

Ex R. 62 A

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

TROUT UNLIMITED, a non-profit Michigan corporation, HUGH G. HARNESS, JANET Z. HARNETT, ROBERT C. LEACOCK, KATHLEEN F. LEACOCK, BLUE WATER REALTY COMPANY, a Michigan corporation, WINFRED L. CASE, MARY L. CASE, RAY N. SMITH, AMELIA J. SMITH, ARTHUR R. COOK, FRANCES E. COOK, CHARLES N. MILLER, ALBERT W. SACHS, KATHRYN K. SACHS, KENNETH F. SODERQUIST, WILLIAM PONCHELON, HOWARD J. McCANN, RUFINA B. McCANN, PAUL S. CALKINS, HELEN B. CALKINS, CHARLES R. GREEN, MARIAN B. GREEN, WILLIAM J. LARSEN, ETHEL K. LARSEN, WILLIAM F. DeFRIES, ELAINE R. DeFRIES, ROBERT TUPES, EDWIN F. BOOTH, RUSSEL BINGHAM, ELIZABETH BINGHAM, ROY J. GERARD, GARBER REALTY COMPANY, a Michigan corporation, WILLIAM E. PULGINI, ARTHUR R. LAKE, BETTY LAKE and CRAWFORD COUNTY, MICHIGAN,

Plaintiffs,

vs.

Case No. 13243-C.

WILLIAM G. MILLIKEN, Governor of the State of Michigan, DEPARTMENT OF NATURAL RESOURCES, WATER RESOURCES COMMISSION, STATE OF MICHIGAN, OTSEGO BOARD OF COMMISSIONERS OF OTSEGO COUNTY, MICHIGAN and OTSEGO COUNTY ROAD COMMISSION OF OTSEGO COUNTY, MICHIGAN,

Defendants.

INTERLOCUTORY CONSENT ORDER

At a session of said Court held in the County Building in the City of Mason in said County on the 2nd day of July, 1971.

PRESENT: HON. SAM STREET HUGHES, Circuit Judge.

The complaint of Plaintiffs having been filed herein and a restraining order having been granted restraining the defendants and each of them from any work on the scheduled project to dig a drain or tile from Otsego Lake in the County of Otsego and State of Michigan and from expending any public funds in connection therewith with order to show cause why a preliminary injunction in accordance with said restraining order should not issue having

FILED

THIS 4TH DAY OF NOV. 1971
Helen M. H. [Signature]
CLERK

come on to be heard in open Court at 2:30 p.m. on the said 2nd day of July, 1971; and the parties to this action being represented as follows: the parties Plaintiff with the exception of Crawford County by Joseph V. Wilcox, Esq., of the law firm of Wilcox & Robison, Albion, Michigan; Nelson A. Miles, Esq. of counsel, Grayling, Michigan; Alfred P. Stuart, Esq., of the law firm of Stuart & Stuart, of counsel, Marshall, Michigan, by Joseph V. Wilcox, Esq.; Plaintiff Crawford County by Bruce B. Benson, Esq., Prosecuting Attorney of Crawford County, Grayling, Michigan, by Joseph V. Wilcox, Esq.; Defendants William G. Milliken, Department of Natural Resources and Water Resources Commission, State of Michigan, by Frank J. Kelley, Esq., Attorney General, by Jerome Maslowski, Esq. Assistant Attorney General; Defendant Board of Commissioners of Otsego County by Randall M. O'Rourke, Esq., Prosecuting Attorney of Otsego County, Gaylord, Michigan; Otsego County Road Commission by Francis E. Lindsay, Esq., Cheboygan, Michigan, by the said Randall M. O'Rourke, Esq.; and it appearing that all parties to this action were before the Court and are bound by this order; and it further appearing to the Court that the parties by their respective attorneys did enter into a certain stipulation in open Court, which stipulation has been transcribed by the reporter and is part of the files and records of this case.

IT IS HEREBY ORDERED that the restraining order heretofore issued on the 18th day of June, 1971, shall be dissolved, and that this Interlocutory Order stand in the place and stead of such and all previous Orders, and all parties shall be bound hereby under penalty of contempt of this Court; and it appearing to the Court that the terms of said stipulation are reasonable and ought to be adopted by this Court in this Interlocutory Order.

IT IS FURTHER ORDERED, pursuant to said stipulation, as follows:

1. The Defendants shall be permitted at once to commence construction of their drain from Otsego Lake to the North Branch of the AuSable River a distance of approximately 7,000 feet; the first 4,000 feet of which is to be tiled and covered and the last 3,000 feet in a lined ditch without open earth according to the plans and specifications entered in the record on motion of Jerome Maslowski and spread upon the record of this cause. Said exhibits are made a part of this order and incorporated herein by reference.

2. The Defendants may immediately commence the construction of said work in accordance with said plans and specifications in order to alleviate the emergency situation which exists by reason of high water at Otsego Lake.

3. The Defendants shall construct or cause to be constructed at the beginning of the outlet of Otsego Lake a lockable control or a device that can be locked to be operated only by the Fish Division of the Department of Natural Resources, Defendant herein in order to prevent vandalism or some other type of discharge of water not authorized or controlled by the Department.

4. The quality of the water released from Otsego Lake into the North Branch of the AuSable River shall be of equal quality to the water of the North Branch of the AuSable River or of a quality which is acceptable and compatible in the North Branch of the AuSable River subject to the monitoring by the Fish Division of the Department of Natural Resources provided for hereinafter in this order.

5. The number of cubic feet per second of water to be drawn from Otsego Lake into the North Branch of the AuSable River shall be monitored at all times by the Fish Division of the Department of Natural Resources. The initial drawdown of water which shall take place upon the completion of the project shall not exceed five (5) cubic feet per second, and thereafter shall not be increased without an evaluation by the Fish Division of the Department of Natural Resources of environmental or property

damage to the North Branch of the AuSable River or its abutting property and the Fish Division shall monitor said flows so as to prevent such damage and may reduce them should said damage occur or be threatened. In no event shall flows exceed more than fifteen (15) cubic feet per second excepting upon petition and the further order of this Court.

6. If the coliform content of the water from the Lake should prove to be unacceptable or if other conditions should exist that would be unacceptable to the North Branch of the AuSable River, then the Fish Division of the Department of Natural Resources shall reduce the flow to 0 feet per second if necessary.

7. The Fish Division shall maintain and control its monitoring system for so long as this Court retains jurisdiction and for such period of time that water continues to be drawn from Otsego Lake into the North Branch of the AuSable River and as aforesaid, no water shall be drawn without its consent and participation.

8. In all years subsequent to 1971, the spring flow of water from Otsego Lake into the North Branch of the AuSable River shall be minimized in order to balance the release of water or ingestion of water in any period of time so that a greater amount than may be necessary is not released into the North Branch of the AuSable River.

9. In all years subsequent to 1971 no water will be discharged from Otsego Lake into the North Branch of the AuSable River during the period from June 15 to September 1.

10. For the purposes of this action and in accordance with the stipulation entered into in open Court the optimum level of the lake is declared to be 1,274 feet above sea level. The Defendants may achieve by the releases aforesaid and they may maintain a level of 1,273 feet eight inches for the purpose of providing a cushion of four inches below the optimum lake level as a safeguard. During such period of time in the future

that the lake level remains between 1,273 feet eight inches and 1,274 feet, water will not be drawn off Otsego Lake at a rate greater than five (5) cubic feet per second excepting as limited in the preceding paragraphs of this order. If the lake exceeds 1,274 feet, water may be drawn out subject to the monitoring and control provisions hereof.

11. The lake level agreed upon and incorporated herein and the other terms of this interlocutory order shall apply insofar as possible to the procedure initiated by certain of the Defendants in the Circuit Court for Otsego County for the establishment of a lake level under Act 146 of 1961.

12. The memorandum of understanding between the Otsego County Board of Commissioners and the Department of Natural Resources of the State of Michigan and the procedures for monitoring the Otsego Lake drawdown dated June 29, 1971, which have been placed in evidence in this cause and made a part of the record herein are hereby incorporated in this order and made a part hereof. Copies are marked Exhibits A and B respectively.

This order is interlocutory only and is not a final judgment under the rules and statutes governing circuit courts and their judgments and orders. This Court specifically retains jurisdiction over this matter for so long as said jurisdiction may be necessary and until the parties agree that jurisdiction may be released.

This order shall further continue as the temporary order of the Court until the further order of this Court modifying or amending the same in any way and as aforesaid, all parties are bound hereby.

SAM STREET HUGHES

Circuit Judge

Aug. 9, 1971

We hereby waive notice of entry of the within order and consent to the entry of same and approve said order as to form and content.

Crawford County
Grayling, Michigan

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A TRUE COPY
C. ROSS MILLIARD
MICHIGAN COUNTY CLERK