

Bond Case Briefs

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WATER LAW - NEW HAMPSHIRE

Appeal of Town of Lincoln

Supreme Court of New Hampshire - June 7, 2019 - A.3d - 2019 WL 2402232

Town appealed from order of the Department of Environmental Services ordering town to repair river levee.

The New Hampshire Water Council upheld the Department's decision, and town appealed.

The Supreme Court held that town was not owner of levee for purposes of statute that required owners of dams to maintain and repair the dam so that they shall not become a dam in disrepair.

Town was not owner of levee for purposes of statute that required owners of dams to maintain and repair the dam so that they shall not become a dam in disrepair; town was not the fee owner of the levee, under a right-of-entry (REA) agreement, the town and the United States only had a limited right to enter upon the land at any time to inspect the restored levee with a view to its proper maintenance and operation, the town was not seeking rights reasonably necessary to enjoy its easement and protect its citizens and property, when it already held those rights under the REA, which did not place any obligations on the town, and while the fee owner had the capacity to transfer ownership to the town, with its attendant rights and obligations, it chose not to do so.