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STATE OF NEW YORK
DEPARTMENT OF LAW
ALBANY

November 19, 1937

Conservation Department
Albany, New York

Attention: Mr. W. G. Howard

Gentlemen:

During the present year, we have had considerable correspondence relating to the re-construction of an old dam at the outlet of Eagle Lake in the Adirondack Park in Essex County.

The information given us is that about 1860, a dam was built on this site, probably in connection with a saw mill; that it gradually fell into disrepair and at some time in the '90s another dam was constructed which went out in 1913 or 14.

It appears from the file that the State took title to the land on which the dam was built in 1928. It further appears that the going-out of this dam resulted in the dropping of the water level of the lake, resulting in a detriment to the State lands around the lake, as well as to the private lands; that the property owners around the lake have already given consent to the restoration of the dam and have expressed a willingness to bear the expense of re-constructing it.

The question presented to us is whether or not your Department has authority to permit the construction of this dam on State land, such construction to be carried on under the direction of the Conservation Department.

On March 3, 1937, I wrote you, asking for additional information; at the same time stating to you that if in the exercise of your judgment the building of this dam was a distinct benefit to State lands, you might permit its being done after securing the State from any possible claims for damage by reason of the dam's construction and maintenance.

It is possible that at the time the State took title to these lands there may have been incorporated in the deed the flowage rights, or it is possible that there may have been certain restrictions which would prohibit the re-construction of the dam, but even though water rights may not have been incorporated in the deed to the State, there would be no reason why you could not consent to the building of this dam, if it is to be a distinct benefit to the State property in the Forest Preserve.

There are, however, certain matters which should receive your careful attention before granting such consent. One of these is the protection of the State from all damage arising in the flooding of private property. Another is to provide for the maintenance of the dam, if possible, by those private owners who now seek to rebuild it.

With these suggestions in mind, you should be able to determine in the exercise of discretion on the part of your Department, whether or not you desire to grant the permission requested. That determination is solely up to you.

Very truly yours,

JOHN J. BENNETT, JR.,
Attorney-General,

By-

(Signed) J. P. O'Connor,

JOSEPH P. O'CONNOR,
Assistant Attorney-General.