



Findings and Recommendations Pursuant to L.D. 1988, L.D. 1998, An Act To Establish a  
Fund for Farmers Adversely Affected by Drought Conditions  
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# LD 1998 Request

LD 1998, *An Act To Establish a Fund for Farmers Adversely Affected by Drought Conditions*, created the Farmers Drought Relief Program. The Program will assist Maine farmers in overcoming the adverse effects of drought conditions through a grant program to be established by DACF.

LD 1998 required DACF to work with Maine DEP and the Land Use Planning Commission (LUPC) to review irrigation permitting processes and develop recommendations to streamline the permitting process.



# LD 1998 Process

- Reviewed with DEP and LUPC the current regulatory processes for reviewing requests for water withdrawals
- Held two public meetings with the Agricultural Water Management Board to review the existing regulatory processes and discuss potential means for improvement.
- One meeting reviewed existing permitting materials to identify potential changes to streamline and enhance the processes

## Participants:

- DACF; DEP; LUPC
- Agricultural Water Management Board
- Wild Blueberry Commission of Maine
- Maine Potato Board





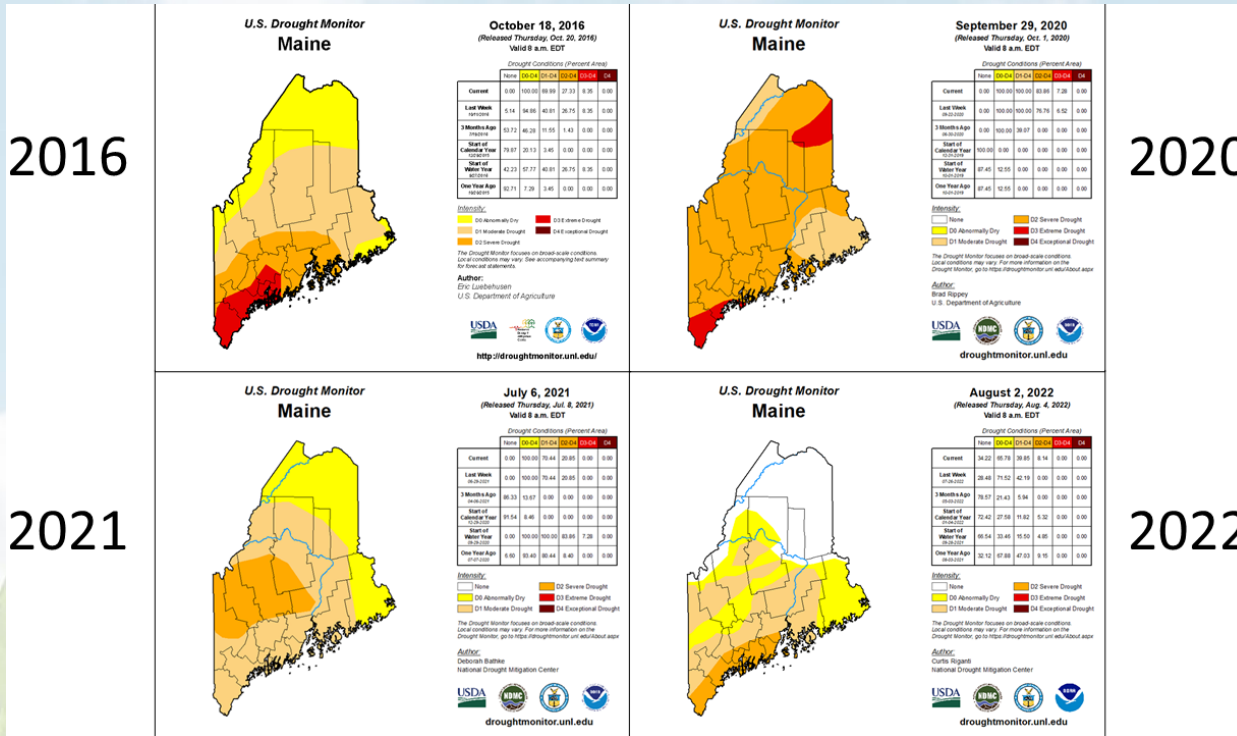
# Themes and Issues

- DEP and LUPC both require permits for various water withdrawal activities. These requirements differ.
- DEP: When water levels or flows are higher than those specified by rule, irrigation water may be withdrawn from surface water sources without approval by DEP. When lower, site-specific written approval is required.
  - DEP also requires a general permit for agricultural ponds that alter a freshwater stream. ~30 - 45 day approval process. If no connection between the pond and a stream, brook, river, etc., no permit needed.
- LUPC: Requires permits for new water withdrawals (groundwater and surface water). Application filings require various technical information and a filing fee that can be burdensome.

# Maine's Changing Climate

- Maine occasionally experiences periods of drought, most lasting less than one year but sometimes extending over several years. Higher temperatures in the future are likely to make these short dry periods more severe, especially during the growing seasons.
- Ag producers must be able to successfully navigate the state's permitting requirements for water withdrawal and for the development of new, off-stream water storage structures for irrigation projects.
- Sustainable irrigation sourcewater development and usage that promote efficient and profitable crop growth will enhance producer resiliency.
- Farms require more water sources – ponds, wells, storage systems – and technical assistance and funding for the development of those structures, systems, and Irrigation Water Management Plans.

# Maine's Four Most Recent Droughts



<https://droughtmonitor.unl.edu/>

# DEP Permitting Overview

- Summary of DEP Rule Ch. 587 *In-Stream Flows and Lake and Pond Water Levels* as it relates to agricultural irrigation.
- Other irrigation related DEP issues:
  - Irrigation Ponds
  - Natural Resource Protection Act (NRPA)
  - Irrigation Wells



## DEP Rule Ch. 587

### In-Stream Flows and Lake and Pond Water Levels

- When water levels or flows are higher than those specified by rule, irrigation water may be withdrawn from surface water sources without approval.
- This is self-implementing based on the water levels and flows and no permit is required for this activity.
- When the water levels or flows are lower than those specified in the rule, irrigation water may only be withdrawn with site-specific written DEP approval.





# Agricultural Ponds

- Agricultural ponds altering a freshwater, nontidal stream, require coverage under DEP general permit.
  - Review and approval process is approximately 30-45 days.
  - Need irrigation management plan.
  - Not a significant fishery.
  - Need Natural Resource Conservation Service design.
- If an agricultural pond does not have a connection with a stream, brook, river, or other protected natural resource then a permit is not required, and the pond is not regulated by DEP.



# Creation of agricultural irrigation well

(38 M.R.S. § 480-B.9-A)

- "Significant groundwater wells" are regulated activity under the Natural Resources Protection Act (NRPA).
  - Activities requiring a NRPA permit include: dredging, bulldozing, removing soil; draining, ditching; permanent structures; filling; etc.
- However, "Significant groundwater well" does not include well for agricultural use or storage, and therefore are not regulated by DEP.



# Alternative Sources

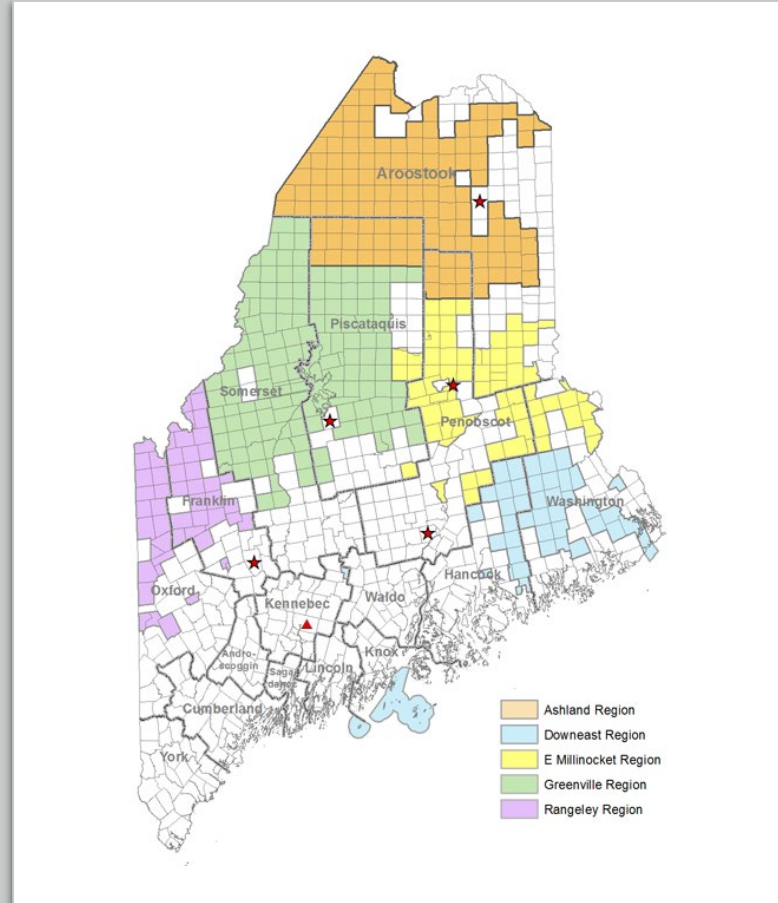
- Irrigators are strongly encouraged to develop alternative sources of irrigation such as storage ponds and wells.
- The DEP and DACF will work with irrigators to help develop alternative irrigation sources.



# LUPC Permitting Overview

## LUPC's Service Area

- 10.5 million acres
- 5 regional offices
- Main office- Augusta



# Zoning Subdistricts

**Grouped into 3 districts**

- Management (e.g. M-GN)
- Protection (e.g. P-WL, P-SL)
- Development (e.g. D-RS, D-CI)

**Each subdistrict identifies uses (or activities) that are:**

- Allowed without a permit
- Allowed without permit subject to standards
- Allowed by permit
- Allowed with a permit by special exception



# Chapter 10, Land Use Districts



Use “...draining, dredging, and alteration of the water table or water level for other than mineral extraction”



Allowed by permit in M-GN, all Development Subdistricts, eight Protection Subdistricts



Allowed by special exception in P-AR & P-WL



Not allowed in P-FW, P-RR, P-RT, P-UA

## Statutory Criteria for Approval

12 M.R.S.A., Section 685-B,4

“Adequate provision has been made for fitting the proposal harmoniously into the existing natural environmental in order to assure there will be no undue adverse effect on existing uses, scenic character, and natural and historic resources in the area likely to be affected by the proposal.”

“...withdrawal of groundwater, the Commission shall consider the effects of the proposed withdrawal on waters of the State; water-related natural resources; and existing uses, including, but not limited to, public or private wells, within the anticipated zone of contribution to the withdrawal.”

“The Commission shall consider the direct effects of the withdrawal and its effects in combination with existing water withdrawals.”

## Permit History 2012-2022

- 10 decisions relating to ag. water withdrawals
  - 6 amendments
  - 4 new permits
    - 2 surface withdrawals
    - 1 pond
    - 1 impoundment
- Average processing time for new surface water withdrawals- 55 days
- Amendment for a new groundwater well- 140 days

# Application Requirements- Surface Water Withdrawals

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- Shoreline Alteration Application Form
- Irrigation Water Management Plan
  - Acres irrigated
  - Amount of water needed
  - Potential sources
  - Water practices to minimize water use
  - Chapter 587 requirements

# Application Requirements- Ground Water Withdrawals

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- Non-residential Development Application Form
- Geologic Characterization & Impact Assessment
  - Long-term safe yield
  - Zone of influence/ zone of capture
  - Interaction with surrounding water resources
  - Potential impacts on any existing wells, base flows in streams, wetland hydrology



# Application Requirements- Ground Water Withdrawals

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- Long-term monitoring
  - Not specifically addressed in the application form
  - Tends to be the most time-consuming aspect of the review
  - Opportunity for inconsistency

# Application Fees

- Shoreland alterations
  - Base fee- \$200
  - Disturbed area fee- \$0.40/ sq. ft.
- Agricultural impoundment example
  - Fee in 2019- \$200
  - Fee after 2021- \$24,594

# Recommendation 1: Improve LUPC Application and Adjust Fees

- Abbreviated Application Form:
  - Clarify the need for irrigation water management plans and/or hydrologic assessments
  - Establish parameters for long-term monitoring plans, if needed
  - Consultant assistance needed
- Rulemaking to Change Fees:
  - Revise application fees applicable to agricultural irrigation pond
  - Major Substantive

# Recommendation 2: Build Technical Assistance at LUPC, DEP, and BAFRR

- Full-time, permanent ES II position in the LUPC's Northern Regional Office to provide more technical assistance to farmers needing to complete permit applications for new water sources.
- Full-time ES III Water Withdrawal Program Manager at the DEP. manage all aspects of water withdrawal including requests for alternative flow evaluations, education and outreach, technical assistance, compliance, and enforcement
- Full-time, permanent Public Service Coordinator I in BAFRR to support Farmer Drought Assistance Fund, Ag Water Management Board, and provide water management and irrigation technical assistance to producers and across DACF.

# Recommendation 3: Capitalize the Farmer Drought Assistance Fund

- L.D. 1998 created the Farmers Drought Relief Grant Program to assist farmers in the state to overcome the adverse effects of drought conditions. The Fund has not been capitalized.
- With funding, it will be an important vehicle to assist agricultural producers to make sustainable, environmentally sound irrigation improvements to their farms.
- Governor's Budget: \$2M with \$300,000 annual funding thereafter.
- DACF is moving forward in partnership with University of Maine to determine potential program parameters.





Thank you

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