

Maine Revised Statutes

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§633

Title 38: WATERS AND NAVIGATION

§634-A

Chapter 5: GENERAL PROVISIONS RELATING TO RIVERS AND STREAMS

Subchapter 1: MILLS AND DAMS

Article 1: ERECTION AND FLOWAGE RIGHTS

Subarticle 1-B: PERMITS FOR HYDROPOWER PROJECTS HEADING: PL 1983, C. 458, §18 (NEW)

§634. Permit requirements

1. Coordinated permit review. Permits required under the following laws are not required by any state agency for projects reviewed or exempted from review under this subarticle: natural resource protection laws, chapter 3, subchapter I, article 5-A; site location of development laws, chapter 3, subchapter I, article 6; and land use regulation laws, Title 12, chapter 206-A. Notwithstanding section 654, the department may attach reasonable conditions consistent with this subarticle concerning the operation of hydropower projects. The commissioner shall give written notice to the Commissioner of Inland Fisheries and Wildlife and the Commissioner of Marine Resources of the intent of any applicant for a permit to construct a dam.











[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §183 (AMD) .]

2. Application. An application for a permit required by section 633 must be made on forms provided by the commissioner and filed with the commissioner. Public notice of the filing must be made as required by the board.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §183 (AMD) .]

3. Application review. Within 10 working days of receiving a completed application, the commissioner shall notify the applicant of the official date on which the application was accepted.

The commissioner shall circulate the application among the Department of Environmental Protection, Department of Agriculture, Conservation and Forestry, Department of Inland Fisheries and Wildlife, Department of Marine Resources, Department of Transportation, Maine Historic Preservation Commission, Governor's Energy Office, Public Utilities Commission and the municipal officials of the municipality in which the project is located. The Governor's Energy Office and the Public Utilities Commission shall submit written comments on section 636, subsection 7, paragraph F. For projects within the jurisdiction of the Maine Land Use Planning

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Commission, the director may request and obtain technical assistance and recommendations from the staff of the department. The Commissioner of Environmental Protection shall respond to the requests in a timely manner. The recommendations of the Commissioner of Environmental Protection must be considered by the commission in acting upon a project application.

[2011, c. 655, Pt. MM, §21 (AMD); 2011, c. 655, Pt. MM, §26 (AFF); 2011, c. 657, Pt. W, §5 (REV); 2011, c. 682, §38 (REV) .]

4. Dam removal. A person intending to file an application for a permit to remove an existing dam must attend a preapplication meeting with the department and must hold a public informational meeting prior to filing the application. The preapplication meeting and the public informational meeting must be held in accordance with the department's rules on the processing of applications.

[2003, c. 134, §2 (NEW) .]

SECTION HISTORY

1983, c. 458, §18 (NEW). 1985, c. 772, §2 (AMD). 1989, c. 309, §3 (AMD). 1989, c. 501, §DD46 (AMD). 1989, c. 890, §SA40,B183 (AMD). 2003, c. 134, §2 (AMD). 2011, c. 655, Pt. MM, §21 (AMD). 2011, c. 655, Pt. MM, §26 (AFF). 2011, c. 657, Pt. W, §5 (REV). 2011, c. 682, §38 (REV).











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§636-A

Chapter 5: GENERAL PROVISIONS RELATING TO RIVERS AND STREAMS

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§636. Approval criteria

The department shall approve a project when it finds that the applicant has demonstrated that the following criteria have been met. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §187 (AMD).]

1. Financial capability. The applicant has the financial capability and technical ability to undertake the project. In the event that the applicant is unable to demonstrate financial capability, the department may grant the permit contingent upon the applicant's demonstration of financial capability prior to commencement of the activities permitted.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §188 (AMD) .]

2. Safety. The applicant has made adequate provisions for protection of public safety.

[1983, c. 458, §18 (NEW) .]

3. Public benefits. The project will result in significant economic benefits to the public, including, but not limited to, creation of employment opportunities for workers of the State.










[1983, c. 458, §18 (NEW) .]

4. Traffic movement. The applicant has made adequate provisions for traffic movement of all types out of or into the development area.

[1983, c. 458, §18 (NEW) .]

5. Maine Land Use Planning Commission. Within the jurisdiction of the Maine Land Use Planning Commission, the project is consistent with zoning adopted by the commission. This criterion does not apply to any project that uses tidal or wave action as a source of electrical or mechanical power.

[2009, c. 615, Pt. F, §4 (AMD); 2011, c. 682, §38 (REV) .]

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6. Environmental mitigation. The applicant has made reasonable provisions to realize the environmental benefits of the project, if any, and to mitigate its adverse environmental impacts.

[1983, c. 458, §18 (NEW) .]

7. Environmental and energy considerations. The advantages of the project are greater than the direct and cumulative adverse impacts over the life of the project based upon the following considerations:

A. Whether the project will result in significant benefit or harm to soil stability, coastal and inland wetlands or the natural environment of any surface waters and their shorelands; [1989, c. 309, §5 (AMD).]

B. Whether the project will result in significant benefit or harm to fish and wildlife resources. In making its determination, the department shall consider other existing uses of the watershed and fisheries management plans adopted by the Department of Inland Fisheries and Wildlife and the Department of Marine Resources; [2009, c. 561, §39 (AMD).]

C. Whether the project will result in significant benefit or harm to historic and archeological resources; [1983, c. 458, §18 (NEW) .]

D. Whether the project will result in significant benefit or harm to the public rights of access to and use of the surface waters of the State for navigation, fishing, fowling, recreation and other lawful public uses; [1983, c. 458, §18 (NEW) .]

E. Whether the project will result in significant flood control benefits or flood hazards; and [1989, c. 309, §6 (AMD).]

F. Whether the project will result in significant hydroelectric energy benefits, including the increase in generating capacity and annual energy output resulting from the project, and the amount of nonrenewable fuels it would replace. [1989, c. 309, §6 (AMD).]

G. [1989, c. 309, §7 (RP) .]

The department shall make a written finding of fact with respect to the nature and magnitude of the impact of the project on each of the considerations under this subsection, and a written explanation of their use of these findings in reaching their decision.

[2009, c. 561, §39 (AMD) .]

8. Water quality. There is reasonable assurance that the project will not violate applicable state water quality standards, including the provisions of section 464, subsection 4, paragraph F, as required for water quality certification under the United States Water Pollution Control Act, Section 401. This finding is required for both the

proposed impoundment and any affected classified water bodies downstream of the proposed impoundment.

A. Notwithstanding section 464, subsection 2, the department shall reclassify the waters of the proposed impoundment to Class GPA if the department finds:

(1) There is a reasonable likelihood that the proposed impoundment will thermally stratify;

(2) The proposed impoundment will exceed 30 acres in surface area;

(3) The proposed impoundment will not have any upstream direct discharges except cooling water; and

(4) The proposed impoundment will not violate section 464, subsection 4, paragraph F. [1989, c. 309, §8 (NEW); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §190 (AMD).]

[1989, c. 309, §8 (NEW); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §190 (AMD) .]

SECTION HISTORY

1983, c. 458, §18 (NEW). 1985, c. 772, §§3,4 (AMD).
1989, c. 309, §§5-8 (AMD). 1989, c. 890, §§A40, B187- 190 (AMD). 1995, c. 406, §15 (AMD). 1999, c. 401, §BB19 (AMD). 2009, c. 270, Pt. D, §7 (AMD). 2009, c. 561, §39 (AMD). 2009, c. 615, Pt. F, §4 (AMD). 2011, c. 682, §38 (REV).

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Name of Dam	Capacity	Watershed
Harris	76.4	Kennebec
Wyman Hydro	72	Kennebec
Penobscot Mills	70.57	W. Branch Penobscot
Rumford Falls	39.4	Androscoggin
Ripogenus	37.5	W. Branch Penobscot
Anson Abenaki	29.1	Kennebec
Lewiston Falls (Monty Sta.)	28.4	Androscoggin
Brunswick	19.6	Androscoggin
Worumbo	19.4	Androscoggin
Gulf Island	19.2	Androscoggin
Mattaceunk	19.2	Penobscot
Riley/Jay/Livermore	17.8	Androscoggin
Skelton	16.8	Saco
Hydro Kennebec	15.1	Kennebec
Pejepscot	13.9	Androscoggin
Williams	13	Kennebec
West Enfield (Bangor Pac.)	13	Penobscot
Weston	12	Kennebec
Woodland	11.6	St. Croix
Hiram	10.5	Saco
Otis	10.4	Androscoggin
Shawmut	9.1	Kennebec
Ellsworth	8.9	Union
Livermore	8.6	Androscoggin
Aroostook River (Caribou)	8.6	Aroostook
West Buxton	7.9	Saco
Lockwood	7.3	Kennebec
Bonny Eagle	7.2	Saco
Aziscohos	6.8	Magalloway
Cataract	6.7	Saco
Riley	6.6	Androscoggin
Deer Rips	6.5	Androscoggin
Milford	6.4	Penobscot
Messalonskee (M2,M3,M5)	6.2	Messalonskee
Benton Falls	4.3	Sebasticook
Bar Mills	4	Saco
Bates Mill Upper	3.9	Little Androscoggin
Androscoggin 3	3.6	Androscoggin
Brassua	3.6	Moose
Medway	3.4	W. Branch Penobscot
Errol	3	Androscoggin
Messalonskee M2	2.8	Messalonskee
Jay	2.6	Androscoggin
Dundee	2.4	Presumpscot
North Gorham	2.3	Presumpscot
Orono	2.3	Stillwater

Name of Dam	Capacity	Watershed
Hill Mill	2.2	Little Androscoggin
Stillwater	2	Stillwater
Howland	1.9	Piscataquis
Gambo	1.9	Presumpscot
Messalonskee M5	1.8	Messalonskee
Eel Weir	1.8	Presumpscot
Burnham (Pittsfield)	1.8	Sebasticook
Barker Lower	1.6	Little Androscoggin
Continental Mills	1.6	Little Androscoggin
Messalonskee M3	1.6	Messalonskee
Barker Mill Upper	1.5	Little Androscoggin
Pumpkin Hill	1.5	Passadumkeag
Rollinsford	1.5	Salmon Falls
Squa Pan	1.5	Squa Pan
Saccarappa	1.4	Presumpscot
Marcal (Mechanic Falls)	1.3	Little Androscoggin
Lower Great Falls	1.3	Salmon Falls
Somersworth	1.3	Salmon Falls
American Tissue (Gardiner)	1.2	Cobbosseecontee Stream
South Berwick (Salmon Falls)	1.2	Salmon Falls
Smelt Hill	1.13	Presumpscot
Upper Androscoggin	1	Androscoggin
Kezar Falls	1	Ossipee
Little Falls	1	Presumpscot
South Milton	1	Salmon Falls
Kennebago	0.9	Kennebago
Swans Falls	0.82	Saco
Automatic (M4)	0.8	Messalonskee
Mallison Falls	0.8	Presumpscot
Waverly Avenue	0.7	Sebasticook
Milo	0.70	Sebec
Lower Mousam	0.6	Mousam
Brown's Mill	0.55	Piscataquis
Damariscotta	0.5	Damariscotta
Rocky Gorge	0.5	Great Works
Green Lake	0.5	Reed Brook
Sandy River (Norridgewock)	0.5	Sandy
Sebec	0.5	Sebec
Hacket Mills	0.49	Little Androscoggin
Goose	0.4	Goose
Ledgemere	0.4	Little Ossipee
Frankfort	0.4	Marsh Stream
Dover Upper Dam	0.3	Piscataquis
Pioneer	0.3	Sebasticook
Sparhawk	0.27	Royal
Eustis	0.25	North Branch Dead

Name of Dam	Capacity	Watershed
North Rochester	0.25	Salmon Falls
Boston Felt	0.15	Salmon Falls
Gilman Stream	0.12	Gilman Stream
Biscoe Falls	0.09	Little Androscoggin
West Winterport	0.07	Marsh Stream
Gardiner Brook	0.05	Gardiner Brook
Uppers Spears	0.05	Spears Stream
Abbots Mills	0.04	Concord Stream
Starks	0.04	Lemon Stream
Stoney Brook	0.04	Stoney Brook
Days Mill	0.03	Kennebunk
Wight Brook	0.03	Wight Brook
Foss Mill	0.02	Marsh Stream
Seabright	0.01	Megunticook

