

From: Judy Hamilton

Re: Update on the May 8, 2007 Emergency Supplemental Dam Safety Order

Date: September 6, 2007

If you have been following my posting of events and minutes to the website, you will know that a Core Group of representatives from the Select Boards of Canton and Hartford, the Canton Water District and the lake association have begun to work toward finding a permanent solution to this long-standing problem of water level management and dam safety. [See various minutes under Permanent Solution blog] An application was submitted to DEP for a temporary dam to be built at the outlet to Whitney Brook and returned on 8/6/07 because the applicants "lack sufficient title, right or interest in all of the property that is proposed for development or use" namely the "flowage rights" or right to flood which came with the ownership of the permanent dam. [See "DEP returns Temporary Dam App. 8/6/07" under Temporary Dam blog]

The Core Group focus has been to get the State to use all its legislative and statutory authority, including fines, to force the dam owner to comply with the MEMA order and to figure out where ownership of the dam should fall if it were abandoned. The petition, which listed violations and asked for the State's support, has close to 200 signatures and presents a united approach from property owners and residents of Canton and Hartford. [See "Petition MEMA for support" under Permanent Solution blog] The original plan was for members of the Core Group to meet with Gen. Libby and give him the petition at that time.

MEMA Orders require the dam owner to: [See "Emergency Supplemental Dam Safety Order, May 8, 2007" under Other Interesting Information on Dam Information page]

1. "Engage a licensed professional engineer ...",
2. "Develop a remedial action plan ...", and
3. "Submit the remedial action plan, signed by the engineer, to me [Gen. Libby] for approval no later than March 31, 2007" as well as make the needed repairs.

On or about June 1, 2007, Ray Fortier hired Summit Geoengineering Services, licensed professional engineers, to complete the ordered remedial plan for repairs. On August 17, 2007, the engineering plan was given to the dam owner and is believed to now be in MEMA's hands. Because

Mr. Fortier has submitted the engineering report to MEMA and has indicated that he is committed to making the ordered repairs, Gen. Libby apparently does not want to appear to be taking sides by meeting with members of the Core Group. At least some on the Core Group feel that we should press for a meeting with MEMA Commissioner Gen. Libby and AAG Phyllis Gardiner and let them invite Ray Fortier if they do not want to appear to be taking sides. The situation continues to change and, with delivery of the engineering plan to MEMA, the Core Group's focus must also change.

In 1997, the Town of Canton took Ray Fortier to court for shoreland zoning violations. It was settled in 1998 with a Consent Order stating in part that "Canton withdraws its claims for civil penalties or attorney fees, but does not waive them should this Order be violated." Letters from DEP and MEMA document the fact that Ray Fortier has violated #4. "Fortier will comply with any administrative orders related to the dam, the existing one being the Lake Anasagunticook (Canton) Lake Water Level Management Plan, dated August 20, 1996." [See "1998 Consent Order" link on Dam Information page under Other Interesting Information]

I fear that if we sit back and wait to see what MEMA, the AAG or Ray Fortier do next, that we will be back where we were a decade ago. I have suggested that the focus of the Core Group should now be:

1. To assist the Town of Canton in enforcing the 1998 Consent Order which Ray Fortier has violated on several counts over the past years and clearly has by not complying with the December 4, 2006 Dam Safety Order;
2. To schedule a meeting with Gen. Libby and AAG Phyllis Gardiner
 - a. To insist on a reasonable timeline for the ordered repairs,
 - b. To ask for their order for a cofferdam or temporary dam to be built, not only to make the ordered repairs, but also to comply with the 1996 Water Level Management Plan to stabilize water levels by 2008, and
 - c. To get assurance from MEMA and the AAG to continue their close monitoring of this case for enforcement of the December 4, 2006 Dam Safety Order. All legislative and statutory authority, including fines, should be used in the enforcement process.

The application for a temporary dam at the outlet to Whitney Brook was returned because it did not show adequate title to the right to flood the lake to stabilize water levels this summer. Only Ray Fortier has those

rights as the owner of the permanent dam on Whitney Brook. Therefore, I feel having a temporary dam in place by early next spring needs to be a high priority focus for the Core Group in finding a permanent solution to the current situation.

It would seem that the lake water quality has fared reasonably well this summer at its lower levels. My husband has monitored water quality for over ten years and his monitoring report taken yesterday indicates that the clarity is about the same as this time last year but the oxygen levels at the bottom of the lake are better (2.5 ppm on 9/5/07) than they were (0 ppm mid way through August) this date in 2006. To see the lake and try to swim or boat near shore is difficult at best. The emails under "Environmental Impact" blog will explain other hazards of lower water levels on the marshes, fish, and critters affected by the exposed shorelines. The important thing to remember is that the lake will rebound if water levels return to "normal" (under the Water Level Management Plan) levels next year. Low water levels for several years in a row, however, will make it more difficult for currently exposed shorelines and marshes to return to pre-2007 conditions.

What can you do to help? Stay informed. Return to this website for new postings. Attend Core Group meetings (6:30 p.m. every other Monday at the Canton Town Office) if you are in town. We hope to soon have a forum on the lake association website where you can ask your questions, make suggestions and participate in this ongoing search for a lasting resolution of this dam safety and water level management problem.