

3.15.98 00:17:13

Reforming the freshwater-wetlands law

FOR THE PAST two years, the Rhode Island General Assembly has wrestled with a total overhaul of the state's freshwater-wetlands statute. Although the drafters of the new bill spent literally hundreds of hours listening to the testimony of wetland scientists, engineers, developers, homeowners, and many other interested parties, it becomes apparent that in an effort to achieve compromise, the cogency of the bill suffers greatly.

Instead of looking at the problem of protecting the resource while maintaining the economic interest of property owners, the legislation simply adjusts technical definitions and clarifies restrictions for proposed activities within wetlands.

In a state with such a limited land mass, increased and more complex wetland regulations create a volatile issue for property owners. Rhode Island currently has an inventory of about 65,000 acres of wetland throughout its 1,058-square-mile area. This represents about 10 percent of the state's land. 57,100 of those acres are freshwater-wetlands under the jurisdiction of the Rhode Island Fresh water-wetlands Act (R.I. G.L. 2-1-18 et. seq.), with the rest being coastal wetland under a separate regulatory statute known as the Rhode Island Coastal Resources Management Program.

In 1971, the General Assembly took the historic and then virtually unheard-of step of regulating freshwater-wetlands within the state's boundaries. In a curious act of political maneuvering, the proponents of the freshwater-wetlands law made overtures to the governor that they would support the state's first-ever income tax if the administration supported their proposal. I know of very few Rhode Island property owners who fully realize the double whammy they received in 1971.

More than 23 years had passed since the passage of the freshwater-wetlands statute, when in 1995 Governor Almond established a blue-ribbon commission to study the 1971 act. The commission held a myriad of public hearings over a 10-month period. A detailed report was published making recommendations to the Department of Environmental Management as to what changes should be made to the law. The DEM used the report's conclusions in the preparation of the current proposal now before the legislature.

The blue-ribbon commission consisted of individuals with very disparate views. The state's environmental community was represented with delegates from groups such as the Audubon Society and Save the Bay. The Rhode Island Builders Association and Professional Engineering Society, which represented business interests, were also included in the voting membership.

The commission's policy was that consensus was necessary for a recommendation to be made. As you can well imagine, issues dear to the environmental community met with resistance from the builders and vice versa. The result was a proposal that lacked a clear and concise set of guidelines for the future regulation of freshwater-wetlands.

The final bill submitted to the legislature in 1996 was passed readily by the state Senate, but was never taken up in the House. In 1997, the bill did not find its way out of either chamber's committee process.

Now, with the 1998 legislative session upon us, the issue of how to best regulate freshwater-wetlands is once again on the front burner. The public needs to realize that the current legislation does address the hard question of resource protection balanced against private property rights. One possible solution to this dilemma lies within the potential marriage of wetland regulation to local zoning control. It is my contention that a freshwater-wetland statute should have provisions within it that provide a landowner with an automatic or, at the very least, an expedited procedure for zoning relief, provided that the sought-after relief results in a demonstrated reduction in impacts to freshwater-wetlands.

In the case of a single-family dwelling, it could be as simple as allowing the house to be moved closer to the road.

For a larger-scale development consider the following example. A community may not allow cluster zoning in areas requiring a minimum of two acres for individual lots. However, if allowed to incorporate a cluster concept into a land-use proposal, it may be possible to avoid a wetland crossing and use only the land area available adjacent to the roadway but at a higher density of development. The result would be an increase of housing density concentrated at or near the existing disturbances. But more importantly, the wetland would not be fragmented by a culvert or bridge crossing and the permanent open space on the undeveloped part of the site would include upland habitat.

The landowner would achieve the same number of residential units with a reduction in road-construction costs, thereby preserving his property rights. The public receives a large area of habitat remaining as open space in perpetuity. Both the property owner and the environment benefit.

Rhode Island, as well as states across the country, need to make the hard decision as to which is more important, protection of wetland resource areas, or absolute local control over land-use planning. I am quite sure that any such

legislation would meet formidable resistance from the cities and towns within the state. I can hear the screams from town officials faced with having to relinquish some control over land use decisions.

However, what I am proposing is not without precedent. Consider current state law concerning low-income housing. A proponent of low-income housing can circumvent local zoning standards if the community currently falls below an acceptable level of available low-income housing. We should implement a similar standard for discouraging wetland alterations. If drafted properly, it could preserve the property owner's right to acquire a fair market value for his land, while at the same time reduce the alarming rate of wetland fragmentation that must now occur to allow property owners access to interior uplands.

It is time for states throughout the nation to debate just how important the preservation of wetlands is to the well-being of our society as a whole.

Scott P. Rabideau, of Burrillville, is a Republican member of the Rhode Island House and a professional wetlands scientist.

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3.24.98 06:34:44

Who owns the water?

Rep. Mesolella draining lake to force sale

By PETER B. LORD

Journal-Bulletin Staff Writer

PROVIDENCE -- In what his lawyer concedes is a gambit to draw the state to the bargaining table, state Rep. Vincent J. Mesolella Jr. has drained half the water from the two-mile-long Pascoag Reservoir.

Mesolella, one of the most powerful figures in the General Assembly, says he won't refill the picturesque reservoir (also known as Echo Lake) until the state Department of Environmental Management makes a serious response to his offer to sell it to the state for \$425,000.

DEM officials continued to argue yesterday that the public has been freely using Pascoag Reservoir for 30 years; why should it have to pay for it now?

Mesolella, chairman of the Narragansett Bay Commission and head of a fund that dispenses millions of dollars for gasoline-spill cleanups, **is also a member of the special state committee that oversees all state property acquisitions.** But in 15 years, he has been unable to persuade the DEM to buy his lake.

Then, a few weeks ago, Mesolella opened the gates to the reservoir's dam. Suddenly the bargaining positions changed.

Already, the mudflats along the shoreline are so wide local fire departments don't know how they'll get across them to draw water for a fire. Some of the 350 or so residents whose houses used to be on the water are hiring a lawyer. And officials from Burrillville and Glocester wonder if there will be enough water for the fishing season -- which opens in a few weeks -- let alone a summer of boating and swimming.

At a meeting with state and community officials yesterday, **Mesolella and his lawyer, John C. Dean**, argued they can legally drain the entire reservoir if they want to because it's private property.

"Hell, if it's empty, maybe a high-rise apartment building could go up there," Dean cracked.

Dean added that the state never listened to Mesolella's proposals to sell until the reservoir began draining. "This is the first time they've paid attention to us, so we don't want to lose that opportunity," he said to local officials who asked him to let the lake refill.

Community leaders urged DEM to start negotiating before a summer season on the lake is lost forever. Burrillville Town Manager Michael Wood offered incentives from the town. And for the first time DEM officials acknowledged that they have requested an appraisal on the lake's value and are considering buying it.

Lawyers for Mesolella, DEM and the communities agreed to get together during the next week to see if they can come to terms on how to negotiate for the underwater property.

But at yesterday's meeting in DEM headquarters, it was clear there are strong differences of opinion between DEM and Mesolella.

Those at yesterday's meeting couldn't even agree whether or not the reservoir is still draining.

Dean said the gates were partially closed over the weekend "so there should be no further reductions."

But Burrillville Town Solicitor Walter J. Kane said water was still pouring from the reservoir yesterday morning and the reservoir is lower than it has ever been in 34 years.

It should be 8 to 9 feet deep at the dam this time of year, according to historical records, Kane said. Last measured, the water was only 3.9 feet deep.

The lake and some abutting property are owned by Pascoag Reservoir and Dam Co., which has three partners, Mesolella, his father, Vincent J. Mesolella Sr. and Richard Ahlborg of Cranston.

They bought an old mill, some surrounding property and the reservoir in 1980. They built housing for the elderly and sold off much of the surrounding land.

But as early as 1982, Mesolella was battling over water rights, arguing that surrounding property owners have rights only to the high water mark, not to the reservoir itself. He says he's been asking the state to buy the reservoir since 1983.

Last summer, Mesolella's company posted signs near a DEM boat-launching ramp proclaiming ``Private Property/No Trespassing.'' He asked local police to enforce it. But they declined and DEM countered with a sign urging boaters to ignore the other sign.

Mesolella insisted the state was using private property without paying for it. He said his company pays the town of Burrillville \$4,000 in taxes each year on the land that is largely underwater.

Last year Mesolella wanted \$400,000 for the reservoir. This year he wants \$425,000.

Early this month, members of the local association that maintains the gatehouse at the reservoir's dam discovered a new negotiating tactic. Mesolella changed the locks on the gatehouse and left the gates open.

At that time, Dean told the Journal-Bulletin that the reservoir was being lowered so the dam could be repaired. A few weeks earlier, a dam in Wakefield had burst, prompting DEM to do a round of dam inspections throughout the state. **The agency warned Mesolella's company that its dam needed repairs and the company would be liable if the dam burst and caused damage.**

But last week the water was still rushing from the reservoir, and when Mesolella and Dean met with DEM, most of the talk was about negotiating a sale.

Dean said the gate would be closed if state and local officials acknowledged that the dam company has sole authority over water levels and police would help keep people off the reservoir.

Draining a reservoir is generally a wetlands violation, unless the water level is lowered to repair a dam. When DEM officials asked Dean yesterday what has been done so far, he replied that if DEM was threatening regulatory action, he would consider that another attempt to strip away the company's rights to its property.

At the meeting, Dean proposed more conditions for opening sale talks and closing the dam gates.

He demanded that DEM agree to try to reach a purchase agreement in 90 days, to take no legal action for 30 days in connection with releasing the water, to give the dam company sole authority to open and close the gate, to recognize the dam company's ownership of the reservoir, and to recognize No Trespassing signs that may be posted by the company.

DEM legal counsel Alan Shoer said DEM couldn't start talks by granting Mesolella sole authority to raise and lower water levels and to post No Trespassing signs.

``We have a longstanding relationship with that reservoir,'' he said. ``We built a boat ramp and the public has fished there for many decades. We're not going to concede on that point.''

Those comments triggered a long speech from Dean about his clients' property rights. He argued that DEM should condemn the reservoir now, and let the courts decide how much the state should pay.

``If we have so few rights that [it amounts] to no ownership rights, that would be reflected in the judgment,'' Dean said. ``But if we are correct that we have all the rights of a property owner, let's put that decision in the proper forum.''

Burrillville Town Solicitor Kane said that instead of fighting over who has what rights, his town wants to see the lake purchased and protected.

He said he believes the dam company owns the land under the reservoir. To help pave the way for a sale, he said the town would abate property taxes, assume responsibility for the dam and take out insurance to cover any liability claims on the lake.

Dean said Shoer has failed to respond to any of his legal arguments over ownership of the reservoir and has not shown any good faith in negotiating.

``If I were a litigator, I'd say, 'I'll see you in court,' '' Dean said. ``But I'm not a litigator, I'm a guy who tries to do deals.''

DEM Associate Director Malcolm Grant said that he has asked for an appraisal to be done on the lake.

“However, it's important to us that the reservoir has water in it before there is any purchase,” Grant said. “We're not willing to negotiate by agreeing to shut down the boat ramp. And we're not going to contemplate buying something that isn't there. If there is no water in the reservoir, it doesn't have any value.”

Grant added it would take some time to go through the state purchasing process and he pointed out that Mesolella is a member of the state Properties Committee, which oversees state land purchases, so he should be aware of the process.

But Mesolella argued that if the two sides disagree over how much control of the reservoir the dam company has, appraisals will differ depending on what the appraiser's instructions are.

Dean added he couldn't understand why DEM was so concerned about refilling the lake.

“Everybody knows what it looked like when it was full of water,” he said. “Water is water.”

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3.25.98 00:10:10

More water over the dam

<Picture>Pascoag Reservoir continues to drain, while interested parties scramble to make a deal with the owner, state Rep. Vincent Mesolella Jr.

**By PETER B. LORD
and DRAKE WITHAM
Journal-Bulletin Staff Writers**

Water continued pouring from Pascoag Reservoir in Burrillville and Glocester yesterday as state and local officials mulled state Rep. Vincent J. Mesolella Jr.'s ultimatum for the state to pay him \$425,000 for the 2-mile-long lake.

Last night, Governor Almond's office said the state has no intention of buying the lake, but it would help the towns or waterfront property owners buy it.

Town councils in both communities scheduled meetings tonight to vote on emergency measures to preserve the lake while the negotiations proceed.

Meanwhile, officials at the Department of Environmental Management were preparing a notice to Mesolella that they intend to cite him for letting the water levels drop too low.

But that enforcement effort is a slow, lengthy process. Five years ago a mill owner let a lake in Coventry dry up during a summer drought. DEM finally fined the company \$11,000, but not until the summer was over.

Almond's spokeswoman, Lisa Pelosi, said the state will do everything it can do to ensure the public continues to have the "recreational opportunities on the lake as they have been available for decades." She did not say how Almond plans to go about doing that, however.

The reservoir, also called Echo Lake, has already lost at least half its water and some officials wondered yesterday whether there is enough time to refill it for summer.

The water level dropped another three inches from Monday to yesterday, according to the local reservoir association -- even though Mesolella and his lawyer, John C. Dean, assured state and local officials Monday that they would prevent further water loss.

The 342-acre lake, probably the most popular place in northwestern Rhode Island for swimming, fishing and boating, has receded far from its banks, leaving private docks hanging over vast stretches of mud and rocks.

Mesolella has been trying to get the DEM to buy the lake since 1983, but Dean says the state never took Mesolella seriously until the last few weeks, when Mesolella opened the gate and let the water go.

Burrillville Town Manager Michael Wood said yesterday he has been assured by someone involved in the negotiations that the gate will be closed this morning. He declined to say whom he talked to.

In a meeting with DEM Monday, Mesolella and Dean made it clear that draining the lake was their bargaining chip to get DEM to the table with the money they demand.

DEM officials responded Monday that they will seek an appraisal of the lake to start the purchase process and see what the market value would be.

It was not clear last night how Almond's position might affect the discussions between DEM and Mesolella.

DEM legal counsel Alan Shoer said lawyers from DEM and Almond's office plan to meet with the town solicitors from Burrillville and Glocester tomorrow morning to discuss the decisions the towns make tonight and decide where to go from there.

Burrillville's Town Council had a regularly scheduled meeting tonight. The Glocester council called an emergency meeting.

They will consider the same issues: whether to waive local property taxes on the dam and the land underneath the Pascoag Reservoir and whether to lease the reservoir for up to a year and half, releasing the land owners, the Pascoag Reservoir and Dam Company, from liability.

The company is owned by Mesolella, his father, and a business associate.

The proposal, put together by Burrillville Town Manager Wood and Town Solicitor Walter Kane, attempts to appease residents who live near the emptying reservoir.

"It's not in their best interests to own those properties and it's not in our best interests for them to own these properties," Wood said of Mesolella and his partners. "It's very complicated to put together a deal to purchase these properties whether it's the state, the towns or a private company, so we need some time."

He said the town would not agree to lease the property until it had evaluated it to make the sure the dam was not in disrepair.

Mesolella maintains DEM triggered the latest dispute when it advised him recently that the dam needed repairs and he would be liable if it failed. At Monday's meeting, however, Mesolella and Dean declined to say if they had fixed the dam.

The reservoir is now at its lowest level in 34 years, according to Ray Cloutier, president of the Pascoag Upper Dam Association.

Yesterday Cloutier said the water level at the dam had dropped another 3 inches to 3 feet, 6 inches. •

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3.26.98 00:22:49

Owner stops draining Pascoag Reservoir

<Picture>Burrillville and Glocester agree to waive property taxes and assume liability for the dam and reservoir.

By DRAKE WITHAM

Journal-Bulletin Staff Writer

BURRILLVILLE -- Adversaries became partners momentarily yesterday morning when state Rep. Vincent Meselella Jr., owner of the Pascoag Reservoir, and Raymond Cloutier, president of the Pascoag Upper Dam Association, together turned the crank and shut the gate in the Upper Dam, stopping the steady flow out of the lake.

Closing the gate solved the short-term concerns of residents who have watched levels drop three to four inches per day from the picturesque reservoir, and allayed the concerns of the Department of Environmental Management over exposed wetlands.

It also gave hope that a long-term solution could be reached to the stalemate between Meselella and the DEM.

The Town Councils of both communities straddled by the reservoir -- Burrillville and Glocester -- also took steps yesterday to reach agreement with the owners.

In Burrillville last night, about 50 residents packed into the Town Council chambers and the hallway outside as the council unanimously approved a \$1 lease on the property over 18 months that would waive property taxes on the dam and reservoir. It would also shift liability to the town and allow it to craft a purchase or lease-purchase of the property.

Walter Kane, town solicitor, said he would draft the proposal and send it to the owners and the DEM. During a special meeting last night, the Glocester Town Council unanimously approved the same proposal.

"They've raised liability as their main issue, and this solves that concern," said Michael Wood, town manager of Burrillville. "There are a lot of possible solutions as far as buying it, whether it's through grants, the town or the homeowners."

The owners -- Meselella, his father, Vincent Sr., and Richard Ahlborg -- have not yet signed off on the deal, but Wood said they gave no indication at a meeting earlier this week that they had problems with it.

Cloutier said Meselella appeared eager to end the dispute yesterday morning. Cloutier, who for 10 years has been keeping measurements on the 355-acre reservoir, encircled by hundreds of homes and camp sites, said that when he arrived at the dam at 8:30 a.m., Meselella was already turning the crank to the gate while his father watched.

"It's tough to turn, so he was huffing a little bit," Cloutier said. "He was only going to close it part way, but I asked him to shut it and helped him do it."

If the gate remains closed, the reservoir is expected to slowly fill back up.

At the heart of the issue is a 15-year-old debate between the DEM and the owners about whether the manmade lake is subject to state wetlands regulations and whether anyone who sets foot in the popular summer hangout is trespassing.

The Meselellas and Ahlborg have been trying to sell the property since 1983, according to John C. Dean, their lawyer, because they were tired of paying taxes and liability insurance on what was essentially a public lake. The DEM has had a public boat launch on the lake since the early 1960s.

Use of the crystal clear lake has exploded over the past 15 years, as acres of waterfront woodlands were replaced by cottages and year-round homes, according to Cloutier.

Last year, the owners paid more than \$7,000 in taxes on the land, assessed at \$182,000 in Burrillville and \$150,000 in Glocester. Just 75 acres of land underneath the reservoir are in Glocester.

Last year, the DEM refused to pay \$400,000 for the property, saying it had prescribed rights to the reservoir after more than 30 years of use. The owners then erected a "No Trespassing" sign in the water right off the DEM boat launch. The DEM responded with a sign inviting people to continue to use the boat launch after local authorities refused to enforce the owners' sign.

An assessment of the dam by the DEM in October identified it as one of 16 high-hazard dams in the state, due to the number of residents in densely populated Pascoag who would be affected should the dam burst.

When California Jim's Pond overtook an earthen dam and flooded Peace Dale last month, the DEM reminded dam owners that they were liable for damage should a dam burst.

The DEM said the spillway next to the Upper Dam in Pascoag had to be cleared, along with the foliage that had grown on the dam.

The owners then changed locks to the gatehouse and let the water, usually at 7 to 8 feet at this time of year, drop to 3 feet, 6 inches by yesterday morning. Since early March, town officials and Cloutier's association have claimed that draining the lake would cause environmental harm, decrease property values and reduce access to a water supply in case of a fire.

Donald Levesque, chairman of the Pascoag Fire District Board of Commissioners, said Tuesday that fire concerns were greatly overstated because the district uses tanker trucks and much of the area has access to hydrants.

The DEM plans to seek an appraisal to help set a market value for Pascoag Reservoir, even though Governor Almond said Tuesday the state has no interest in buying the lake.

DEM officials said the appraisal could help move the negotiating process along, whether it's the towns or the abutting landowners who eventually seek to buy the lake.

The owners are now asking \$425,000 for the property. According to state Rep. Robert B. Lowe, who represents part of Burrillville and has been in touch with the owners, they are open to including an adjacent 30 acres in the deal.

DEM spokesman Bob Ballou also stressed yesterday that DEM is still merely considering whether to take enforcement action against Mesoletta for draining the pond.

DEM Associate Director Malcolm Grant said Tuesday DEM was preparing a notice of enforcement over the incident. But Ballou said yesterday DEM's lawyers were still researching the legal issues and its wetland staff were inspecting the lake.

Don Phaneuf, a lakefront property owner for the past five years, was among the residents who loudly applauded the council as it approved the proposal last night.

"I'm happy to see how the town has gone about this," he said.

-- With reports from staff writer Peter B. Lord.

3.27.98 00:15:41

Reservoir level rises, talks progress

<Picture>With the dam closed, water rises slowly in Pascoag Reservoir, and a long-term resolution to the stalemate is sought.

By DRAKE WITHAM
Journal-Bulletin Staff Writer

BURRILLVILLE -- While representatives from the Department of Environmental Management and Governor Almond's office met yesterday to discuss a proposal from town officials here to resolve the Pascoag Reservoir quagmire, the water level rose three inches.

The 355-acre reservoir, straddling the Burrillville and Glocester town line, had been steadily losing water for the past three weeks after Rep. Vincent J. Mesolella Jr. and his partners opened the dam gate in the midst of a dispute with the DEM.

The water level rose to 3 feet, 9 inches, in the first 24 hours after Mesolella shut the gate Wednesday morning. The reservoir is normally between 7 and 8 feet deep this time of year.

Tired of paying more than \$7,000 in taxes to the towns of Burrillville and Glocester and liability insurance on the dam and reservoir, the owners have been trying to sell it to the state.

The DEM has said it has no interest in buying the property because after more than 30 years of accessing it through a public boat launch, it has prescriptive rights to it. The state also told the owners that they were responsible for any damages should the earthen dam breach and flood densely populated Pascoag.

In negotiations over the past two weeks, John C. Dean, lawyer for the owners, has said the DEM cannot regulate a private reservoir, and the draining began.

But as part of what Burrillville Town Manager Michael Wood termed a "good-faith effort" on the part of the owners, Mesolella shut the gate Wednesday morning. That night, the town councils of Burrillville and Glocester unanimously passed a \$1 lease on the property that would waive property taxes, and shift liability to the towns over the next 18 months while either a purchase or lease could be arranged.

The proposal still must be approved by the DEM and the owners before a long-term solution can be worked out.

"Purchases and leases were not a prominent part of the discussion," said DEM Director Andrew McLeod, of the hour-long meeting with the lawyers from the governor's office. "My very preliminary reaction is that the towns are stepping in a significant and constructive way, but beyond that we want to reserve judgment until we see the particulars."

He also said that the governor's position has not changed since Tuesday, when he said the state has no interest in buying the property.

McLeod said the DEM expects a formal proposal from Burrillville Solicitor Walter Kane by Monday, and hopes to meet with him next week.

In council chambers Wednesday night, residents who live near the reservoir loudly applauded the short-term solution, but it quickly became apparent that the issue is a long way from being solved.

Kane seemed to take the side of the land owners in outlining the situation to the Town Council and residents.

"Whether we like it or not, private property rights are involved here," Kane said. He added that the **owners have cited state Supreme Court cases that prescriptive rights do not hold up on a private reservoir**, while the DEM seems to have taken the position that "they have a right because they say they have a right."

Alan Shoer, chief legal counsel for the DEM, said the state has several theories as to why it has rights to the reservoir.

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3.26.98 00:23:15 Editorial

A private servant

State Rep. Vincent Mesolella has been draining a reservoir to force the state to buy his waterfront property. He has even the most hardened Rhode Islanders wondering whether they heard right. But while lines grow outside the state's psychiatric offices, the first crack at couch time rightfully belongs to the voters in North Providence who keep sending Mr. Mesolella back to the General Assembly. They must have a thing for pain.

Mr. Mesolella actually opened the gates on the two-mile-long Pascoag Reservoir. He did so to pressure the Department of Environmental Management to give him \$425,000 for his property. Conning the state into buying one's land at inflated prices is a time-honored way of making a quick buck in Rhode Island. In defense of the electorate's intelligence, such "offers" are usually made in a less blatant manner.

With the mudflats growing along the shoreline of the reservoir, also known as Echo Lake, Mr. Mesolella perhaps expects his (formerly) waterfront neighbors to aid in his quest, if only to get rid of him. He's also tightened the screws on all who would go fishing or boating at the lake.

Mr. Mesolella says he owns Echo Lake, and can do with it as he pleases. This claim happens to be much in dispute. Nevertheless, the state rep. recently changed the locks on the dam's gatehouse, which a local association maintains.

Burrillville officials are trying to "work" with him. The DEM now talks about giving his offer new consideration. We fear a growing statewide epidemic of "Stockholm Syndrome," whereby hostages identify with their tormentors. Draining a reservoir is a wetlands violation, or hasn't the DEM heard? We would think that the custodians of our environment would rather see handcuffs on Mr. Mesolella than new orders to cooperate with his extortion racket.

Mr. Mesolella currently serves as reverse poster boy for those who seek to keep state legislators off of state boards and commissions. Wouldn't you know, he sits on the special state committee that oversees all state property acquisitions! And as chairman of the Narragansett Bay Commission, he is conduit for NBC contracts whose recipients cough up much moolah for his campaigns. These contracts can be huge. Just last year, for instance, the NBC board approved a \$350 million tunnel project to handle storm-sewage overflow into Narragansett Bay.

All this is why we devoutly pray that the Rhode Island Supreme Court will agree in a forthcoming decision on separation of powers that legislators do not belong on state boards and commissions. The potential for conflicts of interest is almost infinite.

Finally, there's the eternal question of why the voters in North Providence keep returning a statesman like Vincent Mesolella to office. If they enjoy suffering, that's their right. Or maybe it's just inertia. But why won't they spare the rest of us from Mr. Mesolella's vision of public service?

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4.21.98 07:30:47

Water is again draining from Pascoag Reservoir

<Picture>The president of the Pascoag Upper Dam Association reports that the dam has apparently been reopened after the owners nearly drained the lake last month as part of a 15-year-old property-rights dispute.

By DRAKE WITHAM Journal-Bulletin Staff Writer

BURRILLVILLE -- When Raymond Cloutier, president of the Pascoag Upper Dam Association, walked away from the dam at noon yesterday, the water level measured 7 feet, 3 inches. But when he returned later in the day, he says, he could tell the dam had been re-opened and that water was draining.

The water level is usually between 7 and 8 feet at this time of year. But in a property-rights dispute with the Department of Environmental Management, the owners of the land beneath the reservoir -- state Rep. Vincent J. Meselella Jr., his father, Vincent Meselella Sr., and Richard Ahlborg -- began draining the reservoir last month.

The water level fell to a 35-year low of 3 feet, 6 inches before the dam was closed as part of a good-faith agreement with the towns of Burrillville and Glocester, which the 355-acre reservoir straddles. Yesterday marked the highest water level since the dam was closed.

When Cloutier returned to his home at 5 p.m. yesterday, he noticed that water was again "cascading over the fall near CVS," a sign that the dam had been reopened. "I went over to the dam and, sure enough, water was flowing out on the other side," Cloutier says. "I can't even guess how much it's been opened. It's absolutely not as much as before, but the gate is definitely open." Cloutier has been measuring the water level at the dam for the last 10 years and almost daily since the owners began draining it last month.

The dispute, now 15 years old, centers on whether the owners, who pay taxes to Burrillville and Glocester, are subject to state wetlands regulations and whether anyone who sets foot in the popular summer hangout is trespassing.

With the reservoir rapidly receding last month, officials from Burrillville and Glocester approved a proposal that calls for the dam to be closed, property taxes to be waived and liability assumed by the towns until a sale or lease agreement can be worked out.

That plan has not yet been approved by the Department of Environmental Management. It was reported in The Sunday Journal that DEM officials had sent a four-page letter to John C. Dean, lawyer for the owners, declaring that the man-made lake is subject to wetlands laws and that, because the DEM has run a public boat launch on the lake since the early 1960s, the department has prescriptive rights to do so. Dean counters that, "except for DEM's letter, we have had no contact from DEM or the towns."

He also says that he has not received a request that flow from the dam be controlled by the Upper Dam Association and that assertions that the DEM has prescriptive rights to the lake and that it falls under wetlands laws "are wrong."

Dean could not be reached for comment last night.

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4.22.98 07:34:10 Mesolella pulls plug on reservoir again
By DRAKE WITHAM Journal-Bulletin Staff Writer

BURRILLVILLE -- Nearly a month after he turned the crank in the gatehouse of the Pascoag Reservoir, halting the emptying of the 355-acre lake and quelling the concerns of angry residents whose homes surround it, state Rep. Vincent J. Mesolella Jr. has reopened the gate. Mesolella, who, along with his father and another man, owns the dam and the land beneath the pristine lake, said yesterday that he opened the gate Monday to control water flow and not to ignite negotiations in a 15-year property dispute with the Department of Environmental Management. "There's nowhere near as much water coming out as there was in the past," he said yesterday. "I didn't realize it had gotten that high. We're trying to mitigate our potential liability and limit environmental damage."

He didn't say how low he planned to let the water recede, adding only that "the reservoir is not being drained, it's being controlled."

But town officials and angry homeowners couldn't help but think yesterday that they were witnessing another power play in a long-running dispute between the owners and the DEM.

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For the past 15 years, the owners have been trying to sell the property to the DEM, arguing that they were paying taxes and liability insurance on what was essentially a public lake.

The DEM, which has a public boat launch at the popular swimming, boating and fishing spot, refused to buy it for \$400,000, claiming after more than 30 years of use, it had prescriptive rights to the property.

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The DEM reviewed the proposal, met with town officials and will meet with them again Monday. It also sent a letter to the owners outlining its belief that it had rights to the water and that under the state Freshwater Wetlands Act the owners were not free to drain water from the lake.

"Other than that letter we have not received a single, solitary word from the DEM or the towns since we closed the dam," Mesolella said.

Burrillville Town Manager Michael Wood said he hoped Mesolella was not frustrated with the process and trying to send a message.

"The politician ought to understand the bureaucrat," Wood said. "These things take time and messages aren't going to get this solved. This is moving ahead and I think it's important that we let the process develop."

Mesolella said there's no message being sent; he's just trying to balance environmental concerns with liability issues. He said when he found out that water levels had risen to 7 feet, 3 inches Monday he moved to reopen the gate, reasoning that the less water in the reservoir meant less pressure on the dam. Thomas S. Andolfo, an appraiser hired by the DEM, who visited the dam Monday, has a meeting with Mesolella tomorrow. Bob Ballou, spokesman for the DEM, said the agency has no plans to purchase the property but wants to get a handle on its worth.

4.22.98 00:05:35 Mesolella pulls plug on reservoir again
By DRAKE WITHAM Journal-Bulletin Staff Writer

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4.23.98 00:03:14 Mesolella ordered to stop draining lake

<Picture>Swamped with complaints from the public, officials go to court for a restraining order and prepare to cite Rep. Vincent Mesolella Jr. for wetlands violations.

By PETER B. LORD Journal-Bulletin Staff Writer

PROVIDENCE -- Atty. Gen. Jeffrey B. Pine and the Almond administration made it clear yesterday that they have finally had enough of state Rep. Vincent J. Mesolella Jr.'s disappearing-lake act. They obtained a temporary restraining order from Superior Court Judge Michael A. Silverstein yesterday afternoon demanding that Mesolella stop draining Pascoag Reservoir, in Burrillville.

In fact, Silverstein gave Mesolella three hours from the time he issued the order to get the gates closed. Meanwhile, officials at the state Department of Environmental Management said they are preparing to cite Mesolella for violating the state's Freshwater Wetlands Act, which carries civil penalties of up to \$1,000. Mesolella represented himself at the court hearing and signed the restraining order in the space marked "counsel for the defendant." His lawyer was reportedly out of town.

DEM officials said they presumed Mesolella complied with the court order yesterday afternoon but they didn't plan to check on the gate at the Pascoag Upper Reservoir Dam until today. The gate can't be inspected without admittance to the gatehouse and Mesolella wasn't expected to turn over a key until today. Mesolella couldn't be reached for comment.

He will have the opportunity to return to Superior Court at 2 p.m. next Wednesday and argue about the state's plan to seek a permanent injunction preventing him from any further steps to drain the 2-mile-long reservoir, which is also known as Echo Lake. This was the second time this spring that Mesolella has opened the gates.

Last month he drained half the lake, leaving docks high and dry. His lawyer made it clear the draining was a tactic to get DEM to respond to his demands for the state to pay him \$425,000 for the lake. Talks got under way, and Mesolella voluntarily closed the gate. This week he opened the gate again. He told a Journal-Bulletin reporter that the "reservoir is not being drained, it's being controlled."

But neighbors didn't believe it. They besieged local and state officials with complaints and asked them to do something to save the lake as the summer swimming and boating season approaches. For more than 10 years, Mesolella has complained that by owning the lake, he faces many liabilities and few benefits. Every 18 months or so he has launched a new effort to get the state to buy his lake.

DEM officials have steadfastly refused. They have a boat-launching ramp on the lake and the public has been free to use it for 30 years, they argued, so why should the state pay now, particularly since many others, including two church camps, are regular users of the lake?

Last Friday, DEM gave Mesolella an official warning. Alan M. Schoer, DEM's chief legal counsel, sent Mesolella's lawyer, John C. Dean, a letter advising him that DEM believes releasing the lake waters amounts to a violation of the state's Freshwater Wetlands Act. "It is your position that your clients have the unfettered right to do as they see fit to this resource, according to a 1950s Rhode Island Supreme Court decision," Schoer wrote. "However, this common-law decision has long been superseded by the enactment of the Freshwater Wetlands Act, in 1971. Accordingly, any further unauthorized provocative alteration of this resource will subject your client to legal action." Mesolella opened the gate anyway.

Raymond Cloutier, president of the Pascoag Reservoir Upper Dam Association and the man who maintained the gate until Mesolella locked him out this spring, signed an affidavit yesterday asserting that the gate apparently was opened sometime Monday afternoon.

THE STATE'S response was decisive. Yesterday afternoon, four lawyers representing Pine, DEM, and Governor Almond signed a two-part legal complaint asserting that Mesolella's company, Pascoag Reservoir Dam LLC, violated the state wetlands act and the public's rights to use the lake.

Judge Silverstein signed a temporary restraining order after a brief hearing. Mesolella, who is not a lawyer, spoke in his defense. But it couldn't be learned what his arguments were. State officials said Mesolella left them with no choice but legal action.

"Today's action was necessary to protect the citizens and the environment of northern Rhode Island," Pine said in a statement. "Allowing the water levels to drop presented an imminent threat to not only the ecological balance of the

wetlands, but also created a public-safety issue as it relates to fire department access to adequate water supplies in the event of an emergency."

Almond issued a statement saying he shared the concerns of lakefront property owners ``whose quality of life has been greatly disturbed because the owners of the reservoir have arbitrarily decided to lower the water level." State officials said they couldn't perceive any lowering of the water level this week, but it definitely wasn't rising, as it should this time of year.

DEM associate director Edward Szymanski said last night the water at the dam is 7 feet, 3 inches deep. The reservoir is considered full when the level reaches 9 feet.

``If the water is released now, there's the fear we won't be able to reach the amount of water we want for the summer," Szymanski said. ``We're getting towards the end of the wet season. By taking the quick court action, we hope we've closed the gate in time."

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4.24.98 00:04:01 The dam is closed -- again -- as Mesoellea complies with order
By DRAKE WITHAM Journal-Bulletin Staff Writer

BURRILLVILLE -- The Pascoag Reservoir is filling up again.

"The status quo has been restored," said Bob Ballou, spokesman for the Department of Environmental Management, after the agency confirmed yesterday that state Rep. Vincent J. Mesoellea Jr., owner of the dam and 355-acre reservoir, had complied with a Superior Court order and shut the gate.

Judge Michael A. Silverstein granted the temporary restraining order Wednesday, at the request of the attorney general's office on behalf of the DEM. A 15-year dispute between Mesoellea and the DEM about who has rights to the pristine lake heated up in recent weeks when Mesoellea drained the lake down to a 35-year low of 3-foot-6 and subsequently allowed it to rise to 7-foot-3. It flared Monday when Mesoellea, claiming he was trying to balance environmental and liability concerns should the dam breach, reopened the gate. The DEM moved quickly for the restraining order.

"I complied with his order and respect the decision, because I believe it was an objective one," Mesoellea said yesterday. "I respectfully disagree with his order." On Wednesday, Silverstein will rule on whether to grant a permanent injunction against altering the water level.

The DEM, which has had a public boat launch on the lake since the early 1960s, also entered a formal argument with Silverstein that after more than 30 years of use, it has prescriptive rights to the property. It also maintains that under the Freshwater Wetlands Act, the lake cannot be lowered at the will of the owners.

John C. Dean, lawyer for the owners, is in Washington, D.C., this week but in the past has argued that because the lake is manmade it is not subject to the wetlands act.

Caught in the middle are the towns of Burrillville and Glocester, which the lake straddles, and the residents who make their homes around one of the most popular fishing and boating spots in the northwest corner of the state. "People's lives are on hold," said Raymond Cloutier, president of the Pascoag Upper Dam Association, which used to maintain water flow from the reservoir. "People are trying to sell their homes but they can't until this is resolved."

"The residents' concerns are personal interest and that is not what we should be addressing," Mesoellea said. "I have a distinct liability, I pay taxes and there are environmental concerns."

The two towns were instrumental in persuading Mesoellea to close the gate in March and proposed that they would waive taxes on the property, assume liability and lease the dam and reservoir for 18 months while a long-term solution could be worked out.

Walter Kane, solicitor for the town of Burrillville, said the town officials are meeting with the DEM on Tuesday to discuss that plan.

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4.26.98 00:02:12 Meselella, DEM await judgment this week in reservoir dispute

<Picture>The state seeks a permanent injunction against the owner of the Pascoag Reservoir dam that would forbid him to draw down the lake.

By DRAKE WITHAM Journal-Bulletin Staff Writer

BURRILLVILLE -- It's no wonder that the property-rights dispute between state Rep. Vincent J. Meselella Jr., owner of the Pascoag Reservoir, and the Department of Environmental Management has been going on for 15 years. It took a court order for Alan Shoer, chief legal counsel of the DEM, to walk down the hall Thursday from his fourth-floor office in The Foundry building in Providence to the Narragansett Bay Commission, where Meselella, chairman of the commission, has an office.

"It's kind of funny but that's Rhode Island for you," said Shoer, who has exchanged opposing legal opinions and glances in the elevator with Meselella for the past several weeks. Shoer visited Meselella's office to pick up a set of keys to the gatehouse at Pascoag Reservoir. Shoer was to make sure Meselella had complied with a temporary restraining order issued by Superior Court Judge Michael A. Silverstein to close the gate.

He had. But the exchange highlights the snail's pace at which negotiations have been going over the past several weeks in a dispute that dates back to 1983.

Meselella said last week he had reopened the gate because he was trying to balance environmental concerns with liability concerns. But he also said he was displeased negotiations had stagnated since he had closed the gate last month. "I was the one who stepped forward with the first gesture of good faith," Meselella said. "Since then no one had said a word to me. No one seems to sense my frustration."

Wednesday, Judge Silverstein will issue his ruling whether to side with the DEM's argument that Meselella cannot alter wetlands arbitrarily and grant a permanent injunction or side with Meselella's claim that a man-made lake is not subject to those standards.

Tired of paying taxes and liability insurance on one of the most popular fishing and swimming spots in northwest Rhode Island, Meselella tried to sell the dam and 355-acre body of water to the DEM last year. The agency refused and told Meselella that, because it has had access to the lake from a public boat launch since the early 1960s, it has prescriptive rights to his property.

The DEM also told him that he was responsible for loss of life or property damage should the dam fail. So, in March, Meselella lowered the lake to a 35-year low of 3 feet 6 inches.

Confronted by dozens of angry homeowners who had bought waterfront property, the towns of Burrillville and Glocester, which the lake straddles, persuaded Meselella to close the gate in late March and proposed a short-term solution.

The proposal calls for the towns to lease the property from Meselella for 18 months and waive all property taxes and liability while a purchase or long-term lease agreement can be worked out.

Also included in the proposal were options that the state would put forward money to assist the towns in purchasing or leasing the property. Officials from DEM have met more than once with town officials since the proposal was made and will meet again Tuesday but have stated repeatedly that state money for the purchase of the lake will not be made available.

The proposal has not been forwarded to Meselella. "I don't understand why [town officials] are talking to the DEM," Meselella said. "The first issue that needs to be addressed is liability and indemnification."

Shoer concurred with Meselella on that point. He said the towns don't need DEM consent to waive taxes, assume liability or lease property in their town. "We never had any serious discussion about signing on to the proposal because there were never any indications that we were going to contribute state money," he said.

When DEM meets with town officials this week it will be not only to go over the agreement but also to begin working on legal strategies according to Shoer. Walter Kane, solicitor for the town of Burrillville, said last week that he is encouraging homeowners to seek their own legal counsel as to whether they want to bring suit against Meselella for a possible decrease in property values.

By Friday water levels had risen to 7 feet 6 inches, or 18 inches below the maximum depth of 9 feet.
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4.29.98 07:29:54 Owner of dam has new lawyer, delaying trial

<Picture>John Webster, who will represent stateRep. Vincent J. Mesolella in the dispute with the Department of Environmental Management, requests a delay until he can get familiar with the case.

By DRAKE WITHAM Journal-Bulletin Staff Writer

BURRILLVILLE -- The Pascoag Reservoir will continue filling up over the next month while state Rep. Vincent J. Mesolella's new lawyer gets familiar with the 15-year dispute between his client and the Department of Environmental Management. Superior Court Judge Michael A. Silverstein ordered Mesolella to shut the gate at the Upper Dam last week and was expected to either grant a preliminary injunction or allow the owner to lower the lake as he pleased in court today.

But Mesolella replaced John C. Dean, the lawyer who has represented him thus far. Dean will not act as a court attorney with his new hire, John Webster.

In a conference call yesterday, Webster requested a delay in the case. According to Alan Shoer, chief legal counsel for the DEM, a bench trial will probably begin late next month.

The dam will remain closed until that time.

The 15-year dispute over who has rights to the dam and land under the 355-acre reservoir has heated up this spring with Mesolella lowering the lake to a 35-year low in March and then being forced by the court to close the gate at the dam last week.

He says he's paying taxes and liability insurance on what residents and the DEM have been treating as a public lake. The DEM counters that because the lake has had a boat launch since the early 1960s, it has prescriptive rights to the water.

The DEM also maintains that, as the owner of the property, Mesolella is responsible for the upkeep of the dam and any damage or loss of life that could occur if the dam were to fail.

Shoer said the DEM must prepare a written memorandum explaining why it is requesting injunctive relief. He also said that the DEM officials met with solicitors from the towns of Burrillville and Glocester, which the lake straddles, for about 90 minutes yesterday to discuss strategy in the case.

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5.6.98 07:31:21 Town looks to residents to preserve open space

<Picture>Parcels of 5 acres or more could be purchased by the town under a program in which the state Department of Environmental Management would pay 75 percent of the cost.

By DRAKE WITHAM Journal-Bulletin Staff Writer

BURRILLVILLE -- Preserving the town's sprawling fields, crystal lakes and dense woods has long been a goal at Town Hall. Town officials are now asking residents to help them preserve the town's rural feel.

Citing an open-space acquisition program in which 75 percent funding from the Department of Environmental Management would be available, the town is asking residents whether there are parcels of at least 5 acres that they would like to sell. "We're reaching out to the community to see if anybody has any property that would be suitable for preservation under this program," said Town Manager Michael Wood.

Using the Rhode Island Natural Heritage Preservation Commission's open-space grants, the DEM is providing up to \$400,000 to individual municipalities to ensure that open lands and wetlands are preserved. In hopes of landing a large sum of grant money from the state, Wood budgeted \$100,000 in the capital improvement proposal last month. Now he's looking to expand the list of properties that would meet the grant criteria before the June 5 application deadline.

"We want to have as many options as possible before we submit an application," Wood said. "We'll rank and prioritize them and then put the best package forward."

According to Town Planner Katia Balassiano, the grant calls for parcels of more than 5 acres. Other factors under consideration include land abutting or containing wetlands, rare or endangered species and unique natural and scenic features.

Those specifications closely match parcels surrounding the 355-acre Pascoag Reservoir, owned by state Rep. Vincent J. Mesolella. The lake has been the source of a heated dispute this spring. Mesolella has indicated he wants to sell the property, but the DEM has said state money will not be used for that project.

"If it works out, it might be a solution to the bigger problems up there, but that doesn't foreclose acquisition of other properties that more closely meet the specifications of the grant program," Wood said.

Both Wood and Balassiano said that the Pascoag Reservoir situation was not involved in the land-acquisition effort. "The primary goal of the program is to maintain the natural, geographic and scenic properties of open space," Balassiano said. Balassiano said the town will also be able to use the list to update its recreation, conservation and open-space plan, which has not been updated since 1993.

There are at least two properties on the 1993 list that could fit the DEM grant criteria. Across a brook from White Mill Park on Wallum Lake Road are two properties totaling about seven acres. A bridge already connects the park with the parcels, and Balassiano said a trail could be put in, preserving the space for residents.

Add <Picture> on this topic

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5.21.98 07:28:04 Town wants in on dam lawsuit

<Picture>The request will be made on behalf of the town's sewer commission, which requires water to operate.
By DRAKE WITHAM Journal-Bulletin Staff Writer

BURRILLVILLE -- The Town of Burrillville has prepared a motion to join the Department of Environmental Management in its suit against state Rep. Vincent J. Mesolella. Owner of the Pascoag Upper Dam and the land under the Pascoag Reservoir, Mesolella has been embroiled in a 15-year property rights dispute with the DEM. After Mesolella opened the door in the gate house, allowing water to escape from the 355-acre reservoir last month, the DEM obtained a restraining order.

It also brought a complaint against Mesolella charging violation of the Freshwater Wetlands Act by altering a body of water. Mesolella's lawyer, John B. Webster, contends that, because the lake is man-made, it is not subject to those laws.

Now, the town is preparing to ask for permission to join the case on behalf of its sewer commission, according to Town Solicitor Walter Kane. The sewer commission's treatment facility requires water to operate, and the town is looking for assurances that water will continue to flow from the reservoir. "There was an agreement between the previous owners and the sewer commission that assured a certain amount of water flow," said Town Manager Michael Wood.

The agreement, according to Kane, was executed in the 1970s and was essential to the town in obtaining a grant from the Environmental Protection Agency for the facility. Kane said the motion will be filed soon; a judge will have 10 days to decide whether the town will be permitted to join the suit.

The Pascoag Fire District will ask a Superior Court judge this morning for permission to join the case. Ted Garille, general manager of the fire district, asserts that the reservoir is a source of water for the district's fire trucks and that low water levels present a public safety hazard. Members of the district's Board of Fire Commissioners have said that there is no safety hazard and that the reservoir is a last resort in obtaining water, but William Bernstein, lawyer for the fire district, said it does not want to lose that option.

Superior Court Judge Michael A. Silverstein is scheduled to hear testimony on the wetlands complaint tomorrow. At today's hearing, the DEM plans to file a motion asking for Webster's response to the complaint, and documents related to the case.

To be settled at a later date is whether Mesolella, who pays taxes and liability insurance on the property, is legally empowered to forbid the DEM or the public to use the popular summer spot.

Mesolella posted a no-trespassing sign in the water just off the DEM's boat launch last summer. The DEM responded with a sign that essentially told boaters and swimmers to ignore Mesolella's sign. Mesolella has tried to sell the property to the DEM, but it has refused, claiming it had prescriptive rights to the reservoir after 35 years of use.

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5.22.98 07:35:29 Pascoag Fire District seeks to join DEM suit against dam owners

<Picture>State Rep. Vincent J. Mesolella Jr., his father and Richard Ahlborg, owners of the Pascoag Upper Dam and the land under the Pascoag Reservoir, are accused of wetlands violations.

By DRAKE WITHAM Journal-Bulletin Staff Writer

BURRILLVILLE -- The courtroom is getting more crowded in the property-rights dispute between the Department of Environmental Management and state Rep. Vincent J. Mesolella Jr. Concerned about fluctuating water levels in one of its water sources, the Pascoag Fire District is attempting to join the DEM's suit against Mesolella.

Mesolella, his father and Richard Ahlborg own the Pascoag Upper Dam and the land under the Pascoag Reservoir. They pay taxes on the dam and liability insurance for what is essentially a public lake. Last year, they attempted to sell the property to the DEM for \$400,000. The DEM refused the offer, claiming that, because it has accessed the lake for 35 years from its public boat launch, it has prescriptive rights to the property.

Mesolella opened the gate to the dam and began draining the lake in March. He closed the gate and then reopened it in late April. At that time, the DEM sought a temporary restraining order to keep the gate closed and brought a suit against Mesolella accusing him of violating the Freshwater Wetlands Act. Superior Court Judge Michael A. Silverstein granted the restraining order and will begin hearing testimony on the wetlands violation charge on Friday. Tomorrow, the Pascoag Fire District will ask for permission to join the suit. "We do not have hydrant systems that extend to the entire village of Pascoag," said Ted Garille, general manager of the fire district. "There may be times when we would have to draw water from the Pascoag Reservoir or one of the ponds that it feeds."

In late March, the reservoir, which is normally 9 feet deep, had been drained to 3 feet, 6 inches, disclosing mud and rocks once covered by water. Although the reservoir is not the primary water source used by tanker trucks to fight fires, low water levels create a public safety issue, according to William Bernstein, lawyer for the fire district.

"The fire district certainly has an interest in the reservoir because it had for a long time drawn water from the reservoir," he said. "We'd hate to have that option cut off, because it's a matter of public safety."

Because the hearing is set to begin soon, the fire district must obtain Silverstein's permission to join the case.

Town Solicitor Walter Kane said last week that the town and the sewer commission are also considering joining the suit.

5.28.98 00:01:14 Hearing today on dispute over Pascoag Reservoir

BURRILLVILLE -- The state will begin presenting testimony today in a hearing to determine whether state Rep. Vincent J. Mesolella violated the state Freshwater Wetlands Act by lowering the Pascoag Reservoir to a 35-year low this spring.

Mesolella, his father and another man own the Upper Pascoag Dam and the land under the 355-acre reservoir. They pay taxes and liability on the popular summer spot, which the public can access from a Department of Environmental Management boat launch. Last year they asked the DEM to buy the property for \$400,000. The agency refused, saying it had prescriptive rights to the property after more than 30 years of use. Claiming that his property rights were being ignored, Mesolella drained the lake, normally 9 feet deep, to 3-foot-6 in March. He allowed the water to rise in April but when he began to lower it again, the DEM, Governor Almond's office and Atty. Gen. Jeffrey B. Pine's office sought a temporary restraining order and brought a complaint against him for altering a body of water.

Superior Court Judge Michael A. Silverstein granted the restraining order and today will begin hearing testimony on the alleged wetlands violation. John B. Webster, Mesolella's lawyer, says that since Pascoag Reservoir is a manmade lake it is not subject to the Freshwater Wetlands Act.

"The issue [today] is whether he can unilaterally alter the wetland," said Joseph S. Larisa Jr., executive counsel to the governor.

If Silverstein grants a preliminary injunction to keep water levels at their historic marks, then the two sides will return to court at a later date to settle the property-rights issue.

5.29.98 00:00:35 Old rule cited in dam dispute

<Picture>State Rep. Vincent J. Mesolella says a 1925 act by the General Assembly protects his right to drain the Pascoag Reservoir, but DEM officials disagree.

By DRAKE WITHAM Journal-Bulletin Staff Writer

BURRILLVILLE -- State Rep. Vincent J. Mesolella, owner of the Pascoag Reservoir, has the right to drain the 355-acre lake as he wishes, based on a 1925 General Assembly Act, his lawyer argued in Superior Court yesterday. John B. Webster, Mesolella's lawyer, said the 1925 act gave authority to the owners of the Pascoag Reservoir and subsequent owners to maintain and regulate flow from the reservoir "whether covered with water or not." The Pascoag Dam and Reservoir were created in 1860 for the purpose of providing water and power to a mill that has long since gone out of operation.

Mesolella was in court yesterday to face a complaint brought last month by the Department of Environmental Management, Governor Almond's office and Atty. Gen. Jeffrey B. Pine's office, claiming that he violated the state's Freshwater Wetlands Act by draining the lake. The DEM claims that Pascoag Reservoir is defined as a "pond," and thus cannot be altered at the will of the owner. Superior Court Judge Michael A. Silverstein granted a temporary restraining order on opening the dam based on that complaint, and that was the matter under debate yesterday.

Paula Younes, legal counsel for the DEM, would not discuss the case after yesterday's session, but a brief she filed with the court addressed the state's response to Webster's argument. "That law was passed for the purpose of mill operation (which ceased long ago) and in any event is subject to the subsequent passage of the Freshwater Wetlands Act, which did not exempt this Lake (or any other) from its purview," the brief stated.

Younes called three DEM specialists and Raymond Cloutier, who has been regulating flow from the reservoir since 1990, to testify. William Lapin, a biologist for the DEM, described how fish would have been irreparably harmed had the lake continued to drain. David E. Chopy, engineer with the DEM's department of compliance, outlined historic water levels in the reservoir: between 4 feet 4 inches and 6 feet 4 inches in the late fall and winter, and between 8 feet 5 inches and 9 feet 3 inches in the spring and summer. Dean Albro, chief officer of inspection and compliance for the DEM, then said that Mesolella was draining the lake at a time when the water was historically being raised.

The state closed its case, and Webster asked Albro to return to the stand as his first witness. "How does an individual dam owner know at what point he triggers a violation of the Freshwater Wetlands Act?" Webster asked. He continued asking Albro what water level constitutes a violation. "It's not a matter of the level," Albro said. "It's a matter of it being drained when water levels should be rising." Silverstein called it a day shortly after 4 p.m. and asked the sides to return next month. Mesolella did not make any comment, leaving the courtroom immediately after the end of the proceedings.

The case stems from a 15-year property-rights dispute between Mesolella and the DEM. Mesolella, his father and another man own the Upper Pascoag Dam and the land under the reservoir. They pay taxes and liability on the reservoir, which the public can access from a DEM boat launch.

Last year, they asked the DEM to buy the property for \$400,000. The agency refused, saying it had prescriptive rights to the property after more than 30 years of use.

Claiming that his property rights were being ignored, Mesolella drained the lake, normally 9 feet deep, to 3 1/2 feet in March. He allowed the water to rise in April, but when he began to lower it again, the state brought a complaint of violating the Freshwater Wetlands Act.

The state was asked to file a response by the end of next week, and Silverstein will rule on it June 8, when the parties return to court.

If Silverstein rules that Mesolella did violate the Wetlands Act, then the parties will likely return to court to settle the property-rights issue.

6.14.98 00:02:16 Unnatural resource: **The story of Pascoag Reservoir**

By GERALD M. CARBONE and PETER B. LORD Journal-Bulletin Staff Writers

BURRILLVILLE -- In the winter of 1980, a real estate partnership called Sayles Mill Associates authorized Vincent J. Mesolella Jr. to represent the firm in all of its ventures. At the time, Mesolella was earning \$200 a week managing a lumberyard owned by the same three men who owned Sayles Mill: his father, Vincent Mesolella Sr.; his uncle, Thomas Mesumuci; and developer Richard Ahlborg. The younger Mesolella was 30 years old and had little business background.

But Mesolella was also moving into his second term representing North Providence in the Rhode Island House, carried into the office by the powerful political machine of Sal Mancini, the town's legendary mayor, who died in 1994. As he rose to become one of the state's most powerful legislators, Mesolella also worked wonders with his family's real estate acquisitions.

Starting with an initial investment of just \$127,500 in 1980, Mesolella's company used its ownership of the vacant Sayles Mill complex to gain control of the nearby Pascoag Reservoir, the Canada Rocks Dam that controls the reservoir, and 42 acres of waterfront real estate. Over the last 18 years, companies directed by Mesolella grossed more than \$1.2 million through rent hikes, land sales and an insurance settlement reaped from a catastrophic fire.

Mesolella and his partners still control the dam, reservoir, and land with an aggregate assessed value of \$825,500. And this spring Mesolella renewed his long-time dream of getting the state to pay him and his partners for the lake itself -- a body of water that for decades has been freely used by hundreds of abutting cottage owners, the youth attending nearby Catholic and Episcopal church camps, a private campground and by fishermen using a small state ramp for launching boats.

Two months ago, in a move his lawyer said was an effort to bring the state to the bargaining table, Mesolella drained half the water from the 2-mile-long lake. The move outraged property owners and triggered a court order from the state to close the gates. Last week a Superior Court judge heard arguments on the state's complaint that the draining of the lake violated the state's Freshwater Wetlands Act. Meanwhile, Mesolella's lawyer announced the lake was being closed to all users. (State officials say they will continue to encourage the public to use the lake.)

Although he was upbeat and talkative in court, Mesolella and his partners declined to talk with the Sunday Journal about the dispute. Through a spokesperson they said: "Upon the advice of their counsel, the partners will refrain from making any comment to the press."

In public meetings with the Department of Environmental Management and at court, Mesolella insists he is being victimized by all the swimmers and boaters who trespass on his lake. He's spent money and incurred liability for the lake, Mesolella argues, while everyone else uses it without paying him.

Some people, including local officials, express sympathy. But very few realize how little Mesolella and his partners actually spent, and how much their investment has already brought them, as they methodically took control of the Pascoag Reservoir.

SOMEONE COMING across Pascoag Reservoir -- it's also known as Echo Lake --this summer could easily be convinced he was viewing a slice of New Hampshire's Lakes Region. Hundreds of cottages and year-round houses jam much of the northern shoreline -- nearly all of them have a dock and a boat or a diving raft. Hints to the lake's origins can be found among the rubble where Pascoag Lake nudges the village of Pascoag. Years ago the lake was not a recreation area, it was an energy storehouse. Ten stone mill buildings embraced a dam here until they were destroyed by a spectacular fire in 1981. Every other mill that depended on the reservoir eventually burned as well. The story begins in 1814, the year that Daniel Sayles built a small mill on the banks of the Pascoag River. Farmers carried their homespun wool to Sayles's mill for dyeing and finishing.

Albert Sayles, the eventual patriarch of a vast family empire, bought into his grandfather's mill in 1853. Albert Sayles rebuilt the mill with granite, creating a massive, four-story structure with a huge bell tower holding a 500-pound bell. For the next 66 years that bell tolled the rhythm of life in Pascoag, summoning workers in the morning, calling them to lunch, ringing an end to the workday. Even today, the mill's influence is seen in the obituaries of the local men and women who worked there as perchers, inspecting the final cloth; as speckers, taking out imperfections; as doffers, changing bobbins on the looms.

In 1860, Sayles and four fellow mill owners banded together to form the Pascoag Reservoir Association. They bought land upstream from the mills, then flooded that land by building the Canada Rocks Dam in 1862.

The mill owners paid for the dam upkeep with occasional dues and by renting 16 lots on the reservoir to local residents in the know. The rents were cheap -- \$10 a summer for most cottages in 1960 -- but the few hundred dollars they generated, combined with sporadic contributions from the mill owners, paid the taxes and a gatehouse keeper for the dam.

By the 1960s, only three mills contributed toward upkeep of the dam and reservoir:

<Picture>The Sayles Mill was a 10-building complex built throughout the 1800s, the mill was the heart of the Pascoag business district until the last owner of the Sayles Mill finally threw in the towel in 1978 and shut down the mill.

<Picture>The Stillwater Mill built Harrisville and clothed the U.S. Army in olive drab. The company that owned it shut it down in 1973. But it retained three rooms for a small mending operation.

<Picture>The Oakland Mill was also in Harrisville and shut down in 1973. Charles Cove, a Pawtucket scrap dealer, bought the property.

Cove did not use the mill for manufacturing -- the mill became a warehouse for scrap metal such as old textile machinery. But the mill came with membership in the Pascoag Reservoir Corp., and Cove Metal paid its membership dues.

In 1980, Sayles Mill Associates bought Sayles Mill. The three partners -- Mesolella's relatives and Ahlborg, their business associate -- paid \$127,500. They did not buy the mill for manufacturing, but for housing.

Shortly after buying the mill, Sayles Mill Associates announced plans for a 126-unit apartment complex for the elderly.

The proposal met some resistance from the Planning Board, but the Zoning Board gave its imprimatur for the apartments -- 84 in the old mill, with the rest in new buildings adjacent to the mill.

The housing project never came to pass.

In May 1981, arsonists torched the mill on three successive nights. The third fire, on May 14, 1981, was so intense it overwhelmed the effort of firefighters.

"I've had 58 years in the business, by God, and this is the worst one I've seen . . .," now-deceased Pascoag Fire Chief Wilfred Osborne said at the time.

The next day, crane operator Norman Paquet, hired to haul away the rubble, struck the bell tower with his crane. A 110-pound slab of granite slid down the crane's boom and smashed through the cab, killing him.

Because the mill had been torched, the police considered the death a homicide. Within a week they arrested two teenage boys on charges of first-degree arson, death resulting. The 17-year-old pleaded no contest and was sentenced to four years in the state training school; the 18-year-old was exonerated.

SAYLES MILL ASSOCIATES' plans for a housing project went up in smoke with the mill.

But the insurance settlement of \$130,000 more than recouped the initial purchase price. Plus, the company retained the vacant mill land and membership in the Pascoag Reservoir Corp., which gave it a minority interest in the reservoir itself.

Although its members had ceased manufacturing, the Pascoag Reservoir Corp. -- the mill-owners association that controlled the reservoir -- continued to putter along, held together by a quiet, elegant woman named Gladys Gaucher.

Gaucher was an administrative assistant for Stillwater in the 1930s, and she kept the ledger book for the Pascoag Reservoir Corp. from 1935 until Mesolella's company took it over in 1990.

Gaucher tracked the association's good times and bad in her carefully penned ledger.

For four decades, people who wanted to rent cottages could find Gaucher at the Stillwater Mill complex, or in the office she later ran out of the mill owner's stately white house on East Avenue.

As the mill owners fell on hard times, so too did the Pascoag Reservoir Corp. In 1977, the Town of Glocester seized the 10 acres of the Pascoag Reservoir that lie within Glocester, because the corporation failed to pay \$965 in taxes and interest on the reservoir.

The corporation also had tax troubles in Burrillville. In 1982, the corporation was more than \$16,000 in arrears on tax payments for the dam and the reservoir. On March 30, 1982, representatives of Cove Metal, Stillwater Worsted, and Sayles Mill Associates authorized Mesolella to act as their spokesman. Mesolella quickly made himself known to his new neighbors.

That July, Mesolella stood before 250 irate people who owned homes on the reservoir. Residents had heard that Mesolella planned to open the dam's gate to drain the lake at the height of the summer season.

Mesolella told the angry crowd that vandals had damaged the dam's gatehouse and fence, and he didn't feel it was fair for his corporation to bear the costs of upkeep, liability, and taxes for the reservoir and lake.

Later that year, Mesolella offered to sell the dam and reservoir to local property owners for \$300,000.

That was far higher than the assessed value of \$14,550 that the town placed on the reservoir in 1983.

Austin Smith, who owned a house on the lake, didn't like Mesolella's tactics. "He's trying to intimidate us . . . to make money on the dam," Smith said at the time.

The homeowners refused to give Mesolella any money. But they did concede that maintaining the dam was a hardship best borne by the people who lived on the lake.

So in the spring of 1983, Smith helped form a nonprofit group to maintain the old Canada Rocks Dam. More than 300 families with waterfront homes each contributed \$10 to the Pascoag Reservoir Upper Dam Association, and the group set about repairing the dam.

Members of the nonprofit group went to work, heaving boulders away from the dam, rebuilding the gatehouse, installing a new fence. Gerald Miller, who owned an iron-works company, donated a crane to ease a new iron grate into place to filter the sluiceway.

For the past 15 years, the Upper Dam Association has paid all the costs of maintaining the dam, rebuilding a pedestrian bridge across the sluiceway, replacing the gatehouse roof, mending fences.

Association members had keys to the gatehouse, and a couple of dozen times each year they'd enter to raise or lower the dam's gate to control the level of the reservoir.

The gate's gears are cranked by hand, and "it's a lot of work, it's heavy work," said Raymond Cloutier, who has lived on the lake for years and operated the dam's gates. "You shouldn't do it alone."

Every year Cloutier has opened the gate on Columbus Day to drop the water level so that docks don't get crushed when the pond freezes. Throughout the winters, the association has kept the water level at the dam at 4 feet 6 inches. By Memorial Day, the Association lets the water level at the dam rise to 9 feet to ensure plenty of water for the summer boating season.

"We've taken as good a care of that (dam) as if it did belong to us," said Cloutier. "It may be that we've maintained it as well as we did so we would not have any trouble" with the dam's owners.

IN MARCH 1985, Pascoag Reservoir Corporation's tax debt to Burrillville had grown to more than \$17,000.

Jack Alpert, a lawyer for Stillwater Worsted, sought an abatement. In a letter to the town's tax assessor, he noted that the corporation "made no use of the reservoir for approximately 50 years" and "we tried to impress the taxing authorities that the ownership of the property was a liability and not an asset."

The corporation was just days away from losing the dam and the roughly 300 acres of water it owned in Burrillville for failure to pay taxes. But Charles Cove, a corporation member, paid the tax bill of \$17,617.

That spring the corporation stepped up its efforts to increase revenues. It advised people who rented summer cottages that by 1987 their rents would be incrementally increased to \$1,200 to \$1,500 per season, a three-fold increase in most cases. In 1987, the corporation earned more than \$18,000 from its camp rentals, and the Upper Dam Association was paying all the maintenance costs for the dam.

Mesolella also decided that year to seek a different buyer for his reservoir -- the State of Rhode Island.

Then-Gov. Edward D. DiPrete's office ordered Malcolm Grant, an associate director at the state DEM, to a meeting at the State House on Sept. 23, 1987. The governor's staff refused to tell him the meeting's purpose.

When Grant arrived, he was met by Mesolella and Governor DiPrete's chief fundraiser, James Taft.

Mesolella asked DEM for \$3.5 million to \$4 million for the reservoir and some 20 acres of land, according to a memo by Grant that the Sunday Journal obtained through a Freedom of Information request.

After the meeting, Grant fired off a letter to DEM Director Robert Bendick, saying: "I was particularly concerned about the gubernatorial involvement in this matter since Rep. Mesolella's proposal appears to be such a transparently bad deal for the state."

After a review, DEM experts concluded the steep, rocky property was essentially worthless and there was no need to buy the lake because it had long been open for use by abutting property owners, hundreds of cottages, two church camps, a public campground and those who used a small DEM boat launching ramp.

Also, during the period, a number of companies owning dams in other parts of the state, deeded those dams to the state to free themselves from a possible liability. But no one could recall the state actually paying for a dam and a lake.

The DEM turned down Mesolella's offer.

In the next few years, Mesolella's partnership consolidated control of the reservoir corporation.

Stillwater Mills liquidated all of its Rhode Island real estate in 1988, selling its membership in the Pascoag Reservoir Corp. to Sayles Mill Associates and Cove Metal for an undisclosed sum.

Gladys Gaucher closed out Stillwater's account, recording a final disbursement to Stillwater Inc. of \$7,097.

In 1989, an arsonist torched Stillwater's old mill, wiping out the heart of Harrisville's history.

Stillwater's departure left just two companies in the Pascoag Reservoir Corp.: Cove Metals and Sayles Mills Associates.

Cove's Oakland Mill burned down in April 1993.

In March 1988, Sayles Mills Associates sold most of the land that it had acquired when it bought the historic Sayles Mill in 1980. It sold the property to Independent Realty, headed by Eugene Carlino, for \$650,000.

It was little more than a rubble-strewn lot, covered with the remains of the old mill, and the sales price surprised many in town.

"I'll tell you, that's a ton of money for that land," Burrillville Tax Assessor Shelby Jordan said recently. "Let's be generous and say \$200,000," for a 1988 market value. "\$650,000 is way out of line."

Carlino financed the purchase through Rhode Island Central Credit Union, one of several credit unions that failed in the state's 1991 banking crisis. The loan was inherited by DEPCO, the taxpayer-financed agency created to bail out depositors whose money was tied up in failed credit unions. DEPCO foreclosed on the loan, and Carlino retired the debt. A DEPCO spokesman declined to say under what terms the debt was settled.

Mesolella's partnership might have given up its ownership of the reservoir when it sold the mill property to Carlino -- an ownership that Mesolella has claimed was a liability. But, in fact, Mesolella initiated a series of steps to ensure the partnership had complete ownership of the reservoir.

In a document filed with the Carlino deed, Sayles Mill Associates made it clear that the company was not selling its membership in the Pascoag Reservoir Corp.

On Jan. 5, 1990, the 130-year-old Pascoag Reservoir Corp. held the last meeting of its board of directors.

It was a meeting that would wipe the slate clean, clearing away any possible claims the old mill owners would have on the reservoir, and transferring title to the Mesolella partnership.

Mesolella and Ahlborg were the only voting members recorded in attendance.

Mesolella was elected secretary. A motion was made to sell all of the Pascoag Reservoir Corp.'s property in Burrillville to the Pascoag Investment Corp., a new company founded by Mesolella, Cove and Ahlborg. The purchase price was \$1. The vote to sell was unanimous.

The Pascoag Investment Corp. now had 100 percent ownership of the Canada Rocks Dam, most of the Pascoag Reservoir, an island in the reservoir, a boathouse, and nearly 40 waterfront acres on a peninsula.

A month later, Mesolella oversaw one more step for his partnership to gain control of the entire lake.

The corporation bought back 10 acres of the reservoir located in Glocester -- a small tip of water that had been lost years before when the owners failed to pay taxes of \$965. With interest, the 10 acres of water cost Mesolella's corporation \$19,908.

Finally, Mesolella and his partners had 100 percent ownership of the lake.

In 1994, Mesolella's new company subdivided some of the land it acquired from the old Pascoag Reservoir Corp. The subdivision created eight new waterfront lots.

Pascoag Investment Corp. has since sold four of the lots for a total of more than \$400,000. The company retains four lots plus a 25-acre parcel, with a total assessed value of \$451,600.

In 1995, Mesolella and Ahlborg chartered yet another corporation -- Pascoag Reservoir & Dam LLC, a limited liability company. Pascoag Investments then transferred the dam, the reservoir, and the island to the new corporation.

In 1996, Mesolella renewed his efforts to sell the reservoir to the state. And he suggested for the first time that he was concerned about the appearance of a major political leader trying to get the state to buy his property.

In May of that year his lawyer, John Dean, informed the DEM that Mesolella would abstain from the company's efforts to sell the dam and reservoir to the DEM. Dean wrote:

``Because of Mr. Mesolella's position as a State Legislator, the Company and Mr. Mesolella do not deem it appropriate for him to be involved in such negotiations."''

Mesolella, however, didn't disclose many of his potential conflicts in disclosure forms required by the Rhode Island Ethics Commission.

The disclosure forms require elected public officials to identify any corporations for which they serve as a director.

Mesolella, deputy majority whip of the state House of Representatives, is a member of the State Properties Review committee, which rules on all state land transactions; he also is chairman of the Narragansett Bay Commission and was, until recently, chairman of the Underground Storage Tank Responsibility Board. He has never disclosed his involvement with the Pascoag Reservoir Corp., Pascoag Investments or Pascoag Reservoir & Dam.

Mesolella missed this year's filing deadline at the end of April and has failed to file any disclosure form.

In 1995, when DEM sought to widen its boat ramp, which the state has owned since 1964, Pascoag Reservoir & Dam LLC, renewed pressure on the state to buy the reservoir and dam.

On Nov. 7, 1995, Ahlborg sent DEM a letter stating that the company might build ``physical barriers'' across the boat ramp to keep boats from its property.

Ahlborg attached a memo from Dean, the company's lawyer, advising the company to ``minimize its exposure'' by posting no trespassing signs at the boat ramp, imposing a user fee on anyone who uses the reservoir, and ``lowering the level of the Reservoir'' in order to ``minimize'' the company's liability.

Ahlborg again offered to sell the reservoir and the 25-acre parcel on a peninsula to the DEM. This time, the asking price for both properties was \$550,000, with an option to buy just the reservoir for \$350,000.

In a May 2, 1996 memo, Ahlborg wrote, "We feel these are very fair proposals to the state. The purchase price that is quoted is consistent with the price we asked for over ten years ago."

DEM officials declined to buy the reservoir, so in 1997 Ahlborg offered the reservoir to the Town of Burrillville for \$395,000. Burrillville didn't take the offer, and in July 1997 Pascoag Reservoir & Dam LLC posted a No Trespassing sign on the state's boat ramp.

"We own the lake, we pay taxes on the lake, we pay the insurance," Mesolella said at the time. "The DEM put a dock in our lake."

DEM administrator Malcolm Grant countered that the dock had been there for 30 years and "the deed of the property allows us and our guests, the public, to use the lake."

The DEM posted its own sign telling the public that it was okay to use the ramp.

The two sides were at impasse.

Then attention shifted to the dam.

The U.S. Army Corps of Engineers classified the old earthen dam as a "high hazard" because it is upstream of Pascoag's village center, a densely populated area. An Army Corps study concluded that if the Canada Rocks Dam broke, people in the village would have 200 seconds to flee before a 29-foot wall of water swept through town.

Last October, the DEM inspected the old Canada Rocks Dam and made several recommendations for shoring up the dam, including new masonry work for the spillway, cutting brush sprouting from the dam, and replacing some stone "riprap", or breakwater, upstream of the dam.

On Feb. 18, an earthen dam in South Kingstown breached. California Jim's Pond -- just a fraction of the size of the Pascoag Reservoir -- flowed into the village of Peace Dale, flooding streets waist deep.

About a week later, Raymond Cloutier unlocked the gatehouse to the Canada Rocks Dam to release some water from the Pascoag Reservoir, a procedure he followed every year before the spring runoff. Cloutier cranked opened the gate, then went home with plans to return in a few days to close the gate.

He has not operated the gate since.

On March 3, Dean sent a letter to the group that had maintained the dam for 15 years, advising it that its members were no longer welcome in the gatehouse.

The company, Dean said, "decided that it needs to protect itself from potential liability relating to a possible break of the dam."

When the South Kingstown dam broke, "My heart definitely did a little pitter-patter," said Dean, lawyer for the Pascoag Reservoir & Dam LLC. "If you're going to own a pit bull, do you really want someone else training it?"

The company changed the locks on the gatehouse, shutting out Cloutier and other members of the Pascoag Reservoir and Upper Dam Association.

"I was in shock, disbelief," Cloutier recalled. He thought, We are losing our lake. We are losing our lake.

For weeks, Mesolella and Ahlborg left the dam's gate open. Water level at the dam dropped from seven feet, to six feet, to five feet. Docks sat high and dry, threatening to spoil the summer for the thousands of people who use the lake regularly. On the shores of the Pascoag Reservoir sit 350 houses and cottages, a campground with 400 sites, a children's camp run by the Episcopal Church and another camp run by the Roman Catholic Diocese of Providence.

Of the 65 ponds and lakes monitored by the University of Rhode Island's Watershed Watch, the Pascoag Reservoir is the ninth clearest. Cloutier's wife has owned a place on the Pascoag for 50 years. "We are so proud of this lake," he said.

Throughout the month of March, Cloutier watched as his pride and joy slipped away through the locked gatehouse that he had done so much to maintain. By late March, the water level at the gatehouse dropped to a historic low of 3 feet 6 inches. Docks stood high and dry and waterfront lots now looked out on vast expanses of mud.

Again, Mesolella and Ahlborg offered to sell the reservoir to the state. Though he was still a state representative, Mesolella became an outspoken figure in the negotiations. But the price had gone up again: This year, he wanted \$425,000.

At first, DEM officials seemed ready to look into his proposal. But finally Governor Almond announced there would be no deal. The state might help the towns work out something, Almond said, but the state has no interest in Mesolella's reservoir.

Burrillville and Glocester initiated negotiations, which are still open.

On March 24 -- 21 days after changing the locks on the gatehouse -- Mesolella called Cloutier to say that he would close the gate on the following morning, according to Cloutier.

"I told him he'd better bring some help and he said, 'I lift weights, I can do that,'" Cloutier recalled.

Cloutier went down to the gatehouse on March 25, and he found Mesolella Jr. closing the gate while Mesolella Sr. watched.

After some discussion about how the dam's gears operate, Cloutier asked Mesolella how he had come to place a \$425,000 value on the reservoir.

"He said," Cloutier recalled, "'That's what we calculate to be a fair return on our investment.'"

LAST WEEK brought more unsettling news for users of Pacoag Lake.

Lawyers for Mesolella and the state argued in Superior Court over the state's assertions that Mesolella violated the state's Freshwater Wetlands Act by draining the lake this spring.

Judge Michael A. Silverstein said he will issue a decision on or after June 22.

Near week's end, Mesolella's lawyer announced he was closing the lake. He planned to put up No Trespassing signs and send letters to local police and to neighbors threatening legal action if they trespassed.

With the weekend's heavy rain, few people were expected to use the lake anyway. And DEM said it will ignore the letter and continue to encourage the public to use the reservoir.

6.15.98 06:44:19 Draining suggested at Pascoag Reservoir

<Picture>The president of the Upper Dam Association says John B. Webster, attorney for the lake's owner, yesterday raised the possibility of opening the dam gate to allow water to drain from the swollen lake.

By DRAKE WITHAM Journal-Bulletin Staff Writer

BURRILLVILLE -- "No Trespassing" signs weren't needed to keep residents off the Pascoag Reservoir this weekend. More than five inches of rain pounded the area, raising water levels to near-record heights, causing water to seep into some houses and sinking boats at their slips.

"People are starting to worry because the water is starting to lap at their homes," said Ray Cloutier, president of the Pascoag Upper Dam Association. "It's coming much too close to their homes for comfort."

The reservoir has been the center of a much-publicized property rights dispute between owner and state Rep. Vincent J. Mesolella and the Department of Environmental Management. Mesolella drained the lake, normally at 9 feet, to 3 feet, 6 inches in March. The DEM sought a restraining order to keep the gate shut while the dispute could be worked out.

The water level rose to 10 feet, 10 inches in mid-May, flooding residents' yards in the lower-lying Glocester end of the lake and breaking docks away. The DEM considered asking a judge for permission to raise the gate but opted to let nature take its course.

Water levels had been holding at 9 feet, 9 inches, but measured 11 feet, 1 inch last night.

John B. Webster, attorney for Mesolella, said last week that he will write to the DEM, local officials and residents that the lake is closed and anyone entering it will be considered trespassers.

Cloutier said he has not received such a letter but yesterday received a phone call from Webster about possibly opening the gate and allowing water drain downstream.

"He said he's willing to open it if someone can certify that the brooks downstream can handle it," Cloutier said.

Because a restraining order has been granted to keep the gate shut, the DEM and Mesolella must return to court for permission to raise the gate, if that is their intention.

The two sides have been in court in recent weeks on a DEM charge that Mesolella violated the state's Freshwater Wetlands Act by draining the lake this spring. A ruling on that is expected near the end of the month.

The DEM on Friday released a statement that its boat ramp on the lake will remain open to the public and advising residents to consult a lawyer concerning their rights to the lake.

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6.16.98 06:27:49

Pascoag Reservoir overflows its banks, seeps into basements

<Picture>The reservoir, at the center of a legal dispute between state Rep. Vincent J. Mesoella and the DEM, measures 11 feet 5 inches, its highest level in about 50 years.

By DRAKE WITHAM

Journal-Bulletin Staff Writer

BURRILLVILLE -- Does this mean residents are trespassing in their own yards?

The Pascoag Reservoir, center of a long-running legal dispute in which owner and state Rep. Vincent J. Mesoella recently banned residents from entering the water behind their homes, has overflowed its banks again.

After this weekend's deluge, water levels, normally at 9 feet in the spring, have gone from a 35-year low of 3 1/2 feet in March to their highest in at least 50 years, excluding brushes with hurricanes.

The reservoir measured 11 feet 5 inches last night as water overtook lawns, sank three boats and began seeping into cellars.

While residents keep sump pumps running in their basements around the clock and tried to prevent their docks from floating away, the Department of Environmental Management will ask a Superior Court judge for permission to open the dam today.

"It's higher than it ever was. I'm concerned about the wells getting contaminated," said Gerry Miller Jr., a resident on the lake for the past 43 years. "There are four wells under water and the water table is so high there is no drainage."

The DEM hopes to provide drainage by asking for a reversal in the restraining order it obtained against Mesoella to keep the gate shut in April.

It's the latest twist for residents who have been caught in the middle of the property dispute. In the past three months, they've gone from watching the reservoir disappear into stretching mud flats, to receiving notice that activities on the lake were a "blatant trespass," to desperately trying to keep water from flooding their homes.

Embroided in a 15-year property-rights dispute, Mesoella has tried to sell the lake to the DEM, claiming he is paying taxes and liability insurance on a public lake. The DEM refused, claiming it has prescriptive rights to the water after accessing it for more than 30 years from a public boat launch.

In March, Mesoella drained the lake to 35-year low in what his lawyer at the time called an attempt to bring the DEM to the bargaining table. He closed the gate as part of negotiations with the towns of Burrillville and Glocester while a purchase or lease agreement could be worked out.

But when water levels reached 7 feet 3 inches in April, he again opened the gate, and the DEM obtained a restraining order. It also brought a complaint against Mesoella for violation of the state's Freshwater Wetlands Act by lowering the water at a time when it is historically raised.

In mid-May, water rose to 10 feet 10 inches, lapping onto the lawns of residents and causing some docks to break away. But the DEM opted to let nature take its course and the lake dropped to a height of 9 feet 9 inches. At that time Superior Court Judge Michael A. Silverstein gave the DEM and John B. Webster, Mesoella's attorney, permission to raise the gate should water levels rise again.

But the DEM and Webster could not reach agreement Sunday. Webster could not be reached for comment yesterday, but Ray Cloutier, president of the Pascoag Upper Dam Association, said Webster was concerned about the effect that releasing water would have downstream.

"He said he's willing to open it if someone can certify that downstream can handle it," Cloutier said.

The DEM will bring one of its engineers and Donald C. Mehrtens, director of emergency management in Burrillville, into court today to testify that the water is "higher than it's ever been and downstream can handle it," according to a spokesperson.

6.17.98 07:24:19

Judge orders dam gate raised

By DRAKE WITHAM

Journal-Bulletin Staff Writer

BURRILLVILLE -- Citing the "emergency situation" surrounding the Pascoag Reservoir where residents' lawns and cellars have been flooded since last weekend's rain storm, a Superior Court judge yesterday granted permission for the Department of Environmental Management to raise the flood gate.

Judge Michael A. Silverstein modified the temporary restraining order obtained by the DEM in April to keep the gate shut after owner and state Rep. Vincent J. Mesolella had drained the lake to a 35-year low in March.

He ordered the DEM to "manipulate the gate at the dam so as to reduce the water level to approximately 9 1/2 feet and [maintain] it at that level."

A representative of the DEM opened the gate at the Pascoag Reservoir 6 inches last night in hopes of lowering the water, normally at 9 feet in the spring, down from a height of 11 feet 4 inches yesterday morning.

The decision is the latest development in a bizarre property-rights dispute between Mesolella and the DEM. Mesolella pays taxes and liability insurance on a public lake and tried to sell the 355-acre reservoir to the DEM. The DEM refused the offer, claiming it has prescriptive rights to the water because it has been accessing it for more than 30 years from its boat launch.

For the past three months, residents living around this popular summer boating and fishing spot have been caught in the middle. In March, they watched as mud and rocks replaced the water behind their homes. The DEM obtained a restraining order in April to keep the gate shut and, twice since then, water has risen to at least 10 feet 10 inches and caused mild flooding. Last week, John B. Webster, Mesolella's attorney, announced the reservoir was closed and sent a letter to the DEM informing it that any activities on the lake were a "blatant trespass."

Yesterday's decision came despite Webster's strenuous objections. He pointed out that since the DEM obtained its restraining order, surrounding properties have flooded twice. He also said there is no way to predict the weather or how releasing the water will affect property owners downstream.

"I don't like making decisions based on a forecast," he said. "To take water out of someone's basement and put it in someone else's is not a solution."

He asked for assurances from the state's two witnesses that the high water level coupled with imminent rain would not cause problems downstream.

Ray Cloutier, president of the Pascoag Upper Dam Association and the man who had been regulating flow from the reservoir until he was locked out of the gate house by Mesolella in March, could not offer that.

But Donald C. Mehrtens, director of emergency management in Burrillville, said flow from the reservoir "would be controlled and there would be no adverse effect downstream."

That was enough for Silverstein, who modified the restraining order.

Webster argued, in vain, that by allowing the DEM to regulate Mesolella's dam while still holding him liable for damages, would "strip my client's property rights."

6.18.98 07:27:45

DEM raises gate at dam

<Picture>Raising the floodgate of the dam at the Pascoag Reservoir an additional six inches has little effect downstream.

By DRAKE WITHAM

Journal-Bulletin Staff Writer

BURRILLVILLE -- The Department of Environmental Management raised the floodgate of the dam at the Pascoag Reservoir an additional six inches yesterday morning with little effect downstream.

After a weekend downpour, water levels, normally at 9 feet, rose to 11 feet, 5 inches Monday, causing docks to float away, three boats to sink and lawns and cellars of residents on the lake to flood.

The Department of Environmental Management obtained a restraining order to keep the gate shut after it was drained to a 35-year low by owner and state Rep. Vincent J. Mesolella earlier this spring.

With water seeping into basements this weekend, the department asked Superior Court Judge Michael A. Silverstein for permission to open the gate Tuesday.

Citing the "emergency situation" and public welfare, Silverstein authorized opening the gate no more than six inches every six hours, to bring water levels no lower than 9 feet, 6 inches.

John B. Webster, Mesolella's attorney, argued in court that opening the gate could cause flooding downstream.

But Donald C. Mehrtens, the town's director of emergency management, said there was no danger of that yesterday.

"The Pascoag River came up three inches where it crosses High Street and still has another 18 to go before it reaches the top of the bank," he said.

Mehrtens checked three points at which the Pascoag River flows into other rivers in Burrillville and said "everything looks normal from my observation point. It would take another 3 1/2 to 6 inches of rain in a 24-hour period before we have a problem."

Ray Cloutier, president of the Pascoag Upper Dam Association and the man who had been regulating water flow from the 355-acre reservoir until the lock to the gatehouse was changed by Mesolella in March, said the water level dropped to 11 feet, 2 inches last night.

David Chopy, an engineer for the DEM, opened the gate six inches Tuesday evening and another six inches yesterday morning.

He will consult with Mehrtens and Cloutier and take more measurements before opening the 36-inch pipe farther.

"If it appears to be dropping at a gradual rate, there won't be a need to make additional changes," he said.

At the heart of the issue is a 15-year-old property rights dispute between Mesolella and the DEM.

Mesolella pays taxes and liability insurance on a public lake and has tried to sell the reservoir to the DEM. The department refused, claiming it has prescriptive rights to the water because it has been accessing it for more than 30 years from its boat launch.

Mesolella drained the water to 3 feet, 6 inches in March. In April the DEM obtained a restraining order and brought a complaint against Mesolella for allegedly violating the state's Freshwater Wetlands Act by lowering the water when historically it has been raised.

Water levels have risen to at least 10 feet, 10 inches since then, causing flooding on lawns. Webster last week issued a letter banning the DEM and adjacent property owners from the reservoir.

Testimony on the alleged wetlands violation wrapped up last week and a decision is expected from Silverstein, possibly as early as Monday.

6.23.98 07:28:10

Ruling in dam case delayed

By DRAKE WITHAM

Journal-Bulletin Staff Writer

BURRILLVILLE -- The question of whether state Rep. Vincent J. Mesolella violated the state's Freshwater Wetlands Act by lowering the water level in the Pascoag Reservoir won't be answered until at least Friday, according to a spokesman for the Department of Environmental Management.

Superior Court Judge Michael A. Silverstein, who was expected to rule on the matter as early as yesterday, extended the deadline for the DEM to respond to the arguments of Mesolella's lawyer until Thursday.

At the heart of the case is a property-rights dispute between Mesolella, who owns the 355-acre reservoir, and the DEM. Mesolella has tried to sell the property to the DEM but the state has refused the offer, saying it has prescriptive rights to the property because of its public boat ramp, built in the early 1960s.

That part of the case will be argued after the judge rules on whether Mesolella violated state law by draining the lake at a time when water levels are historically being raised.

Testimony in that matter wrapped up earlier this month, and Silverstein asked both sides to submit closing arguments in written form by last Friday.

Bob Ballou, spokesman for the DEM, said the agency could not meet the deadline because it did not receive the closing brief of John B. Webster, Mesolella's lawyer, until that afternoon.

The case was also delayed last week because both sides appeared in court so the DEM could seek permission to raise the flood gate in the reservoir after a rainstorm flooded residents' property.

Yesterday, water levels measured 10 feet, 1 inch, down from 11 feet, 5 inches the previous week.

7.1.98 00:21:20

Judge: DEM can regulate Pascoag Reservoir

<Picture>But state Rep. Vincent J. Meselella, owner of the 355-acre reservoir and Upper Dam in Pascoag, said he plans to appeal the decision to the state Supreme Court.

By DRAKE WITHAM

Journal-Bulletin Staff Writer

A judge ruled yesterday that the Department of Environmental Management has jurisdiction over water levels in the Pascoag Reservoir and ordered state Rep. Vincent J. Meselella to maintain "normal" water levels.

Superior Court Judge Michael A. Silverstein issued a preliminary injunction sought by the DEM on the grounds that Meselella's lowering of the water this spring without the permission of the DEM violated the state's Freshwater Wetlands Act.

A date has not been set for a hearing on a permanent injunction.

Though Silverstein did not address it directly, his decision seemingly overruled Meselella's argument that a Special Act by the General Assembly in 1925 superseded the state Wetlands Act of 1972. The 1925 act gave then and subsequent owners of the dam the right to regulate water flow.

Outside the courtroom, Meselella called the decision "erroneous" and said he will appeal it to the state Supreme Court.

The decision is the latest development in a bizarre 15-year-old property-rights dispute between Meselella, owner of the 355-acre reservoir and Upper Dam in Pascoag, and the DEM. It also charges Meselella with regulating water flow from the gatehouse at the Upper Dam, a duty the DEM has been performing since June 10.

John B. Webster, Meselella's attorney, said he was "hard pressed to understand why Mr. Meselella is being ordered to maintain a private recreation ground for the state of Rhode Island."

Paula Younes, attorney for the DEM, agreed with the decision for Meselella to regulate water levels because she said the agency is "not in the business of taking over property but regulating wetlands."

Meselella has tried to sell the property to the DEM in the past, arguing that he is paying taxes and liability insurance on a public lake.

The DEM has refused, claiming it has rights to the property because it has maintained a public boat launch on the lake for more than 30 years.

Both the DEM and Webster said yesterday that it will likely be years before the property-rights issue is resolved.

Silverstein's decision yesterday is a temporary solution to a situation that has caused residents to deal with wildly fluctuating water levels over the past four months.

For the past 15 years, the Pascoag Upper Dam Association has regulated the flow from the dam, but that stopped when Meselella changed the locks to the gatehouse in March.

Meselella then drained the reservoir, normally at 9 feet, to a 35-year low of 3 feet 6 inches. He shut the flood gates later that month while trying to work out a purchase or lease agreement with the towns of Burrillville and Glocester. At that time the DEM informed him that he must seek permission before opening the gate again.

But when water levels rose above 7 feet in April, Meselella reopened the gate. At that point the DEM obtained a temporary restraining order and brought its complaint against Meselella for violating the Wetlands Act.

Since then, water levels have twice overflowed the banks of the reservoir, causing lawns and basements to flood. With water levels at 11 feet 5 inches on June 10, the DEM received permission from Silverstein to open the gate and allow some water to drain down.

Raymond Cloutier, president of the Pascoag Upper Dam Association, was pleased with yesterday's decision.

“This is what we've been asking for right along from day one,” Cloutier said. “We wanted it maintained as we've been maintaining it for 15 years.”

Yesterday's rainstorm brought water levels up to 10 feet 1 inch, about 10 inches above where Silverstein said they should be maintained.

“[Mesolella] better get up here and regulate it because he's already in violation,” Cloutier said.

7.2.98 07:36:51

Water, controversy rising once again at Pascoag Reservoir

By DRAKE WITHAM

Journal-Bulletin Staff Writer

BURRILLVILLE -- And now the water is coming back up.

One day after a judge ordered state Rep. Vincent J. Mesolella, owner of the controversial Pascoag Reservoir, to sustain water levels at a height of no more than 9 feet 3 inches, water levels were approaching 10 feet 6 inches yesterday.

John B. Webster, Mesolella's attorney, said his client was not to blame for the latest round of flooding on the reservoir that has breached its banks three times this spring, causing the lawns and cellars of residents to flood.

"We haven't done anything yet," Webster said last night. "We don't have 24-hour service and I haven't been able to get hold of my client."

The DEM had a different take on it.

"The court order takes effect immediately," said Alan Shoer, chief legal counsel for the DEM.

At the heart of the controversy is a long-running property rights dispute between Mesolella and the DEM. But it's wildly fluctuating water levels that are the concern of residents.

After the water reached 11 feet 5 inches in June, Superior Court Judge Michael A. Silverstein ordered the DEM to drain the reservoir no lower than 9 feet 6. When it reached that height last Thursday, David Chopy, a DEM supervising engineer, closed the gate.

But the closed gate coupled with Tuesday's rainstorm has caused the water to rise nearly one foot.

He said his client intends to comply with Tuesday's court order but has not had a chance to do that yet.

7.3.98 07:28:47

Dam gate is reopened a day late

<Picture>A Superior Court judge ordered the gate at the Pascoag Reservoir opened Tuesday to lower the water level, but the step apparently wasn't taken until yesterday.

By DRAKE WITHAM

Journal-Bulletin Staff Writer

BURRILLVILLE -- Jeff Dolinski couldn't tell by looking at his flooded yard yesterday, but water was again being released from the Pascoag Reservoir.

"The water hasn't gone down any," Dolinski said, eyeing a pool that had formed on his lawn just a few feet from his house, "but I went down to the dam and it's definitely open."

A Superior Court judge on Tuesday ordered state Rep. Vincent J. Mesolella, owner of the Pascoag Reservoir and Upper Dam, to maintain water levels between 8 feet, 8 inches and 9 feet, 3 inches. But by Wednesday night, water levels, at 10 feet, 1 inch at the time of the mandate, had risen to 10 feet, 6 inches.

Mesolella's lawyer, John B. Webster, said Wednesday night that he hadn't been able to reach his client, but he did plan to comply with the judge's order.

Webster also said that the Department of Environmental Management had closed the gate. Superior Court Judge Michael A. Silverstein ordered the DEM to regulate flow from the gate on June 10, advising the department not to allow it to drop below 9 feet, 6 inches.

David Chopy, a supervising engineer for DEM, said he closed the gate on June 25 when water reached that level. He checked the reservoir over the weekend and the water level remained steady, so he kept the gate closed.

On Tuesday, while a torrential rain was falling, Silverstein turned the responsibility over to Mesolella.

The latest episode is par for the course in a case that has its roots in a 15-year property rights dispute between the DEM and Mesolella.

Mesolella drained the lake to 3 feet, 6 inches in March, leaving some of the lake dry. The DEM obtained a temporary restraining order in April to keep the gate shut; twice, rainstorms caused water to spill over the banks into the lawns and cellars of residents.

Residents' relief at Tuesday's preliminary restraining order was short-lived when water rose again.

It was not clear yesterday who opened the gate, but that it had been done was apparent, as water gurgled out on the opposite side.

Webster announced last month that the lake was closed. Though that announcement has been routinely ignored by boaters and fishermen, there are no plans for the Fourth of July boat parade.

An event that features people in costume and decorated boats, the parade has been staged on the reservoir every year since 1976.

"I don't know if that's going to happen this year," Dolinski said. "I usually have people over for a barbecue, but I'm not having anybody over this year because my yard is a mud pit. Nobody has a yard."

10.20.98 06:37:00

Don't look now, but it's that dam again

<Picture>After a quiet summer, residents around the Pascoag Reservoir are worried again that Rep. Vincent Mesolella, owner of the lake, will not adjust the water level in time to prevent damage to their property.

By DRAKE WITHAM
Journal Staff Writer

BURRILLVILLE -- Raymond Cloutier said he knew that as sure as changing leaves and falling temperatures, the controversy that surrounded water levels at the Pascoag Reservoir last spring would return this fall.

President of the Pascoag Upper Dam Association, Cloutier regulated water levels on the 355-acre reservoir for years until lake owner and state Rep. Vincent J. Mesolella changed the locks to the gate house in March and reignited a 15-year property-rights dispute with the state.

Mesolella was under court order to begin lowering the lake on Oct. 15, and it hasn't been done.

The changing of the locks and Mesolella's draining of the reservoir to a 35-year low led to a tumultuous spring for residents. The Department of Environmental Management obtained a court order in April to close the gate, but then water levels, which had been so low in March that part of the lake bottom was visible, rose rapidly, flooding residents' property more than once.

It took another court order in late June from Superior Court Judge Michael A. Silverstein to bring calm to the lake, which straddles the towns of Burrillville and Glocester. Silverstein ordered on June 30 that Mesolella maintain water levels between 8 feet 8 inches and 9 feet 3 inches during spring and summer months.

But he also ordered Mesolella to begin lowering water levels in preparation for winter on Oct. 15 to between 4 feet and 4 feet, 6 inches. Yesterday the height was 8 feet 7 inches, more than 4 feet above the ordered height.

Ordinarily Cloutier begins lowering the reservoir in mid-October so residents can make repairs to their property and docks and so that ice will not damage their docks.

"People need to make improvements and repairs to their docks especially this year after all the property damage that people suffered last spring from the water damage," Cloutier said. "If it gets too cold people can't do their necessary repairs. He must be laughing at us."

Cloutier said he tried to reach Mesolella by phone last week but has been unable to do so.

John Webster, Mesolella's attorney, pleaded ignorance yesterday, saying he had been out of town and was not aware that the date had passed to lower water levels.

"I have not had an opportunity to take a look at the situation," Webster said. "I'll make sure everything is fine. We're going to do whatever the court order says."

But Cloutier is skeptical because the DEM had to go into court in early July to get permission to open the gate when water levels were above court-ordered heights and Mesolella did not resolve the matter.

A spokesman for the DEM said yesterday that the agency will not take immediate action because "there is no imminent threat to any property or houses."

At the center of the controversy is a property-rights battle. Mesolella pays taxes and liability insurance on the land under the reservoir and has been trying to sell the property to the state, the towns or the residents.

The state has refused to pay \$425,000 for the property, claiming it has prescriptive rights to the reservoir through a boat launch it has been operating there for more than 30 years.

As he did in the spring, Webster indicated yesterday that his client may not be interested in selling the property after all. He refused to provide specific details but said he was very close to reaching a deal to put a 340-megawatt electricity plant at the dam.

Meanwhile, residents remained concerned about water levels. Several called Cloutier yesterday to ask why the water was not being lowered.

“The phone is ringing off the hook,” Cloutier said. “Here we go again.”

7.27.99 06:49:04

Trial opens on access to reservoir

The state's suit against former Rep. Vincent Mesolella dates to last summer, when he drained the Pascoag Reservoir and put up no-trespassing signs.

By JEFF WHELAN
Journal Staff Writer

PROVIDENCE -- Former state Rep. Vincent J. Mesolella broke with years of tradition and became a "public enemy" when he drained the Pascoag Reservoir last year to assert his control over the property, a state assistant attorney general argued in Superior Court yesterday.

Mesolella's lawyer countered that the state was ignoring "400 years of property rights law" by seeking to prevent Mesolella from exercising his rights over the reservoir, which he has owned since 1980.

The arguments came as the state opened its case against Mesolella and his corporation in a battle over whether the public should have access to the 355-acre reservoir.

The controversy flared last year after Mesolella drained water from the reservoir and put up no-trespassing signs to keep the public off the lake.

Mesolella had attempted to sell the reservoir property to the state for years, but the state had refused the offer. Mesolella's lawyer said he took the action in an attempt to bring the state to the bargaining table.

Asst. Atty. Gen. Michael Rubin argued that, although Mesolella owns the underlying land, the lake itself is public. He said that the public has established rights of access to the water via a state Department of Environmental Management boat ramp built in 1965.

"The successive owners of the reservoir . . . are not our enemies, they are not public enemies," Rubin said. "Over the years they have been allies of the public until relatively recently."

Then, he said, Mesolella "turned around and took two things. First the water, and second, boat access."

Arguing that it was a case "about people," Rubin called three long-time Pascoag residents as witnesses to support his argument that the public has long understood that it can enjoy open access to the lake.

"We assumed it was public," said Helen Fairbrother Moroney, 80, who owns the Echo Lake Campgrounds on property that abuts the reservoir. "I've been using the Pascoag Reservoir since I was a young girl . . . We always used it and nobody ever said anything different."

John Webster, Mesolella's lawyer, called the state's civil suit against his client "political skullduggery," and said state officials were pandering to voters and residents of the lake during an election year when they filed a complaint against Mesolella last year.

Webster said that the state acknowledged Mesolella's control over the lake when the DEM refused his offer to sell the property. He said it was unfair for Mesolella to have to pay taxes and liability insurance on the lake while residents can use it and businesses can make a profit from the access they offer to the lake.

"If it really was public, shouldn't the public -- the state, the city, the town -- be paying for it?" Webster said.

Webster disputed that the lake was even public, saying that in practice, it is really a private pond for residents with lakefront property.

He called the state's argument that there was a distinction between the land and the water "absurd." He likened it to owning a plot of land without owning the dirt, trees and grass on that land.

Webster also conducted lengthy cross-examinations of three of the state's witnesses, during which all three acknowledged that they made a profit from the use of the lake. Webster argued that it was unfair that the witnesses, including owners of a campground and a marina, could restrict access and charge fees for the use of their property, if Mesolella could not.

One of the witnesses, John Dolinski, bought the property on which he operates a marina from Mesolella in 1996. He and his mother had operated the marina for years, initially leasing the property.

He said that the deed Mesolella sold him did not specify that he had rights to the water.

“If they were selling me a marina, I would surmise that the water went with it,” Dolinski said.

Webster said yesterday that he subpoenaed Governor Almond. The governor's spokesman said later that the governor was not relevant to the case, and his counsel would seek to see to it that he didn't have to testify.

The trial, before Judge Francis J. Darigan Jr., is to resume at 9:30 this morning.

7.28.99 00:02:02

Former police chief: Public access to Pascoag lake never challenged

Wallace F. Lees's testimony seems to support the state's contention that the public's uninterrupted access to the lake constitutes a public easement.

By JEFF WHELAN
Journal Staff Writer

PROVIDENCE -- A former Burrillville police chief testified in Superior Court yesterday that he was never called in to kick anyone off the Pascoag Reservoir, nor did he ever instruct anyone that the lake was private property during his 31 years of working for the Police Department.

The testimony of Wallace F. Lees, who is currently Burrillville Town Council president, came as the state continued to make its case that public use of the reservoir went unchallenged for decades until former state Rep. Vincent J. Mesolella drained the lake last year.

Asst. Atty. Gen. Michael Rubin argued during the non-jury trial that owners of the reservoir have traditionally allowed, and profited from, public use of the lake for decades. As a result, he said, the state and the public have developed a navigational or recreational easement to use the property.

An easement is a right, such as a right of way, afforded a person to make limited use of someone else's property. An example cited by Rubin in court yesterday is when a plane flies over private property.

The state's case is grounded in common law that Rubin asserts has been further solidified by case law.

In his brief, Rubin cites the state Supreme Court's ruling in *Talbot vs. Town of Little Compton*, a 1932 case. In that case, Rubin argues, the court ruled that when there is "open, notorious and uninterrupted public use of property over an extended period of time . . . aided by governmental action, the [private] landowner will be presumed to dedicate the property to public use."

John O'Brien, a deputy chief at the Department of Environmental Management, testified yesterday that the public's use of the reservoir was aided by the government. He described a boat ramp that was built by the DEM on the lake in 1965.

In a civil suit filed against Mesolella and his corporation, the Pascoag Reservoir and Dam Limited Liability Corporation, the state is seeking a permanent injunction that would prohibit the owners from blocking public access to the lake. The state is also asking Judge Francis J. Darigan to issue a declaration in his ruling that would recognize the state's and the public's right to use the lake.

The controversy arose last spring after Mesolella drained water from the reservoir and put up no-trespassing signs to keep the public off the lake. Mesolella attempted to block access to a state boat ramp that provides access to the water. He also locked the dam that controls water levels. Mesolella controls the dam, but it had been operated by a homeowners' association.

Mesolella had attempted to sell the reservoir property to the state for years, but the state had refused the offer. Mesolella's lawyer said that he took the action in an attempt to bring the state to the bargaining table.

Mesolella insisted that he is being victimized by the swimmers and boaters who use the lake. He spent money and paid liability insurance for the lake, he argued, while everyone else, including for-profit businesses, uses it without paying him.

But the state argues that Mesolella, as his predecessors before him, profited from the lake because it enhanced the value of his lakefront property.

Yesterday in court, lake resident Robert Fura testified that he and an association of his neighbors bought lakefront property from Mesolella's corporation five years ago.

Fura said that his family had owned a cottage on the property for years, but had leased the land. Then, he and eight other neighbors paid \$200,000 for approximately 3.7 acres of lakefront property from Mesolella and his partners.

Fura said that the reservoir never came up in negotiations and that he had an expectation that he would continue to use the lake as he had for the previous 30 years.

But Webster continued to hammer away on his point that Fura's assumption, one shared by other Pascoag residents who testified, was a faulty one.

He said that residents took it for granted that the water would always be there, but said the assumption had no basis in fact except for "it's a nice lake, I like it, I want to play in it."

"They just don't want to lose their lake but they just don't want to pay for it," Webster said, after he cross-examined the witnesses to demonstrate that their deeds did not specify that they had rights to access the water.

7.30.99 00:01:52

DEM feared liability when it declined to buy lake

Vincent Mesolella Jr.'s lawyer seeks to show that the state wants the benefits of public access to the Pascoag Reservoir while Mesolella bears the responsibility.

By JEFF WHELAN
Journal Staff Writer

PROVIDENCE -- The state Department of Environmental Management cited "liability concerns" as one reason for rejecting an invitation to purchase the Pascoag Reservoir from former state Rep. Vincent J. Mesolella Jr., according to a 1995 letter submitted in Superior Court yesterday.

As he opened his defense against the state, Mesolella's lawyer, John Webster, offered the document as evidence that the DEM wants to reap the benefits of the lake without assuming any responsibility.

The state's civil suit against Mesolella's corporation, which has owned the Pascoag Reservoir since 1980, asserts that the public and the state have a right to use the lake, a popular destination for boating, swimming and fishing.

Mesolella says he sought to sell the reservoir to the DEM because he was frustrated that he pays for liability insurance and taxes on the property, while everyone else, including for-profit businesses, uses it without paying him.

In 1995, Lisa Pointek, supervisor of the DEM's Land Conservation and Acquisition Program, wrote Mesolella's corporation to inform him that it would decline his offer to sell the property.

"Due to severe funding limitations, liability concerns, and management issues related to the reservoir, the committee voted not to pursue this acquisition," Pointek wrote.

Webster introduced the letter as he questioned Malcolm Grant, an associate director at the DEM, shortly before court recessed late yesterday afternoon. The defense will resume its case and its questioning of Grant today at 9:30 a.m.

ASST. ATTY. GEN. Michael Rubin has argued that public access to the reservoir had gone unchallenged since its creation more than a century ago --until Mesolella drained water from it and put up no-trespassing signs last year, the action that led to the lawsuit.

Rubin contends that public access to the water, and a boat ramp the DEM built in 1965, have enhanced the value of Mesolella's lakefront property. Parcels he has sold would have fetched significantly less had they not abutted the lake, Rubin has argued, and the purchasers obviously had an expectation of access.

Webster calls that assumption groundless.

Seeking yesterday to demonstrate that Mesolella has profited from public use of the lake, Rubin established that he had sold one parcel that was less than an acre for \$67,000.

A LIGHT MOMENT came shortly before Rubin rested his case, as the two lawyers were debating the admissibility of a map he wanted to submit as evidence.

To support the state's claim of a longstanding right of way, Rubin was trying to establish that before the reservoir was created, in 1860, the waterway was navigable in its natural state.

He sought to submit an 1831 map that bore the stamp of Rhode Island. But "Pascoag" was nowhere on the map.

The ensuing exchange brought chuckles to the courtroom and a smile across the face of Superior Court Judge Francis J. Darigan Jr.

"I can represent that the former name of the town of Pascoag was Monkeytown," said Rubin.

Webster objected: "With all due respect to the people who named Monkeytown 'Monkeytown,' I am not in a position to say Pascoag was Monkeytown."

The judge allowed the exhibit to be entered as evidence because it did provide an adequate representation of the area at

that time, he said -- although he said it did not prove the river was navigable.

Rubin said later that it was his understanding that a sailor who retired in the village brought a pet monkey back from his travels and the name stuck. He said that when plans to charter a bank bearing the name of the town developed, residents thought they needed a more dignified name.

On an 1846 map also submitted by Rubin, the name Pascoag appeared in place of Monkeytown.

Rubin, who Webster credited in court as being a budding historian, said Pascoag is an Indian word for "the place where the snakes pass."

8.4.99 00:05:14

Mesolella reads letter detailing DEM's decision not to buy lake

The owner of Pascoag Reservoir takes the stand and reads aloud from a 1987 DEM letter: "the land in question appears to be unsuited to public recreational use, at least at a state level."

By JEFF WHELAN
Journal Staff Writer

PROVIDENCE -- Shortly before Vincent J. Mesolella Jr. strode to the witness stand yesterday, he joked with Asst. Atty. Gen. Michael Rubin to go easy on him during a court recess.

"I want you to know I consider this to be my summer vacation," Mesolella said. And then, after a bit more banter, he said, "You know Mike, when you have the answers to all the questions, they're easy."

The former state legislator has consistently exuded that kind of confidence during the Superior Court trial that could determine how hundreds of people who use the Pascoag Reservoir spend their summer vacations.

And yesterday -- when Mesolella took the stand for the first time during the seven-day-old trial -- was no exception.

The state has brought a civil suit against Mesolella's corporation, claiming that public use of the lake went unchallenged for decades until Mesolella drained the lake and put up no-trespassing signs last year.

Rubin has argued that, as a result of that use, the state and the public have a property interest in the reservoir in the form of a recreational and navigational easement, similar to a right of way.

Yesterday, Mesolella could hardly keep his composure on the stand as he read into the record a 1987 letter sent to him by the state Department of Environmental Management.

In the letter, a DEM official explained why the state was turning down his offer to sell the reservoir and about 20 acres of land for \$3.5 million to \$4 million.

"Unfortunately, the land in question appears to be unsuited to public recreational use, at least at a state level," Mesolella read in between quiet laughs.

John Webster, Mesolella's lawyer, said yesterday after court recessed that Mesolella cited the letter because it contradicts the state's argument that the public has earned an easement through continued public use. He has argued in court that the pond is not a public lake, but a private pond used almost exclusively by lakefront property owners and for-profit businesses only with Mesolella's permission.

During the trial, Webster did not ask Mesolella to read the remainder of the letter, which said, ". . . and we [the DEM] presently maintain two public launch ramps on the reservoir which provide adequate boating access."

The state boat ramp, which was built in 1965, is a key component of the state's case. Rubin has argued that it is the conduit through which the public has gained access to the water and an easement to the lake.

In Rubin's view, the letter is consistent with the state's belief that it didn't need to purchase property from Mesolella because the public could already access the lake.

That fact -- that the state has refused to buy the lake at the same time it is claiming that the public has a right to use it -- has long frustrated Mesolella.

Mesolella testified yesterday that he told state officials in 1982 that "it was our land and our lake, and that if they wanted to own it, they should buy it."

Mesolella said he had warned state officials as far back as 1982 that he was concerned about his corporation's liability. He said that youths were drinking in the gatehouse at night and diving into the water, risking injury.

He said that he was concerned he could be found liable if they were injured, and that he warned the state at that time that he would consider lowering the water level to protect himself.

8.5.99 00:01:57

Mesolella 'irate' at state's stand on lake

The former state representative finishes testifying in the state's civil suit against him.

By JEFF WHELAN
Journal Staff Writer

PROVIDENCE -- In animated testimony that was at times breathless and often punctuated by a pointed finger, former state Rep. Vincent J. Mesolella Jr. said yesterday the state infuriated him and drove him to drain the Pascoag Reservoir to a 35-year low last year.

Under direct examination by his lawyer, Mesolella told Superior Court Judge Francis J. Darigan Jr. that the already tense negotiations over the fate of the lake reached a boiling point in the summer of 1997.

Mesolella, who wrapped up his testimony yesterday, said that he had grown increasingly frustrated with a rise in boat traffic on the 355-acre reservoir. He said that the traffic, exacerbated by the state's improvements to a boat-launch ramp, increased his exposure to liability as an owner of the property.

At a meeting that summer, Mesolella gave the state two options: buy the property or stop using the lake.

When a state Department of Environmental Management official told him that the agency would have difficulty financing such a purchase, Mesolella suggested the state tap into federal money reserved for fish and wildlife programs. Then, Mesolella said, the DEM official told him the purchase wouldn't be eligible for such funds.

Mesolella argued the purchase of the property would be eligible, because the lake was primarily used for boating and fishing.

"I told them, if they didn't want to buy the lake, fine," said Mesolella, the level of anger in his voice rising. "But don't insult my intelligence."

Then, Mesolella said, he packed up his papers and stormed off, triggering a series of events that eventually landed Mesolella and the DEM in court.

The state brought a civil suit against Mesolella, charging that public use of the lake went unchallenged for decades until he attempted to restrict access. In the spring of 1998, Mesolella posted no-trespassing signs and drained the lake to three and a half feet.

The state is seeking a permanent injunction that would prohibit Mesolella from limiting access to the lake.

The eight-day trial has been politically charged from the beginning. Yesterday, that continued as Asst. Atty. Gen. Michael Rubin questioned Mesolella about a 1987 meeting he had at the State House with representatives of then-Gov. Edward D. DiPrete.

The meeting, during which Mesolella asked the DEM to pay \$3.5 million to \$4 million for the reservoir and about 20 acres of land, was attended by the governor's chief fundraiser, James Taft, Rubin said.

Mesolella charged yesterday that the state's suit against him was politically motivated. His lawyer, John Webster, has raised questions about the involvement of Governor Almond's office in the matter.

Under cross-examination by Webster, Mary Kay, a DEM lawyer, testified that Governor Almond's office rejected Mesolella's last offer to sell the lake and the dam in the spring of 1998. Webster has argued that the state took that position because of election-year politics. Webster has subpoenaed the governor.

In an interview after her testimony, Kay said the governor's office rejected the offer because it viewed Mesolella's tactics as "extortion."

Mesolella said yesterday that he was merely seeking fair and just compensation, and has been continually betrayed by state officials during negotiations.

In August 1997, shortly after the meeting that infuriated Mesolella, he received a memorandum from the DEM that

instructed him to repair the dam that controls the water levels at the lake. Attached was a brochure that informed Mesolella he had strict liability should anything go wrong with the dam.

Mesolella said of his reaction: "First it was panic, then I was irate."

Mesolella said that shortly before he received the package, another dam had broken and caused a substantial amount of damage in South County. He said that he was alarmed because his dam was larger and could potentially cause "10 times more damage in the town of Pascoag."

"It was now staring me right in the face," he said.

Mesolella said he was confounded that the state continued to encourage use of the lake but refused to purchase it, and then turned around and told him that it would be his fault should anything go wrong.

"That's why I was angry," Mesolella said.

After yesterday's session, the trial recessed until next week.

Mesolella, state wrap trial over reservoir

Wednesday, September 8, 1999

• Lawyers make final arguments in the trial that will determine if the former state representative has the right to restrict public access to the Pascoag Reservoir.

By Jeff Whelan Journal Staff Writer

PROVIDENCE — Lawyers made closing arguments yesterday in the trial that will determine if former state Rep. Vincent J. Mesolella Jr. has the right to restrict public access to the 355-acre Pascoag Reservoir, which his corporation owns. Asst. Atty. Gen. Michael Rubin argued that public access to the lake had gone unchallenged from its creation a century ago until last year, when Mesolella put up no-trespassing signs and drained the lake to a 35 year low.

Mesolella's lawyer, John Webster, continued to attack the state's civil suit against his client as "patently frivolous" and a "knee-jerk political response." He said the state filed the civil suit against Mesolella because it wanted to appease homeowners during an election year.

The state is seeking a permanent injunction that would prohibit Mesolella from blocking public access to the lake, which is a popular destination for swimming, boating and fishing. The state is also asking Superior Court Judge Francis J. Darigan, who will decide the case in the non-jury trial, to issue a declaration that would recognize the state's and public's right to use the lake. In his closing argument, Rubin said that Mesolella devoted the "economic utility" of the reservoir to enhancing property he owned along the shore. By doing so, Rubin argued, Mesolella surrendered to the public the right to use the lake.

Rubin likened the lake to a road in a residential subdivision. When a developer builds a street for a subdivision, Rubin argued, he surrenders certain rights to that road as soon as he sells a single lot. He said that homeowners have an expectation when they buy a house that the road will always be there for their use.

Rubin said that people who purchased waterfront property from Mesolella had an expectation that they would be allowed to use the lake.

Pamela Kobrock, a real estate appraiser, testified as an expert witness for the state yesterday and said that property along the reservoir would have fetched significantly less money were it not marketed as waterfront property. "They were purchasing waterfront land with the amenities included in waterfront land into the future," she said. "I think it's an assumption they made without giving it a great deal of thought." Webster said that assumption was groundless. "We can't have 400 years of property law upended because of an assumption someone had," he said. During his cross-examination of Kobrock, Webster said, "All anybody had to do was walk into Town Hall and ask a simple question — who is the owner of this property?"

Earlier in the trial, Mesolella testified that he attempted to restrict access to the lake because he was frustrated that he paid for the taxes, liability and maintenance of the property while others, including for-profit businesses, enjoyed its benefits. He had attempted to sell the property to the state, but the state rejected his offer. As a last resort, Mesolella said, he drained the lake. "Everybody was fat, dumb and happy while my client was paying the bills," Webster said yesterday. He said it was unfair when "the state came in and said, 'We own it, but you pay for it.' Lawyers for both sides are to submit briefs by Friday, after which time Judge Darigan will decide the case.

We can't have 400 years of property law upended because of an assumption someone had. All anybody had to do was walk into Town Hall and ask a simple question — who is the owner of this property?'

- John Webster, lawyer for Vincent J. Mesolella Jr.

10.12.99 06:48:48

Water level to go down at reservoir

The seasonal lowering of the Pascoag Reservoir will proceed as usual this week, as the simmering property-rights battle awaits a court verdict.

By JEFF WHELAN
Journal Staff Writer

BURRILLVILLE -- The fate of the Pascoag Reservoir remains locked in a bitter property-rights dispute between the state and former state Rep. Vincent J. Mesolella Jr. But for now, it's business as usual.

Ray Cloutier, president of the Upper Dam Association, said that he will begin lowering the water level of the reservoir tomorrow. Cloutier said that the lake is currently at 9 feet. He said it will take 10 days to drain the water level to its traditional winter height of 4 1/2 feet.

"We do this for the benefit of the waterfront property owners so they can make any necessary repairs to their docks or their retaining walls," Cloutier said. "We also do it to minimize any potential ice damage to the dam or the water works itself."

The 355-acre reservoir, which straddles the towns of Burrillville and Glocester, was at the center of a high-profile battle in Superior Court this past summer. At issue is whether or not the public should have access to the picturesque lake, property which Mesolella has owned for nearly two decades.

Mesolella has said that he was frustrated that he paid taxes, liability and maintenance of the property while others, including for-profit businesses, enjoyed its benefits. After the state rejected an offer to buy the reservoir from him, Mesolella drained the lake to a 35-year low last spring.

The state contends that public access to the lake had gone unchallenged from its creation a century ago up until that point. The state is seeking a permanent injunction that would prohibit Mesolella from blocking public access to the lake, which is a popular destination for swimming, boating and fishing.

On Sept. 8, Asst. Atty. Gen. Michael Rubin and John Webster, Mesolella's lawyer, made final arguments in the non-jury trial before Providence Superior Court Judge Francis J. Darigan. Darigan's decision could take months, both lawyers said.

Meanwhile, life goes on at the lake. And Mother Nature has her own ideas about what the water level of the reservoir should be. Because of the drought, the lake dropped to unusually low levels this year, Cloutier said.

"We got down to 7 feet, which is just about barely minimum for recreational use," he said.

Under a court-ordered temporary truce, Cloutier, who had tended to the lake's water levels since 1963, is in control of lowering and raising the dam. The lowering of the lake this week is routine.

But he said that the outcome of the trial still looms large in the minds of residents. Cloutier, who testified at the trial, said they often come to him with questions.

"Everybody is very anxious and wondering," Cloutier said. "But there's nothing I can tell them. I don't have any answers. I'm waiting for Judge Darigan."

Few agency expenses used to win clients

Relevance: 100 **Author:** CHRISTOPHER ROWLAND Journal State House Bureau **Date:** 12-09-1999 **Section:** Other
Page Number: A-01 **Word Count:**

* A review of credit-card records detailing restaurant charges made by the Economic Development Corp.'s top officials shows most were for meals for the staff, government personnel or politicians. *** PROVIDENCE - Of 229 restaurant bills charged...
Mesolella

2.9.2000 00:03:14

Ratepayers lose homes over unpaid sewer bills

Activists angrily confront the Narragansett Bay Commission over the practice of attaching liens and then selling houses primarily in Providence's poor neighborhoods.

By JONATHAN SALTZMAN
Journal State House Bureau

PROVIDENCE -- Activists, elected officials and city homeowners yesterday confronted the chairman of the state Narragansett Bay Commission and accused the agency of selling people's houses without their knowledge for owing a few hundred dollars on sewer bills.

The group, which included activists from the Urban League of Rhode Island, said the commission chaired by **Vincent Mesolella Jr.** is selling people's houses from under them, chiefly in poor neighborhoods in Providence, for owing as little as \$150.

Lawyers and real estate agents who have obtained the properties are showing up on the doorstep of the unwitting homeowners, the activists said. The visitors tell the property owners that they no longer own their houses and will have to pay several thousand dollars to get them back.

Jackie Hicks, of Glenham Street, Providence, said the agency recently told her 66-year-old mother, Mattie Smith, that she no longer owns her house at 252 California Ave. because she failed to pay a bill for \$174.75 in November.

Waving a copy of her mother's bill, Hicks said the manager of a company named Realty Associates, Norman Reisch, told Smith that he now owns her house.

"Where do you get off selling off someone's property from under them?" Hicks yelled at **Mesolella** in a State House committee room. "I don't know how you sleep at night."

Reisch could not be reached for comment last night.

Dennis Langley, executive director of the Urban League and a member of the Narragansett Bay Commission, said the commission is targeting poor and minority homeowners who struggle to pay their sewer bills. The commission is giving the deeds to politically connected lawyers and real estate agents who are demanding exorbitant sums if the homeowners want to get back their houses, he said.

Mesolella, who resigned from the state House of Representatives in 1998 after a controversial tenure, confirmed that his agency attaches liens to the houses of delinquent commission ratepayers. But, he said, the ratepayers typically have failed to pay their bills for four years and owe at least \$750.

He said the commission, which has 80,000 customers in 10 communities, typically mails several bills to customers before it attaches liens to the properties.

"If anyone can demonstrate that there was a lien sale and that the property was sold without their being properly notified, it will be rescinded," he said.

Too often, **Mesolella** said, homeowners simply ignore their sewer bills. Because the commission has a responsibility to all ratepayers, he said, the agency sometimes has no choice but to attach liens in the hope of collecting outstanding bills.

Still, concerns about the way the commission is selling the houses of delinquent ratepayers has prompted him to cancel a lien sale scheduled for May, he said. Meanwhile, the agency will review its policy.

Sally Easton, the housing director for the Urban League, said she is familiar with at least a dozen cases in which the commission sold the homes of residents in South Providence, the West End and Federal Hill because they owed small sums.

"Don't you think the punishment is a lot for the crime?" she said to **Mesolella**.

A handful of lawyers and real estate agents are surprising the homeowners with the news that they now own the properties, including attorneys Fernando Cunha and Patrick Conley, she said. Neither attended the hearing or could be reached for comment.

City Councilwoman Patricia Nolan said she has heard of several cases similar to the one involving Hicks's mother.

Arthur Lawrence, who is in his late 70s, told the 15 people sitting in the committee room that the commission sold his house because he owed \$547. To redeem the property, he has to pay \$4,895, which covers his delinquent bills and numerous other fees. He said he doesn't have the money.

Rep. Aisha W. Abdullah-Odiase, D-Providence, who chaired the meeting, said she was considering the possibility of a special legislative commission investigating the allegations. She is also considering introducing legislation to address the problem.

The subject came up when the Urban League discussed its legislative agenda for the 2000 session.

Ruling on Pascoag Reservoir, public access expected soon

By JEFF WHELAN Journal Staff Writer

Published 03-12-2000

* The state's civil suit against former state Rep. Vincent J. **Mesolella** Jr. could affect property rights throughout Rhode Island.

BURRILLVILLE - As winter thaws into spring, residents will turn their attention to the Pascoag Reservoir, a 355-acre picturesque lake that is a popular destination for swimming, boating and fishing.

But the calm surrounding the lake today stands in sharp contrast to the high-profile property-rights dispute that unfolded in Providence Superior Court last summer.

Judge Francis J. Darigan Jr. is soon expected to decide the civil suit the state filed against former state Rep. Vincent J. **Mesolella** Jr. The judge will determine whether or not **Mesolella** has the right to restrict public access to the reservoir, which his corporation has owned for two decades.

The stakes are high, said Matthew Harrington, an associate dean at the Roger Williams University School of Law.

"This judge knows that no matter what decision he makes, it possibly could substantially affect property rights throughout Rhode Island," Harrington said. "Certainly, a decision that I could do whatever I want with water that is on my land would actually be a dramatic change in the traditional view [of property rights]. On the other hand, any curtailing of those rights also affects landholders."

The nonjury trial started in August and lasted into September. Both sides, and people who own property near the reservoir, have been anxiously awaiting the verdict ever since.

"We're just sitting tight, waiting for a decision," said John Webster, **Mesolella's** lawyer. "I bumped into the judge last week and asked him not to forget us."

Mesolella testified that he grew frustrated that he paid taxes, liability insurance and maintenance for the property while others, including for-profit businesses, enjoyed its benefits. After the state rejected an offer to buy the reservoir from him, he posted no-trespassing signs and drained the lake to a 35-year-low in the spring of 1998.

The state filed a civil suit against **Mesolella**, arguing that public access to the lake had gone unchallenged from its creation a century ago until that point. The state is seeking a permanent injunction that would prohibit him from blocking public access to the lake.

Asst. Atty. Gen. Michael Rubin argued that people who purchased waterfront property from **Mesolella** had a legitimate expectation that they would be allowed to use the water for recreation. Webster has said that assumption was groundless.

"On the one hand ._._. here is a guy who is maintaining a body of water and is required to maintain a body of water for the state and is saying, 'I want to be compensated for doing that,'_" said Harrington. "On the other hand, there are a lot of expectations built up around the reservoir that need to be honored.

"This is a judge that needs to split the baby."

SECTION: Local & Regional News

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JEFF WHELAN Journal Staff Writer, Ruling on Pascoag Reservoir, public access expected soon., 03-12-2000, pp B-09.

4.4.2000 06:42:54

Court: Mesolella is sole owner of Pascoag Reservoir, dam

The former state representative immediately issues a notice that bars access to the reservoir by the public, abutting property owners and the state.

By RAGHURAM VADAREVU
Journal Staff Writer

BURRILLVILLE -- Former state Rep. Vincent J. Mesolella Jr. owns the Pascoag Reservoir and has the right to restrict public access to it, a Superior Court judge has ruled.

"Private property rights are among the most important and hallowed rights enjoyed by citizens of the state," Superior Court Judge Francis J. Darigan Jr. wrote in a decision handed down yesterday.

"It is beyond this Court's authority to deprive a private landowner of the rights inherent in ownership because a landowner has chosen to allow others to benefit from his property."

The ruling is the latest, and perhaps final, chapter in the dispute between the state and Mesolella over access to the picturesque 355-acre reservoir that stretches between Burrillville and Glocester. The reservoir, also known as Echo Lake, is a popular destination for swimming, boating and fishing.

The long-running dispute came to a head when Mesolella put up no-trespassing signs and drained the lake in 1998 to keep the public out. Mesolella had tried to sell the property to the state Department of Environmental Management for years, but the state refused, arguing that while Mesolella owned the underlying land, the lake itself is public.

Judge Darigan's decision concludes that Mesolella has the right to restrict public access to the reservoir, which his corporation, Pascoag Reservoir Dam, LLC, has owned since 1983.

Darigan wrote that Mesolella "is the owner of the lake, lake bed, and dam, and may exercise all rights inherent in and consistent with existing state statutes."

He said the public has been able to use the lake because Mesolella and previous owners had allowed them to use it since it was created over a century ago by mill owners.

"We've been vindicated," Mesolella said yesterday afternoon, adding that as far as he is concerned, the public is no longer allowed to swim, fish, boat, or otherwise use the reservoir without his permission.

But Joe Larisa, the governor's executive counsel, said "it is highly likely" that the state will appeal the decision to the Supreme Court and seek a stay, preventing it from taking effect.

"We believe that the public clearly has obtained the rights to access the lake [via the state-owned boat ramp]," Larisa said. The state built the ramp in 1965 and it had since been used by the public and lakefront landowners.

Larisa said the decision does not affect the waterfront property owners. But John Webster, Mesolella's attorney, disagreed, saying that it clearly establishes that Mesolella owns the lake and can prohibit anyone from using it.

"We're denying access to everyone; not only to abutting property owners but to the general public and the state," Webster said. ". . . My client has a private property right to the lake."

Mesolella said he would consider individual requests to use the lake.

Today, the reservoir is bordered by 300 private homes, two for-profit businesses and two campgrounds for children. It is mostly used for recreation during the summer.

Area residents last night said they were not sure what to make of the ruling.

Ray Cloutier, president of the Pascoag Reservoir Upper Dam Association, said he could not comment until his organization of 400 waterfront landowners reviewed the decision. He said the group wanted time to determine the decision's meaning.

Town Council President Wallace F. Lees also said it was too early for him to comment.

In the civil suit, the state sought a permanent injunction that would prohibit Mesolella from blocking public access to the reservoir. The nonjury trial started last August and stretched into September.

During the trial, Mesolella testified he grew frustrated that he paid taxes, liability insurance and maintenance for the property while others, including for-profit businesses, enjoyed its benefits.

Asst. Atty. Gen. Michael Rubin argued that people who purchased waterfront property from Mesolella had a legitimate expectation that they would be allowed to use the water for recreation.



4.5.2000 00:04:58

Mesolella says stay off my lake

Ruling upsets homeowners

By PETER B. LORD and RAGHURAM VADAREVU

Journal Staff Writers

BURRILLVILLE -- Constance Somers talked fondly of the annual Fourth of July boat parade in her tiny corner of Pascoag Reservoir. Looking out from her home as rain draped a grayish mist on the water, she said, "I'll miss it."

Across the lake, Gerald J. Miller Jr., said he felt the same way. His daughter, Jackie, 14, usually has her birthday party in July in the family's lush back yard, and they always swim in the lake or go boating.

Yesterday, he said she asked him: "Dad, what's going to happen about the party?"

The lives of these waterfront residents, and many more who use the 2-mile-long reservoir -- also known as Echo Lake -- in Glocester and Burrillville, appeared to have been dealt a serious blow on Monday when Superior Court Judge Francis J. Darigan Jr. ruled that former state Rep. Vincent J. Mesolella Jr. owns the reservoir and has the right to prohibit people from using it.

Lakefront property owners yesterday worried about losing a way of life, as well as tremendous financial value in their houses. Fishermen bemoaned losing one of the top bass fishing spots in the state.

Mesolella announced he will let the public use the lake through the weekend so fishermen can enjoy the opening day of trout fishing. (State officials pointed out they don't stock trout in the lake, but they appreciated Mesolella's gesture anyway.)

But starting Monday, Mesolella said, he will ban all boaters except those

who receive his permission.

Jubilant and combative, Mesolella said he won a comprehensive decision and complaints from Governor Almond's legal counsel were "laughable." He asked why Almond was fighting him instead of offering to buy the lake. And he voiced no sympathy for the more than 300 families who own lakefront houses.

"The people on the lake teamed up to gang up on Vinnie Mesolella," he said, when he opposed state plans to expand a boat ramp in 1995. "Well, I came out from under the pile and won the fight. And now those same people want me to let them use the lake."

He said he won't.

"We'll take photos. We'll enforce this," Mesolella said. "I may put someone on there and we'll call the Burrillville or Gloucester police or the state police. We'll impose fines for anyone caught trespassing."

State officials say the dispute is far from over. And it's not at all clear who will be affected or how.

Joseph L. Larisa Jr., Almond's legal counsel, said he will appeal to the state Supreme Court.

Larisa said he worries that if the decision stands, it could cause harm to those using public access to other bodies of water. Even if access has been granted for years, a property owner could abruptly curtail that if Darigan's decision holds, Larisa said.

Also, Larisa said Darigan's decision only applies to the public's use of the lake through the state boat launching ramp. It does not apply to whatever rights may be held by the 300 families, two campgrounds and one marina that own lakefront property.

Matthew Harrington, a dean at the Roger Williams University Ralph R. Papitto School of Law, said he thinks the statewide implications are limited because the decision focuses on ownership of an artificial lake, a relatively unusual situation.

"But it's still pretty damn significant," Harrington said. "All the uses Rhode Islanders have traditionally enjoyed on Echo Lake -- boating, fishing, swimming -- are at an end if the owner says so."

The dispute over the lake erupted in the summer of 1997 when Mesolella erected no trespassing signs. The next year he drained several feet of water and demanded that the state buy him out. The state responded by charging him with a wetlands violation; it also sought a court order guaranteeing the public's right to use the lake.

In the trial last summer, the state presented 21 witnesses who testified about years of unfettered access to the lake.

They said they knew mill owners created the lake in the 1800s, but they assumed they had a right to use it as they liked.

Mesolella testified he had no objections because lakefront property owners maintained the dam for him.

Darigan noted that there was evidence that the Mesolella and previous lake owners never waived their ownership and control of the lake.

“It is well recognized by this court that Echo Lake has played an important role in the lives of many citizens of Rhode Island,” Darigan wrote. But he added, “It is beyond this Court’s authority to deprive a private landowner of the rights inherent in ownership because a landowner has chosen to allow others to benefit from his property. To do so would be to penalize the generosity of private landowners.”

When Mesolella questioned yesterday why Almond assigned his lawyer to fight him, Larisa responded: “Because there is no other case in the state where the public has used a body of water openly for decades and the property owner comes in to shut them off.”

He said Almond isn’t offering to negotiate because Mesolella has rejected proposals to turn the lake and dam over to the towns and the state.

Larisa stressed the state has previously won an injunction forbidding Mesolella from raising or lowering the waters of the lake, so at least water levels should remain.

Harrington pointed out that Mesolella may have enforcement problems if abutters win the right to boat on the lake, while outsiders can’t.

And, he said, it will be bizarre if Mesolella calls on the very people he just evicted -- the state -- to enforce his no trespassing orders.

If Mesolella does stop waterfront property owners from using the lake, Somers said, “I’m going to Town Hall and I’ll tell them to lower my property [taxes] because the waterfront is no longer able to be used.”

On the Burrillville shoreline, Ron Palin, of 5 Lake Drive, said denying access to waterfront landowners is unfair. People move to the area because of the lake, he said. It is the center of their lives.

“This man should have never been allowed to be in the position that he is in . . . He’s a multimillionaire throwing around his weight.”

But David Kenyon, of Charlestown, who heads a fishing group that planned a tournament for April 15, said he would hate to lose such a prime bass fishing spot, but he could understand why Mesolella wanted to be paid for his lake.

Karl A. Martone, a Greenville real estate broker who specializes in waterfront property, said restricting use of the waterfront would cause the values to decrease and make them more difficult to sell.

“A house may not have a lot to offer,” said Martone, who is selling a home overlooking the reservoir. “And if it’s on the water, you can get a lot more money . . . waterfront does enhance the property.”

Mesolella wouldn’t say how much money he wants. But he said the state has spent \$10,000 an acre on properties far less desirable than his.
