsor:

As you know, the preservation of the Allagash River in my state as a wilderness waterway is a matter of broad national concern . . . There have been basic conflicts between the federal and state approach as well as inherent weaknesses in the state plan. For some time I have been working toward resolution of these issues.

Recently I developed an approach which in my view will provide a vehicle for the compromise of Federal-State differences. . . .

---

<sup>15</sup> The vivid Baxter-Allagash dichotomy persists today. A columnist writes: “The state Allagash charter says, unambiguously, that it is intended ‘to preserve, protect and develop the maximum wilderness character of the watercourse.’ . . . The state pledged not just to resist human intrusions, but to develop greater wilderness character – just as cut-over sections of Baxter State Park have gradually become wild-looking country. Instead, the state has shamefully done the opposite – treating the Allagash not as a crown jewel but as just another state park, where issues of access and use are decided by whim.” (“Sold Down the River,” by Douglas Rooks, *The Ellsworth American*, 11/2/00.)

The effect of this amendment would be to add to the National Wild Rivers System, State designated and administered wild river areas.

The amendment provides that the State-Federal partnership in the National Wild Rivers System would be accomplished in this manner. The Governor of a State desirous of administering a National Wild River would present to the President his recommendations for inclusion within the System of such a waterway within his State.

His [the Governor's] recommendations would be supported by a general plan which would assure the President and the Congress that the purposes of the act would be effected in perpetuity.

... .

cc: Senators Clinton P. Anderson, Alan Bible, Frank Church, Ernest Gruening, Frank Moss, Quentin N. Burdick, Carl Hayden, George McGovern, Gaylord Nelson, Lee Metcalf, Thomas Kuchel, Gordon Allott, Len B. Jordan, Milward L. Simpson and Paul Fanain. (Edmund S. Muskie to Senator Henry M. Jackson, Chairman Interior & Insular Affairs Committee, U.S. Senate, June 8, 1965, U. S. Senate: Senate Office (228-1), Edmund S. Muskie Collection, The Edmund S. Muskie Archives, Bates College, Lewiston, Maine. Letter relative to Amendment No. 217 to S.1446, the Wild Rivers Act, Muskie introduced on May 27, 1965.) [emphasis added] (Exhibit 17).

Senator Muskie sees the Allagash in a national context, as a state-administered river that is part of a nationwide system.

This letter, then, captures and broadcasts the Maine Senator's *original intent* in seeking federal designation for a state-administered Allagash Wild river: irrevocable, permanent protection. He never wavers from this position.

Senator Muskie copies his declarations of permanent protection for Wild rivers to a constellation of other Senators. Among them, besides "Scoop" Jackson himself, are Senators Frank Church, Gaylord Nelson, Clinton Anderson and others, who were at the heart of some of the big conservation enactments to come out of the sixties and seventies. For example, the Wilderness Act, the Land and Water Conservation Fund, the creation of the Bureau of Outdoor Recreation -- landmarks all -- arose in this period.<sup>16</sup>

Stewart L. Udall, the Secretary of the Interior under Presidents Kennedy and Johnson, was also a framer and prime mover of these resource protection initiatives. He later said the Wild and Scenic Rivers Act was his favorite. (Personal communications.) The Wild and Scenic idea had originated with Drs.

---

<sup>16</sup> The Clean Water Act and the Clean Air Act, of which Senator Muskie was a leading architect, and the National Environmental Policy Act, also were enacted in this general era.

John and Frank Craighead, two respected biologists. They realized that while an increasing number of conservation tools were being developed to protect *terra firma*, no such federal instrument existed to confer permanent protection on nationally significant rivers.

The preservation intent is also expressed straightforwardly in a statement on the Allagash by the National Parks Advisory Board, which counseled Secretary Udall's Park Service:

NATIONAL PARK SERVICE: TOP ADVISORY BOARD BACK SEVEN AREAS FOR INCLUSION IN NATIONAL PARK SYSTEM.

Maine is world-renowned for its scenic beauty, forests, seacoasts, waterways and other exceptional natural wonders....There is no dearth of opportunity for those persons desiring to take advantage of water-oriented activities, including swimming, water skiing, sailing, and power boating.

Dedication of the Allagash National Riverway to a more subdued conservation principle will not adversely affect the recreation habits of Maine's citizens or the host of out-of-State visitors who seek pleasure in the State each year. Preserving the Allagash in its free-flowing state—and thus perpetuating a primitive recreation experience—will simply strengthen the image of a State already famous for its northwoods atmosphere and rugged features.

Primitive water travel should take precedence over all other uses of the Allagash. The area is not suited for intensive, concentrated use. Travel and camping along portions of the river and lakes of the Allagash would offer an exhilarating experience to those seeking a primitive environment.

... .

Thus, the water, forest, and wildlife through use become the recreation resources of this region. The recreation needs associated with remoteness, the opportunity to know nature intimately, and the opportunity to lose oneself in time rather than distance greatly enhance the value and usefulness of these resources. These are conditions that now exist on much of the watershed. They can be maintained only if intensive use is excluded. (U.S. Department of the Interior News Release, November 17, 1963, U. S. Senate: Senate Office (227-4), Edmund S. Muskie Collection, The Edmund S. Muskie Archives, Bates College, Lewiston, Maine.)

Among the eleven members of the National Parks Advisory Board that promoted the “more subdued conservation principle” of “primitive recreation” were Dr. Melville B. Grosvenor, Washington, D. C., of the family that founded the National Geographic Society; Sigurd F. Olson, Ely, Minnesota, the wilderness writer and educator, and a founder of The Wilderness Society; and Wallace Stegner, Los Altos Hills, California, the Pulitzer Prize novelist, and a writer on wilderness.

No less a figure than Supreme Court Justice William O. Douglas also joined the early call to preserve the Allagash. A vigorous outdoorsman, he was a prolific author too. Mountains, rivers, wild lands conservation, and man-in-nature were his subjects. He had canoed the Allagash and written about it in his book *My Wilderness: East to Katahdin*, devoted to his travels in eastern wild areas:

From Telos to the junction of the Allagash and the St. John it is a bit over a hundred miles. There are no hundred miles in America quite their equal. Certainly none has their distinctive quality. They will, I pray, be preserved for all time as a roadless primitive waterway (William O. Douglas, *My Wilderness: East to Katahdin*, Doubleday & Co., 1961, p. 244., (Douglas 1961)) [emphasis added].

Thus the Supreme Court Justice, like the Maine Senator and others, fears a dim fate for the Allagash. Justice Douglas had looked first hand:

Upstream for Whittaker Brook, I had seen the site of a proposed highway extending from Ashland, Maine on the east to Dauquam [sic], Canada on the west – a road that would traverse the Allagash corridors. These operations would mean the end of the Allagash. . . . This corridor must be free of roads, free of resorts, free of all marks of civilization. The Allagash must become and remain a roadless wilderness waterway. No more cutting of trees. No more invasions of any kind (Douglas 1961, p. 263.).

The Justice advises that

If we have the courage to act swiftly. . . we can make a permanent treasure of the Allagash. If we drift with the easy tides of popular pressures, the Allagash will become “civilized.” Once that happens, it will join the mass recreational areas where the peace and quiet of wilderness are gone forever . . . . Those who love the Allagash for its wildness fear that this will happen (Douglas 1961, p. 263).

Here Justice Douglas presents a twist on how the river should gain real and permanent protections:

The most frightening prospect for many is that the Allagash will become a national park. This is a curious – yet understandable – fear. . . [T]he park service becomes more and more devoted to roads and hotels, less and less devoted to true wilderness areas. The prospect of making the Allagash another Yellowstone Park is sickening to those who know the wonders of this wilderness waterway (Douglas 1961, pp. 263-264.).

Conrad Wirth, Director of the National Park Service at the time, complained about the Justice’s disparaging remarks about the agency. The Justice responds with a change of position:

I hope and pray that the Allagash is made a National Park and I think that all the misgivings of the local people can be cleared up by some official announcement as to what Park Service Policy in that area will be. I would like to see a big public hearing of the Park Service put on somewhere in northern

Maine. (William O. Douglas to Conrad L. Wirth, 4 December 1961, Melvin I. Urofsky, ed., *The Douglas Letters: Selection from the Private Papers of Justice William O. Douglas* (Bethesda, Md.: Adler & Adler, Publishers, Inc., 1987), pp. 245-46.)

Three years later, in an article titled “Why We Must Save the Allagash,” the Justice writes:

There is also public sentiment for a National Park. But the Allagash's popularity as a hunting area has evoked strong local resistance to creation of an Allagash National Park, since hunting is normally prohibited in National Parks. So a formula is being sought that would encompass some hunting and yet put the critical watershed area under Federal control. An alternative proposal would put the watercourse under an Allagash River Authority or state agency. All conservationists, all sportsmen, and all others who love the wilderness agree that some solution must be quickly found. The alternative is sudden death for the Allagash. (William O. Douglas, "Why We Must Save the Allagash," *Field and Stream* (July 1964): pp. 29, 57.)

In view of what he foresees as “sudden death” for the Allagash, Justice Douglas suspends his initial negative opinion of national park status and acknowledges an alternative involving state management of some kind. His position embodies the conflict that is eventually resolved by Senator Muskie’s 2(a)(ii) compromise, a federally protected but state-administered Allagash.

In his 1968 book *The Allagash*, writer Lew Dietz summarizes his own understanding of the state protections for the AWW:

In the fall of 1966 an act creating the Allagash Wilderness Waterway received the blessings of the people of the State of Maine and became law. It became, moreover, the first such wilderness river preserved in America. (Lew Dietz, *The Allagash: The History of a River in Maine*, The Thorndike Press, 1968. p. 243. (Dietz, 1968)..)

His views, like those of Justice Douglas, Senator Muskie and Maine’s voting majority, derived from the plain language of the state bond and the AWW statute.

Dietz describes how Maine partisans for an Allagash wilderness river, often contentious among themselves, nonetheless concurred in one thing: “There was general agreement, however, that unrestricted access and use would surely destroy the avowed purpose of the wilderness preserve” (Dietz, 1968, p. 145.).

He compares the state-protected Allagash to the New York’s state-protected Adirondack Park, where “pressures are mounting to accommodate mass recreation by building roads into the fastness. ... ” (Dietz, 1968, p. 247.).

In his foreword to Dietz's book, Senator Muskie writes: "Under a cooperative federal-state program, the Allagash will be protected in perpetuity as an unspoiled link with our past . . . (Dietz, 1968, p. xiii.) [emphasis added].

The Senator's foreword is dated January 1968, seven months before Congress passed the Wild and Scenic Rivers Act containing his compromise. Thus the foreword refers to the federal-state funding arrangement for land acquisition costs, not to his amendment. His phrase "in perpetuity," then, reexpresses his oft-stated hope that DOC will keep the Allagash a wilderness forever. But his canny amendment, granting ironclad federal protections superior to state protections, bespeaks his understanding that DOC is unlikely to preserve the river, even though the state statute mandates it.

Dietz, for his part, seems to harbor Muskie-like reservations about whether the state can do the job:

It's much too soon to say the Allagash has been "saved." Clearly, the Allagash cannot provide outdoor recreation for the multitude without impairing its natural values . . . . Inevitably there will be pressures on the Allagash country . . . from those who wish, in the name of public recreation, to sacrifice its special qualities by making of it playground rather than a sanctuary (Dietz, 1968, p. 247)..

One thing is certain. No matter what conservation instrument they favor, Justice Douglas, Senator Muskie, Lew Dietz and the others are adamant about permanent wilderness protection.<sup>17</sup>

It is ultimately ironic that the lack of day-to-day management involvement by National Park Service on the Allagash should lead, in successive small deaths, to what Justice Douglas, and certainly Senator Muskie, feared most, today's wholesale abandonment of the preservation ideal -- by Maine's

---

<sup>17</sup> Based evidently on his understanding of the ultimate Allagash protections, the Supreme Court Justice, for his part, speaks glowingly of what he believes Mainers had accomplished: "In time the entire community joined forces to preserve inviolate the recreational potentials of New England. There was no more resounding declaration than that of the people of Maine to make the Allagash a scenic river-- protected its entire length by a six-hundred yard sanitary corridor in which no structure could ever be erected" (*Go East, Young Man, The Early Years: The Autobiography of William O. Douglas*, by William O. Douglas, Random House, N.Y., 1974, p. 210.). (Douglas, 1974). If he is referring to the 1966 AWW statute only, or instead to the 1970 federal designation only, or to a combination, his point is nevertheless constant: "inviolate" protections for a "sanitary corridor" along the river's full length were what was accomplished under law. This, of course, exactly mirrors the understandings of Governor Curtis, Senator Muskie and Secretary Hickel in 1970, and of Maine's voting majority that passed the 1966 \$1.5 million state bond "to develop the maximum wilderness character." That language, copied verbatim from the 1966 AWW statute, is hard to misconstrue for its literalness and hard to ignore since it appeared twice.

DOC. The agency is demonstrably “more and more devoted to roads...less and less to true wilderness,” (Douglas 1961, p. 264.), than is the National Park Service in, say, its administration of Acadia National Park, also in Maine.<sup>18</sup>

At Acadia, the Park Service has consistently refused to acquiesce to pressures that dwarf those on the Allagash: the park is the state’s most popular destination after L.L. Bean, it sustains roughly three million visits annually and has more visitors per acre than Yosemite or Yellowstone. Park management is respected locally and nationally for having maintained the natural and cultural asset as a cohesive whole. Acadia and Baxter Park share that distinction in Maine.

When motivated private individuals and public luminaries, the Congress, and the Kennedy and Johnson administrations eventually brought forth the Wild and Scenic Rivers Act of 1968, it was a continuing expression of a larger preservation ideal. When the Act’s framers spoke of *permanent* preservation for the Allagash, they meant the word exactly, in its plain dictionary meaning.

An aide to Senator Muskie, Donald E. Nicoll, writing in 1965, also clarifies and reinforces the Senator’s vision for a permanent wilderness waterway:

The basis for bringing the riverway under public control is that although present owners may be willing to preserve the area, there is no guarantee that this will be continued in the future. It is not intended that the riverway become a park for general use but [that] it will be maintained for wilderness canoe travel.” (Donald E. Nicoll, Administrative Assistant to Senator Edmund S. Muskie, to Glenn Mahnken, student at Antioch College, November 5, 1965, U.S. Senate: Senate Office (227-6), Edmund S. Muskie Collection, The Edmund S. Muskie Archives, Bates College, Lewiston, Maine.) [emphasis added] (Exhibit 18).<sup>19</sup>

---

<sup>18</sup> Although the Justice accedes to possible management by the Park Service on the Allagash, he evidently still harbored strong reservations. In his autobiography, he nominated the National Park Service as a “public enemy” for having “crisscrossed most of the wilderness areas with highways” (Douglas 1974, p. 215.). “I learned that agencies soon became spokesmen for the status quo, that few had the guts to carry through the reforms assigned to them . . . I concluded that the so-called experts had come close to ruining our environment, that a return to common-sense judgments of laymen was essential” (p 217.).

<sup>19</sup> Despite the clarity of the Senator’s statements in this regard, and despite Mr. Nicoll’s words in support of his boss in 1965, Mr. Nicoll espouses a different personal view today. (See Chapter Nine, “DOC’s 1999 Allagash Plan,” footnote 9, *supra*.) He favors the John’s Bridge road-and-boat development, the fourteenth road access, which LURC authorized on 11/1/00. Because it will be a day-use facility, John’s Bridge access can hardly serve the “maintained for wilderness canoe travel” standard that Mr. Nicoll promoted in Senator Muskie’s name in 1965. Mr. Nicoll’s evident contradiction is troublesome because the public naturally associates him with Senator Muskie and is likely to impute to the late Senator a viewpoint that is Mr. Nicoll’s. Mr. Nicoll left the Senator’s staff at about the time the Nixon Administration took over, with Walter J. Hickel replacing Stewart L. Udall as Secretary of the Interior. Thus Mr. Nicoll was not privy to the 1970 binding agreements that Governor Curtis and DOC made to uphold a

When Senator Muskie produced what became Section 2(a)(ii) of the Act, he was affirmatively embracing permanent federal protections for the Allagash. Governors Curtis's two application letters and the state's visionary 1970 report fit perfectly with the Senator's concept, and with the letter of the law. These in turn reflected the will of everyday Maine people.

In November 2000, Governor Curtis reaffirmed his pro-preservation intent in comments to a reporter, who writes:

The state has shown it is not a trustworthy steward of the Allagash. But there may be more to the story. In 1970, the Allagash became a charter entry under the federal Wild and Scenic River Act, nominated by Gov. Kenneth Curtis. When I spoke to him last week, the former governor was quite clear about the intent that the river be kept "forever wild" (just what Gov. Baxter said about his park), and said he believed "We could achieve greater clout by having the federal government do it." There's no sound argument against keeping one river off-limits to mechanized use, Curtis said. "Maine has an awful lot of lakes and waterways." Designating one river "doesn't infringe on people's rights because there are plenty of other places to go. . ." Despite Curtis' hopes, the Wild and Scenic River designation has had no discernible effect on state policy. ("Sold Down the River," by Douglas Rooks, *The Ellsworth American*, 11/2/00.)

Governor Curtis' support for a wild Allagash Maine must have been informed originally and fortified by the Maine citizens who had spoken in a groundswell in 1966. They resoundingly passed the Allagash bond issue (68%-32%) supporting the legislated AWW statute. The laws bore identical language: "to develop the maximum wilderness character" of the river. Mainers thought they were compelling DOC to do just that. The federal designation four years later was a third layer of insurance. Three laws had converged on one problem, the generally fugitive nature of bureaucratic resolve.

Through Section 2(a)(ii), Senator Muskie was also creating the strong tool by which eleven other states, following the lead of Maine and Governor Curtis, have since permanently protected seventeen other outstanding rivers. But DOC's actions that gutted Senator Muskie's section of the Act and repudiated Governor Curtis' lawful actions as they pertain to the Allagash, now jeopardize those seventeen rivers too. Even though Senator Muskie was concerned in 1965 about the state's "weak" approach, he could not have completely foreseen DOC's patent disregard of the Allagash Wild classification he helped devise.

---

permanent Wild classification in which Secretary Hickel limited the number of road accesses to two.

Perhaps the Senator, by definition a creator of laws, believed no state agency would baldly disregard one, especially the one he had customized as a compromise for the people of Maine, whom DOC purports to serve.

Senator Muskie promoted his position with clarity, frequency, force and consistency, with “no room for misunderstanding.” It is simply not possible to believe that he could have wanted his own state, through DOC, to become the agent that eviscerated his salient personal contribution to the Act by stripping it *de facto* of its *de jure* permanent provisions.

Likewise, what would he have thought today about a DOC that contemplated de-designation, the idea of withdrawing from the National Rivers System the first state river to receive a Wild classification, Senator Edmund Muskie’s home river, the treasured Allagash?

Or that DOC staff seriously discussed striking the word “Wilderness” from the term “Allagash Wilderness Waterway”? (Personal communications.)

DOC’s actions make up a quadruple affront -- to the law, to the founders’ original intent in establishing the National Rivers System, to the written pledges of a Governor, and to the legacy of a giant of a Senator from Maine. In hindsight, Senator Muskie’s early doubts about the state’s “weak” commitments to a protected wild river seem like prophecy today.

To borrow a phrase from Justice Douglas, DOC “drift[ed] with the easy tides of popular pressures” (Douglas 1961, p. 263.), and in doing so lost its compass.

## ***Chapter Sixteen***

### **AN AGENCY ADRIFT: DOC IN PATTERN AND PRACTICE**

*“What we are given to administer, we presently come to think of as our own.”*

-- H.G. WELLS

**I**nsofar as DOC’s management of the Allagash goes, the inescapable, conclusive image is of an agency adrift since 1973, boot-legging it from year to year.

DOC’s 1996 rules, for example, which are often distributed to Allagash users, contain a litany of regulations and legal references compressed into two cluttered pages (Exhibit 11). The rules nowhere cite the Wild and Scenic Rivers Act, explain the Wild classification, or suggest that the river enjoys strong federal protections, including a high degree of mandated inaccessibility.<sup>20</sup>

The same is true of another DOC rules sheet, “Rules and Regulations of the Allagash” (undated).

---

<sup>20</sup> Mandated inaccessibility is a simple concept that for some reason seems to confuse DOC. Under the Act’s Wild classification, general inaccessibility is a positive condition, a desired end. But DOC views it as a negative condition, which indeed it may be at certain other DOC-managed parks, lands and waters that do not enjoy formal wilderness or Wild designations and that invite automobile usage. The polar choices -- positive accessibility and positive inaccessibility -- contribute to managerial dissonance and may help explain DOC’s historic bias for increasing vehicular access along the Allagash Wilderness Waterway and Wild river. Faced with mutually exclusive choices, it is easier for DOC to err toward the customary, which is motor accessibility. That, after all, is how the agency is used to managing much of the visitable public estate it controls, whereas positive inaccessibility is what the federal Wild classification requires.

Also, DOC's official Allagash brochure provides only a glancing mention of the Act and the designation. It too contains no substantive facts.

And, as discussed, DOC's 1973 Allagash plan is Act-deficient.

As discussed, DOC's 1999 Allagash plan is mostly silent on the Act, or it is wrong or grossly misleading. According to citizen participants, DOC scarcely raised the issue of the federal designation in the planning process.<sup>21</sup>

As discussed, DOC's 1997 LURC application to build a modern concrete-and-steel dam on the Wild river at Churchill omits mention of the Act.

As discussed, DOC's 1997 404 application to the Corps of Engineers is likewise mute.

As discussed, so is DOC's 2000 preliminary Churchill Dam re-application to the Corps. The latter omission strains belief, since a violation of the Wild and Scenic Rivers Act is what triggered the entire Churchill Dam re-permitting process in the first place.

Nor is DOC forthright with the Legislative oversight committee with full information. Called before the Legislature's joint Committee on Agriculture, Conservation and Forestry, on January 25, 2001, to explain the Churchill permit situation, a DOC executive did not reveal to the committee that: 1) the 404 violation invalidated the LURC permit; 2) the Corps committed a Wild and Scenic Rivers Act violation; 3) the dam was therefore being operated illegally under both the Clean Water Act and the rivers Act, as well as under LURC rules; 4) the federal violations could, in theory, bring as much as \$25,000 a day in EPA fines; 5) the LURC violations could bring, in theory, as much as \$10,000 a day, or 6) the potential fines amounted to a hypothetical \$50-million. In other words, DOC gave the oversight committee only part of the story.

---

<sup>21</sup> "[T]his access question is disturbing, especially after having served on the state-appointed advisory committee that helped put together the 1998 [i.e. 1999] management plan and trying unsuccessfully to limit access. I should also say that those of us on the advisory committee had no idea at the time of the legal requirements of the Wild and Scenic Rivers (WSR) designation, since the state never mentioned it as a management consideration during our two years of meetings. It was only during the John's Bridge controversy that it was brought to our attention by Ken Olson in an Op-Ed piece in the Bangor Daily News [7/10/00]." (Letter from Dean B. Bennett to Christopher N. Brown, National Park Service, 1/25/01.)

See also "Sold Down the River," by Douglas Rooks, *The Ellsworth American*, 11/2/00: "John Luoma, who favors preservation and fought a rear-guard action while serving on the 1998 planning committee, said the federal law didn't come up in discussion."

A citizen presenter followed the DOC representative and explained the violations and potential penalties. The DOC executive rebutted, having been forced by then to speak to the previously omitted issues.

So far as is evident, such factual omissions characterize all internal management directives, all plans and all public information pieces DOC has ever issued for the Allagash since the 1970 designation. This represents a durable pattern and practice in DOC's impairment of the Act.

It is also notable that nowhere in the post-designation amendments to the 1966 AWW Statute is the federal designation mentioned or even the state's binding agreements of 1970.

No amendments to the AWW statute instruct that the river shall be managed in compliance with the federal Act. If such an admonition had been incorporated into the amendments, today's Allagash management mess arguably could have been avoided. DOC would have had clear and permanent management direction plus a solid defense against any political pressures to overdevelop the Wilderness Waterway.

Such a provision would have even more visibly reconciled the 1966 AWW statute and Act, making explicit again Governor Curtis' earlier assertion that the statute was in "full accord" with the Act (Curtis, 5/4/70), and re-certifying to Secretary Hickel's confirmation that "The entire Waterway has been designated [via the AWW Statute] in a manner consistent with a wild river area" (1970 Fed. Regis., p. 11525.).<sup>22</sup>

---

<sup>22</sup> One member of the Allagash Advisory Board proposed that the river today is not legally Wild and never was. He argues that the federal designation process was incomplete because, in essence, the Legislature did not ratify Governor Curtis' actions. He cites a proposed measure, L.D. 1575, An Act to Provide for a Maine Scenic and Wild Rivers System, in 1973, that would have given Maine the authority to establish more state and federally designated rivers:

[O]ur Legislature ... understood the contents of the Wild and Scenic Rivers Act, but did not wish to be party to it. It [the measure] then died in committee and did not result in section 2, a, ii requirements being fully met... Consequently, the Allagash cannot legally be recognized as wild river area... In addition, the Allagash Wilderness Waterway doesn't meet the federal criteria for wild river area status if you read [the Act]... I think you will find the Legislature found [the Act] not compatible with the Maine AWW statute passed in 1966 which had been enacted to prevent a federal takeover of the Allagash" ("Wild and Scenic Rivers," by Frederick L. Denico, Letters, *Bangor Daily News*, 8/24/00).

If this accurately captures the Legislature's attitude, it may help explain why no AWW amendments mention the state's obligations under the Act. Nonetheless, the letter is simply wrong on the relevant facts and pronounces a flat-Earth theory about the federal Act. Governor Curtis certified that the AWW Statute was in full accord with the Act, the 2(a)(ii) requirements were in fact fully met, and the Allagash is in fact legally Wild today.

DOC, for its part, appears never to have instructed Department staff, especially Waterway staff, about the Act's meaning, not even in general training sessions, and certainly not in any special regulation-specific sessions. Waterway staff were simply told that the Act was not relevant to river managers. (Personal communications.)

Plenty of the state's own words about wilderness and wildness existed to guide DOC. But DOC by its actions divested the words of substance. Today the words are honored more in the breach than in any comprehensive adherence.

In a case of wilderness denial parallel to DOC's overarching one, a LURC commissioner, on September 21, 2000, announced he would vote for the John's Bridge access development and explained that he routinely removes the word "Wilderness" from "Allagash Wilderness Waterway" in his personal thinking. The three-word term is the waterway's official title under the state's 1966 AWW statute, which LURC is required to uphold. The commissioner's reasoning contradicts the fundamental legal guidance that the AWW statute provides, *i.e.*, "to develop the maximum wilderness character" of the river (1966 AWW Statute).

The commissioner's subsequent vote, on November 1, 2000, supporting the access, was plainly based in part on his nullification of the words of the law and on his willful revision of it. This seems arbitrary and capricious but fits the general tenor of DOC, with which LURC is formally associated. According to the LURC staff director at the commission's August 17 meeting, the federal Wild and Scenic Rivers Act is irrelevant (See footnote 23, *infra*). By November, according to the revisionist commissioner, so is the explicit language of the state statute.

In three decades, DOC has provided no binding and lawful strategic vision for the Allagash. The bureaus, other sub-agencies, and appointed commissioners are left to invent direction and develop fanciful, ungrounded rationales.

Yet the Wild and Scenic Rivers Act has ample vision and eloquence to which DOC and its associated entities could readily have subscribed— and to which Senator Muskie and Governor Curtis did in fact subscribe. DOC's management prescriptions and self-imposed policy boundaries, specified in the 1970 report, fitted well within the Act's generous compass, leaving DOC managers ample latitude and room for positive creativity.

But DOC did not so subscribe.

Instead, DOC's official behavior toward the Act and toward the river's permanent Wild classification ranged from *omission* of Act imperatives to *commission* of Act violations – from arbitrary disregard for requirements that would implement the Act, to capricious agency actions that impaired the Act, which is deservedly one of the landmark conservation laws of the 20th century.

As early as 1973, for reasons no one has adequately explained in twenty-seven years, the state took a path away from the controlling law, the protections, and the imperatives of the Wild and Scenic Rivers Act. *River of Broken Promises* does not investigate why DOC has executed a repeated and continuing pattern of divergence, but five general possibilities exist: a) honest ignorance of the Act, b) indifference to the Act, c) hostility toward the Act, d) political influence, or e) some combination of the above.

DOC's inexplicable deviation continues today with the agency's anti-Wild 1999 plan, which fails the straight-face test, the recent discovery of yet another impermissible access at Drake Road, the John's Bridge development proposal, and recent revelations about illegalities in the construction and operations of the new concrete Churchill Dam.

And with DOC's public denials.

A *Boston Globe* article on the front page of the Health and Environment section underlines DOC's unabating intransigence:

State officials deny they are running afoul of federal law and say thirteen access points to the river is a tiny number compared to the Allagash's almost-100-mile route. . . .”We are trying to provide a remote backcountry recreational experience,” said [a DOC executive] (“Maine’s Allagash: A river wild, or is it?” by Beth Daley, *The Boston Globe*, November 28, 2000, p. E-4. (Globe 11/28/00, Exhibit 19)).

The reporter's paraphrase suggests that DOC admits to the downgrading of the river – to thirteen accesses -- from Wild to Recreational, which is illegal under the federal Act, but simultaneously denies it has broken the federal law, a proclamation worthy of the Queen of Hearts. (The attempted body English applied to this admission matches the spin on DOC's earlier confession that today's Allagash “best fits” a combination of Scenic and Recreational (1999 Plan, p. 14.). Fortunately, the facts are naked in both cases.)

Then, according to the *Globe*, the DOC executive “said the designation doesn't say there can't be more than two roads, only that the state needs to keep the place primitive.” (Globe, 11/28/00, p. E-4.).

If the *Globe* has accurately paraphrased the executive's viewpoint, DOC is here, once again, baldly contradicting the facts of all the 1970 binding agreements that implemented the designation: the two letters of Governor Curtis, DOC's own 1970 report, the 1970 federal river management guidelines, and Secretary Hickel's *Federal Register* notice of July 17, 1970. Pursuant to those documents and their unambiguous stipulations about, among other things, limiting road accesses, the state had agreed to administer the designated river permanently as "generally inaccessible."

DOC has also failed, in the executive's phrase, "to keep the place primitive." The federal river management guidelines define the term *primitive* straightforwardly:

"Essentially primitive" means the shorelines are free of habitation and other substantial evidence of human intrusion. . . . With respect to watersheds, "essentially primitive" means that the portion of the watershed within the boundaries has a natural-like appearance. As with shorelines, developments within the boundaries should emphasize a natural-like appearance so that the entire river area remains a vestige of primitive America (1970 Guidelines, pp. 6-7.).

Between the plain language of the Act and the precise words of the 1970 federal river management guidelines, how can DOC rationalize that fourteen road accesses, as many as sixteen parking lots, up to 29 miscellaneous developments, and a modern steel-and-concrete dam qualify the "entire river area" as "essentially primitive"?

The *Globe* piece describes the modern Churchill Dam as "illegal," and quotes an NPS official:

"We are very concerned about the dam because it could have an adverse and direct effect on the waterway," said Chris Brown, head of the national designations division of the National Park Service in Washington. But Brown said the access issues around the Allagash are much more complex than saying there should or should not be roads. . . . "It's a wild river and the people who have been on it consider it a wild experience," he said. "At the same time, for a river designated 'wild' under the act, there is probably more access than one would expect" (*Globe*, 11/28/00, p. E-4.) [emphasis added].

The Park Service, which as of this writing has not conducted a site visit, is nonetheless publicly voicing its incipient skepticism, about the dam and about "more access" than is expected on the Wild Allagash.

Yet, according to the *Bangor Daily News*, the DOC Commissioner persists in the official denials of agency wrongdoing:

As for charges that his agency has not adequately protected the waterway, [the DOC Commissioner] said there have been no significant changes on the Allagash during the current administration, except the reconstruction of a dam on Churchill Lake, a project that was overwhelmingly supported by Maine voters (Bangor Daily, 12/1/00, p. A-4) [emphasis added].

If the paraphrase is accurate, the Commissioner is misleading on the facts.

The construction of modern Churchill Dam, which he apparently admits is a “significant change,”<sup>23</sup> is an illegal structure under both state and federal law. Moreover, DOC is operating it illegally and has been for three to four years. Maine voters did not “overwhelmingly support” such illegalities when they allocated \$1.4 million and entrusted DOC to build the dam. To the extent voters are even aware of the possible risk of federal and state fines of \$50 million, they could hardly agree that DOC’s management follies are insignificant. DOC has not yet informed the general public about the possible fines or their potential cash magnitude.

Further, at least three impermissible vehicular accesses were allowed or authorized in the “current administration” – John’s Bridge, Finley Bogan and Drake Road (Umsaskis II) – representing *25 percent* of the illegal accesses discovered to date. Several parking lots and miscellaneous other developments also were allowed or authorized during this period.

None of this constitutes even adequate protection. Nevertheless, the Commissioner later continues DOC’s rationalizations, this time in a *Maine Sunday Telegram* report:

[The Commissioner] defended the state’s overall management of the waterway... .”I think the work the department has done all the way through its history has been in keeping with the intent of the Legislature when they created the Allagash Wilderness Waterway in 1966... .”

[He] said he has not read the federal documents that relate to the protection and management of the river [presumably the 1970 federal river management guidelines and Secretary Hickel’s *Federal Register* notice]. He also said he has never seen a reference elsewhere to the removal of roads in the waterway [presumably DOC’s 1970 report that accompanied Governor Curtis’ application letters].

[The Commissioner] noted that the federal Wild and Scenic Rivers Act gave management responsibility to state government.

---

<sup>23</sup> Indeed, the National Park Service regards the dam as a significant change: “[T]here is no question that the dam replacement project represents a significant undertaking with the potential for direct and adverse impacts to the Allagash National Wild and Scenic River” (Letter from Sandra Corbett, NPS, to Jay Clement, Corps, October 12, 2000.)

“The responsibility we have goes back to administering the waterway according to the state law that created it, and when we do that, we fulfill our obligation to the federal government.” (“The Flavor of Wilderness,” by Dieter Bradbury, *Maine Sunday Telegram*, pp. 10D, 8D.)

If the *Sunday Telegram*'s paraphrase is accurate, the Commissioner professes ignorance about the Act's implementing documents, presumably including DOC's own 1970 report, which asked for the permanent Wild designation and expressly called for limited access and for the discontinuance of certain roads.

The Commissioner's words proffer that DOC's active adherence to the 1966 AWW statute automatically equals adherence to the federal Act. But this cannot be so, for the AWW statute calls for development of the “maximum wilderness character” of the Allagash, an imperative similar to the Act's affirmative “protect and enhance” provisions.

Nor has DOC honored the Maine Attorney General's opinion:

The whole purpose of the Act [i.e., 1966 AWW statute] is to preserve the Waterway as a wilderness area. Public roads would obviously be inconsistent with that purpose. (“Subject: Allagash Waterway-Realty Road,” from John M. Patterson, Assistant Attorney General, to Lawrence Stuart, Commissioner of the Department of Parks and Recreation, October 6, 1972, p. 2. [emphasis added].)

Instead, DOC has conspicuously abused the state's internal wilderness standard with excessive road access and other inappropriate development.

By contrast, three decades earlier, when Governor Curtis certified that the 1966 AWW statute was in “full accord” with the federal Act (Curtis, 4/10/70), he wasn't playing word games. He and DOC were promising to honor the boundaries of the Act and the federal river management guidelines, which specify that the river must be kept Wild and generally inaccessible in perpetuity.

Having not read the federal guidelines, or Secretary Hickel's *Federal Register* notice, or – evidently -- DOC's own 1970 report, and having ignored the Attorney General's opinion, the present Commissioner has not even rudimentary grounds to claim his department is Act-compliant, let alone to assert concurrent adherence to the state and federal laws involved.<sup>24</sup>

---

<sup>24</sup> The Commissioner is appointed by the Governor and is a member of the cabinet. Because his service term as a political appointee may be relatively short compared to that of some career civil servants, any Commissioner may be forgiven a lack a complete knowledge on certain matters. It is legitimate to ask who within DOC's professional ranks is responsible for educating the present Commissioner on Allagash management issues and why, six years into his likely eight-year term, the staff evidently has not familiarized him with the basic Allagash documents. To its credit, his senior staff did try to dissuade him from proposing the John's Bridge access. The Commissioner overruled them. As to the larger picture of DOC's

The Commissioner is unwittingly saying that the AWW statute is today not in full accord with the Act – after all, had “full accord” prevailed, no federal law would have been broken. Since neither the Act nor the state statute has changed materially in thirty years, that leaves only DOC as the changeling.

The more DOC deviates from the Act, the more it papers over the variances with soothing words of compliance. This is classic bureaucratic evasion. Unfortunately the history of American conservation is full of it. The pattern is readily identifiable. Citizens entrust an agency to protect a natural resource. Too often, they later must save the resource from its sworn protectors, as with the Allagash, where a state statute, a state bond, an attorney general’s opinion, a federal Act, and permanently binding commitments by the agency itself prove insufficient.

DOC’s word spinnings, outright denials, and rearguard defense of its myriad indefensible law-breakings over decades, serve only to diminish public trust that the agency is willing and capable of permanently enhancing and protecting the Maine’s only Wild and Scenic River – a minuscule three-tenths percent of Maine’s total river mileage.

That is DOC’s Allagash legacy. Of this, there can be no room for misunderstanding.

---

obligations under the federal Act, it is not clear whether accurate historical and legal information was developed and transmitted to the Commissioner or, if so, whether he merely chose to ignore it.

## ***Chapter Seventeen***

### **VIOLATIONS OF THE ACT**

*“Each component of the national wild and scenic rivers system shall be administered as to protect and enhance the values which caused it to be included in said system . . .”*

-- THE NATIONAL WILD AND SCENIC RIVERS ACT OF 1968, 16 U.S.C., P.L. 90-542, SECTION 10(A)

**L**isted below in numerical order of Act sections are violations of the National Wild and Scenic Rivers Act, the 1970 federal river management guidelines, the binding agreements codified by Secretary Hickel in the *Federal Register* of July 17, 1970, and the federal Clean Water Act. The violations primarily, but not exclusively, involve road accesses and parking lots.

Of fourteen present-day road accesses, only two were grandfathered (permitted) by Secretary Hickel: Telos Landing (which was replaced by Chamberlain Bridge Thoroughfare) and Twin Brooks.

The other twelve vehicular accesses that DOC has allowed were not permitted: Churchill Dam, Bissonnette Bridge, Umsaskis Lake Thoroughfare (Umsaskis I, along Realty Road), Henderson Brook Bridge, Michaud Farm, Cunliffe, Ramsay, Indian Stream, Finley Bogan (authorized 9/17/00), Drake Road (Umsaskis II, discovered to exist 10/4/00), Upper Allagash Stream, and John’s Bridge (authorized by LURC 11/1/00).

In addition, of the sixteen present-day parking lots in the river corridor, two lots are associated with road accesses permitted by Secretary Hickel: Chamberlain Thoroughfare parking lot (which replaced the Telos Landing parking lot), and Twin Brooks parking lot.

Eleven other parking lots are associated with accesses the Secretary did not permit: Churchill Dam parking lot, Umsaskis Lake Thoroughfare parking lot (Umsaskis I), Henderson Brook parking lot, Michaud Farm parking lot, Cunliffe parking lot, Ramsay parking lot, Indian Stream parking lot, Finley Bogan

parking lot, Drake Road parking lot (Umsaskis II), Upper Allagash Stream parking lot, and John's Bridge parking lot.

Three other parking lots may or may not represent additional breaches of the Act, and warrant investigation: Ziegler parking lot, Nugent's parking lot, and Jalbert's parking lot.

*Act Sections and Violations:*

?? **Act, Section 1(a):** Designated rivers “and their immediate environments shall be protected for the benefit and enjoyment of present and future generations.”

**1(a) Violations:** At least twelve road accesses, at least eleven parking lots, and some number up to twenty-nine miscellaneous other developments (since 1986 alone), beyond what were permitted by the Secretary of the Interior, have been emplaced or allowed by DOC in the immediate environments of the river. DOC has in each case broken the Act's protection mandate that a Wild river be kept Wild for present and future generations.

?? **Act, Section 1(b):** “*Provided*, That this shall not be construed to authorize, intend or encourage further construction of such structures within components of the national wild and scenic rivers system.”

**1(b) Violations:** In allowing since 1970 at least twelve additional road accesses, at least eleven parking lots, and some number up to twenty-nine miscellaneous other developments (since 1986 alone), to be emplaced in the protected immediate environments of the river, beyond what was permitted, DOC has in each case misconstrued the Act to authorize and encourage “further construction.”

In building in 1998 a non-grandfathered modern concrete-and-steel dam of no historic value at the north end of Churchill Lake, the former site of a wooden dam of historic value that was grandfathered in 1970, the state has misconstrued the Act to authorize new dam construction on a Wild component of the National Rivers System.

?? **Act, Section 2(a):** rivers “are to be permanently administered” as Wild, or as Scenic, or as Recreational.

**2(a) Violations:** In authorizing since 1970 at least twelve additional road accesses, at least eleven parking lots, and some number up to twenty-nine miscellaneous other developments (since 1986 alone), to be emplaced in the protected immediate environments of the river, beyond what was permitted, the

state has in each case broken the Act's mandate of permanent administration as a Wild river.

In building in 1998 a non-grandfathered modern concrete dam of no historic value at the north end of Churchill Lake, the former site of a wooden dam of historic value that was grandfathered in 1970, DOC has illegally allowed non-conforming new construction on a Wild component of the National Rivers System.

?? **Section 2(b):** "Every wild, scenic or recreational river . . . shall be classified, designated, and administered as one of the following:"  
Wild, Scenic or Recreational.

**2(b) Violations:** In authorizing since 1970 at least twelve additional road accesses, at least eleven parking lots, and some number up to twenty-nine miscellaneous other developments (since 1986 alone), to be emplaced in the protected immediate environments of the river, beyond what was permitted, DOC has in each case broken the Act's mandate that the single Allagash river segment shall be administered in the single Wild classification only. The state's 1999 admission that it manages the Allagash as a "combined Scenic and Recreational river" certifies to the violations.

?? **Section 2(b)** "*Wild river areas* . . . [are] generally inaccessible except by trail."

**2(b) Violations:** In authorizing since 1970 at least twelve additional road accesses, at least eleven parking lots, and some number up to twenty-nine miscellaneous other developments (since 1986 alone), to be emplaced in the protected immediate environments of the river, beyond what was permitted, DOC has in each case broken the Act's mandate that the single, classified Allagash Wild river segment shall be administered to be generally inaccessible except by trail and has made the river readily accessible by modern automobile. DOC's 1999 admission that it manages the Allagash as a "combined Scenic and Recreational river" certifies to the violations.

?? **Section 2(b):** "*Wild river areas* [have] watersheds or shorelines [that are] essentially primitive . . . These [rivers] represent vestiges of primitive America."

**2(b) Violations:** In authorizing since 1970 at least twelve additional road accesses, at least eleven parking lots, and some number up to twenty-nine miscellaneous other developments (since 1986 alone), to be emplaced in the protected immediate environments of the river, beyond what was permitted, DOC has in each case broken the Act's mandate that the Allagash retain its

essentially primitive shorelines and watersheds, has failed to administer the river as an essentially primitive area, and has made the river readily accessible by modern automobile, erasing vestiges of the river's immediate primitiveness and diminishing the Allagash as a national example of primitive America.

In building in 1998 a non-grandfathered new concrete dam of no historic value at the north end of Churchill Lake, the former site of a wooden dam of historic value that was grandfathered in 1970, the state has negatively altered the watershed and shoreline of the Allagash Wild river with modern structure inconsistent with the primitiveness of the area.

?? **Section 7(a):** “[N]o department or agency of the United States shall assist by loan, grant, license or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration.”

**7(a) Violations (and 404 Clean Water Act Violations):** In authorizing DOC to develop wetlands and build in 1998 a non-grandfathered new concrete dam of no historic value at the north end of Churchill Lake, the former site of a wooden dam of historic value – an “existing structure” that was grandfathered in 1970 for historic purposes -- the U.S. Army Corps of Engineers violated the Act by failing to consult with the Secretary of the Interior, via its proxy the National Park Service, regarding the proposed dam and wetlands development. The Corps violated the federal Clean Water Act by failing to issue a 404 permit to DOC. DOC violated the Clean Water Act by failing to obtain a 404 permit to construct and operate the dam and develop the associated wetlands. Under the two federal laws the dam is therefore an illegal construction. DOC at this writing continues operating the dam without a federal 404 permit (or a valid LURC permit, which is conditioned on the existence of a 404 permit), in violation of the Clean Water Act and of the National Wild and Scenic Rivers Act.

?? **Section 10(a):** “Each component of the national wild and scenic rivers system shall be administered as to protect and enhance the values which caused it to be included in said system without, insofar as is consistent herewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values.”

**10(a) Violations:** In authorizing since 1970 at least twelve additional road accesses, at least eleven parking lots, and some number up to twenty-nine miscellaneous other developments (since 1986 alone), to be emplaced in the protected immediate environments of the river, DOC has in each case broken the Act's mandate that the Allagash component of the National Rivers System shall be protected and enhanced in the Wild conditions prevailing at the time of its

inclusion in the system and has allowed automobiles ready access, promoting vehicular use that interferes substantially with public use of the river for its Wild, primitive, and historic values and its general inaccessibility.

In building in 1998 a non-grandfathered new concrete dam of no historic value at the north end of Churchill Lake, the former site of a wooden dam of historic value that was grandfathered in 1970, DOC has failed to protect and enhance the outstandingly remarkable historic values of Allagash Wild river, which values are part of the original justification for the Wild designation. DOC has developed a modern structure inconsistent with the history of the local area and the historic buildings in the area, and which degrade the outstandingly remarkable historic values for which, in part, the Allagash was included in the National Rivers System.

?? **Section 10(a):** “In such administration primary emphasis shall be given to protecting its aesthetic, scenic, historic, archaeological, and scientific features. Management plans for any such component may establish varying degrees of intensity for its protection and development, based on the special attributes”

**10(a) Violations:** In authorizing since 1970 at least twelve additional road accesses, at least eleven parking lots, and some number up to twenty-nine miscellaneous other developments (since 1986 alone), to be emplaced in the protected immediate environments of the river, DOC has in each case broken the Act’s mandate that the Allagash component of the National Rivers System shall be protected and enhanced in the Wild conditions prevailing at the time of its inclusion in the system and has allowed automobiles ready access, promoting and giving primary emphasis to vehicular use to a degree diametrically inconsistent with and destructive of the river’s special attributes including, but not necessarily limited to, its outstanding natural, scenic, recreational and historic attributes, and interfering substantially with public use of the river for its Wild, primitive, and historic values and its general inaccessibility.

In building in 1998 a non-grandfathered new concrete dam of no historic value at the north end of Churchill Lake, the former site of a wooden dam of historic value that was grandfathered in 1970, DOC has failed to give primary emphasis to the outstandingly remarkable historic values of Allagash Wild river, which values are part of the original justification for the Wild designation. DOC has developed a modern structure inconsistent with the history of the local area and the historic buildings in the area, and which degrade and do not give primary emphasis to the outstandingly remarkable historic values for which, in part, the Allagash was included in the National Rivers System.

?? **Section 13(d):** “The jurisdiction of the States over waters of any stream included in a national wild, scenic or recreational river shall be unaffected by this Act to the extent that such jurisdiction may be exercised without impairing the purposes of the Act or its administration.”

**13(d) Violations:** In building in 1998 a non-grandfathered new concrete dam of no historic value at the north end of Churchill Lake, the former site of a wooden dam of historic value that was grandfathered in 1970, DOC has exercised its jurisdiction over the waters of the Allagash in a manner that impaired the purposes of the Act by failing to protect and enhance the scenic and historic values for which wooden Churchill dam was originally grandfathered. DOC has developed a modern structure inconsistent with the history of the local area and with the historic buildings in the area, which are important cultural elements in the designated river corridor.

## ***Afterword***

### **POTENTIAL VIOLATIONS OF STATE ADMINISTRATIVE PROCEDURE ACT BY DOC, BPL AND LURC**

*“ . . .Arbitrary or capricious or characterized by abuse of discretion . . . ”*

-- SUBCHAPTER VII OF MAINE'S ADMINISTRATIVE PROCEDURE ACT (§ 11007, 4.C. (6)).

**P**ossible violations of the Maine Administrative Procedure Act are not the main thrust of this report. However, the brief discussion offered below may suggest areas for inquiry.

On August 17, 2000, LURC, which is part of DOC, made a non-binding recommendation to itself that the commission vote down the proposed John's Bridge road access at its next meeting, on September 21. The commissioners' non-binding recommendation was the right choice, but for the wrong reason.

Rather than consider rejecting the proposal because the road access would violate the Act, LURC recommended the rejection on the bases that alternative road accesses existed nearby and that any new Allagash road access ought to be located well away from the John's Bridge area. If LURC inspires a new road access elsewhere along the designated Waterway, the contentious issues will merely arise anew.

In his introductory remarks of August 17, the LURC staff director told the commissioners that the National Wild and Scenic Rivers Act was not relevant in deciding the case. He said, "It's up to the Department of the Interior to deal with that issue." He did not mention the Wild classification. He had received written comments invoking the Act in opposition to the John's Bridge road-and-boat development, but he evidently found them irrelevant to the case.

The staff director's dismissive statement is curious. On the one hand it continues DOC's overt disregard of the Act. On the other, it seems to invite Interior's intervention, an invitation that runs contrary to prior DOC behaviors.<sup>25</sup>

At the least, the director's statement forbade the commission from judging DOC's John's Bridge proposal in light of a rich and directly relevant body of applicable federal law and related agreements to which DOC was party, particularly in regard to vehicular access development in a Wild river corridor.

At its September 21 meeting, the commission reversed itself and directed the staff to prepare instead a draft approval of the John's Bridge project for the commission's consideration at its November meeting. The Act was not addressed.

At LURC's November 1 meeting, the commissioners voted 4-2 to approve John's Bridge. (There, as noted earlier, a commissioner explained, as partial justification for his pro-access vote, that he routinely dismisses the word "wilderness" from the "Allagash Wilderness Waterway," the official designation used in the state AWW statute. The statute's principal purpose is "to develop the maximum wilderness character" of the waterway (1966 AWW Statute).)

The staff director's dismissal of the federal Act as irrelevant would suggest that LURC's approval of the John's Bridge proposal may put LURC, BPL, and DOC in breach of Subchapter VII of Maine's Administrative Procedure Act (APA), which forbids, among other things, "arbitrary or capricious" decisions (*infra*). In the end, LURC approved the proposed John's Bridge road-and-boat access without thoroughly reviewing the requirements of the Act as a major statutory directive to which agencies must adhere.

Approval and construction of the fourteenth access may constitute agency actions that are:

---

<sup>25</sup> The staff director also noted that there had been no major objections to the Churchill Dam reconstruction, completed in 1998. This statement leaves one to infer that if the Act was not invoked on the larger Churchill project, the smaller John's Bridge project should also not trigger it. But in fact the Act would have been invoked if the Corps of Engineers had consulted with the NPS as required under Section 7. Further, the old Churchill Dam was, of course, incorporated into the Wild classification, for its historic significance as a wooden dam reminiscent of the log-driving era. Indeed, the river was federally designated in significant part for the outstanding historic values of the river's logging heritage. By contrast the new concrete dam was not grandfathered, has no historic relevance, is a jarring edifice in its Wild setting, and is certainly a legitimate subject for dispute, particularly because it is unlicensed and therefore illegal today. Like the new dam, John's Bridge access enjoys no special immunity from scrutiny under the Act.

In violation of constitutional of statutory provisions (APA, 5 § 11007, 4.C. (1)); In excess of the statutory authority of the agency (APA, 5 § 11007, 4.C. (2)); Made upon unlawful procedure (APA, 5 § 11007, 4.C. (3)); affected by bias or error of law (APA, 5 § 11007, 4.C. (4)); and Arbitrary or capricious or characterized by abuse of discretion (APA, 5 § 11007, 4.C. (6)).

Doubtless there exist many users of the AWW who qualify as “aggrieved persons” to file formal complaints (See APA, 5 § 11001, 4.C. (1)).

It also must be asked whether DOC’s failure to obtain a federal 404 permit to build and operate the modern concrete-and-steel dam at Churchill Lake violates APA. Likewise, a determination is needed on whether the invalid LURC permit also violates APA.

**Attachment 1**

**RIVER SEGMENTS DESIGNATED UNDER  
SECTION 2(a)(ii)  
OF WILD & SCENIC RIVERS ACT OF 1968**

<u>Name</u>	<u>Date</u>	<u>Number of Miles Designated</u>			<u>Total</u>
		<u>Wild</u>	<u>Scenic</u>	<u>Recreational</u>	
Allagash Wilderness Waterway (Me.)	07/19/70	92.5			92.5
Little Miami (Ohio)	08/20/73		18	48	66
	01/28/80		28		28
Little Beaver (Ohio)	10/23/75		33		33
New (N.C.)	04/13/76		26.5		26.5
St. Croix (lower) (Mn/Wi)	06/17/76			25	25
American (lower)(Cal.)	01/19/81			23	23
Klamath (Cal.)	01/19/81	12	24	250	286
Trinity (Cal.)	01/19/81	44	39	120	203
Eel (Cal.)	01/19/81	97	28	273	398
Smith (Cal.)	01/19/81	78	31	216.35	325.35
Loxahatchee (Fla.)	05/17/85	1.25	5.75	0.5	7.5
Vermilion, Middle Fork (Ill.)	05/11/89	17.1			17.1
Westfield (Mass.)	11/02/93	18.9	24.4		43.3
Cossatot (Ark.)	02/02/94		10.7		10.7
Big & Little Darby Creeks (Ohio)	03/10/94		85.9		85.9
Klamath (Ore.)	09/22/94		11		11
Wallowa (Ore.)	07/23/96			10	10
Lumber (N.C.)	09/28/98		60	21	81
					1,772.85

**SECTION 2(a)(ii) OF THE  
WILD AND SCENIC RIVERS ACT OF 1968:  
AN UNDERUTILIZED TOOL TO DESIGNATE  
NATIONAL WILD AND SCENIC RIVERS**

**JACK HANNON  
TOM CASSIDY**

**Dean B. Bennett**  
**RR 1, Box 5490**  
**Mt. Vernon, ME 04352**  
**Phone: (207) 293-2761**  
**E-mail: bennett@maine.edu**

June 10, 2000

Governor Kenneth M. Curtis  
1 Canal Plaza, 10<sup>th</sup> Floor  
Portland, Maine 04101

Dear Governor Curtis:

I am writing about a matter which relates to a mutual interest that began many years ago--the Allagash Wilderness Waterway. As young men during the sixties and seventies, we both found ourselves engaged in waterway-related events: I as a canoeist beginning in 1962 and as a visitor at Nugents in the 1970s and you as Governor of Maine and, from what some have told me, also a visitor at Nugents.

In the spring of 1970 when you were governor, I arranged through Neil Rolde for you to speak at Yarmouth High School to students from four surrounding towns celebrating the first Earth Day. I was then directing a large environmental education program for schools in the area. That same spring you applied to the United States Department of Interior for the Allagash Wilderness Waterway to become the first state administered riverway in the National Wild and Scenic River System. This was approved by the Secretary of the Department of the Interior and announced at the dedication of the waterway in the following July. We all know the Allagash is one of Maine's natural treasures and the federal designation only underscored its national significance.

At the time of the dedication, there were three major ways to access the waterway by vehicle, which were fairly well-known by the public, although there were a dozen or so other points of entry from rather poor, little known logging roads. Extensive day use was not anticipated by the Maine State Park and Recreation Commission nor was it seen to be in keeping with the original intent of the waterway as a long canoe trip offering a wilderness experience. However, as we both know, visitor use since then has grown dramatically as well-graveled roads increased, detailed maps became available, modes of travel and recreational vehicles improved, and affluence and leisure time rose. In 1983 the Bureau of Parks and Recreation approved eight vehicle access points through rule-making. After this year's (2000) rule making, the number may rise to ten, one of which is particularly unsettling--a public boat launch between Eagle and Churchill lakes at a crossing known as John's Bridge.

As a member of the state-appointed advisory committee to craft a management plan for the waterway a few years ago, I opposed this access point along with a large majority of the state's citizenry who gave public input on the plan. Even the current director of the Bureau of Parks and Lands recommended against it. Unfortunately, the decision was politicized and the current commissioner decided to construct a public boat launch at John's Bridge.

Over the years, I've continued to visit the Allagash with my wife and family. As a way of trying to build public awareness of the waterway's unique natural character, I produced the enclosed book. My hope was that it would help in creating a constituency that would come to the defense of the waterway, that if people knew what they stood to lose they would act to protect it. Since the 1960s, I've seen firsthand the incremental degradation of the waterway's remoteness, its silence, its opportunities for solitude, and its appearance of primitive naturalness. I believe that we are now to a point where citizens and their leaders who cherish these qualities must speak out. I thought of you, especially, because of your strong stance and reputation for environmental protection. One of your accomplishments, if I remember correctly, was the establishment of the Land Use Regulation Commission. Now, the decision is in the hands of LURC, which has jurisdiction over the siting of boat launches on water bodies in the unorganized townships, and is currently evaluating the plans submitted by the Bureau of Parks and Lands.

More than a half dozen organizations and individuals are intervening in the decision and most are now grouped by LURC into one intervenor under the Natural Resources Council of Maine, represented by its attorney for north woods affairs, Cathy Johnson. Hearings will be held on June 28<sup>th</sup> and 29<sup>th</sup>. Written comments will be received up to July 10<sup>th</sup>. As you are one of our state's most respected citizens and one who is identified with a strong environmental ethic, an expression of your opinion against the opening of an approved public access point at John's Bridge would carry great weight in the commission's deliberations. If you could find that you could do no more than communicate your concern and encourage the commission to give this careful consideration in the application of their guidelines to the original intent of the waterway, which stressed a **remote** canoe experience, I believe that this would be especially helpful.

Should you decide that this is a matter in which you would be willing to lend your support, contact with the commission is as follows:

Stephen W. Wight, Chairman  
Maine Land Use Regulation Commission  
22 State House Station  
Augusta, Maine 04333-0022  
(800) 452-8711

Thank you for considering this request.

Sincerely,

Dean B. Bennett  
Professor Emeritus  
University of Maine at Farmington

ONE CANAL PLAZA, P.O. BOX 7320, PORTLAND, ME 04112-7320/TEL: 207-774-9000 FAX: 207-775-0612/WEBPAGE: WWW.CURTHAX.COM

Kenneth M. Curtis  
kmc@curthax.com

185 STATE STREET  
P.O. BOX 5307  
AUGUSTA, ME 04332  
TEL: 207-626-0388  
FAX: 207-626-3052

June 21, 2000

Professor Dean B. Bennett  
RR 1, Box 5490  
Mt. Vernon, Maine 04352

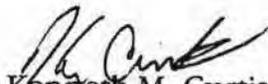
Dear Professor Bennett:

Thank you for your kind letter of June 10. I haven't followed the John's Bridge issue to any great extent. However, as the population grows and becomes increasingly mobile, conflicts between access and the maintenance of wilderness areas will accelerate.

I agree with you. The Allagash Wilderness Waterway was created as something unique. It would seem that we could strike a balance between meeting public need and the preservation of a few wilderness areas such as the Allagash Waterway.

Instead of any direct intervention on my part, I would be pleased to be included as a supporter of those intervening in this decision.

Sincerely,

  
Kenneth M. Curtis

KMC:bl

Date sent: Mon, 03 Jul 2000 09:01:58 -0400  
From: "KEN CURTIS" <Ken@curthax.com>  
To: <bennett@mail.maine.edu>  
Subject: Re: thanks and question

YES PLEASE FEEL FREE TO INCLUDE MY NAME.

>>> <bennett@mail.maine.edu> 07/01/00 01:36AM >>>

Dear Governor Curtis:

Thank you for your supportive letter. We have until July 10th to send written comments to the commission. May I have your permission to enter your letter into the record? Sincerely, Dean Bennett Dean Bennett, Ph.D. Professor of Education University of Maine at Farmington 104 Main Street Farmington, ME 04938 USA Tel: (207)778-7159

July 6, 2000

Stephen W. Wight, Chairman  
Maine Land Use Regulation Commission  
22 State House Station  
Augusta, Maine 04333-0022

Dear Chairman Wight:

I have enclosed a letter I received from Governor Kenneth M. Curtis who supports the intervenors opposing the opening of John's Bridge as an access point to the Allagash Wilderness Waterway.

Governor Curtis's administration was instrumental in the implementation of the legislation creating the Allagash Wilderness Waterway. Further, while he was Governor, another important agency was created that supports the values recognized by the waterway legislation, the Maine Land Use Regulation. Today we are asking that LURC uphold the policies of the Curtis administration.

Governor Curtis was elected in 1966 on the same ballot in which the voters of Maine overwhelmingly voted "An Act to Authorize Bond Issue in Amount of One Million Five Hundred Thousand Dollars to Develop the Maximum Wilderness Character of the Allagash Waterway." A user of the Allagash himself, he successfully applied for National Wild and Scenic River status in 1970. In July of that year, he officiated at the dedication of the waterway at Churchill Dam. A year later, 1971, the Maine Land Use Regulation came into being.

Governor Curtis was Maine's highest government official during the formative years of the Allagash. His opposition to the application for a canoe launch site at John's Bridge is significant.

Sincerely,

Dean B. Bennett



STATE OF MAINE  
OFFICE OF THE GOVERNOR  
AUGUSTA, MAINE  
04880

April 10, 1970

KENNETH M. CURTIS  
GOVERNOR

W.J.H.  
4-20  
D.P.

The Honorable Walter J. Hickel  
Secretary of the Interior  
Washington, D. C.

Dear Secretary Hickel:

As you probably know, the Allagash Wilderness Waterway was specifically mentioned in Section 2 (a) (ii) of P.L. 90-542, the National Wild and Scenic Rivers Act, as one of two rivers that could be included in the system, subject to qualifications, upon request of the Governor of the State concerned.

As Governor of the State of Maine, I do hereby request that that portion of the Allagash Wilderness Waterway below Churchill Dam and continuing downstream north to West Twin Brook (a distance of about 60 miles) be designated a "Wild River" under this Act. Director Lawrence Stuart of the Maine State Park & Recreation Commission, under whose jurisdiction the Waterway falls, has examined carefully the "Guidelines for Evaluating Wild, Scenic and Recreational River Areas - February 1970" recently sent him and has conferred with Rolland Handley, Regional Director of Bureau of Outdoor Recreation, Philadelphia. In fact, Mr. Stuart flew Mr. Handley on an inspection trip of the Allagash this past summer, so Mr. Handley should be well qualified to advise of the Riverway's eligibility.

Furthermore, Mr. Secretary, I have scheduled a formal dedication of the Allagash Wilderness Waterway this summer on Sunday, July 19th at Churchill Dam in the heart of the Waterway and at the head of that part of the River Section being requested for designation as a Wild River. Maine would be <sup>greatly</sup> honored to have you present at the Dedication and if you find the Riverway qualifies, this would give you an opportunity to officially designate what I believe to be the first wild River in the National System. I would also hope that your schedule would allow time either before or after the ceremonies to take a shore canoe trip on the Allagash.

*report prior  
commit  
N.A.*

I would appreciate your early consideration of our request for designation, and I would particularly like to know as soon as possible whether your schedule will allow a visit to Maine on this special occasion.

Sincerely,

*Kenneth M. Curtis*  
Kenneth M. Curtis  
Governor

8-37984

BOR CONTROL No. S-379



STATE OF MAINE  
OFFICE OF THE GOVERNOR  
AUGUSTA, MAINE  
04880

KENNETH M. CURTIS  
GOVERNOR

May 4, 1970

The Honorable Walter J. Hickel  
Secretary of the Interior  
Washington, D. C.

Dear Secretary Hickel:

My letter of April 10 requested your consideration of the Allagash Wilderness Waterway as a State administered unit of the National System under P.L. 90-542, the Wild & Scenic Rivers Act. Since that time, the Maine State Park & Recreation Commission has been working closely with the Bureau of Outdoor Recreation to provide suitable information to meet the review requirements of the Act.

The enclosed application is submitted for your use in this respect. You will notice that the application modifies my original letter in that the entire waterway is now included and all concerned feel this is as it should be considering the character of the area and our understanding of the intent of the National Act. It is my belief that the Allagash Wilderness Waterway Act of Maine is in full accord with the National Act and the guidelines developed by your Department, and the Department of Agriculture in February 1970, for permanent administration as a Wild River Area.

I again want to restate my hope that you can personally be with us on July 19, 1970 to officially dedicate the Allagash and designate it as a Wild River under P.L. 90-542, if you find it so qualifies.

Sincerely,

*Kenneth M. Curtis*  
Kenneth M. Curtis  
Governor

KMC/zir



GUIDELINES FOR EVALUATING WILD,  
SCENIC AND RECREATIONAL RIVER  
AREAS PROPOSED FOR INCLUSION IN  
THE NATIONAL WILD AND SCENIC  
RIVERS SYSTEM UNDER SECTION 2,  
PUBLIC LAW 90-542.

## PURPOSE

The following criteria supplement those listed in Section of the Wild and Scenic Rivers Act, which states that rivers included in the National Wild and Scenic Rivers System shall be free-flowing streams which possess outstandingly remarkable scenic, recreational, geological, fish and wildlife, historic, cultural and other similar values.

These guidelines are intended to define minimum criteria for the classification and management of free-flowing rivers proposed for inclusion in the national system by the Secretary of the Interior or the Secretary of Agriculture, and for State rivers included in the system by the Secretary of the Interior.

In reading these guidelines and in applying them to real situations of land and water it is important to bear one important qualification in mind. There is no way for these statements of criteria to be written so as to mechanically or automatically indicate which rivers are eligible and which class they must be. It is important to understand each criterion; but it is perhaps even more important to understand their collective intent. The investigator has to exercise his judgment, not only on the specific criteria as they apply to a particular river, but on the river as a whole, and on their relative weights. For this reason, these guidelines are not absolutes. There may be extenuating circumstances which would lead the appropriate Secretary to recommend, or approve pursuant to Section 2(a)(ii), a river area for inclusion in the system because it is exceptional in character and outstandingly remarkable even though it does not meet each of the criteria set forth in these guidelines. However, exceptions to these criteria should be recognized only in rare instances and for compelling reasons.

The three classes of river areas described in Section 2(b) of the Wild and Scenic Rivers Act are as follows:

- "(1) Wild river areas--Those rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive

and waters unpolluted. These represent vestiges of primitive America.

- "(2) Scenic river areas--Those rivers or sections of rivers that are free of impoundments, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads.
- "(3) Recreational river areas--Those rivers or sections of rivers that are readily accessible by road or railroad, that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the past."

### GENERAL CHARACTERISTICS

The Wild and Scenic Rivers Act, Section 10(a), states that, "Each component of the national wild and scenic rivers system shall be administered in such manner as to protect and enhance the values which caused it to be included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values. In such administration primary emphasis shall be given to protecting its esthetic, scenic, historic, archeologic, and scientific features. Management plans for any such component may establish varying degrees of intensity for its protection and development, based on the special attributes of the area."

In order to qualify for inclusion in the national system, a State free-flowing river area must be designated as a wild, scenic, or recreational river by act of the State legislature, with land areas wholly and permanently administered in a manner consistent with the designation by any agency or political subdivision of the State at no cost to the Federal Government, and be approved by the Secretary of the Interior as meeting the criteria established by the Wild and Scenic Rivers Act and the guidelines contained herein. A river or related lands owned by an Indian tribe cannot be added to the national system without the consent of the appropriate governing body.

In evaluating a river for possible inclusion in the system or for determining its classification, the river and its immediate land area should be considered as a unit, with primary emphasis upon the quality of the experience and overall impressions of the recreationist using the river or the adjacent riverbank. Although a free-flowing river or river unit frequently will have more than one classified area, each wild, scenic, or recreational area must be long enough to provide a meaningful experience. The number of different classified areas within a unit should be kept to a minimum.

Any activity, use, or development which is acceptable for a wild river is also acceptable for scenic and recreational river areas, and that which is acceptable for a scenic river is acceptable for a recreation river area. Activity and development limitations discussed below should not necessarily be interpreted as the desired level to which development or management activity should be planned. Hunting and fishing will be permitted, subject to appropriate State and Federal laws.

● The Wild and Scenic Rivers Act provides that rivers must be in a free-flowing natural condition, i.e., a flowing body of water or estuary or a section, portion, or tributary thereof, including rivers, streams, creeks, runs, kills, rills, and small lakes which are without impoundment, diversion, straightening, rip-rapping or other modification of the waterway. However, low dams, diversion works, and other minor structures will not automatically preclude the river unit from being included in the National Wild and Scenic Rivers System, providing such structures do not unreasonably diminish the free-flowing nature of the stream and the scenic, scientific, geological, historical, cultural, recreational, and fish and wildlife values present in the area.

● The river or river unit must be long enough to provide a meaningful experience. Generally, any unit included in the system should be at least 25 miles long. However, a shorter river or segment that possesses outstanding qualifications may be included in the system.

● There should be sufficient volume of water during normal years to permit, during the recreation season, full enjoyment of water-related outdoor recreation activities general-

ly associated with comparable rivers. In the event the existing supply of water is inadequate, it would be necessary to show that additional water can be provided reasonably and economically without unreasonably diminishing the scenic, recreational, and fish and wildlife values of the area.

● The river and its environment should be outstandingly remarkable and, although they may reflect substantial evidence of man's activity, should be generally pleasing to the eye.

● The river should be of high quality water or susceptible of restoration to that condition. A concept of nondegradation whereby existing high water quality will be maintained to the maximum extent feasible will be followed in all river areas included in the national system.

All rivers included in the national system should meet the "Aesthetics--General Criteria" as defined by the National Technical Advisory Committee on Water Quality in the Federal Water Pollution Control Administration's Water Quality Criteria, April 1, 1968. Water quality should meet the criteria for fish, other aquatic life, and wildlife, as defined in that document, so as to support the propagation of those forms of life which normally would be adapted to the habitat of the stream. Where no standards exist or where existing standards will not meet the objectives of these criteria, standards should be developed or raised to achieve those objectives. Wild river areas can be included in the national system only if they also meet the minimum criteria for primary contact recreation, except as these criteria might be exceeded by natural background conditions. Scenic or recreation river areas which qualify for inclusion in the system in all respects except for water quality may be added to the system provided adequate and reasonable assurance is given by the appropriate Federal or State authority that the water quality can and will be upgraded to the prescribed level for the desired types of recreation, and support aquatic life which normally would be adapted to the habitat of the stream at the prescribed level of water quality. At such time as water quality fully meets the criteria, it may be desirable to change the classification of a river.

● New public utility transmission lines, gas lines, water

lines, etc., in river areas being considered for inclusion in the national system are discouraged. However, where no reasonable alternative exists, additional or new facilities should be restricted to existing rights-of-way. Where new rights-of-way are indicated, the scenic, recreational, and fish and wildlife values must be evaluated in the selection of the site in accordance with the general guidelines described in the Report of the Working Committee on Utilities prepared for the President's Council on Recreation and Natural Beauty, December 1968.

● Mineral activity subject to regulations under the Act must be conducted in a manner that minimizes surface disturbance, sedimentation and pollution, and visual impairment. Specific controls will be developed as a part of each management plan.

#### CRITERIA FOR RIVER DESIGNATION

The following criteria for classification, designation, and administration of river areas are prescribed by the Act. These criteria are not absolutes, nor can they readily be defined quantitatively. In a given river, a departure from these standards might be more than compensated by other qualities. However, if several "exceptions" are necessary in order for a river to be classified as wild, it probably should be classified as scenic. If several "exceptions" are necessary in order for a river to be classified as scenic, it probably should be classified as recreational.

#### Wild River Areas

The Wild and Scenic Rivers Act states that "these represent vestiges of primitive America," and they possess these attributes:

1. "Free of impoundments"
2. "Generally inaccessible except by trail"
3. "Watersheds or shorelines essentially primitive"
4. "Waters unpolluted"

● Classification criteria.

Despite some obvious similarities, the "wildness" associated with a wild river area is not synonymous with the "wildness"

involved in wilderness classification under the Wilderness Act of 1964. One major distinction, in contrast to wilderness, is that a wild river area also may contain recreation facilities for the convenience of the user in keeping with the primitive setting.

1. An "impoundment" is a slack water pool formed by any man-made structure. Except in rare instances in which esthetic and recreational characteristics are of such outstanding quality as to counterbalance the disruptive nature of an impoundment, such features will not be allowed on wild river areas. Future construction of such structures that would have a direct and adverse effect on the values for which that river area was included in the national system, as determined by the Secretary charged with the administration of the area, would not be permitted. In the case of rivers added to the national system pursuant to Sec.2(a)(ii), such construction could result in a determination by the Secretary of the Interior to reclassify or withdraw the affected river area from the system.

2. "Generally inaccessible" means there are no roads or other provisions for overland motorized travel within a narrow, incised river valley, or if the river valley is broad, within 1/4 mile of the riverbank. The presence, however, of one or two inconspicuous roads leading to the river area will not necessarily bar wild river classification.

3. "Essentially primitive" means the shorelines are free of habitation and other substantial evidence of man's intrusion. This would include such things as diversions, straightening, rip-rapping, and other modifications of the waterway. These would not be permitted except in instances where such developments would not have a direct and adverse effect on the values for which that river area was included in the national system as determined by the Secretary charged with the administration of the area. In the case of rivers added to the national system pursuant to Section 2(a)(ii), such construction could result in a determination by the Secretary of the Interior to reclassify or withdraw the affected river area from the system. With respect to watersheds, "essentially primitive" means that the portion of the watershed within the boundaries has a natural-like appearance. As with shorelines, developments within the boundaries should emphasize a natural-

like appearance so that the entire river area remains a vestige of primitive America. For the purposes of this Act, a limited amount of domestic livestock grazing and pasture land and cropland devoted to the production of hay may be considered "essentially primitive." One or two inconspicuous dwellings need not necessarily bar wild river classification.

4. "Unpolluted" means the water quality of the river at least meets the minimum criteria for primary contact recreation, except where exceeded by natural background conditions, and esthetics as interpreted in the Federal Water Pollution Control Administration's Water Quality Criteria, April 1, 1968. In addition, the water presently must be capable of supporting the propagation of aquatic life, including fish, which normally would be adapted to the habitat of the stream. Where no standards exist or where existing standards will not meet the objectives of these criteria, standards should be developed or raised to achieve those objectives.

● Management objectives.

The administration of a wild river area shall give primary emphasis to protecting the values which make it outstandingly remarkable while providing river-related outdoor recreation opportunities in a primitive setting.

To achieve these objectives in wild river areas, it will be necessary to:

1. Restrict or prohibit motorized land travel, except where such uses are not in conflict with the purposes of the Act.
2. Acquire and remove detracting habitations and other non-harmonious improvements.
3. Locate major public-use areas, such as large campgrounds, interpretive centers or administrative headquarters, outside the wild river area. Simple comfort and convenience facilities, such as fireplaces, shelters, and toilets, may be provided for recreation users as necessary to provide an enjoyable experience, protect popular sites, and meet the management objectives. Such facilities will be of a design and

location which harmonize with the surroundings.

4. Prohibit improvements or new structures unless they are clearly in keeping with the overall objectives of the wild river area classification and management. The design for any permitted construction must be in conformance with the approved management plan for that area. Additional habitations or substantial additions to existing habitations will not be permitted.

5. Implement management practices which might include construction of minor structures for such purposes as improvement of fish and game habitat; grazing; protection from fire, insects, or disease; rehabilitation or stabilization of damaged resources, provided the area will remain natural appearing and the practices or structures will harmonize with the environment. Such things as trail bridges, an occasional fence, natural-appearing water diversions, ditches, flow measurement or other water management devices, and similar facilities may be permitted if they are unobtrusive and do not have a significant direct and adverse effect on the natural character of the area.

#### Scenic River Areas

The Wild and Scenic Rivers Act states that scenic rivers:

1. Are "free of impoundments"
2. Are "accessible in places by road"
3. Have "shorelines or watersheds still largely primitive and shorelines largely undeveloped"

#### ● Classification criteria.

1. An "impoundment" is a slack water pool formed by any man-made structure. Except in rare instances in which esthetic and recreational characteristics are of such outstanding quality as to counterbalance the disruptive nature of an impoundment, such features will not be allowed on scenic river areas. Future construction of such structures that would have a direct and adverse effect on the values for which that river area was included in the national system as determined by the Secretary charged with the administration of the area, would not be permitted. In the case of rivers added to the national

system pursuant to Section 2(a)(ii), such construction could result in a determination by the Secretary of the Interior to reclassify or withdraw the affected river area from the system.

2. "Accessible in places by road" means that roads may occasionally bridge the river area. Scenic river areas will not include long stretches of conspicuous and well-traveled roads closely paralleling the riverbank. The presence, however, of short stretches of conspicuous or longer stretches of inconspicuous and well-screened roads or screened railroads will not necessarily preclude scenic river designation. In addition to the physical and scenic relationship of the free-flowing river area to roads, consideration should be given to the type of use for which such roads were constructed and the type of use which would occur within the proposed scenic river area.

3. "Largely primitive" means that the shorelines and the immediate river environment still present an overall natural character, but that in places, land may be developed for agricultural purposes. A modest amount of diversion, straightening, rip-rapping, and other modification of the waterway would not preclude a river from being considered for classification as a scenic river. Future construction of such structures would not be permitted except in instances where such developments would not have a direct and adverse effect on the values for which that river area was included in the national system as determined by the Secretary charged with the administration of the area.

In the case of rivers added to the national system pursuant to Section 2(a)(ii), such construction could result in a determination by the Secretary of the Interior to reclassify or withdraw the affected river area from the system. "Largely primitive" with respect to watersheds means that the portion of the watershed within the boundaries of the scenic river area should be scenic, with a minimum of easily discernible development. Row crops would be considered as meeting the test of "largely primitive," as would timber harvest and other resource use, providing such activity is accomplished without a substantially adverse effect on the natural-like appearance of the river or its immediate environment.

4. "Largely undeveloped" means that small communities or any concentration of habitations must be limited to relatively short reaches of the total area under consideration for designation as a scenic river area.

● Management objectives.

A scenic river area should be managed so as to maintain and provide outdoor recreation opportunities in a near natural setting. The basic distinctions between a "wild" and a "scenic" river area are degree of development, type of land use, and road accessibility. In general, a wide range of agricultural, water management, silvicultural and other practices could be compatible with the primary objectives of a scenic river area, providing such practices are carried on in such a way that there is no substantial adverse effect on the river and its immediate environment.

The same considerations enumerated for wild river areas should be considered, except that motorized vehicle use may in some cases be appropriate and that development of larger scale public-use facilities within the river area, such as moderate size campgrounds, public information centers, and administrative headquarters, would be compatible if such structures were screened from the river.

Modest facilities, such as unobtrusive marinas, also would be possible if such structures were consistent with the management plans for that area.

Recreational River Areas

The Wild and Scenic Rivers Act states that recreational rivers:

1. Are "readily accessible by road or railroad"
2. "May have some development along their shoreline"
3. May have "undergone some impoundment or diversion in the past"

● Classification criteria.

1. "Readily accessible" means the likelihood of paralleling roads or railroads on one or both banks of the river, with the possibility of several bridge crossings and numerous

river access points.

2. "Some development along their shorelines" means that lands may be developed for the full range of agricultural uses and could include small communities as well as dispersed or cluster residential developments.

3. "Undergone some impoundment or diversion in the past" means that there may be water resources developments and diversions having an environmental impact greater than that described for wild and scenic river areas. However, the degree of such development should not be to the extent that the water has the characteristics of an impoundment for any significant distance.

Future construction of impoundments, diversions, straightening, rip-rapping, and other modification of the waterway or adjacent lands would not be permitted except in instances where such developments would not have a direct and adverse effect on the values for which that river area was included in the national system as determined by the Secretary charged with the administration of the area. In the case of rivers added to the national system pursuant to Section 2(a)(1), such construction could result in a determination by the Secretary of the Interior to reclassify or withdraw the affected river area from the system.

● Management objectives.

Management of recreational river areas should be designed to protect and enhance existing recreational values. The primary objectives will be to provide opportunities for engaging in recreation activities dependent on or enhanced by the largely free-flowing nature of the river.

Campgrounds and picnic areas may be established in close proximity to the river, although recreational river classification does not require extensive recreational developments. Recreational facilities may still be kept to a minimum, with visitor services provided outside the river area.

Adopted:

*Harrison Lorsch* 2-2-70  
Department of the Interior (Date)

*Edward P. Cliff* 2-3-70  
Department of Agriculture (Date)

Attributes and management objectives of three river classifications for inclusion in the National Wild and Scenic River System

	Wild	Scenic	Recreation
Attributes	<p>1. Free-flowing. Low dams, diversion works or other minor structures which do not inundate the natural riverbank may not bar consideration as wild. Future construction restricted.</p> <p>2. Generally inaccessible by road. One or two inconspicuous roads to the area may be permissible.</p> <p>3. Shorelines essentially primitive. One or two inconspicuous dwellings and land devoted to production of hay may be permitted. Watershed natural-like in appearance.</p> <p>4. Water quality meets minimum criteria for primary contact recreation except where such criteria would be exceeded by natural background conditions and esthetics <sup>2/</sup> and capable of supporting propagation of aquatic life normally adapted to habitat of the stream.</p>	<p>1. Free-flowing. Low dams, diversion works or other minor structures which do not inundate the natural riverbank may not bar consideration. Future construction restricted.</p> <p>2. Accessible by roads which may occasionally bridge the river area. Short stretches of conspicuous or longer stretches of inconspicuous and well-screened roads or railroads paralleling river area may be permitted.</p> <p>3. Shoreline largely primitive. Small communities limited to short reaches of total area. Agricultural practices which do not adversely affect river area may be permitted.</p> <p>4. Water quality should meet minimum criteria for desired types of recreation except where such criteria would be exceeded by natural background conditions and esthetics <sup>2/</sup> and capable of supporting propagation of aquatic life normally adapted to habitat of the stream, or is capable of and is being restored to that quality.</p>	<p>1. May have undergone some impoundment or diversion in the past. Water should not have characteristics of an impoundment for any significant distance. Future construction restricted.</p> <p>2. Readily accessible, with likelihood of paralleling roads or railroads along river banks and bridge crossings.</p> <p>3. Shoreline may be extensively developed.</p> <p>4. Water quality should meet minimum criteria for desired types of recreation except where such criteria would be exceeded by natural background conditions and esthetics <sup>2/</sup> and capable of supporting propagation of aquatic life normally adapted to habitat of the stream or is capable of and is being restored to that quality.</p>
Management objectives	<p>1. Limited motorized land travel in area.</p> <p>2. No unharmonious or new habitations or improvements permitted.</p> <p>3. Only primitive-type public use provided.</p> <p>4. New structures and improvement of old ones prohibited if not in keeping with overall objectives.</p> <p>5. Unobtrusive fences, gauging stations and other management facilities may be permitted if no significant adverse effect on natural character of area.</p> <p>6. Limited range of agriculture and other resource uses permitted.</p>	<p>1. Motorized vehicles allowed on land area.</p> <p>2. No unharmonious improvements and few habitations permitted.</p> <p>3. Limited modern screened public use facilities permitted, i.e. campgrounds, visitor centers, etc.</p> <p>4. Some new facilities allowed, such as unobtrusive marinas.</p> <p>5. Unobtrusive fences, gauging stations and other management facilities may be permitted if no significant adverse effect on natural character of area.</p> <p>6. Wide range of agriculture and other resource uses may be permitted.</p>	<p>1. Optimum accessibility by motorized vehicle.</p> <p>2. May be densely settled in places.</p> <p>3. Public use areas may be in close proximity to river.</p> <p>4. New structures allowed for both habitation and for intensive recreation use.</p> <p>5. Management practice facilities permitted.</p> <p>6. Full range of agriculture and other resource uses may be permitted.</p>

<sup>1/</sup> To be used only in conjunction with the text.

<sup>2/</sup> Federal Water Pollution Control Administration's Water Quality Criteria, April 1, 1968.

February 1970

EXHIBIT 9

**THE  
ALLAGASH  
WILDERNESS  
WATERWAY**

---

**April, 1970**

## FOREWORD

This report is presented for the purpose of including the Allagash Wilderness Waterway, a state controlled river, in the Wild and Scenic River System pursuant to the Wild and Scenic Rivers Act of October 2, 1968 (P.L. 90-542). The act designates the Allagash Wilderness Waterway as one of the rivers which, upon application of the Governor of the State of Maine, may meet the criteria for inclusion in the system.

This report was prepared by the Maine State Park and Recreation Commission to support the Governor's application for this purpose. Detailed information and the boundary plan are on file with the Secretary of the Interior and the Maine State Park and Recreation Commission.

## THE ALLAGASH A WILD RIVER

Approximately 85 miles of the Allagash River with the several lakes and ponds in its watercourse have been established as the Allagash Wilderness Waterway by virtue of an act passed by the Maine State Legislature and signed into law on February 3, 1966, and effective May 11, 1966 (Chap. 496, 1965 Public Laws). The intent of this legislation sets forth that this watercourse shall forever be maintained and operated in its wild condition to provide a wilderness canoe experience.

The entire Allagash region is comprised of some 1.8 million acres in the northwestern Maine which is drained by the river of the same name. Today, fifth and sixth growth forest surrounds some 40 lakes and ponds and innumerable streams and brooks, and the region remains a stalwart wilderness forest.

The State of Maine, by and through the Maine State Park and Recreation Commission has acquired fee simple title to the 400-800 foot restricted zone adjacent to the high water mark for the entire length of the watercourse as prescribed by the act creating the "Waterway." This places some 25,000 acres in State ownership to be maintained and operated in a wild state. In addition, the State of Maine, by virtue of the act, has control over all operations and developments beyond the restricted zone a distance of one mile from the high water mark. This area is referred to as the outer zone.

These two zones combined with approximately 33,000 acres of water places some 200,000 acres under State control.

---

*Continued...*

## HISTORY

In the late 1700's and early 1800's, vast sections of Maine's forest land changed hands many times as investors tried and failed in attempts to entice farmers to settle in substantial numbers.

Although many of our present villages and towns in central and North central Maine were first founded by people responding to this pioneer appeal, their numbers were too few to have any appreciable "farm land" effect upon the value of the surrounding areas, most of which still belonged to the commonwealth of Massachusetts.

It was during these early colonial and post-colonial times that a number of very remote, scattering individual farms were hewed out of the wilderness by the adventurous "explorer" type of pioneer -- Army veterans with land grants, in some cases; strong, individualistic people who either did not want nearby neighbors, or who were searching for a "Utopia." Many of them found their private Utopia along the Allagash.

It was also during the 1700's that a tremendous stand of Eastern white pine was reaching ripe maturity in the valleys of the Penobscot, Allagash, and St. John Rivers; pine deposited there by some freak or whim of Mother Nature, for this was not pine country.

The specie would not regenerate itself except under the most optimum conditions.

Until the 1830's, ownership of the bulk of these "wild lands" was retained by Maine and Massachusetts, under a separation agreement. In the 1830's, the pressure from many individuals for land grants, statehood financial problems, plus the failure of Massachusetts to hold up their end of the separation agreement, prompted the legislature of both states to sell all the land they owned except the public reserved lots.

The new owners of the wildlands, including the Allagash River Valley, were observant businessmen, and two things became apparent to them in the mid 1800's; the future of the Northern Maine forest lay not in pine, but in spruce; a tree which, over the thousands of years of its existence, had completely fitted itself to this soil and climate. It re-seeded and regenerated without assistance, it was a fast growing tree after being released by the removal of the towering pines and it could be manufactured into excellent lumber.

The second item recognized by the private owners of the Allagash lands was that the future of the area lay not in people, towns, farms, etc.; but a forest environment based on the production of wood.

In 1841, a dam was built at the outlet of Chamberlain Lake, raising the level of the lake and sending it spilling over into the Penobscot by way of "Telos cut" and Webster Lake. This was the scene of the "Telos War," a dispute over driving rights and toll charges at Telos Dam. Also, by virtue of a dam at Churchill and locks at Chamberlain, logs downriver from Chamberlain were floated into the Penobscot. Millions of board feet of Allagash lumber came to Bangor by that route.

Logging was done almost entirely during the winter months when snow and ice made skidding easier, and it was necessary to move small armies of men into the woods to get the logs out in a short few months.

In the late 1800's, the Allagash became popular as a wilderness canoe trip; a real adventurous expedition in those days.

For the thousands who have made the canoe journey, it has offered an opportunity for trips of 145 miles spread over three or four weeks or an 85 mile venture of ten days to two weeks. The longer route stretches from Northeast Carry on the upper end of Moosehead Lake to St. Francis on the St. John while the shorter starts at Telos Lake.

Flowing north, the Allagash River takes shape after the canoeist has paddled up Telos, Eagle, Chamberlain and Churchill lakes to Chase

Rips. Even on down the river the journey is broken up by other beautiful lakes---Umsaskis and Long as well as Round Pond. Near journey's end is Allagash Falls. The watershed offers several side trips, too, which can take the traveler off the main route.

It was also during the late 1800's that a firm <sup>?</sup> policy was established of protecting the esthetic quality of the forest; of allowing no development of facilities for transients which would mar or detract from the natural, wild aspect.

At the turn of the century, an endless cable tramway was constructed to speed up delivery of logs from Eagle-Churchill Lakes to Chamberlain and the Penobscot. Remains of this system are still visible at "Tramway Farm."

It was also in this period that paper mills made their appearance in Maine. In 1925, a standard gauge railroad was built, beginning at the Tramway Farm on Eagle Lake, for the purpose of hauling pulpwood from Allagash waters to the Penobscot. This was used to some extent for 10 years, and remnants of the locomotives, railroad and trestle across the West end of Chamberlain are still to be seen.

## PHYSICAL FEATURES

In its entire length of 85  $\pm$  miles, the Allagash Wilderness Waterway has a vertical drop of 420 feet. Essentially, the watercourse is free-flowing and the water is of high quality.

There are three small dams of timber crib construction which do no form impoundments which detract from the wilderness character of the waterway and are of historic significance in the development of the logging industry of the region.

Churchill dam, which is owned by the State of Maine, has a head of 8  $\pm$  feet. This dam has been rebuilt and is operated by the State for the primary purpose of controlling water flow to allow for optimum canoeing throughout the entire recreation season.

Telos and Lock Dams both have heads of 5  $\pm$  feet and are both owned by the Bangor Hydro Electric Company. This company operated these dams for the primary purpose of water storage. This company has agreed not to draw down the level of Telos and Chamberlain Lakes during the recreational use season below the normal level.

✓ Access to the "Waterway" is limited to automobiles and float planes. The roads leading to the area are privately owned by the timber companies. The major access points by automobile are located at Telos Landing and West Twin Brook. The primary use of



all other roads in the area is for the transportation of harvested wood. The existing roads will be scarified as soon as practicable and the location of all new roads for these purposes are subject to approval by the State. The policy on these will be to provide the minimum impact on the wilderness character of the "Waterway."

With the exception of the three existing low dams and those structures essential State service, there are no permanent habitations or agricultural lands within the waterway.

The Maine Environmental Improvement Commission has classified the waters of the Allagash watershed as Class B-1. This class is suitable for water contact recreation, for use as potable water supply after adequate treatment, and for a fish and wildlife habitat. There are no sawmills, industries, or other activities within the watershed and the only source of contamination is by natural sources.

## NATURAL FEATURES

Principal big game species found within the Allagash valley include the most important game species in Maine, the white-tailed deer, and the most prized big game trophy in Maine, the black bear. Other big game species include the moose, which is protected, and the caribou, which was re-introduced into Baxter State Park in 1964.

Small game and fur-bearing mammals include the beaver, martin, fisher, otter, mink, muskrat, racoon, and red fox. The bobcat and canadian lynx, both unprotected, are rarely seen.

Upland bird species include the ruffed grouse, spruce grouse, ring-necked pheasant (introduced), american woodcock, and common snipe. The bald eagle and common loon are occasionally found in the region.

Although endowed with many species of fresh water fish, the Allagash is world-noted for its excellent brook trout fishing. Also plentiful are lake trout (togue) and lake whitefish.

An average rainfall of 38 inches and a frost-free period of only 100 days support a climax type of spruce-fir intermixed with a sprinkling of white pine and northern hardwoods (maple, beech, birch).

The valley is predominantly thorndike loams derived from slate, shale, and sandstone till. During the 1700's a tremendous stand of Eastern white pine dominated the Allagash valley. After cutting, the species would not regenerate itself except under the most optimum conditions. The present species of red and white spruce and balsam fir support a thriving wood industry on the lands surrounding the Allagash wilderness waterway.

## LEGISLATION

After World War 2, and in the 1950's, the "population explosion," combined with increasing leisure time, better mobility, more disposable income, etc., began to trigger a change in the environment over large segments of the country. Natural, undeveloped areas began to shrink, and conservation groups began to express the wish that the Allagash River and its environs could be set aside under a plan to preserve its wilderness characteristics.

Concern over the future of the area during the past decade has led to state, federal and private studies. A special study committee of the Maine Legislature summed up this concern in these words early in 1966:

"There has arisen a growing awareness that the wilderness character of this beautiful natural resource is threatened by increased incursions made by a fast growing population demanding more and more recreational facilities and an increased harvesting of the vast forest products by the private owners of the land within the area."

The Allagash legislation was the result of a report by the Allagash-St. John Legislative Study Committee following a study in the interim between the conclusion of the 1965 regular session of the 102nd Maine Legislature and the special session of 1966.

Highlights of the legislation creating the "Waterway" include:

- a) Establishment of a park about 85 miles long and varying in width from a minimum of 2 miles along the Allagash stream and river and to one mile deep from the shoreline of lakes and ponds. It would have an approximate area of 200,000 acres---33,000 of which would be water.
- b) Within the "Waterway" would be a "restricted zone" ranging from 400 to 800 feet on either side of the river and stream and back from the shores of lakes and ponds. Outside this "restricted zone" but still within the waterway, controlled harvesting of wood would be allowed.
- c) All camps, private and public, within the restricted zone would be purchased but it would be possible to lease commercial sporting camps (there were only three) back to owners or others for operation.
- d) From Lock Dam (between Chamberlain and Eagle lakes in the southern portion of the proposed park) on downstream to the confluence of Allagash River and West Twin Brooks, only canoes (including square stern) would be allowed with power of up to 10 h.p. per canoe permitted. On Telos and Chamberlain lakes at the southern end of the waterway, recreational activities would be controlled but no restrictions placed on the type of boat or size of motor. Allagash Lake and Allagash Stream are restricted to use of canoe and paddle only.

The second item enacted by the same legislative session authorized a \$1.5 million dollar bond issue to be matched by federal funds. This bond issue was ratified by the voters of the State of Maine, and the federal funds were realized from the Land & Water Conservation Fund.

## POLICY & ADMINISTRATION

The purposes and philosophy contained in the Legislation establishing the Allagash Wilderness Waterway clearly indicate that this area is to be forever maintained and operated as a wilderness canoe experience. In order to carry out this philosophy, the State Park and Recreation Commission has already adopted and will continue to revise policies which it believes assists in carrying out the Legislative intent as spelled out in the Act.

To assist in determining policies, etc., the Commission has already appointed an Advisory Committee of seven (7) individuals representing the various interests involved in the use and management of the Waterway. It includes a major land owner, a private airplane pilot, a conservationist, a member of the Maine State Legislature, an owner of one of two sporting camps and a private promoter of organized trips. Several meetings of this Advisory group together with deliberations by the Commission have resulted in the following policies to maintain the wilderness character.

1. Discontinuance of all private woods roads as their usefulness ceases to the woods operator except that at the two (2) ends of the Waterway, Telos Lake and Allagash Village. If the Realty Road continues to cross at the middle of the Waterway as it now does, then strict control or access at this point will be maintained.
2. All existing camp sites will be maintained in a wilderness character with a proper facility for human waste provided. A rustic fireplace site delineated possibly with rustic materials for fireplace construction, small table made of rough wood may also be provided.

3. New camp sites will be located throughout the Waterway in an effort to spread out use.
4. An attempt will be made to locate certain sites that are adaptable for large groups (over 3 canoes) and facilities provided here will be rustic in nature and suitable for larger groups of users.
5. All camp sites will endeavor to identify and locate suitable drinking water.
6. As the new sites are put into use to distribute the load, a continuing appraisal will be made to determine as nearly as possible just how many canoes can use the Waterway at one time without destroying its wilderness experience. When the figure is determined, then the Waterway will go onto a reservation system for both individual and commercial users. The conditions and restrictions involved in a reservation system will be determined at a later date.
7. In all probability, before the reservation system is adopted, a fee system for use will be instituted (presently all users are registered but at no fee).
8. Dump sites at individual camp sites have not worked out for various reasons. Effective with the summer of 1970, all users of the Waterway will be expected to carry away from the camp site all of their non-burnable rubbish. Trash bags will be provided and dumping stations for these bags will be indicated all along the Waterway and should be located so frequently that no one will need to carry their rubbish more than one (1) or two (2) days.

It is the thinking of the Commission and its Advisory Committee that if users are not willing to take the Allagash trip on terms and conditions outlined above, then they should not undertake the Allagash trip.

NOTICES

It is ordered, That the evidentiary hearing in this proceeding shall resume in the Van Deusen Auditorium of the City Library System, 315 South Rose Street, Kalamazoo, Mich., at 9:30 a.m. on Tuesday, July 21, 1970.

Issued: July 14, 1970, Germantown, Md.

ATOMIC SAFETY AND LICENSING BOARD,  
SAMUEL W. JENSCH,  
Chairman.

[F.R. Doc. 70-9176; Filed, July 16, 1970; 8:49 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management  
ALASKA

Notice of Filing of Plat of Survey

July 10, 1970.

1. Plat of survey of the land described below will be officially filed in the Fairbanks District and Land Office, Fairbanks, Alaska, effective 10 a.m., August 14, 1970.

FAIRBANKS MERIDIAN

T. 6 S., R. 7 W.,  
Sec. 6, all,  
Sec. 7, all,  
Sec. 18, all,  
Sec. 19, all,  
Sec. 30, all,  
Sec. 31, all.

Containing an aggregate of 3,696.14 acres.

2. The area surveyed is located about 10 miles south of Nenana, Alaska. The terrain is nearly level with a gentle slope to the North. The land is poorly drained, and has many swamps, marshes, small creeks and ponds. The land has dense stands of scrub spruce, birch and tamarack, with heavy thickets of alder and willow brush. The topsoil is peat, overlying frozen, silty clay.

3. The public lands affected by this order are hereby restored to the operation of the public land laws, subject to any valid existing rights, the provisions of existing withdrawals, including Public Land Order 4582, dated January 17, 1969, and the requirements of applicable laws, rules and regulations.

4. Inquiries concerning the lands should be addressed to the Manager, Fairbanks District and Land Office, Post Office Box 1150, Fairbanks, Alaska 99701.

ROBERT C. KRUMM,  
Manager, Fairbanks District  
and Land Office.

[F.R. Doc. 70-9141; Filed, July 16, 1970; 8:46 a.m.]

OUTER CONTINENTAL SHELF OFF LOUISIANA

Oil and Gas Lease Sale

July 15, 1970.

The competitive oil and gas lease offering of blocks on the Outer Continental

Shelf off Louisiana, scheduled for July 21, 1970, and announced in the FEDERAL REGISTER on Saturday, June 20, 1970, is hereby amended as shown below:

The following tracts, as described in the FEDERAL REGISTER on June 20, 1970, are withdrawn and deleted from the lease offering:

LOUISIANA  
OFFICIAL LEASING MAP, LOUISIANA MAP NO. 1  
(Approved June 8, 1964, Revised July 22, 1966, April 2, 1968)

Wild Common Area

Tract No.	Block	Description	Acres
La 284	28	N3, N15, N49, S15	2,620

OFFICIAL LEASING MAP, LOUISIANA MAP NO. 2  
(Approved June 8, 1964, Revised April 28, 1966, July 22, 1968)

Strip Shovel Area

La 287	37	E4, N6, E10, S10, S15, S20, S25, S30, S35, S40, S45, S50, S55, S60, S65, S70, S75, S80, S85, S90, S95, S100	306.5
	38	S15, S20, S25, S30, S35, S40, S45, S50, S55, S60, S65, S70, S75, S80, S85, S90, S95, S100	

BOYD L. RASMUSSEN,  
Director,  
Bureau of Land Management.

Approved: July 15, 1970.

HARRISON LOESCH,  
Assistant Secretary  
of the Interior.

[F.R. Doc. 70-9273; Filed, July 16, 1970; 9:05 a.m.]

Office of the Secretary  
ALLAGASH WILDERNESS  
WATERWAY, MAINE

Notice of Approval for Inclusion in National Wild and Scenic Rivers System as State Administered Wild River Area

Pursuant to the authority granted the Secretary of the Interior by section 2 of the Wild and Scenic Rivers Act (82 Stat. 906, 907) and upon proper application of the Governor of the State of Maine, the Allagash Wilderness Waterway, Maine, is hereby designated a State administered wild river area of the National Wild and Scenic Rivers System.

The application which contains the management and development plan for the Allagash Wilderness Waterway submitted by the State of Maine has been evaluated by this Department. It has been determined that the entire Allagash Wilderness Waterway meets the requirements for classification as a wild river area under the provisions of the Wild and Scenic Rivers Act and the supplemental guidelines adopted by this Department and the Department of Agriculture in February 1970.

\* Copy filed with the Office of the Federal Register as part of the original document. Copies are also available at Bureau of Outdoor Recreation, Department of the Interior, Washington, D.C. 20240.

The application has been reviewed by the Secretary of Agriculture, the Secretary of the Army, the Chairman of the Federal Power Commission, the Director of the Water Resources Council, the Chairman of the New England River Basins Commission and heads of other affected Federal departments and agencies. Their comments stated there were no conflicts and offered no objections to inclusion of the Allagash Wilderness Waterway in the National Wild and Scenic Rivers System as a State administered wild river area.

The following is my evaluation of the management and development plan for the Allagash Wilderness Waterway submitted by the State of Maine:

ALLAGASH WILDERNESS WATERWAY, MAINE  
EVALUATION FOR INCLUSION IN THE NATIONAL WILD AND SCENIC RIVERS SYSTEM IN ACCORD WITH THE WILD AND SCENIC RIVERS ACT (82 STAT. 906) AS A STATE ADMINISTERED WILD RIVER AREA

1. The Allagash Wilderness Waterway is specifically identified in section 2(a)(ii) of the Wild and Scenic Rivers Act as being an outstandingly remarkable free-flowing stream which, with its immediate environs, would be a worthy addition to the National Wild and Scenic Rivers System.

2. On May 11, 1966, the Allagash Wilderness Waterway Act, Title 12, Maine Rev. Stat. Ann., sec. 661 et seq. became effective. That Act:

a. Established the State policy to preserve, protect, and develop the natural scenic beauty and unique character, wildlife habitat and wilderness recreational resources of the Allagash Wilderness Waterway for this generation and all succeeding generations; and declared such policy is in the public interest, for the public benefit, and the good order of the people of Maine.

b. Established 400-800-foot restricted zone from the shores of the watercourse which has been purchased in fee title by the State to be maintained and administered in a wild state.

c. Provided permanent control of all land uses outside the restricted zone and within 1 mile of the high watermark of the watercourse.

d. Provided permanent and exclusive administration of the entire watercourse by the Maine State Park and Recreation Commission.

3. The entire Allagash Wilderness Waterway has been designated in a manner consistent with a Wild River Area.

4. The entire Allagash Wilderness Waterway is permanently administered without expense to the United States.

5. The entire Allagash Wilderness Waterway meets the criteria of a Wild River Area established by the Wild and Scenic Rivers Act, and the Guidelines for Evaluating Wild, Scenic and Recreational River Areas Proposed for Inclusion in the National Wild and Scenic Rivers System \* \* \* February 1970 as follows:

a. *Impoundments.* There are three small dams within the Allagash Wilderness Waterway:

- (1) Telos Dam 5± feet of Head.
- (2) Lock Dam 5± feet of Head.
- (3) Churchill Dam 8± feet of Head.

These existing structures do not form impoundments which distract from or disrupt the wilderness character of the waterway and are of historic significance in that they portray the development of the logging industry in the northeastern United States. Originally these structures permitted the Allagash and Penobscot Rivers to be used as a principle route for transporting timber to the sawmills. Wood is now trucked to the mills. Churchill Dam has been rebuilt and is operated for the primary purpose of controlling water flows for optimum canoeing throughout the entire recreation season. Telos Dam and Lock Dam are operated by Bangor Hydro Electric Co. for water storage. The operation of all three dams is governed by the policy established by the State of Maine in the Allagash Wilderness Waterway, "to preserve, protect, and develop the maximum wilderness character of the watercourse."

b. *Accessibility.* Public access over private roads will be permitted to and along a portion of Telos Lake at the southern end of the waterway and to the northern boundary at West Twin Brook. Existing private roads within the waterway which have been developed for logging purposes will be closed to public use. These private roads do not create a substantial impact on the overall wilderness character of the river. As new timber management plans are prepared, most of these roads will be removed from the immediate river area. There are six established and designated areas for the landing and take-off of passengers and equipment by aircraft:

- (1) Telos Lake at Telos Landing.
- (2) Chamberlain Lake at Nugent's Camp.
- (3) Churchill Lake at its northerly end near Heron Lake.
- (4) Umsaskis Lake at the Forest Warden's headquarters.
- (5) Long Lake at Jalbert's Camp.
- (6) Round Pond (T13, R12) at Jalbert's Camp.

During the winter, snowmobiles are permitted on designated roads, trails, and paths. The Allagash Lake and Stream are closed to all forms of motorized travel including aircraft.

Temporary bridges for short-term logging purposes may be authorized by the State. Any such crossing is designed to provide minimum impact on the wilderness character of the waterway.

c. *Essentially primitive.* The overall character of the Allagash Wilderness Waterway is an outstanding vestige of primitive America. There are no permanent habitations or agricultural lands within the waterway and other than the three existing low dams, there are no diversions, straightening, rip-rapping, or other modifications of the waterway. There is no substantial evidence of man's

intrusion within the 400- to 800-foot restricted zone adjoining the watercourse. The watershed is free also of such evidence within the boundary. All existing structures have been removed except those essential to State service, maintaining water level control, and temporary structures necessary for watercourse crossing and access.

d. *Unpolluted.* There is no data on the existing quality of the water in the waterway. However, there are no sawmills, industries, permanent residences, or other activities of man within the drainage basin of the Allagash Wilderness Waterway which would suggest that the present water quality would not meet or exceed the minimum criteria for aesthetics and primary contact recreation as interpreted in the Federal Water Pollution Control Administration's Water Quality Criteria, April 1, 1968. The Maine Environmental Improvement Commission has classified the Allagash Wilderness Waterway as Class B-1 which is suitable for water contact recreation; for use as potable water supply after adequate treatment; and for a fish and wildlife habitat. A concept of nondegradation will be followed whereby existing high water quality will be maintained to the maximum extent feasible. The waterway supports the propagation of aquatic life, including fish, which are typical of high quality streams in the north woods.

This action of approving the Allagash Wilderness Waterway for inclusion in the National Wild and Scenic Rivers System is fully within the meaning and intent of the provisions of the National Environment Policy Act of 1969 (83 Stat. 852) and Executive Order 11514.

Notice is hereby given that effective July 19, 1970, the Allagash Wilderness Waterway as described herein, is approved for inclusion in the National Wild and Scenic Rivers System as a wild river area to be administered by the State of Maine.

WALTER J. HICKEL,  
Secretary of the Interior.

JULY 13, 1970.

(F.R. Doc. 70-8231; Filed, July 16, 1970;  
8:52 a.m.)

#### PRESERVATION, USE AND MANAGEMENT OF FISH AND WILDLIFE RESOURCES

##### Notice of Proposed Policy Statement on Intergovernmental Cooperation

The Secretary of the Interior has developed a statement of policy to strengthen and support the missions of the various States and the Department of the Interior in the cooperative preservation, use and management of the Nation's fish and wildlife resources.

This statement, as set forth below, is published to solicit public comment. Within 30 days of the publication of this notice in the FEDERAL REGISTER, interested persons may submit their comments directly to the Secretary of the Interior, Washington, D.C. 20240.

It is proposed, after consideration of any comments received, to publish the following as a policy statement of the Department of the Interior:

#### REGULATION OF THE SECRETARY OF THE INTERIOR RELATING TO CERTAIN RESPONSIBILITIES OF INTERIOR AGENCIES AND THE STATES IN THE PRESERVATION, USE AND MANAGEMENT OF THE NATION'S FISH AND WILDLIFE RESOURCES

The Secretary of the Interior recognizes that fish and wildlife resources must be maintained for their aesthetic, scientific, recreation and economic importance to the people of the United States, and that because fish and wildlife populations are totally dependent upon their habitat, the several States and the Federal Government must work in harmony for the common objective of developing and utilizing these resources. It is the policy of the Secretary of the Interior further to strengthen and support, to the maximum extent possible, the missions of the States and the Department of the Interior in the attainment of this objective.

The effective husbandry of such resources requires the cooperation of State and Federal government because:

(a) The several States have the authority to control and regulate the capturing, taking and possession of fish and resident wildlife by the public within State boundaries;

(b) The Congress, through the Secretary of the Interior, has authorized and directed to various Interior agencies certain responsibilities for the conservation and development of fish and wildlife resources and their habitat.

Accordingly, the following procedures will apply to all areas administered by the Secretary of the Interior through the National Park Service, Bureau of Sport Fisheries and Wildlife, Bureau of Land Management, and Bureau of Reclamation (hereinafter referred to as the Federal agencies). These Federal agencies will:

1. Within their statutory authority, institute fish and wildlife habitat management practices in cooperation with the States which will assist the States in accomplishing their respective, comprehensive, statewide resource plans;

2. Permit public hunting, fishing, and trapping within statutory limitations and in a manner compatible with the primary objectives for which the lands are administered. Such hunting, fishing, and trapping and the possession and disposition of fish, game, and fur animals shall be conducted in all other respects within the framework of applicable State laws, including requirements for the possession of appropriate State licenses or permits. The Federal agencies may, after consultation with the States, close all or any portion of land under their jurisdiction to public hunting, fishing, or trapping in order to protect the public safety, to prevent damage to Federal lands or resources thereon, and may impose such other restrictions as are necessary to comply with management objectives;

**04-059 DEPARTMENT OF CONSERVATION  
BUREAU OF PARKS AND LANDS  
CHAPTER 2 - RULES & REGULATIONS FOR THE ALLAGASH WILDERNESS WATERWAY**

The following rules and regulations are established by the Bureau of Parks and Lands pursuant to the provisions of the Maine Revised Statutes Annotated, Title 12, Section 673.

**A. REGISTRATION:** each party using the Waterway must register at the first opportunity.

**B. CAMPING FEE:** the Bureau shall charge a reasonable fee for persons camping overnight, as approved by the Governor.

**C. PARTY SIZE\***

1. Groups of 13 or more people of any age, including leaders and/or guides, are prohibited from using the Waterway without a valid oversized group permit. Groups who arrive to use the waterway that exceed this limit will be:
  - A. Separated upon arrival in the Waterway; and
  - B. Not allowed to share equipment or campsites.
2. Organizations which sponsored groups larger than 12 people prior to 1974 may be eligible for an oversized group permit which will allow them to have no more people than the largest group they registered in the past 3 seasons. They cannot be granted permits for more trips than they had in any of the past 3 seasons.
  - \* Trip leaders of organized children's camp groups need a Trip Leader Permit obtainable from the Maine Department of Inland Fisheries and Wildlife, State House Station 41, Augusta, ME 04333.

**D. CAMPING**

1. Camping is prohibited except at authorized campsites. Authorized campsites are marked as indicated on the Waterway brochure and may consist of a number of individual cells of picnic tables and fireplaces.
2. Camping is prohibited in parking areas with the following exceptions: Chamberlain Thoroughfare Bridge, and Umsaskis Thoroughfare from October 1st to May 15th. (See winter exceptions to the rules and regulations on the reverse side for the Chamberlain Thoroughfare Bridge Parking Lot.)
3. Will be allowed on consecutive nights on any campsite if, in the judgment of the Bureau as represented by its authorized employees, such use is not an inconvenience to other users of the Waterway.

**E. CUTTING** of live trees is prohibited.

**F. OPEN FIRES** will be allowed only in authorized fireplaces on official campsites. No person shall build fireplaces in addition to those provided by the Bureau. When ground is snow covered, fires should be built in authorized fireplaces on designated campsites or on the ice below the high water mark.

**G. RUBBISH:** unburned rubbish shall not be left in fireplaces. All rubbish which cannot be completely burned must be carried out.

**H. BOATING** (State law requires flotation devices in all watercraft.)

1. From the south end of Telos Lake to the north end of Chamberlain Lake there is no restriction on watercraft or motor size.
2. On Allagash Lake and Allagash Stream to the red posts, at the location of the former trestle, only canoes without motors may be used.
3. From Lock Dam north only canoes with or without motors may be used. No motors over 10 hp may be used.
4. A canoe is defined as a form of small watercraft, long and narrow, sharp on both ends or sharp on one end and blunt at the other, usually propelled by paddles or small motors and having no rudder or sails. The width at the widest point shall not exceed 20% of the craft's overall length, nor shall the transom, if any, exceed 26 inches in width. Measurement shall be the outside of the hull but shall not include gunwales, rub rails or spray rails, if any. Inflatable watercraft are not allowed.

**WATER-SKIING** or a similar activity is prohibited on all waters.

**SWIMMING** and diving from Churchill Dam is prohibited. Swimming from other structures such as bridges may be hazardous. Caution for underwater objects is recommended.

**ACCESS TO THE ALLAGASH WILDERNESS WATERWAY**

1. Access by motor vehicle shall be prohibited except at the following locations: Chamberlain Thoroughfare Bridge, T6 R11; Churchill Dam, T10 R12; Bissonnette Bridge, T10 R12; Umsaskis Launching Area, T11 R13; Round Pond Bridge, T13 R12; Michaud Farm, T15 R11; Twin Brook, Allagash Plantation. For the purposes of this rule, access by motor vehicle shall be defined as the stopping or standing of a motor vehicle and/or a trailer for the purpose of loading or unloading people, watercraft, baggage or provisions.
2. Parking of vehicles within the restricted zone shall be prohibited except at designated sites at the following locations: Chamberlain Thoroughfare Bridge, T6 R11; Churchill Dam, T10 R12; Umsaskis Thoroughfare, T11 R13; Michaud Farm, T15 R11.
3. Equipment including canoes and other watercraft(s) shall not be left unattended except in an emergency situation.
4. Aircraft may land and take off, for the purposes of embarking or disembarking passengers, baggage or provisions, only at the following locations: Telos Landing, T5 R11; Chamberlain Thoroughfare Bridge, T6 R11; Nugent's Camps, T7 R12; Lock Dam, T7 R13; The Jaws between Churchill Lake and Heron Lake, T9 R12; Camp Drake on Umsaskis Lake, T11 R13; Jalbert's Camps, Round Pond, T13 R12. Aircraft are not permitted to land or take off at any other locations within the one mile zone of the Allagash Wilderness Waterway except with the prior approval of the Bureau. Otter Pond (T8 R14) is within the one mile zone.
5. John's Bridge (T9 R13). The launching or retrieving of watercraft(s), or other recreational equipment, the embarking

or disembarking of passengers, baggage or provisions from the shores of the thoroughfare within 500 feet of John Bridge is prohibited.

- 6. Trails within the Allagash Wilderness Waterway used for the purpose of providing an access to the Waterway shall be prohibited, except those that have been specifically approved by the Bureau of Parks and Lands.
- 7. Allagash Lake Access. The operation of motor vehicles within the one mile zone of the Allagash Wilderness Waterway in T7 R14 and T8 R14 is prohibited from May 1 to September 30.
- 8. **Special winter access points:** see section on Winter rules and regulations.
- L. **POWER EQUIPMENT** except outboard motors, as noted in Rule H, may not be used without prior approval from the Bureau. The possession of power saws is prohibited at all times. Generators are allowed in the Chamberlain Thoroughfare Bridge Parking Lot during the winter camping season only.
- M. **CONDUCT** detrimental to the safety and well being of person or persons is prohibited.
- N. **CONDUCT** which would change or destroy the natural beauty and wilderness character of the Waterway is prohibited.
- O. **ARTIFACTS** and other material are a part of the Allagash Wilderness Waterway and are not to be removed.
- P. **FIREARMS** may be transported across the Restricted Zone of the Allagash Wilderness Waterway provided that they are securely wrapped in a complete cover, fastened in a case, or carried in at least two pieces in such a manner that they cannot be fired unless the separate pieces are joined together. Firearms shall not be discharged, and the Restricted Zone shall be closed to all hunting from May 1 to October 1 each year.
- Q. **THE DISCHARGE OF WASTES** including soaps and detergents into the waters of the Allagash Wilderness Waterway is prohibited.

**WINTER EXCEPTIONS TO RULES & REGULATIONS**

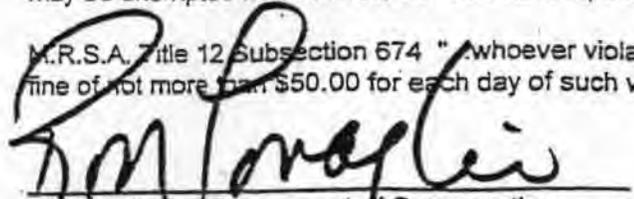
- A. **ACCESS** there shall be no land access by motorized vehicles including but not limited to: snowmobiles, ATV's automobiles and trucks to the Allagash Wilderness Waterway during the period of January 1 to March 31, except at the following locations in: T6R11 - Telos Dam and Chamberlain Thoroughfare; T7R11 - Mud Pond Carry and McNally Brook; T7R12 - Indian Stream; T7R13 - Upper Crows Nest and Lock Dam; T7R14 - Island Road Allagash Lake and Carry Trail; T8R13 - Zeigler Trail; T8R14 - Ledge Campsite; T9R12 - Twin Brooks; T10R12 - Churchill Dam; T11R13 - Reality Road; T12R13 - Ross Stream; T13R12 - Blanchette Bridge; T14R12 - Burntland Brook; T15R11 - Michaud Farm and Allagash Plantation - Twin Brook.
- B. **CAMPING FEES** will be in effect from December 1 to April 1.
- C. **SNOWMOBILES** may be used except on Allagash Lake and Allagash Stream.
- D. **POWER ICE AUGERS** may be used on any of the lakes open to ice fishing except Allagash Lake.
- E. **AIRCRAFT** are permitted to land on frozen bodies of water within the Allagash Wilderness Waterway except Allagash Lake.
- F. **ICE FISHING SHACKS** and/or structures used for ice fishing are prohibited within the mile zone of the Waterway from April 3 through November 30. They may be stored in the parking lot at Chamberlain Thoroughfare Bridge with the Supervisor's permission.
- G. **WINTER CAMPING AT CHAMBERLAIN THOROUGHFARE BRIDGE PARKING LOT -**
  - 1. Winter camping at the Chamberlain Thoroughfare Bridge Parking Lot will not be permitted from the 1st Sunday in December to the second Saturday in December. All camping equipment must be removed from the parking lot during this period. Any camping equipment remaining in the parking lot may be subject to removal at the owners expense. The parking lot will be open to campers from 8:00 a.m. on the second Saturday in December to May 15th.
  - 2. Camping spaces in the parking lot will be allotted on a first come first served basis, until the campground capacity is reached. One self-contained camping unit will be allowed per site, per party.
  - 3. Campers must register with the ranger upon arrival. Camping equipment must be set up on the site no later than seven (7) days after registration.
    - A. Individuals who register for campsites in the Chamberlain Thoroughfare Bridge Parking Lot will be held accountable for any damage, or infraction of rules that occur on that site.
  - 4. For those sites designated for monthly use a minimum payment of one months rent will be required at the time of registration. If the camping fee payment is not rendered when it is due, the camping unit may be subject to removal at the owners expense.
  - 5. No camping equipment shall be left on site without first registering.
  - 6. Assignment, subletting and commercial use is not allowed.

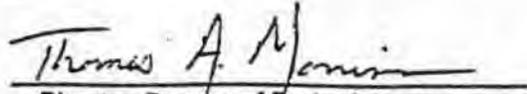
**EXCEPTIONS**

State employees or their representatives in the official conduct of their duties and with prior permission from the Bureau may be exempted from the above rules as adopted under Title 12 Section 673.

**PENALTIES**

M.R.S.A. Title 12 Subsection 674 "whoever violates any rules and regulations of the Bureau....shall be punished by a fine of not more than \$50.00 for each day of such violation.

  
 Commissioner, Department of Conservation

  
 Director, Bureau of Parks & Lands

Author: Tom Cieslinski at DOC

Date: 8/10/98 4:25 PM

Priority: Normal

TO: Tom Morrison, Herb Hartman, Ralph Knoll, Cindy Bastey,

Timothy Caverly at DCN-Parks-North, Tim Hall at DCN-Parks-North

subject: AWW de-designation

As a follow-up to conversations we have had regarding the possibility that the National Park Service could or might de-designate the AWW, and correspondence the Bureau has received from a few individuals regarding whether or not this could happen, I contacted Cassie Thomas of the NPS in Boston, who heads up the federal wild and scenic river program in this region. She said the Park Service's role regarding the designation of the AWW ended when the river was designated in 1970, that the Park Service has never considered de-designation of a river, and that a Wild and Scenic River has never been de-designated. The NPS has been asked this question frequently because individuals occasionally threaten to urge the NPS to de-designate rivers.

She also reminded us that the federal Wild and Scenic Rivers Act was not meant to be an act protecting "wilderness." There are wild, scenic, and recreational provisions within the Act that allow the administering agency to provide a variety of recreational opportunities.

In addition, Ms. Thomas says the NPS has no role in reviewing state management plans, although she has reviewed our plan for information and model purposes only. There are no regulations or guidelines associated with the National Wild and Scenic River Act. Therefore the NPS role is to administer only what is described in the Act, which does not address de-designation of federal or state-administered rivers or the review of state prepared management plans for federally-designated state rivers. Their office does not provide comments regarding state-prepared management plans.

However, the Interior Department has a LAWCON role because LAWCON money was used by the state to acquire the river. So, as stated in the current draft plan, Interior can halt a federally-funded project that threatens the purposes for which the Allagash River was designated.

In summary, it appears that the only permissible or authorized request for de-designation would have to come from the authority which requested designation, namely the Governor of the State.

# COPY

EXHIBIT 13

April 11, 1963

The Honorable Edward P. Cyr  
Maine State Senate  
State House  
Augusta, Maine

Dear Ed:

This will acknowledge receipt of your invitation to comment upon L. D. 115, "An Act Creating an Allagash River Authority for the State of Maine."

I have not had the opportunity to thoroughly study the bill and its implications, but some observations do occur to me as to its effectiveness in serving its own purpose.

I suggest the following observations in this connection:

(1) Presumably, the establishment of such a wilderness area, if it is to be meaningful, should include the Allagash River and adjacent land areas as a contiguous and well defined entity irrevocably dedicated to its maintenance in a wilderness state. The bill does not clearly embrace such an objective. The language of the bill would appear to suggest the possibility of a patch-work system "conservation areas" not necessarily connected. Also, the permanence of the dedication is in doubt in view of the fact that by its terms the bill, if enacted, would terminate June 30, 1965.

as proposed

(2) If the Allagash River Authority ~~was intended to create~~ under the terms of the bill, is to effectively implement the foregoing objective, it must obviously have some authority to acquire land, or, at least, to control the lands so dedicated. The amount of the appropriation provided clearly rules out any possibility of acquisition by purchase or eminent domain. In addition, there would not appear to be authority to acquire by eminent domain. Thus, the Authority, for all practicable purposes, would be in a position to acquire lands only by voluntary gift of the landowners. Obviously there is a question as to whether the kind of area to which I refer above, and dedicated as suggested, could be acquired by voluntary gift.

# COPY

The Honorable Edward P. Cyr

- 2 -

April 11, 1963

Clearly, then, the bill reduces itself to a simple effort to explore for two years the possibility of acquiring by negotiation with the landowners, a meaningful wilderness area on the Allagash River by gift or purchase (if the legislature should subsequently appropriate sufficient funds). The legislature, of course, must evaluate the possibilities that such an exploration could be fruitful.

With all good wishes, I am

Sincerely,

Edmund S. Muskie  
United States Senator

E  
S  
M  
:  
N  
C  
O

*CONFIDENTIAL*DRAFT

JFShanklin:jed

12/16/63

*real change and  
OK'd to J. F. Shanklin  
12/17/63*

Dear Governor Reed:

You will recall that while I was in Maine last August I verbally offered to send Director Crafts of the Bureau of Outdoor Recreation to meet with the Allagash River Authority to discuss the proposed Allagash National Riverway report. On August 16 I confirmed this suggestion, and we mutually agreed on October 24 for such a conference.

Concurrently I confirmed a similar verbal offer which I had made to Mr. John Maines, <sup>Vice President of the Great Northern Company and Chairman</sup> of The Association for Multiple Use of Maine Timberlands.

On the morning of October 24, Director Crafts and two principal assistants met with the Allagash Authority in Augusta, and that afternoon they held a separate meeting with The Association for Multiple Use. At this time, I should like to trace briefly the substance of these two meetings.

Director Crafts informs me that the meeting with the Authority was amiable and informative and that he was impressed with the <sup>constructive</sup> ~~public interest~~ attitude of the members and their desire to discuss substantive matters. It appears that this initial meeting served its basic purpose in an excellent manner.

A different attitude was encountered in the afternoon meeting with the timber landowners. I am advised that the landowners <sup>for the most part,</sup> were <sup>and</sup> unresponsive, <sup>and</sup> in fact, rather unfriendly, <sup>They</sup> and did not seem very knowledgeable about, nor did they desire to talk over, the substantive aspects of our recommendations. The main point which was made over and over again was that the Federal government need not concern itself with the Allagash River, and that the landowners were perfectly capable of preserving the area.

Shortly before our conference with the timber landowners, the Great Northern Paper Company had announced that they would conduct cutting operations close to the edge of the waterway near Churchill Lake. This action on the part of one of the principal landowners in the area raises grave doubts in the public mind about the ability or desire on the part of the landowners to <sup>Conserve</sup> keep the Allagash <sup>Riverway</sup> in its primitive state. <sup>It</sup> Furthermore is contradictory to a statement made earlier by The Association for Multiple Use of its intention not to cut timber close to the water's edge. <sup>Coming, as it did, prior to formal discussions between the interested parties, this action shook my confidence in the good faith of the landowners in their avowed interest</sup>

9 In a letter of September 23, which has been made public, to Lawrence Kugleman, Assistant Director of Woodlands, International Paper Company, I reaffirmed my position that this Department is sensitive to the needs of the landowners. I assured him that neither I nor any other members of this Department had any desire to recommend any program on the Allagash which would not consider the needs of the

in discussing with the State Authority and with representatives of the Department of Interior the viewpoint of the Allagash.

landowners in the area. In this connection, I should like to emphasize the highly conservative nature of our proposal for Allagash protection. It does not contemplate the taking of a large block of land; Federal acquisition and control would be limited to a ribbon extending not more than a half mile on either side of the river. These protective strips, together with scenic easements to be acquired on lands to remain in private ownership are regarded as the minimum required to assure adequate protection of the natural scene <sup>along the riverway.</sup> However, if we are to consider more fully the actual requirements of the landowners in the conduct of their timber operations, it is <sup>essential</sup> ~~only proper~~ that they be willing to discuss their needs in an objective manner.

In this regard, I should now like to suggest a three-way meeting between the Allagash River Authority, the landowners, and representatives of the Bureau of Outdoor Recreation. If you find this proposal to have merit, I believe we should agree as to an agenda beforehand so that matters open to negotiation, such as the size of the area, the reduction of logging roads and access points, and other items, could be discussed. On the question of control of the area, it is my judgment, and I stand firm on this position, that public ownership and management is the only sure guarantee of the preservation of the Allagash River in perpetuity. I have no inflexible position on the issue of State or Federal ownership and

*management. At the same time, I would not rule this out as an item for discussion, so long as it is not necessary to accept other questions.*

It is hoped that you will be agreeable to this suggestion to hold a three-way meeting some time in the next 90 days. We shall welcome such an opportunity to sit down and discuss our mutual objective of perpetuating ~~a primitive environment~~ and conserving the Allagash as a free-flowing river *in a primitive environment.*

May I suggest that it would be proper for the Allagash River Authority to call such a meeting. This might be an open meeting and I would also suggest that you issue the invitations.

I shall await word from you on this matter.

Sincerely yours,

Secretary of the Interior

Hon. John H. Reed  
Governor of Maine  
Augusta, Maine

November 18, 1964

Honorable Austin H. Wilkins  
Forestry Commissioner  
State of Maine  
Augusta, Maine

Dear Austin:

Since returning to Washington I have learned that my answers to questions on the Allagash during the campaign have been distorted in some of the national reports, especially in trade journals. Don told me of his conversation with you and of your interest in my comments. I think it is important to reiterate my position so that there can be no room for misunderstanding.

As you know, both Secretary Udall and I have felt from the beginning that the key issue on the Allagash is the preservation of the riverway as a free-flowing stream in a primitive and, insofar as possible, unspoiled forest area. To be meaningful, such preservation must be in perpetuity. Such a program could be carried out under State or Federal auspices. As the Secretary and I have said on several occasions, we have no preference between the two.

If the State comes up with a program which will preserve the Allagash as well as the Katahdin area has been protected in Baxter State Park, I shall be delighted to support State action. As I see it, the burden is on the State to develop a meaningful program which will truly insure preservation of the area in perpetuity.

I understand the State plan, as advanced by the Allagash Riverway Authority, will be available in the near future. I look forward to seeing it. I know Secretary Udall will be interested in examining it. In making a judgment on the plan we shall use the tests I have outlined here, which Secretary Udall and I have stated in our previous conversations with you and others and in our public statements.

Best wishes,

Sincerely,

Edmund S. Muskie  
United States Senator

# COPY

June 11, 1965

Mr. Malcolm Stoddard  
21 Mayflower Road  
Hallowell, Maine

Dear Max:

Thank you for your letter of June 9 with the copy of your previous letter of April 7.

Of course you now know that the Administration has retreated from its previous position of closing a number of VA hospitals and domiciliaries. As you suggested, perhaps Washington officials were educated a bit as to the needs of people. In any event, after a reappraisal of both cost and human factors, many of the units scheduled for closing will remain in operation. For the future, the Congress is considering legislation pertinent to Congressional review prior to further closings.

With regard to the Allagash, the situation boils down to a situation where we have a comprehensive rather all inclusive federal plan on the one hand and a rather weak State approach on the other. For some time I have been attempting to achieve a compromise between these two extremes. I recently hit upon the approach of amending the Administration's bill for a National Wild River System to include State administered rivers administered under a general plan whose criteria would be approved by the President and the Congress. In this approach, 50 per cent federal funds would complement State monies for acquisition of property, easement, etc. This should help alleviate the problem Austin Wilkins related to you with the paper companies.

I am enclosing extra copies of both the State and Federal approaches which will enable you to make a comparison.

It is always good to hear from you and I certainly apologize for the misplacement of your initial letter.

Sincerely,

Edmund S. Muskie  
United States Senator

# COPY

June 8, 1965

Senator Henry M. Jackson  
Chairman Interior & Insular Affairs  
Committee  
United States Senate  
Washington, D. C.

Dear Snoop:

On May 27 I introduced Amendment No. 217 to S.1446, the Wild Rivers Act.

As you know, the preservation of the Allagash River in my states as a wilderness waterway is a matter of broad national concern. The National Park Service, Bureau of Outdoor Recreation and the State of Maine have each developed proposals for its preservation. There have been basic conflicts between the federal and state approach as well as inherent weaknesses in the state plan. For some time I have been working toward the resolution of these issues.

Recently I developed an approach which in my view will provide a vehicle for the compromise of Federal-State differences on the Allagash and other similar river situations throughout the country. I regret that this approach was not available at the time of your recent hearings on S.1446, but sincerely trust you will give this proposal appropriate consideration prior to Committee clearance of the bill.

The effect of this amendment would be to add to the National Wild Rivers System, State designated and administered wild river areas.

Inclusion of such nationally significant waterways, administered under State authority, would effectively bring the States into compatible partnership with the Federal Government. The preservation of selected rivers recommended by the Governors of the several States and the President and approved by the Congress would be enhanced and the national conservation purposes of the Wild Rivers Act thus furthered.

The amendment provides that the State-Federal partnership in the National Wild Rivers System would be accomplished in this manner. The Governor of a State desirous of administering a National Wild River would present to the President his recommendations for inclusion within the System of such a waterway within his State.

2-  
**COPY**

His recommendations would be supported by a general plan which would assure the President and The Congress that the purposes of the act would be effected in perpetuity. The President would review State proposals and make known his recommendations to the Congress for legislative designation of the wild river area within the National Wild Rivers System.

Funds appropriated to the States from the Land and Water Conservation Fund would be made available to the State for the acquisition of property, rights, or easements necessary for the purposes of the act. Such authorization will provide the financial means for State action and is in full accord with the Land and Water Conservation Fund Act which we passed in the last Congress.

As you well know, the task before this nation in both the development of our natural resources and the preservation of unique wilderness and aesthetic values for the support and enjoyment of tomorrow's generations is a tremendous task. Neither the Federal government nor the States can accomplish these ends alone. I earnestly believe the Federal-State partnership I suggest in this area has merit.

I should be pleased to discuss it further with you.

Sincerely,

Edmund S. Muskie  
United States Senator

cc: Senators Clinton P. Anderson, Alan Bible, Frank Church, Ernest Gruening, Frank Moss, Quentin N. Burdick, Carl Hayden, George McGovern, Gaylord Nelson, Lee Metcalf, Thomas Kuchel, Gordon Allott, Len B. Jordan, Milward L. Simpson and Paul Fanain.

# COPY

EXHIBIT 18

November 3, 1965

Mr. Glenn Mahnken  
Antioch College Union  
Yellow Springs, Ohio

Dear Mr. Mahnken:

I am acknowledging your letter of October 21, 1965, with reference to the proposed Allagash riverway, in Senator Muskie's absence.

I assume from your letter that you have the basic printed material on the various proposals which have been made with reference to the preservation of the Allagash.

The Allagash was not included in the National Wild Rivers bill because of the interest in developing a cooperative state-Federal program which would keep the riverway under state control with financial assistance from the Federal government.

A special study committee of the Maine State Legislature is now reviewing the various proposals on the Allagash and is attempting to come up with a reasonable and practical plan for the region.

The basis for bringing the riverway under public control is that although present owners may be willing to preserve the area, there is no guarantee that this will be continued in the future. It is not intended that the riverway become a park for general use but it will be maintained for wilderness canoe travel.

Thank you for your interest.

Sincerely,

Donald E. Nicoll  
Administrative Assistant to  
Senator Edmund S. Muskie

DEN/mts

**GLOBE SANTA — A mother makes a plea on behalf of three ailing children, B5**

VOLUME 268  
NUMBER 151

50 cents

\*\*\*

# The Boston Globe

TUESDAY, NOVEMBER 28, 2000

CLOUD CONTROL

TODAY: Partly cloudy,  
highs in the 40s

TOMORROW: Mostly cloudy,  
highs in the 40s

HIGH TIDE: 12:24 a.m., 12:24 p.m.  
FULL REPORT: PAGE B

## Maine's Allagash: A river wild, or is it?

By Beth Daley  
GLOBE STAFF

TOWNSHIP 10, RANGE 12, MAINE — It's a good two hours down a bumpy, mud-filled dirt road to get to the Allagash River, where not a house and rarely a person disrupts its tranquility. Standing on the spruce-lined riverbank, it's easy to imagine Henry David Thoreau canoeing down the serene river to chronicle Maine's primitiveness.

Today, the 92 miles of meandering water remains one of New England's last wildernesses, a snaking ribbon of river and shore designated by Congress to be kept "forever in its wild condition."

But, with as many as 14 roads to the river these days, a new parking lot planned and an illegal dam that controls water for canoeists,

some fear the wild is being squeezed right out of its wilderness. Conservationists say the growing number of access points are an open door to the more than 50 million people who are only a day's drive away from the corridor.

"The Allagash experience has been cheapened . . . and it's going to get more so," said W. Kent Olson, former president of American Rivers who charges the state's management of the Allagash Wilderness Waterway has run afoul of federal law that requires it to be kept "essentially primitive."

Olson said the 1970 act of Congress that created the wilderness specifies only two official accesses to the river and the state is bowing to pressure from fishermen and campers who want to reach it more easily.

He said he wants the federal government to study the Allagash corridor to see how Maine has strayed from the original mission to restore the river to its natural state.

"All these accesses do not fit the definition of what the Allagash is supposed to be. The state is supposed to manage the Allagash according to the law, not what everyone wants," Olson said.

But the state says pleasing the public is part of what they should be doing. The number of visitors who historically spent two remote weeks canoeing the length of the Allagash is declining, state officials say. In their place are people who want easier access so they can get at least a taste of the river's tranquility, even if it's only for a day. In 1980,

ALLAGASH, Page E4



GLOBE STAFF

Tim Caverly, former manager of the Allagash Wilderness Waterway, stands near the illegal concrete replacement Churchill timber dam on the river.

EXHIBIT 19

# The Alligash: A river wild, or is it?

► **ALLAGASH**  
Continued from Page E1

1,493 people used the waterway for summer day use and, by 1998, that number had swelled to 7,343. In total, about 50,000 people use the waterway every year.

State officials deny they are running afoul of federal law and say 13 access points to the river is a tiny number compared to the Allagash's almost-100-mile route.

"We are trying to provide a remote, back-country recreational experience," said Tom Morrison, director of the Maine Bureau of Public Lands.

While the federal government designated the river corridor, it is solely managed by the state. In fact, the federal government has had little say in what happens there other than to oversee water resource issues, such as dams. Morrison said the designation doesn't say there can't be more than two roads, only that the state needs to keep the place primitive.

"And, if you talk about it from a philosophical perspective, people

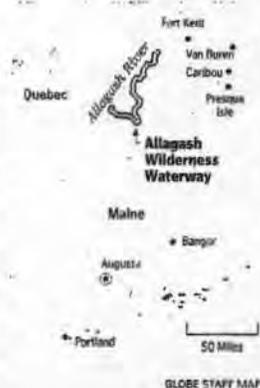
who go there are having that experience," he said.

In many ways, the Allagash is anything but a pristine wilderness. It slices through 3 million acres of a heavily logged forest, with timber operations happening only 500 feet from shore in some places. If three dams on the river weren't there, water levels would be too low for people to canoe down it.

Still, most Mainers consider it the most remote place they can get to and regularly tell stories of their first overnight canoe trip on it or the first time they saw a moose nearby.

"I shot my first deer there when I was 12 years old. My wife and I go there and fish all the time. It's our cup of tea," said Rick Denico, 59. He wants more "reasonable" access to aid fishermen, hunters, campers and canoeists who want to experience the Allagash.

"I would never hurt the river and I don't want 12 boat launches. But the realistic thing is that the waterway was created for every-



one to use within reason."

But others say the waterway was designated as a place where man would be only an occasional visitor. As access gradually increases, they say, the remote experience slowly erodes.

"This is the natural environment at its best," said Tim Caverly, former supervisor of the waterway. "Maine needs this place uncluttered by motorized access and all the things that come with it."

The Allagash wasn't always so popular, although it has a storied place in Maine's heritage. Its remoteness easily convinced Maine residents in 1966 to pass a \$1.5 million bond to develop its "maximum wilderness character." Unlike many of the other majestic rivers in Maine, the Allagash was

pure and had virtually no development near it other than logging camps left over from the heyday of river drives and an occasional sport camp.

In 1970, the entire Allagash gained the distinction of being the first state-managed river in the country to be federally protected as a "wild" river, which makes it "generally inaccessible except by trail."

But there were already roads leading to it, put there by logging companies that own most of the surrounding land. While some roads have grown over, more have been built. And while they are considered private, virtually anyone can use them. Bureau of Public Lands director Morrison said Congress gave the state power to phase out roads near the river and to deny new ones, but "the reality is that they are private roads and their usefulness has not ceased," he said.

There were few complaints over the years about access but, when the state unveiled a new management plan for the Allagash last year and began discussions to create a new parking lot near it, conservationists balked.

One of their biggest contentions is the illegal concrete replacement of the Churchill timber dam, near an old logging camp. The Army Corps of Engineers never gave a needed permit for the

dam's construction, virtually everyone associated with the project agrees. The state is now going through the permit process retroactively.

Olson and others said the concrete dam should be refurbished to look more like the historic timber structure. The whole purpose of the Allagash is to retain a historic feel and the concrete dam is anything but, he said. The National Park Service is now investigating.

"We are very concerned about the dam because it could have an adverse and direct effect on the waterway," said Chris Brown, head of the national designations division of the National Park Service in Washington. But Brown said the access issues around the Allagash are much more complex than simply saying there should or shouldn't be roads.

"It's a wild river and the people that have been on it consider it a wild experience," he said. "At the same time, for a river designated 'wild' under the act, there is probably more access than one would expect."

No issue has illustrated that better in recent years than the controversial and delayed approval two weeks ago of the John's Bridge parking lot. For years, people have illegally parked and launched canoes from the bridge, part of an old logging road that crosses the Allagash about 13 miles from Churchill dam. State officials say the vote to build the 10-car parking lot merely ac-

**'We are trying to provide a remote, back-country recreational experience.'**

**TOM MORRISON**  
Director of the Maine Bureau  
of Public Lands

knowledges that the area is a parking lot in practice, if not on paper. The lot they are building will put cars away from the river's edge so they can't be seen by fishermen or canoeists.

"The real question for us was if this access was going to change the way of life up there," said John Williams, director of the Land Use Regulation Commission. "The parking lot is not drastically changing things there."

Conservationists agree, but say the lot is just another example of the wrong direction the state is going in: Officials should be working to cut off access, not increase it.

And, while many say they aren't against construction of boat ramps and parking lots elsewhere in Maine for people to enjoy, the Allagash needs to be kept as remote as possible as a reminder of the wilderness Maine once was.

"I'm not antiprogress or anti-development, but there are certain areas that should be protected as wilderness regardless," said Theresa S. Hoffman, a Land Use Regulation Commission member who voted against the John's Bridge parking lot proposal.

"We don't have to have boat launches and roads everywhere — especially in a wilderness that is legally determined to be a wilderness. Otherwise, it can stop being one."