

Public Comments on the newly proposed Chapter 200 Metallic Mining Rules

The newly developed Chapter 200 metallic mining rules allow wet mine waste units for the temporary storage of mine waste and calls for their complete remediation at mine closure. The below video testimony at the May 13, 2015 ENR committee hearings on LD 750 by state geologist Dr. Marvinney confirms that it is impossible to dewater and remediate waste ponds once they are created.

The McKay School of Mines at the University of Colorado is the leading expert in allowable technology available in the mining process. I have spoken to school representatives on two occasions in the past concerning the use of wet mine waste units and tailings ponds to store mine waste during and after the mining process. My findings were presented as public testimony during public hearings on LD 750.

The McKay School of Mines maintains that the use of Wet Mine Waste Units results in permanent waste ponds requiring perpetual treatment and care. It is not possible to successfully dewater and remediate these waste ponds and tailings ponds. Dr. Marvinney found no example of wet mine waste units and tailings ponds that have been successfully dewatered and remediated. This testimony was confirmed by Dr. Marvinney and can be viewed on the utube video below.

Please remove any reference to the use of wet mine waste units and tailings ponds from the proposed Chapter 200 mining rules. The use of dry mine waste storage technologies is the only available option in the storage of mine waste. State Senator Tom Saviello, co-chair of the Environment and Natural Resources committee is well aware of this issue and has been in agreement in the past with the need to use dry mine waste storage technologies if the people of Maine do not want to be responsible for the perpetual care and treatment of wet mine waste units and tailings ponds.

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Public Comments concerning Chapter 200. Proposed Mining Rules

The AG's office has stated that Maine's public lands, and specifically Maine's public reserve lands may currently be mined for metallic minerals under 12 M.R.S.A. 549. I do not believe that this is the case because 12 M.R.S.A. 549 was not passed in accordance with the Constitution of the State of Maine, Article IX Section 23. This constitutional article states in part, "State Park land, public lots or other real estate held by the state for conservation or recreation purposes and designated by legislation implementing this section may not be reduced or its use substantially altered except on the vote of 2/3 of all the members elected to each House."

12 M.S.R.A. 598 titled Designated Lands states, "The following lands are designated lands under the Constitution of Maine, Article IX Section 23. Designated lands under this section may not be reduced or use substantially altered, except by a 2/3 vote of the legislature. It is the intent of the legislature that individual holdings of land or classes of land may be added to the list of designated lands under this section in the manner normally reserved for amending the public laws of the state. Once so designated, however, it is the intent of the Legislature that designated lands remain subject to the provisions of this section and the Constitution of Maine, Article IX, Section 23 until such time as the designation is repealed or limited by a 2/3 vote of the Legislature."

Under 12 M.S.R.A. 598 Definitions, 5. Substantially Altered., " Substantially Altered, in the use of designated lands, means changed so as to significantly alter physical characteristics in a way that frustrates the essential purposes for which the land is held by the state", also prescribed in the definition, "The essential purposes of public reserved and nonreserved lands are the protection, management and improvement of these properties for the multiple use objectives established in section 1847. "

12 M.R.S.A. 1847 Management of Public Reserved Lands states in part under 1. Purpose. "the public reserved lands be managed under the principles of multiple use to produce a sustained yield of products and services"... Metallic mining does not meet this requirement as mining is by its nature an extractive use, a single time activity which forever alters the physical characteristics of the land in a way that frustrates the essential purposes for which the land is held by the state for conservation and recreational purposes.

As metallic mining of public reserved lands qualifies as a substantially altered use, 12 M.R.S.A. 549 must have been passed by the legislature by 2/3 of the members elected to each house to meet the requirements of Maine's Constitution Article IX Section 23. In April of 2015, clerks at the Maine Legislative Law Library did an exhaustive review of the legislative history of 12 M.R.S.A. 549 to determine if the statute had been passed by 2/3 of the members elected to each house. Nowhere in the legislative history was any reference found for either the need for the statute to be passed by a 2/3 vote or if in fact the statute was passed by a 2/3 vote. As such, the passage of 12 M.R.S.A. 549 does

not pass constitutional muster and must be nullified.

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Constitution of the State of Maine

Article IX

Section 23. State park land. State park land, public lots or other real estate held by the State for conservation or recreation purposes and designated by legislation implementing this section may not be reduced or its uses substantially altered except on the vote of 2/3 of all the members elected to each House. The proceeds from the sale of such land must be used to purchase additional real estate in the same county for the same purposes.

§598-A. Designated lands

The following lands are designated lands under the Constitution of Maine, Article IX, Section 23. Designated lands under this section may not be reduced or substantially altered, except by a 2/3 vote of the Legislature. It is the intent of the Legislature that individual holdings of land or classes of land may be added to the list of designated lands under this section in the manner normally reserved for amending the public laws of the State. Once so designated, however, it is the intent of the Legislature that designated lands remain subject to the provisions of this section and the Constitution of Maine, Article IX, Section 23 until such time as the designation is repealed or limited by a 2/3 vote of the Legislature. [1993, c. 639, §1 (NEW).]

Designated lands are: [1993, c. 639, §1 (NEW).]

1. Certain Department of Inland Fisheries and Wildlife lands. The following lands held by the Department of Inland Fisheries and Wildlife:

A. State-owned wildlife management areas and public access sites described in section 10109, subsection 1 and section 12708; and [2003, c. 414, Pt. B, §20 (AMD), 2003, c. 614, §9 (AFF).]

B. Lands held and managed as a state game farm under the provisions of section 10109, subsection 2; [2003, c. 414, Pt. B, §20 (AMD); 2003, c. 614, §9 (AFF).]
[2003, c. 414, Pt. B, §20 (AMD); 2003, c. 614, §9 (AFF) .]

2. Public lands and public reserve lots.

[1995, c. 502, Pt. E, §16 (RP) .]

2-A. Certain lands of the Bureau of Parks and Lands. Lands under the care, custody, control and management of the Bureau of Parks and Lands, including:

A. Lands that constitute a state park or historic site as those terms are defined in section 1801; [1999, c. 127, Pt. A, §24 (AMD).]

B. Lands that constitute the Allagash Wilderness Waterway as defined in chapter 220, subchapter VI; [1999, c. 127, Pt. A, §25 (AMD).]

C. Lands used for public boat facilities under the provisions of chapter 220, subchapter IX, including launching ramps, locks, parking sites and access roads; [1999, c. 127, Pt. A, §26 (AMD).]

D. Public reserved lands as defined in section 1801, subsection 8; and [1997, c. 678, §8 (AMD).]

E. Nonreserved public lands as defined in section 1801, subsection 6. [1999, c. 127, Pt. A, §27 (AMD).]

Designated lands do not include: submerged lands; and all parcels of public reserved land in the towns of Bradley, LaGrange and Bradford held by the Bureau of Public Lands on January 1, 1994.

[1999, c. 127, Pt. A, §§24-27 (AMD); 2011, c. 657, Pt. W, §7 (REV); 2013, c. 405, Pt. A, §24 (REV) .]

§598. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1993, c. 639, §1 (NEW).]

1. Lands or land. "Lands" or "land" means real estate held by the State.

[1993, c. 639, §1 (NEW) .]

2. Proceeds. "Proceeds" means money arising or obtained from the sale of designated lands, excluding the costs of the sale.

[1993, c. 639, §1 (NEW) .]

3. Real estate held by the State. "Real estate held by the State" means real estate wholly owned by the State by fee simple title. "Real estate held by the State" does not mean land partially owned by the State or land owned by someone other than the State in which the State holds an easement, right-of-way or covenant.

[1993, c. 639, §1 (NEW) .]

4. Reduced. "Reduced" means a reduction in the acreage of an individual parcel or lot of designated land under section 598-A. "Reduced" does not mean a reduction in the value of the property. "Reduced" does not mean the conveyance of an access right by easement in accordance with section 1814-A.

[2011, c. 278, §3 (AMD) .]

5. Substantially altered. "Substantially altered," in the use of designated lands, means changed so as to significantly alter physical characteristics in a way that frustrates the essential purposes for which that land is held by the State. The essential purposes of state parks, historic sites, public access sites, facilities for boats and the Allagash Wilderness Waterway are the protection, management and improvement of these properties for public recreation, conservation, scenic values, nature appreciation, historic preservation and interpretation, public access and related purposes. The essential purposes of public reserved and nonreserved lands are the protection, management and improvement of these properties for the multiple use objectives established in section 1847. The essential purposes of lands acquired through the Land for Maine's Future Board that are not held by the Department of Inland Fisheries and Wildlife or by the Department of Agriculture, Conservation and Forestry are the protection, management and improvement of those lands for recreation, conservation, farming, open space, plant and animal habitat, scenic values, public access and related purposes. The essential purposes of state-owned wildlife management areas and game farms are the protection, management and improvement of those properties for fish and wildlife habitat and propagation, hunting, trapping, fishing, recreation, propagation and harvesting of forest and other natural products and related purposes. "Substantially altered" does not mean the conveyance of an access right by easement in accordance with section 1814-A.

[2011, c. 278, §4 (AMD); 2011, c. 657, Pt. W, §5 (REV) .]

SECTION HISTORY

1993, c. 639, §1 (NEW). 1997, c. 678, §7 (AMD). 2011, c. 278, §§3, 4 (AMD). 2011, c. 657, Pt. W, §5 (REV).

§1846

Title 12: CONSERVATION

Part 2: FORESTS, PARKS, LAKES AND RIVERS

Chapter 220: BUREAU OF PARKS AND PUBLIC LANDS

Subchapter 4: PUBLIC RESERVED LANDS

§1848

§1847. Management of public reserved lands

1. Purpose. The Legislature declares that it is in the public interest and for the general benefit of the people of this State that title, possession and the responsibility for the management of the public reserved lands be vested and established in the bureau acting on behalf of the people of the State, that the public reserved lands be managed under the principles of multiple use to produce a sustained yield of products and services by the use of prudent business practices and the principles of sound planning and that the public reserved lands be managed to demonstrate exemplary land management practices, including silvicultural, wildlife and recreation management practices, as a demonstration of state policies governing management of forested and related types of lands.

[1997, c. 678, §13 (NEW); 2011, c. 657, Pt. W, §7 (REV); 2013, c. 405, Pt. A, §24 (REV) .]

2. Management plans. The director shall prepare, revise from time to time and maintain a comprehensive management plan for the management of the public reserved lands in accordance with the guidelines in this subchapter. The plan must provide for a flexible and practical approach to the coordinated management of the public reserved lands. In preparing, revising and maintaining such a management plan the director, to the extent practicable, shall compile and maintain an adequate inventory of the public reserved lands, including not only the timber on those lands but also the other multiple use values for which the public reserved lands are managed. In addition, the director shall consider all criteria listed in section 1858 for the location of public reserved lands in developing the management plan. The director is entitled to the full cooperation of the Division of Geology, Natural Areas and Coastal Resources, the Department of Inland Fisheries and Wildlife and the Maine Land Use Planning Commission in compiling and maintaining the inventory of the public reserved lands. The director shall consult with those

agencies as well as other appropriate state agencies in the preparation and maintenance of the comprehensive management plan for the public reserved lands. The plan must provide for the demonstration of appropriate management practices that will enhance the timber, wildlife, recreation, economic and other values of the lands. All management of the public reserved lands, to the extent practicable, must be in accordance with this management plan when prepared.

Within the context of the comprehensive management plan, the commissioner, after adequate opportunity for public review and comment, shall adopt a specific action plan for each unit of the public reserved lands system. Each action plan must include consideration of the related systems of silviculture and regeneration of forest resources and must provide for outdoor recreation including remote, undeveloped areas, timber, watershed protection, wildlife and fish. The commissioner shall provide adequate opportunity for public review and comment on any substantial revision of an action plan. Management of the public reserved lands before the action plans are completed must be in accordance with all other provisions of this section.

[2013, c. 405, Pt. C, §9 (AMD) .]

3. Actions. The director may take actions on the public reserved lands consistent with the management plans for those lands and upon any terms and conditions and for any consideration the director considers reasonable.

[1997, c. 678, §13 (NEW) .]

4. Land open to hunting. The bureau and the Department of Inland Fisheries and Wildlife shall communicate and coordinate land management activities in a manner that ensures that the total number of acres of land open to hunting on public reserved lands and lands owned and managed by the Department of Inland Fisheries and Wildlife does not fall below the acreage open to hunting on January 1, 2008. These acres are subject to local ordinances and state laws and rules pertaining to hunting.

[2007, c. 564, §1 (NEW); 2011, c. 657, Pt. W, §7 (REV); 2013, c. 405, Pt. A, §24 (REV) .]

SECTION HISTORY

1997, c. 678, §13 (NEW). 1999, c. 556, §19 (AMD). 2007, c. 564, §1 (AMD). 2011, c. 655, Pt. JJ, §8 (AMD). 2011, c. 655, Pt. JJ, §41 (AFF). 2011, c. 657, Pt. W, §7 (REV). 2011, c. 682, §38 (REV). 2013, c. 405, Pt. A, §24 (REV). 2013, c. 405, Pt. C, §9 (AMD).