



WATER RESOURCES DIVISION

64 North Main Street
Post Office Box 2008
Concord, NH 03301-2008
603-271-3406

TTY/TDD 225-4033
Relay Service for Deaf/Speech Impaired

ROBERT W. VARNEY
COMMISSIONER
ELBERT F. DOWNING
DIRECTOR

Lake Ashuelot Estates Association)
P.O. Box 105)
Washington, NH 03280)

NOTICE OF DECISION
Determination of Lake Level
Date: September 13, 1991

Re: Ashuelot Pond Dam)
Washington, NH)
Dam #245.05)

A. INTRODUCTION

This Determination of Lake Level is issued by the Department of Environmental Services, Water Resources Division ("Division") to the Lake Ashuelot Estates Association (Owner), pursuant to authority vested in the Division by RSA 482:79.

B. PARTIES

1. The Department of Environmental Services, Water Resources Division is a duly constituted administrative agency having a mailing address of P.O. Box 2008, 64 North Main Street, Concord, N.H. 03302-2008, and a telephone number of (603) 271-3406.

2. The Lake Ashuelot Estates Association is an association of homeowners and has a mailing address of P.O. Box 105, Washington, N.H. 03280.

C. STATEMENT OF FACTS AND LAW

1. The Lake Ashuelot Estates Association is the owner of the Ashuelot Pond Dam ("the Dam") in Washington, N.H., N.H. Dam #245.05 in the State dam inventory.

2. On October 16, 1990, the Division received a petition for lake level investigation of Ashuelot Pond in the Town of Washington ("the Petition").
3. In response to the Petition, the Division conducted a preliminary investigation of conditions affecting the use and enjoyment of Ashuelot Pond, and determined that a public hearing should be held.
4. The Division gave notice of the hearing as required by NH Code of Admin. Rules Env-Wr 208.03, and conducted the public hearing on July 12, 1991, ("the Hearing").
5. Ashuelot Pond is a "great pond" raised by damming. A great pond is defined as a fresh water waterbody of more than ten acres in its natural condition.
6. The State of New Hampshire claims ownership of the land and flowage rights to a point of 3.5 feet below the elevation of the two overflow spillways associated with the Dam at the pond's outlet.
7. The Lake Ashuelot Estates Association retains the flowage rights from a point 3.5 feet below the elevation of the two overflow spillways to the pin in the large boulder just upstream of the Dam.
8. The annual drawdowns, which have been conducted since the Lake Ashuelot Estates Association obtained ownership of the Dam and flowage rights, have reduced the amount of aquatic vegetation present in the pond.
9. The 1983 repairs to the stone spillways consisted of remortaring the voids between and beneath the stones. The repairs did not act to raise the spillway elevation.
10. Sand Pond in Marlow and Millen Lake in Washington, both located upstream of Ashuelot Pond, have annual fall drawdowns. Sand Pond's 15" drawdown begins the week after Columbus Day. Millen Pond's 30" drawdown begins the week before Columbus Day.
11. The Dam is registered with the Department of Environmental Services Water Resources Division.
12. The flowage rights of the Dam are as follows:

The upper limit extends to the uppermost pin in the large boulder (historical marker) which is approximately 75 feet upstream of the Dam. This translates to 1.3 feet above the crests of the overflow spillways. The lower limit of the flowage rights extend to a point 3.5 feet below the overflow spillways.

13. At the July 12, 1991, Hearing, the Division received testimony that:
- a. Reducing aquatic weed growth and guarding against future submergent and emergent vegetation is generally desired.
 - b. The three reasons that Lake Ashuelot Estates Association conducts the annual drawdown are weed control, flood control, and Dam repairs.
 - c. The pH levels were measured at 5.8 in 1977, at 5.3 in 1986, at 5.4 in 1989, at 5.3 in 1990 and at 5.4 in 1991.
 - d. The pH of the pond is having a negative effect on the pond's aquatic life.
 - e. The transparency of the pond seems to be decreasing. SECCI disk readings have been 4.5 in 1977, 3.5 in 1986, 2.45 in 1989, and 2.5 in 1990.
 - f. The public boat launch which is adjacent to the right end of the Dam is nearly impossible to use when the pond is very low. This is due to the presence of large boulders and the proximity of the low level outlet intake channel to the Dam.
 - g. Due to changes in winter water levels of the pond, ice can become unsafe for recreation.
 - h. There is a historic marker (large boulder) about 80 feet upstream of the Dam. The marker contains a reference point for the water rights.
 - i. The utility of the two dry hydrants is adversely affected by drawdowns. The hydrants are presently inoperable. Fire department representatives stated that alternate sources of fire fighting water supply are readily available.
 - j. Repairs made to the two overflow spillways in 1983 resulted in higher pond elevations during low flow conditions due to reduced leakage.
 - k. Drawdowns of upstream ponds affect the ability to draw down the pond.
 - l. Lake Ashuelot Estates Association favors a 5 to 7 foot drawdown to be conducted every two years. The Lake Ashuelot Estates Association also stated that the drawdown should begin in mid-September.
 - m. Ashuelot Pond Association, another association of property owners, favors a drawdown to begin November 1 and which does not exceed three feet. The Ashuelot Pond Association also stated that refilling should begin thirty days after drawdown is reached.

D. DETERMINATIONS

1. Large drawdowns infringe on the ability of those who must use the spillway crests or boats to access their property.
2. The management and control of Ashuelot Pond is lawful and in the public interest, but changes in the manner of the exercise of the right of management and control would be of benefit to others without undue injury to the owner of the outlet.
3. Changes in the management and control of the outlet would not deprive the owner of the outlet or others of rights which they are lawfully entitled.

E. ORDER

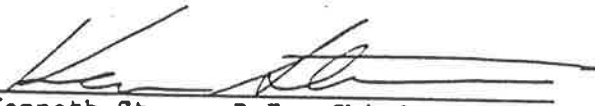
Based on the Division's independent investigation and the testimony received at the Hearing, as summarized above, the Lake Ashuelot Estates Association is hereby ordered as follows:

1. The annual drawdown of Ashuelot Pond may begin no earlier than Columbus Day.
2. The drawdown may not exceed two feet below the elevation of the overflow spillways prior to November 1.
3. The total drawdown depth thereafter may not exceed 3.5 feet below the elevation of the overflow spillways.
4. Drawdowns below 3.5 feet may be conducted once every five years for the purpose of Dam repairs, aquatic weed control and maintenance of shorefront improvements. These deep drawdowns may begin prior to Columbus Day provided that notification is given by certified mail, return receipt requested, to the Division and the Town of Washington, and is posted in a place for public viewing no less than 30 days in advance. The first major drawdown shall begin in the Fall of 1991. Deep drawdowns for weed control and shorefront improvements shall be returned to not greater than 3.5 feet by January 1.
5. The boulder upstream of the Dam which is the reference for water rights shall and not be disturbed for any reason including Dam repairs or navigational improvements, (see attached photographs).
6. The pond shall be returned to normal operating level not later than June 1.
7. Notwithstanding Item E.4 above, unplanned drawdowns may be conducted at a greater depth or frequency should an emergency condition exist. The emergency shall be determined by the Department of Environmental Services, Water Resources Division based upon evidence provided by the Dam owner or upon its own investigation.

continued ...

Notice of emergency drawdowns shall be given by the Lake Ashuelot Estates Association as soon as practicable to the Town of Washington and to the public.

8. During periods of drought or flooding the level of Ashuelot Pond may fall below or extend above the limits set forth in this Decision. These conditions are considered to be natural occurrences and shall not be attributed to the Dam owner.



Kenneth Stern, P.E., Chief Engineer
Water Resources Division
Department of Environmental Services

KJS/SND/waf/0322V

cc. Barbara A. Wright
Town of Washington
Public Information Coordinator
Gretchen Rule, DES Enforcement Coordinator