

**STATE OF MICHIGAN  
IN THE 46<sup>th</sup> JUDICIAL CIRCUIT COURT  
OTSEGO COUNTY**

Michigan Department of Natural  
Resources and Environment, et al.<sup>1</sup>  
Plaintiffs,

v

Golden Lotus, Inc.,  
Defendant

Case No. 09-12933-CE(m)  
Honorable Dennis F. Murphy

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**DEFENDANT'S ANSWER TO INTERVENING PLAINTIFFS'  
MOTION TO CLARIFY AND ENFORCE INTERIM ORDER**

**THE REAL ISSUE PRESENTED -- INTRODUCTION**

Intervenors misstate the real issue by inclusion of self-serving statements not supported by the record. Simply put, the issue is:

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<sup>1</sup> The original Plaintiffs were the Department of Environmental Quality and Dept of Natural Resources. They were merged into the DNRE by Governor Granholm and the case caption amended per the Interim Order entered on April 5, 2010. Governor Snyder has since split the DNRE into the original two agencies. They are collectively referenced at times in this Motion and accompanying Brief as the "State."

**Does the Permit Application Submitted by Golden Lotus Comply with the Agreement of the Parties as Embodied in the Interim Order entered on April 5, 2010?**

Golden Lotus answers: "Yes."  
The State answers: "Yes."  
Intervenors answer: "No."

The Interim Order was a negotiated agreement to which all the parties, including Intervenors, expressly agreed. It reads in relevant part:

The DNRE agrees that upon removal of the dam structure, *Golden Lotus will be allowed the continued use of the existing bridge* or, if in the opinion of a Golden Lotus engineer, due to structural concerns with the existing bridge structure, a replacement bridge crossing. (Interim Order, par. 3; **GL Exhibit 1**; emphasis added).

*Golden Lotus shall be entitled to maintain the current bridge*; or, if in the opinion of a qualified, licensed engineer it must be removed as part of the contemplated dam removal project, Golden Lotus shall be entitled to construct a comparable bridge across the Pigeon River at the same or the nearest feasible location. (**GL Exhibit 1**; emphasis added).

The "existing bridge" comprises not only the portion which accommodates travel, but its supporting structure as well -- the vertical support provided by the concrete abutments and lateral support of the abutments by the concrete spillway.

The purpose of the Interim Order was to address the problem created by the June 2008 event, i.e., to prevent any future sediment releases by removing the Lansing Club impoundment. Corollary benefits include elimination of fluctuations in river flow, and stabilization of water temperature. The Conceptual Plan submitted by Golden Lotus (**GL Exhibit 2**) comports with the Order, provides for exactly the dam removal plan set forth in the Permit Application, and was approved by the State and Intervenors.

Contrary to the assertion of Intervenors, Golden Lotus submitted evaluations and data as to the physical extent of the spillway structures and the method and cost of removing them in the event an engineer determined that the existing bridge was unsound. However, when the engineering firm

of Wade Trim issued its opinion on November 22, 2010 that the bridge was structurally sound, potential removal of the spillway and abutments became moot.

Interveners' desire for "fish passage" may be laudable, but it was not part of the Agreement. The Motion is an unwarranted attempt to get a court-ordered "renegotiation" that they could not have gotten had they been forthright about their true intentions during the negotiations. The State has told Interveners orally and in writing that it concurs fully in Golden Lotus' understanding and interpretation of the Interim Order .

### **RESPONSE TO "THE BASIS FOR THE MOTION"**

1. The allegations of this paragraph are true, but incomplete.

2. The allegations of this paragraph mischaracterize the language of the Interim Order and present a distorted interpretation of what was agreed upon by the parties in their settlement.

3. The allegations of this paragraph:

(a) Insofar as they imply that Golden Lotus was responsible for a slower "pace of planning" contemplated by the Order, such implication is untrue. Golden Lotus has timely and fully complied with the Interim Order; the "pace of planning" has been the product of collaboration between the parties to assure that all details for implementation of the project are properly addressed; and, to conduct further investigations and analyses as requested by the State and Interveners.

(b) Insofar as they imply that Golden Lotus did not adequately or fully respond to *all* inquiries and concerns, they are untrue.

(c) The allegation that "the Conceptual Plan was never completed so as to include all of the components required under Par. 4 of the Order" is untrue.

4. The allegations of this paragraph mischaracterize and distort the extent and nature of the discussions, submissions, and communications between the parties, particularly with regard to the allegation that "Golden Lotus expressed preference for the much cheaper Option 1." Option 1 was not only the "preferred Option, but more importantly, it embodied the removal plan agreed upon

by the parties in the Interim Order.

5. The allegations of this paragraph are denied as untrue. Interveners have misstated and mischaracterized the discussion held at the December 15, 2010, Pre-Application Meeting regarding the plan for removal. It was made clear to Interveners as early as May 4, 2010, and reiterated thereafter, including during the December 15 meeting, that Option 1 complied with the Order. The Order was a product of negotiation in which none of the parties achieved their ultimate goals – it was a compromise of disputed claims.

6. The allegations of this paragraph are denied for the reason that Interveners failed to include the relevant sections of the Conceptual Plan which set forth the several options for removal in descending order based upon the structural integrity of the bridge and its supporting components.

7. The allegations of this paragraph are denied for the reason that they are untrue.

(a) No such objections were raised by Interveners or Burroughs at the meeting. Instead, they were first voiced in an email from Interveners' legal counsel, Peter Gustafson ("Gustafson") in the email to Golden Lotus' counsel on December 17, 2010.

(b) The dam removal project proposed by Golden Lotus fully complies with the Interim Order.

(c) The agreement of the parties embodied in the Order did not provide for or require that the project provide fish passage – its objective was to eliminate the prospect of any future releases of sediment as occurred in 1984 and 2008.

(d) The proposed project does not create any unsafe conditions "endangering people and watercraft." In fact, by eliminating the impoundment, it will enhance safety.

(e) The proposed project will result in complete draining of the impoundment.

(f) Even though fish passage was not an objective of the Order nor required by it, at the meeting, Golden Lotus expressed its willingness to cooperate on a *strictly voluntary basis* with Interveners in a subsequent stream restoration project unrelated to the work required by the Order. The only *caveats* imposed by Golden Lotus were that, because of its poor financial condition, it would have to be funded by others; and, there would have to be a new bridge to replace the existing one.

8. Golden Lotus denies the allegations of this paragraph as untrue. It submitted the Permit Application on February 1, 2011. The Application fully complies with the Interim Order and addresses: the fact that the spillway and abutments must remain as support for the existing bridge; assesses the condition of the bridge and accompanying supports as structurally sound per the opinion of Wade Trim and as required by the express language of the Order; and, does not address the method or cost of removing the abutments and spillway for the reason that they are to remain in place as support for the existing bridge.

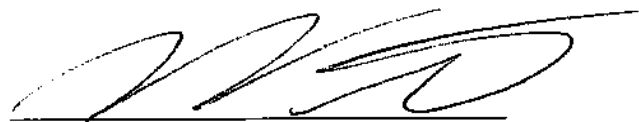
9. The Motion is not well grounded in fact nor warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and, it were interposed for an improper purpose, namely, to harass Golden Lotus and cause it needless expense. A clear message should be sent to Interveners in the form of significant sanctions pursuant to MCR 2.114 and costs pursuant to MCR 2.625(A)(2) and MCL 600.2591.

10. This Answer is supported by an accompanying Brief.

**RELIEF REQUESTED**

Golden Lotus requests that the Motion be denied and that appropriate sanctions be imposed against Interveners.

April 28, 2010



William M. Schlecte  
Attorney for Golden Lotus

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**GOLDEN LOTUS' BRIEF IN SUPPORT OF ITS ANSWER TO  
INTERVENERS' MOTION TO CLARIFY AND ENFORCE INTERIM ORDER**

This lawsuit was precipitated by an unauthorized release of sediment from the Lansing Club Pond in June of 2008. A similar release occurred in 1984 and was the subject of bitter and lengthy legal proceedings. Although Golden Lotus admitted that the 2008 release occurred, it contested the alleged volume of released sediment, the claimed extent of damage, and the extreme nature of the relief sought by the State and Interveners. The parties were once again poised to engage in a protracted, bitter, expensive, and "to-the-death" battle in which victory to each party was uncertain.

In a good-faith attempt to avoid the fate of the 1984 episode, its expense and outcome, the parties agreed to participate in facilitative mediation. An all-day session was conducted on December 21, 2009, at which a *bargain* was fortunately struck, the details worked out in subsequent months, and then embodied in the April 5, 2010 Interim Order (**GL Exhibit 1**). It was a settlement of each party's claims and requests for relief – no one got exactly what it wanted, which is the very nature of compromise.

Immediately following entry of the Order, Golden Lotus embarked on the task of complying with it. As is evident from the Discussion below and attached Exhibits, the process has been complex, detailed, and oddly enough until filing of the Motion, extremely collaborative. The final product was a Permit Application which comports with the settlement and the Order; and one which achieves the goal of preventing any possibility of a future release of sediments from the Lansing Club Pond. By their Motion, Interveners want this court to rewrite the agreement, grant them the relief sought in their Complaint without the opportunity for Golden Lotus to have its day in court, and deprive Golden Lotus of the benefit of the negotiated settlement. The Motion is utterly without merit, unsupported by the facts and without any legal authority whatsoever.<sup>1</sup>

**I. THE INTERIM ORDER DOES NOT REQUIRE GOLDEN LOTUS TO REMOVE THE ABUTMENTS AND SPILLWAY WHICH SUPPORT THE BRIDGE.**

**A. The Interim Order was a Negotiated Agreement in Which The Parties Weighed the Costs, Risks, and Time Associated with Litigation, as Well as Golden Lotus' Lack of Financial Resources.**

The Interim Order is an agreement that is, in effect, the same as a Consent Judgment. The only difference is the lack of finality, but even that element was addressed in the Interim Order because it expressly provides for entry of a Consent Judgment upon issuance of the Permit. (GL

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<sup>1</sup> It should be noted that Interveners' Motion, Brief and Supplement are devoid of any legal authority.

**Exhibit 1**, par. 17.) Judgments entered pursuant to an agreement of parties are of the nature of a contract . . . and are to be construed and applied as such. *Gramer v. Gramer*, 207 Mich App 123, 125; 523 NW2d 861 (1994); *Bolen v. Lobaina* , 267 Mich App 415; 705 NW2d 34 (2005). Settlement agreements and consent judgments constitute contracts and are governed by the legal principles applicable to the construction of a contract. *Laffin v. Laffin*, 280 Mich. App. 513, 517; 760 N.W.2d 738, 740 (2008).

A contract must be interpreted in the sense in which one of the parties knew, or had reason to know, the other party understood it. A one-sided, self-serving interpretation of a contract is of no assistance in interpreting the contract. See, e.g., *Gaydos v. White Motor*, 54 Mich App 143, 220 NW2d 697 (1974); and *Davis v. Kramer Bros.*, 361 Mich 37, 105 NW2d 29, 32 (1960). Thus, the meaning of the contract cannot be established by the construction placed on it by one of the parties, unless such interpretation has been made to, and relied on by, the other party or parties, or has been known to, and acquiesced in, by the other party or parties, or, is against the interest of the party making it. *Gaydos, supra*.

Golden Lotus filed an Answer and Affirmative Defenses to the Complaints of both the State and Interveners. At the time of mediation on December 21, 2009, it was prepared to continue its vigorous defense against their claims and obtain dismissals of both, which would allow it to keep its dam and impoundment. The Lansing Club Pond has great spiritual, recreational, and economic value to Golden Lotus that it was loath to give up. It would not do so without either a final order from a court after years of administrative and legal proceedings, including appeals, or without a settlement which recognized those values and included a suitable *quid pro quo* for Golden Lotus.

In addition to the private property rights it possessed in the pond, Golden Lotus had additional reason to fight for the impoundment. When it initially filed a claim with its insurance

company for coverage of the claims, it was denied. However, upon further application by legal counsel, the insurer relented in part and issued a “reservation-of- rights” letter in which it stated that it would pay for defense against the claims, *but would not pay for any damages or other relief*. In other words, Golden Lotus had tremendous financial incentive to *not* settle and instead force the case through all proceedings available to it -- administrative, trial, and appeals -- *unless* it got something substantial in return.

The insurance policy and reservation-of-rights letter were given to the State and Interveners prior to mediation and they were well aware of the economic factors which had to be considered by Golden Lotus. They also had Golden Lotus’ tax returns for the last ten years and knew that it had no funds available to perform a dam removal project of the scope now sought by Interveners. Any deal which might be cut for dam removal would have to be one which would accomplish the goal of getting rid of the impoundment in the least expensive manner possible.

**B. The Interim Order Expressly Provides for the Existing Bridge To Remain if a Structural Engineer Opines that it is Sound.**

Thus it was that, at the mediation, the parties came to an agreement which they subsequently memorialized in the Interim Order. As in any settlement, no one achieved 100% of its objectives:

The State compromised its claim for damages – but it still received the sum of \$150,000 as mitigation, and, most importantly, achieved elimination of the impoundment and the future risk of damage to the Pigeon River;

Golden Lotus gave up its valued pond and had to pay some mitigation damages -- but it achieved a reduction in the amount of the claimed damages and, most importantly, a dam removal plan that it could afford;

Interveners gave up their claim for complete stream restoration – but most importantly, they achieved elimination of the impoundment and the future risk of damage to the Pigeon River; and,

All parties got: elimination of the risk that they might lose entirely or in part and avoidance of many more years of expensive administrative proceedings and litigation.

To effect this compromise, the parties spent the next three months crafting a detailed Interim Order to which they stipulated and had entered by the Court. Although Interveners, in their Brief, quote only selected sections of the Order to support their argument, they cleverly avoid including the ones that are relevant. The dam removal plan which was the outcome of the settlement negotiations and contained in the Interim Order is exactly the one set forth in the Permit Application, namely, that the existing bridge is to remain intact so long as a qualified engineer opines that it is structurally sound. To emphasize this requirement, it is expressed not once, but twice, in the Order:

3. Subject to and in accordance with the provisions of this Interim Order, Golden Lotus shall remove the private dam . . . .

The DNRE agrees that upon removal of the dam structure, *Golden Lotus will be allowed the continued use of the existing bridge* or, if in the opinion of a Golden Lotus engineer, due to structural concerns with the existing bridge structure, a replacement bridge crossing.

14. *Golden Lotus shall be entitled to maintain the current bridge*; or, if in the opinion of a qualified, licensed engineer it must be removed as part of the contemplated dam removal project, Golden Lotus shall be entitled to construct a comparable bridge across the Pigeon River at the same or the nearest feasible location. (GL Exhibit 1; emphasis added).

*Golden Lotus provided the requisite opinion of a structural engineer that the existing bridge is structurally sound* (Wade Trim letter; GL Exhibit 70). The condition precedent to retention of the existing bridge, set forth in two places in the Interim Order, was satisfied.

It is illustrative of Interveners' sophistry that they did not, in their Brief, quote that part of Paragraph 3 which disfavors them, particularly the language which precedes the requirement that "Golden Lotus shall remove the private dam." It is the phrase that dam removal is "[s]ubject to and in accordance with the provisions of this Interim Order." Interveners would have this Court take the "removal" language entirely out of context and treat it as if in a vacuum, unmodified by the remaining substantive terms of the Order.

The “icing on the cake” is the Resolution adopted by the Golden Lotus Board of Directors and stipulated by the parties to be appended to the Order as Exhibit A. It reads:

4. Upon entry of the Interim Order by the Court, Donald Handyside, as Chairman, and William M. Schlecte, as legal counsel, are authorized and directed to take all steps necessary and appropriate to implement the provisions of the Interim Order, including, but not limited to:
  - (b) Preparation, execution and delivery of a Conceptual Plan, Application for Permit or Permits; engineering plans for dam removal *and bridge retention*, . . . ( Exhibit A to Interim Order; emphasis added).

**C. The Interim Order Speaks Volumes by What it *Doesn't* Say.**

It is evident from the length and detail of the Order that the parties and their counsel took great pains to assure that it included *everything* – the purpose being to avoid the very controversy in which Interveners have now embroiled them. They labored over this work of legal art for over three months, yet *nowhere* in any of the correspondence and nowhere in the final version of the Order does there appear any language which remotely resembles what Interveners claim was to be included. Had removal of the abutments and spillway been a condition of the settlement, it would have been a ridiculously easy thing to have written it in – it was not.

The drafts of a Facilitation Summary and proposed Order, particularly those by Gustafson on behalf of Interveners, drive home the point made in the final version of the Order. For example:

- Notes of the mediation forwarded by *Gustafson* after the session (**GL Exhibit 15**):
  - 1.d.i. Golden Lotus reserves right for a bridge in a different location if maintaining current location at dam site is not feasible.There is no mention of removal of abutments or spillway.
- *Gustafson* draft of a proposed Facilitation Summary – Jan 13, 2010 (**GL Exhibit 16**):
  - [1.b.] . . . In addition, it is recommended that the Defendant provide, as part of the pre-application materials, plans and

descriptions of *any proposed modifications to the existing bridge structure* or plans for a replacement crossing structure of the Pigeon River.

[1.d.i.] *Plaintiffs acknowledge the Defendant's desire to continue use of the existing bridge unless condemned by a licensed professional engineer due to safety concerns.* If a new bridge is required at current or alternative location, the Defendant is responsible for obtaining all necessary permits and financing required to replace the bridge.

[1.d.iv.] The dam removal plan shall be designed to ensure environmental and resource protection/enhancement *and will consider various cost effective options* and safety concerns.

There is no mention of removal of abutments or spillway.

- *Gustafson* revised draft of proposed Facilitation Summary– Jan 14, 2010. (**GL Exhibit 17**): same language as in January 13 draft. No mention of removal of abutments or spillway.
- *Gustafson* revised draft of proposed Facilitation Summary – Jan 19, 2010 (**GL Exhibit 18**): same language as in January 13 and 14 drafts. No mention of removal of abutments or spillway.
- *Gustafson* draft of proposed Stipulated Order – Jan 28, 2010 (**GL Exhibit 19**): same language as in January 13, 14, and 19 drafts of Facilitation Summary. No mention of removal of abutments or spillway.
- Schlecte draft of proposed Interim Order – February 3, 2010: (**GL Exhibit 21**): two references to retention of bridge, and no mention of removal of abutments or spillway – *no objections or comments from Gustafson.*
- *Gustafson* revised draft of Interim Order – March 15, 2010 (**GL Exhibit 22**): two references to retention of bridge, and no mention of removal of abutments or spillway. No mention of removal of abutments or spillway.

If the Order was to intended to require Golden Lotus to remove the abutments and spillway, it would have said so. It does not.

**D. Interveners' Tortured Interpretation of the Order Would Render the Provisions Regarding the Existing Bridge Meaningless.**

To arrive at a proper interpretation of particular language, the entire contract must be

considered. *McIntosh v Groomes*, 227 Mich 215; 198 NW 954 (1924). “Every word in the agreement must be taken to have been used for a purpose, and no word should be rejected as mere surplusage if the court can discover any reasonable purpose thereof which can be gathered from the whole instrument.” *Id.*; also see, *Laevin v St Vin. De Paul*, 323 Mich 607; 36 NW2d 163 (1949). Courts must give effect to every word, phrase, and clause in a contract and avoid an interpretation that would render any part of the contract surplusage or nugatory. *Klapp v United Ins*, 468 Mich 459; 633 NW2d 447 (2003); *Knight Ent v Fairlane*, 482 Mich 1006; 756 NW2d 88 (2008).

A court may not rewrite clear and unambiguous language under the guise of interpretation. *Woodington v Shokoohi*, 288 Mich App 352; 792 NW2d 63 (2010); *Wonderland Shopping Ctr v CDC Mortg. Cap.*, 274 F3d 1085 (6th Cir. Mich. 2001); *Vary v Shea*, 36 Mich 388 (1877).

Intervenors’ “interpretation” of the Order would make the two express sections of it which specifically provide for retention of the bridge meaningless. Simply put, there would be no need for a structural engineer’s opinion regarding the structural integrity of the *existing* bridge because: first, it would no longer be “existing” since it would have to be removed in order to get rid of the spillway or abutments; and, second, once it is no longer existing, there would be no necessity for an engineer’s opinion on its structural integrity because not only would it not be there, its replacement would necessarily have to be structurally sound. Both paragraphs would have no effect and be mere surplusage – a result which would contravene longstanding principles of Michigan law.

**E. The Settlement and Order Resolve the Conditions That Caused the 1984 and 2008 Sediment Releases.**

The parties’ agreement provided for achievement of the following goals: elimination of the risk of future sediment build-up and releases, stabilization of water flow, and elimination of water temperature increases. Intervenors want something more: “fish passage.” Golden Lotus freely

acknowledges that the bargain struck between the parties allows only stronger species of trout to get past the spillway because of water velocities. This is true, *but the settlement was not intended to accomplish "fish passage."* Although a laudable goal, the cost of achieving it far exceeds the economic capability of Golden Lotus – a fact recognized in the negotiations and thereafter.

Intervenors' contention that Golden Lotus agreed to this additional cost is contradicted not only by the Order, the plethora of communications by the parties, the investigations and submissions by Golder in furtherance of the Order, but also by a revealing press release which MCTU issued to its members shortly after entry of the Order (**GL Exhibit 24**):

All parties to the litigation have been working towards (*sic*) an agreement that would put aside the litigation and focus resources on helping the Pigeon River. Golden Lotus' desire to do what was best for the river and its aquatic life was instrumental in reaching this agreement. *This agreement will protect the river from similar incidents in the future* while allowing it to become healthier than it has ever been," said Bryan Burroughs, Executive Director of Michigan TU.

*Dams disrupt the natural flow of water, sediment, nutrients and organisms in rivers and often warm water temperatures, past the ideal range for trout and other coldwater fishes. Removal of this dam is expected to greatly improve the trout fishery for nearly 20 miles downstream of the dam. (Emphasis added).*

There is not, nor could there be, any mention in the press release that the agreement included "fish passage." It could not because Intervenors knew that the Order did not provide for it. They got 90% of what they wanted by the settlement, but they did not get everything. Although it is speculation on Golden Lotus' part, it may very well be that the real reason for Intervenors' present motion is that their negotiating team has gotten unfavorable "backlash" from their constituency.

That constituency wants "fish passage" and restoration of the river to a pristine state. But that is not the responsibility of Golden Lotus and the settlement plainly recognizes the limits of its liability. It acknowledges its responsibility to assure that no more releases of sediment occur. This it could do through fail-safe control equipment installed on the existing dam, leaving the

impoundment in place; or, it could voluntarily and permanently remove the mechanism which creates the impoundment. Although Golden Lotus would have preferred the former, but as a consequence of the concessions made by *all* parties at the mediation, Interveners included, they collectively chose the latter as the means to address the concern for which Golden Lotus was responsible.

**F. The Intention of the Parties was that Golden Lotus Would Not Have to Remove the Bridge.**

Golden Lotus does not believe that the Interim Order is ambiguous or that the Court needs to look beyond its “four corners” to discern its meaning. However, to the extent that it deems the intention of the parties to be relevant, certain fundamental principles apply. As a general rule, where a contract is ambiguous or uncertain, weight and effect will be given to the construction placed on the contract by the parties themselves. *L&S Bearing v Morton Bearing*, 355 Mich 219, 93 NW2d 899 (1959); *Michigan Chandelier v Morse*, 297 Mich 41, 297 NW 64 (1941). However, an attempt will not be made to ascertain the actual mental processes of the parties to a particular contract. It will be presumed that the parties understood the import of their contract and that they had the intention which its terms manifest. *Id.*

“The facts and circumstances attending the making of a contract, are indispensable to a correct construction or interpretation thereof, and if it is executory, and its terms uncertain or ambiguous, the manner in which the parties themselves have treated it, in carrying it into effect, is entitled to great weight as affording a practical construction which the parties themselves have placed upon its intent and meaning.” See *Klapp v. United Ins*, 468 Mich 459, 663 NW2d 447 (2003). Contract interpretation should be based on common sense. *Bianchi v Auto Club of Mich.*, 437 Mich 65, 467 NW2d 17 (1991).

It is difficult to swallow Interveners' interpretation of the Order in light of the fact that the State concurs with Golden Lotus (State's Brief in Opposition to the Motion) – parties who were on opposite sides of the litigation before the settlement. The “clarification” which Interveners seek is not only a tortured interpretation of the express terms of the Order, it runs counter to the understanding and intent of the other parties who were themselves adversaries in the litigation and in the negotiations for the settlement; and, it does not make sense.

The Affidavits of all the members of the Golden Lotus negotiating team are unanimous in their recollection of the mediation, communication to Interveners of the financial condition of Golden Lotus, the non-negotiable insistence that the bridge remain, and their understanding of the settlement. **GL Exhibits 10, 11 ,and 12.**

Evidence of “subsequent acts or declarations of the parties showing the practical consideration put upon [equivocal or ambiguous] words” may be considered “for the purpose of ascertaining [the parties'] intention, and parol evidence is admissible for this purpose.” *Glenwood Shopping Center v K Mart Corp.*, 136 MichApp 90, 356 NW2d 281.

All of the actions, communications, and submissions from and after April 5, 2010, in furtherance of the Order up until Gustafson' email on December 17, 2010, support the position of Golden Lotus and the State. There were numerous meetings in which all parties participated, myriad communications between them, and several formal submissions in accordance with the Order. A Chronology is attached as **GL Exhibit 14** which details many of these. The court can discern from the submissions alone the Herculean efforts of Golder, on behalf of Golden Lotus, to produce a plan which complied with the Order – all of which were thoroughly reviewed, discussed, and “vetted” with the Interveners. These included:

Conceptual Plan -- May 2010 (**GL Exhibit 2**)

Field Data Collection Work Plan – May 2010 (GL Exhibit 3)

Field Data Summary Report – September 2010 (GL Exhibit 4)

Interim Evaluation of Drawdown and Dam Removal Options – Oct 2010 (GL Exhibit 5)

Technical Memorandum – December 3, 2010 (GL Exhibit 6)

Joint Permit Application – February 1, 2011 (GL Exhibit 7)

Response to Application Correction Request – Feb 17, 2011 (GL Exhibit 8)

Response to Application Correction Request 2 – March 3, 2011 (GL Exhibit 9)

Intervenors have known since December 21, 2009, that dam removal would not include removal of the abutments and spillway. Everything that has been done since mediation supports Golden Lotus' and the State's interpretation of the settlement and Order.

## **II. THE PERMIT APPLICATION FULLY COMPLIES WITH THE INTERIM ORDER.**

Intervenors are not only wrong on what the Interim Order says, they are wrong on what the “dam” is and what the removal does. The dam is not “12 feet high” – the gates are approximately 15 feet high. Funkhouser Affidavit (GL Exhibit 13). The gates are to be entirely removed. The impoundment will be entirely drained. Stanko and Funkhouser Affidavits (GL Exhibits 12 and 13); also see Affidavits of Donald Handyside and Carol Armour to the effect that the impoundment was entirely drained in 1984 at the time of the earlier drawdown and sediment release (GL Exhibits 10 and 11). The base of the spillway will not rise any significant distance above the stream bed. Funkhouser Affidavit (GL Exhibit 13).

The fact that water velocity is higher than what Intervenors desire does not impact the efficacy of the removal insofar as the settlement and Golden Lotus' responsibilities are concerned. The result is that there will not be the degree of “fish passage” sought by Intervenors. The issue, though, is not whether “fish passage” is desirable, but whether it is part of the settlement. Since it

was not, and since the intent of the settlement was to address the circumstances of the 1984 and 2008 sediment releases, the dam removal plan is not required to provide for it.<sup>2</sup>

It should be noted that the definitions contained in Part 315 of the NREPA also contradict Interveners' claim that "dam removal" means removal of not only the part that "dams" the river, but also all vestiges of other associated structures. This is not what Part 315 says:

"Removal" means the physical elimination of a dam *or impoundment*. MCL 324.31505(1) (emphasis added).

"Impoundment" means water held back by a dam, dike, floodgate, *or other barrier*. MCL 324.30101(g) (emphasis added).

"Spillway" means a waterway in *or about* a dam designed for the discharge of water. MCL 324.31505(6) (emphasis added).

The "bottom-line" is that the dam removal plan is exactly what is provided in the Interim Order, it conforms to Part 315, and it does exactly what it is intended to do.

### **III. THE MAY 2010 CONCEPTUAL PLAN EXPRESSLY SETS FORTH EXACTLY THE PLAN CONTAINED IN THE PERMIT APPLICATION.**

The assertion by Interveners that the May 2010 Conceptual Plan was never "complete (as defined in ¶4 of the Order) or approved by the Intervening Plaintiffs" is bizarre. It was submitted in early May, 2010, reviewed, discussed, re-reviewed, re-discussed, and approved as evidenced by the many subsequent submissions by Golder of data, reports, investigations, and finally the Permit

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<sup>2</sup> As an aside, Golden Lotus has, on several occasions, informed Interveners and the State that it would be willing to participate in a post-dam removal project to remove the abutments, spillway, and other structures. The only conditions are that the project be funded by other sources – Golden Lotus does not have the money – and it provide for a suitable replacement bridge. In fact, at Interveners' request, Golder (without charge to Golden Lotus) drafted a "stream restoration scenario," which included a projected cost of \$750K - \$850K. What is puzzling to Golden Lotus and the State is that Interveners know that outside funding for such a project is available only if it is not mandated by a court order. If Interveners actually succeed in their Motion, it will completely eliminate any opportunity to fund it; it is indisputable that Golden Lotus does not have the wherewithal to do so; and, Golden Lotus will be back in the same position it was before mediation, i.e., it will be better for them to prolong the litigation and appeals because at least it will be covered by insurance. It would be better for Interveners to withdraw their Motion and work with Golden Lotus and the State on a subsequent restoration project rather than carry on the present fight.

Application – all at considerable expense. See Chronology **GL Exhibit 14**. For Interveners to assert almost a year later that the Conceptual Plan is incomplete or was not approved is the height of absurdity.

The Application conforms to the Conceptual Plan (**GL Exhibit 2**). The Plan says:

1.1 General Dam Removal Plan.

Ultimately, the last stoplog will be removed. At this stage, the lake will be empty and the river will be flowing through the spillway and through the low level outlet in the powerhouse. At this stage, all of the gates and control equipment at the upstream end of the primary spillway can be removed. The need or desire to remove the primary spillway invert and low level outlet at the powerhouse location can be fully assessed by viewing the stream at this location. No further action at the emergency spillway will be necessary.

*While detailed structural evaluation of the bridge has not yet been conducted, the existing bridge is anticipated to remain in place following drawdown to provide continued vehicle access to Song of the Morning's main offices and gathering place. Additional discussion of bridge disposition is provided in Section 1.4. (Emphasis added)*

The part that Interveners also deliberately declined to recite is Section 1.4. It reads:

1.4 Disposition of the Existing Bridge

The disposition of the existing bridge is described below in descending order of preference:

1. *Existing Bridge remains in place.* No repairs to the abutments, concrete supports, etc. following spill gate, spill gate wood deck, and power house turbine and infrastructure removal are necessary to accommodate continued use.
2. *Existing Bridge remains in place.* Some minor repairs to existing abutments, concrete supports following spill gate, spill gate wood deck, and power house turbine and infrastructure removal are necessary to accommodate continued use.

The claim by Interveners that the Permit Application does not comport with the Conceptual Plan, or that they were misled by the Plan, or were unaware that the Permit Application would not

include retention of the bridge and abutments and spillway, is belied by the Plan itself. What they did in their Memorandum is quote an excerpt from the Conceptual Plan entirely out of context. They included only the first part of the above paragraph, but ignored its crucial passages.

**IV. THE ORDER DOES NOT, AND CANNOT, PROVIDE FOR BURROUGHS' APPROVAL OF THE DAM REMOVAL PLAN.**

It is axiomatic that the State may not delegate its authority to grant a license or permit. See, e.g., *People v. Fournier*, 175 Mich 364, 141 NW 689 (1913). Also see *Brighton v Hamburg Twp*, 260 Mich App 345; 677 NW2d 349 (holding that there is exclusive statewide authority to regulate the state's water resources). Even assuming he had the appropriate credentials (which he does not), it was not the intention of the parties, nor could it be, that Burroughs have authority to approve or disapprove the Permit Application. It was to be a collaboration in which he was a contributor but not the decision-maker.

Burroughs was hardly excluded from the process -- quite the contrary. The Chronology (GL Exhibit 14) which details his and Gustafson's inclusion, and it does not include their contacts and correspondence with the State Review Team.

It is likewise ludicrous for Interveners to argue that Golden Lotus and the State have been anything less than painstakingly thorough in their investigations, analyses, and assessments of the dam removal plan and all options. The sheer number and content of the documents attached to this Brief attest to the efforts that have been expended -- all of it was provided to and discussed with Interveners at great length. A proper assessment of all options has been done -- beginning with the May 2010 Conceptual Plan and culminating in the Permit Application. Their objection is really a red herring. What Interveners are upset about is that the assessment resulted in a plan which is exactly what they negotiated on December 21, 2009, but with which they are now unhappy.

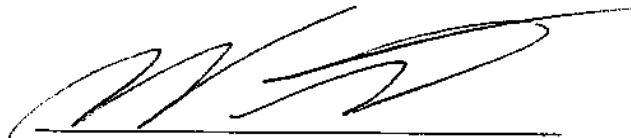
## CONCLUSION

The State and Golden Lotus are on the same track. It is Interveners who are off it. If their Motion is granted, it will set off a chain of events that will undo the settlement; send the parties back to the embarkation point for a long and expensive journey through the administrative and legal maze (which no one wants); delay removal of the threat of future sediment release; and perhaps result in the impoundment continuing to exist.

The settlement is clear; the Order is clear; the Conceptual Plan explicitly sets forth the two top options, both of which do not involve removal of the abutments or the spillway; Interveners have known this fact since at least early May of 2010; Golden Lotus and the State have taken extraordinary measures since entry of the Order to implement it – all with Interveners participation, input, and concurrence; and, the Permit Application comports entirely with the Order and the Conceptual Plan.

The Motion is demonstrably frivolous, entitling Golden Lotus to an award of sanctions against Interveners.

April 28, 2011



William M. Schlecte  
Attorney for Golden Lotus

**STATE OF MICHIGAN  
IN THE 46<sup>th</sup> JUDICIAL CIRCUIT COURT  
OTSEGO COUNTY**

Michigan Department of Natural  
Resources and Environment, et al.  
Plaintiffs,

v

Golden Lotus, Inc.,  
Defendant

Case No. 09-12933-CE(m)  
Honorable Dennis F. Murphy

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**DEFENDANT'S ANSWER TO INTERVENING PLAINTIFFS'  
"SUPPLEMENT TO MOTION TO CLARIFY AND ENFORCE INTERIM ORDER"**

**1. Burroughs Versus the "Rest of Us."**

Interveners' description of Bryan Burroughs ("Burroughs") as a "recognized expert in dam removal" comes as a great surprise to the those who comprise the State Technical Review Team and personnel at Golder who are working on behalf of Golden Lotus. They do not consider his qualifications to rise quite to that dizzying height. In fact, it is evident from the recitation of his sparse background in the Supplemental Motion and from his thin resume, he falls considerably short

of being a “recognized expert.” As Interveners so aptly state, his sole claim to fame is that he “completed his Masters thesis and doctoral dissertation at Michigan State University specifically in this subject.” He has *zero* practical experience and ranks as a “pup” in dam removal circles.

Mr. Stanko was being kind in his Affidavit when he said:

13. It is worth noting that Burroughs’ representation of his “credentials” in Paragraph 1 of his Affidavit and the attached resume. They, together with a “Google” search of Burroughs, disclose that: he has limited practical experience with respect to dam removals; he received his doctorate degree only recently (2006); and, his work experience includes only his current position as Executive Director of Michigan Chapter of Trout Unlimited. In my professional opinion, this hardly qualifies him as an “expert” on dam removal, in particular the wide array of technical disciplines needed to plan and execute a dam removal project require a team of experts. His lack of credentials is in stark contrast to those of the Golder and State personnel. It was never intended that Burroughs be “the” expert whose opinion would hold sway in the application process, but rather that he had “some expertise” which he could contribute to the collective wisdom of the collaborative effort by the group of experts with diverse expertise and extensive experience. (Stanko Affidavit, par. 13; **GL Exhibit 12**)

In contrast to Burroughs’ lack of credentials, the resumes of the State Review Team and Golder personnel assigned to this project reflect an impressive array of professional, experienced talent. Their credentials do the talking for them:

Chris Freiburger	State (CV attached as <b>GL Exhibit 41</b> )
James Pawloski	State (CV attached as <b>GL Exhibit 42</b> )
Joe Rathbun	State (CV attached as <b>GL Exhibit 43</b> )
Ronda Wuycheck	State (CV attached as <b>GL Exhibit 44</b> )
William Larsen	State (CV attached as <b>GL Exhibit 45</b> )
Dave Borgeson	State (CV attached as <b>GL Exhibit 46</b> )
Jessica Mistak	State (CV attached as <b>GL Exhibit 47</b> )
Ralph Reznick	State (CV attached as <b>GL Exhibit 84</b> )
Tom Stanko	Golder (CV attached as <b>GL Exhibit 48</b> )
Mark Funkhouser	Golder (CV attached as <b>GL Exhibit 13A</b> )
Keith Tollanaere	Golder (CV attached as <b>GL Exhibit 48</b> )
Joe Mion	Golder (CV attached as <b>GL Exhibit 49</b> )

There are other State personnel who participated in the review process, but their resumes

were not available at the time this Response was prepared.

Suffice to say, Burroughs is literally buried under an avalanche of greater knowledge, experience, and hands-on expertise possessed by the State Review Team and Golder. The Interim Order envisions a cooperative, multi-disciplinary collaboration of numerous experts, all bringing to the table their input and ideas. It is incredible *chutzpah* for Burroughs to think that his credentials entitle him to don a mantle which he has not earned. He is but one cog in the project machinery, and not such an important one as he is wont to think.

**2. Interveners' Claim that Burroughs was "Shut Out" of the Post-Interim Order is Contradicted by the Facts.**

The contention that Burroughs has not been consulted and informed throughout the entire post-Interim Order process of implementation would be laughable if the matter were not so serious. Again, rather than recite chapter and verse here, Golden Lotus attached a Chronology (**GL Exhibit 14**) to the Brief which sets forth in great and gory detail much of the interaction with Burroughs and Gustafson. It does not include the many contacts and communications between the State, Burroughs, and Gustafson to which Golden Lotus was not privy. A review of the Chronology and referenced Exhibits quickly reveal the absurdity of Interveners' argument that they have been shunned.

As to the specific allegations in the Supplemental Motion:

- 1(a) Order ¶4: The Conceptual Plan was given to Burroughs in early May at the same time it was filed with the State. Ever since that time, the Plan has the underpinning for the investigations, analyses, reports, and discussions that followed – in all of which Burroughs and Gustafson were full and active participants. See **GL Exhibit 14**.
- 1(b) Order ¶5: There were several meetings and numerous communications, addressing this requirement. They are detailed in the Chronology. Burroughs and Gustafson were full and active participants. See **GL Exhibit 14**.
- 1(c) Order ¶7: Golden Lotus timely submitted a completed Joint Application on February 1, 2011, in accordance with the Interim Order, the extensive discussions and

collaborations with the State, Burroughs and Gustafson, and the final discussion at the Pre-Application Meeting on December 15, 2011 – in all of which Burroughs and Gustafson were full and active participants. See **GL Exhibit 14**.

- 1(d) Order ¶8: Golden Lotus did exactly what the Order required and Burroughs and Gustafson were full and active participants in the process. See **GL Exhibit 14**.
- 1(e) Order ¶9: Golden Lotus did exactly what the Order required and Burroughs and Gustafson were full and active participants in the process. See **GL Exhibit 14**.
- 1(f) Order ¶13: The parties did exactly what the Order required and Burroughs and Gustafson were full and active participants in the process. See **GL Exhibit 14**.
- 2(a) The reason that Burroughs was not consulted by Golden Lotus after December 17, 2011, is that there was nothing to be consulted about! The parties had spent almost nine months getting to the point where all that was left was “*pro forma*” activity. The Application was simply a compilation of the data, discussions, analyses, and decisions that culminated in the Pre-Application Meeting on December 15, 2010.<sup>1</sup>
- 2(b) The notion that a copy of the Application was not promptly delivered to Burroughs is pure nonsense.! Burroughs did not have to “track it down by separate request.” The Application was hand-delivered by Stanko to the State on February 1. It was then converted to .pdf for transmittal to all others, including Golden Lotus’ counsel. As soon as it was received by counsel for Golden Lotus, he forwarded it to Burroughs and Gustafson.
- 2(c) Golden Lotus and its counsel were not aware that Burroughs was requesting a response from them. The objections appeared to be addressed to the State. However, now understanding this to be the case, they are addressed to some degree in the Affidavits of Tom Stanko (**Exhibit 12**) and Mark Funkhouser (**Exhibit 13**); and Golden Lotus welcomes further input and discussion on the subjects of drawdown, sediment transport, etc. It is as interested as Interveners in making sure the drawdown goes smoothly and safely, that sediments are not discharged downstream in unacceptable quantities or concentrations, and that there is no damage to the Pigeon River as a result of this project. All concerns of Burroughs and everyone else are being taken seriously and are being, or will be, addressed. There is no intention to shut Burroughs out of this process. All parties to this litigation have the same goal in this regard.
- 2(d) The only “follow-up” meeting and correspondence were administrative. None of it

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<sup>1</sup> It is possible that Interveners genuinely believed that they were being shunned when, in fact, there was just nothing happening. However, in the email attaching the Application on February 4, 2011, counsel for Golden Lotus explained that nothing of substance had been happening (**GL Exhibit 75**). Despite the email, Interveners persisted in their false belief.

related to “the permit planning process and all other aspects of the dam removal”:

- (i) There was a meeting of Stanko, Lederle, and counsel to make sure the Application was properly completed – there were no substantive issues discussed; and the meeting had been discussed and arranged at the December 15, 2010 conference at which Burroughs and Gustafson were present.
  - (ii) Golder filed a correction of the address for Golden Lotus.
  - (iii) The State sent Golder a Correction Request – it asked for only technical corrections to the Application and no substantive changes. In fact, it was considered so *pro forma* that a copy was not even sent to Golden Lotus’ counsel. Like Burroughs, he found out about it after the fact.
  - (iv) The State sent a second Correction Request which was, again, technical and administrative only. It was promptly forwarded by Golden Lotus counsel to Gustafson.
- 2(e) There is no “revised Golden Lotus permit application” with respect to which Burroughs was to be consulted. The “revisions” by Golder were simply the responses to the two requests by the State for administrative corrections.
- 2(f) Same as 3(e). The claim that neither Burroughs nor Intervening Plaintiffs were informed that the Application was deemed “administratively complete” is false. Counsel for Golden Lotus called Gustafson on March 4, 2011, immediately upon being informed by phone by the Assistant Attorney General that this had occurred. He left Gustafson a voice mail message. Counsel followed up with an email to Gustafson the next day (**GL Exhibit 80**).
- 2(g) Golden Lotus was not present at the meeting and is unable to respond to the allegations of this subparagraph.
- \* There is a footnote at the bottom of page 5 that requires comment. Interveners make it sound as if Golden Lotus was unwilling to discuss the present application in any respect. This is completely false. At no time did Burroughs or Gustafson request a meeting with Golder or Golden Lotus to discuss the Permit Application. The meetings were scheduled *at the request of Golden Lotus counsel* to talk about the Motion and the possibility of working together on a cooperative, voluntary basis outside of the scope of the Interim Order to forestall the Motion. What counsel told Gustafson was that Golden Lotus did not want the meeting conversation to revisit the issue of whether or not the Interim Order required removal of the abutments and spillway. The relevant part of the email from counsel to Gustafson is:

We do not want to get into a debate on whether Phase II is or is not required by the Interim Order. We understand your position and you

understand ours. It is to be a meeting which is strictly "exploratory" with primary emphasis on how development and implementation of a Phase II project can (realistically) be funded. As I have said on numerous occasions, Golden Lotus will not, and cannot, commit to such a project unless it is funded by other sources. (March 3, 2011 Schlecte email to Gustafson).

- 2(h) This is false and Interveners know it is false. See above.
3. See Golden Lotus' Answer to Motion to Clarify and Enforce Interim Order and Brief in Support.

### RELIEF REQUESTED

Golden Lotus requests that the Motion be denied and appropriate sanctions imposed against them for filing a frivolous pleading.

April 28, 2011



William M. Schlecte  
Attorney for Golden Lotus

**STATE OF MICHIGAN  
IN THE 46<sup>th</sup> JUDICIAL CIRCUIT COURT  
OTSEGO COUNTY**

Michigan Department of Natural  
Resources and Environment, et al.  
Plaintiffs,

Case No. 09-12933-CE(m)  
Honorable Dennis F. Murphy

v

Golden Lotus, Inc.,  
Defendant

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Harry Ingleson II (P26096)  
Co-Counsel for Defendant  
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---

**AFFIDAVIT OF DONALD HANDYSIDE**

Donald Handyside, being duly sworn, states:

1. I reside at 18269 Huntley Square North, Beverly Hills, MI 48025.
2. I have been visiting the Song of the Morning Yoga Ranch since 1970 and became a member of Golden Lotus in approximately 1975. I am familiar with the Ranch and its operation, including the Lansing Club Pond impoundment and dam, and have been since 1970.
3. I have been a member of the Golden Lotus Board of Directors since 2002 and was its Chairperson at the time of negotiation of the Interim Order in the above-referenced case.

4. I am familiar with: the June 2008 incident which resulted in a release of water and sediment from the Lansing Club Pond; the pending litigation regarding the June 2008 event; the subsequent litigation filed by the Michigan Department of Environmental Quality and Department of Natural Resources (collectively, the "State") and by the Intervening Plaintiffs, Michigan Chapter of Trout Unlimited and Pigeon River Country Association ("Intervenors"), being Otsego County Circuit Court Case No. 09-12933-CE(m) (the "Litigation"); negotiation of the settlement agreement between the parties embodied in the Interim Order entered by the Court on April 5, 2010; and, implementation of the Interim Order in accordance with its terms.

5. I am personally familiar with the facts and circumstances surrounding the 2008 incident, the Litigation, negotiation of the terms of the parties' agreement as embodied in the Interim Order, and implementation of the Order.

6. In anticipation of preparing this Affidavit, I reviewed: Intervenors' Motion to Clarify and Enforce Interim Order; Memorandum in Support of Motion to Clarify and Enforce Interim Order; Supplement to Motion to Clarify and Enforce Interim Order; and the Affidavit of Bryan A. Burroughs ("Burroughs") and exhibits attached to the affidavit.

7. I personally attended and actively participated in the December 21, 2009, mediation session conducted in the Lansing offices of Foster Swift (the "Mediation"); and, I actively participated with Golden Lotus, Tom Stanko ("Stanko") of Golder Associates ("Golder"), and its legal counsel, Bill Schlecte ("Schlecte"), in the negotiations and communications which resulted in the parties agreement embodied in the Interim Order (the Mediation and subsequent negotiations leading up to the Interim Order are collectively referenced as the "Settlement Negotiations").

8. During the Settlement Negotiations:

(a) Burroughs and Intervenors' legal counsel, Peter Gustafson ("Gustafson") not

only participated in the Mediation, they were personally present with Golden Lotus' Chairperson of the Board of Directors, Carol Armour ("Armour"), Stanko, Schlecte, and myself (collectively, the "Golden Lotus Negotiating Team") during much of it.

(b) It was made crystal clear to Interveners that Golden Lotus could not afford a dam removal project that included removal of the abutments and spillway supporting the bridge, and that any settlement of the Litigation must include the right and ability of Golden Lotus to retain the existing bridge unless a qualified engineer issued an opinion that the existing bridge is structurally unsafe.

(c) Interveners were well aware that the existing bridge comprises not only the bridge deck, but also the structures necessary to support it, namely, the abutments and spillway.<sup>1</sup>

(d) At no time did Interveners raise the issue of removal of the spillway or abutments, nor did they insist upon such removal as part of the parties' agreement.

(e) Had Interveners insisted upon a provision requiring removal of the spillway and abutments as part of the settlement, it would have been rejected by Golden Lotus.

9. The Interim Order is extremely detailed and it is evident by omission that, if it had been agreed that Golden Lotus would be required to remove the bridge abutments and spillway:

(a) It could and would have been expressly set forth in the Interim Order;

(b) It would been easy to include such a provision, but it was not; and,

(c) The provisions which are included in the Interim Order regarding the right and ability of Golden Lotus to retain the existing bridge would have made no sense and would

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<sup>1</sup> I have been informed and believe that Interveners and Gustafson have made several visits to the subject site, and that they were provided with engineering drawings and photographs of the impoundment, dam, and associated structures before the Settlement Negotiations.

not have been included in the Interim Order.

10. Based on the November 22, 2010, letter of Wade Trim, I am informed and believe that the existing bridge is structurally sound and safe.

11. Based on the opinion of Wade Trim, and of Golder, I am informed and believe that removal of the spillway will destroy the structural integrity of the bridge and would render ineffective those provisions of the Order which expressly provide that Golden Lotus shall be entitled to keep the "existing bridge."

12. It was not the intention of the parties at the Mediation that Burroughs was to possess any authority to issue approvals or disapprovals with respect to the proposed dam removal.

13. To the best of my knowledge and information, Burroughs was an active and continuous participant in this process and was present at the December 15, 2010, Pre-Application Meeting at which all substantive issues regarding the proposed dam removal plan were resolved.

14. To the best of my knowledge and information, the Permit Application is in complete accord with the Interim Order and the discussions of the parties through the Pre-Application Meeting.

15. I have read the Affidavit of Burroughs attached to the Supplement to Motion and concur with his statement in paragraph 3 that he was "personally involved in negotiation and drafting of the April 5, 2010, Interim Order." However, I strongly disagree with his interpretation of the Order because:

(a) Burroughs and Gustafson were told throughout the negotiations that Golden Lotus had limited financial capability;

(b) Golden Lotus would not be able to afford, and could not agree to, a dam removal project which included removal of the abutments and spillway;

- (c) This issue was non-negotiable;
- (d) Specific language was put into the Interim Order to assure that the existing bridge would remain unless found to be structurally unsound; and,
- (e) Interveners' interpretation would render this language complete ineffective.

16. To the best of my information and belief:

(a) Burroughs was provided with all substantive communications and documents throughout development of the substantive aspects of this project.

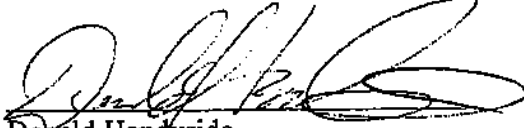
(b) Burroughs was allowed to, and did, participate in all discussions and communications regarding all substantive aspects of this project, and his claims to the contrary are without any foundation.

(c) Burroughs was not excluded from any substantive communications or discussions regarding the project and I am not aware of his exclusion by the State or by Golder.

17. I am personally familiar with the drawdown incident in 1984 which resulted in prior litigation by the State against Golden Lotus.

18. Based upon personal observation during the eleven days that the impoundment was drawn down as a result of the 1984 incident, the river flowed freely through the spillway with no impoundment of water remaining whatsoever.

19. I have personal knowledge of the facts set forth in this Affidavit except as to those statements made upon information and belief, and if sworn as a witness, can testify competently to them.

  
Donald Handyside

State of Michigan, County of Oakland } ss.

Subscribed and sworn by Donald Handyside this 28<sup>th</sup> day of April, 2011.

Winfred A. Bales  
Notary Public

Oakland County, Michigan

My Commission Expires: 9-25-11

Prepared by:

William M. Schlecte

Attorney for Golden Lotus

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WINFRED A. BALES  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF OAKLAND  
MY COMMISSION EXPIRES Sep 25, 2011  
ACTING IN COUNTY OF (OAKLAND)

**STATE OF MICHIGAN  
IN THE 46<sup>th</sup> JUDICIAL CIRCUIT COURT  
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**AFFIDAVIT OF CAROL ARMOUR**

Carol Armour, being duly sworn, states:

1. I reside at 9534 Rajasi Circle, Vanderbilt, MI 49795 in "Clear Light Community," which is a residential development created by Golden Lotus, Inc. d/b/a Song of the Morning Ranch, and part of the Golden Lotus property located on Sturgeon Valley Road and along the Pigeon River (the "Ranch" or "Property").
  
2. I have been a member of Golden Lotus since 1974 and am very familiar with the

Ranch and its operation, including the Lansing Club Pond impoundment and dam, since that time.

3. I have been a member of the Golden Lotus Board of Directors since the mid-1990s and am its current Chairperson.

4. I am familiar with: the June 2008 incident which resulted in a release of water and sediment from the Lansing Club Pond; the pending litigation regarding the June 2008 event; the subsequent litigation filed by the Michigan Department of Environmental Quality and Department of Natural Resources (collectively, the "State") and by the Intervening Plaintiffs, Michigan Chapter of Trout Unlimited and Pigeon River Country Association ("Intervenors"), being Otsego County Circuit Court Case No. 09-12933-CE(m) (the "Litigation"); negotiation of the settlement agreement between the parties embodied in the Interim Order entered by the Court on April 5, 2010; and, implementation of the Interim Order in accordance with its terms.

5. I am personally familiar with the facts and circumstances surrounding the 2008 incident, the Litigation, negotiation of the terms of the parties' agreement as embodied in the Interim Order, and implementation of the Order.

6. In anticipation of preparing this Affidavit, I reviewed: Intervenors' Motion to Clarify and Enforce Interim Order; Memorandum in Support of Motion to Clarify and Enforce Interim Order; Supplement to Motion to Clarify and Enforce Interim Order; and the Affidavit of Bryan A. Burroughs ("Burroughs") and exhibits attached to the affidavit.

7. I personally attended and actively participated in the December 21, 2009, mediation session conducted in the Lansing offices of Foster Swift (the "Mediation"); and, I actively participated with Golden Lotus, Tom Stanko ("Stanko") of Golder Associates ("Golder"), and its legal counsel, Bill Schlecte ("Schlecte"), in the negotiations and communications which resulted in

the parties agreement embodied in the Interim Order (the Mediation and subsequent negotiations leading up to the Interim Order are collectively referenced as the “Settlement Negotiations”).

8. During the Settlement Negotiations:

(a) Burroughs and Interveners’ legal counsel, Peter Gustafson (“Gustafson”) not only participated in the Mediation, they were personally present with Golden Lotus’ Chairperson of the Board of Directors, Donald Handyside (“Handyside”), Stanko, Schlecte, and myself (collectively, the “Golden Lotus Negotiating Team”) during much of it.

(b) It was made crystal clear to Interveners that Golden Lotus could not afford a dam removal project that included removal of the abutments and spillway supporting the bridge, and that any settlement of the Litigation must include the right and ability of Golden Lotus to retain the existing bridge unless a qualified engineer issued an opinion that the existing bridge is structurally unsafe.

(c) Interveners were well aware that the existing bridge comprises not only the bridge deck, but also the structures necessary to support it, namely, the abutments and spillway.<sup>1</sup>

(d) At no time did Interveners raise the issue of removal of the spillway or abutments, nor did they insist upon such removal as part of the parties’ agreement.

(e) Had Interveners insisted upon a provision requiring removal of the spillway and abutments as part of the settlement, it would have been rejected by Golden Lotus.

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<sup>1</sup> I was personally present during a site visit by Interveners prior to the Settlement Negotiations; have been present at subsequent site visits; and, have been informed that Interveners and Gustafson were provided with engineering drawings and photographs of the impoundment, dam, and associated structures before the Settlement Negotiations.

9. The Interim Order is extremely detailed and it is evident by omission that, if it had been agreed that Golden Lotus would be required to remove the bridge abutments and spillway:

- (a) It could and would have been expressly set forth in the Interim Order;
- (b) It would be easy to include such a provision, but it was not; and,
- (c) The provisions which are included in the Interim Order regarding the right and ability of Golden Lotus to retain the existing bridge would have made no sense and would not have been included in the Interim Order.

10. Based on the November 22, 2010, letter of Wade Trim, I am informed and believe that the existing bridge is structurally sound and safe.

11. Based on the opinion of Wade Trim, and of Golder, I am informed and believe that removal of the spillway will destroy the structural integrity of the bridge and would render ineffective those provisions of the Order which expressly provide that Golden Lotus shall be entitled to keep the "existing bridge."

12. It was not the intention of the parties at the Mediation that Burroughs was to possess any authority to issue approvals or disapprovals with respect to the proposed dam removal. In fact, I specifically asked who the "go to" person was to be, in Bryan's presence at the December 15, 2010 meeting and we were told it was Jim Pawlowski of the State. Burroughs said nothing in response to this directive.

13. To the best of my knowledge and information, Burroughs was an active and continuous participant in this process and was present at the December 15, 2010, Pre-Application Meeting at which all substantive issues regarding the proposed dam removal plan were resolved.

14. To the best of my knowledge and information, the Permit Application is in complete

accord with the Interim Order and the discussions of the parties through the Pre-Application Meeting.

15. I have read the Affidavit of Burroughs attached to the Supplement to Motion and concur with his statement in paragraph 3 that he was “personally involved in negotiation and drafting of the April 5, 2010, Interim Order.” However, I strongly disagree with his interpretation of the Order because:

(a) Burroughs and Gustafson were told throughout the negotiations that Golden Lotus had limited financial capability;

(b) Golden Lotus would not be able to afford, and could not agree to, a dam removal project which included removal of the abutments and spillway;

(c) This issue was non-negotiable;

(d) Specific language was put into the Interim Order to assure that the existing bridge would remain unless found to be structurally unsound; and,

(e) Interveners’ interpretation would render this language complete ineffective.

16. To the best of my information and belief:

(a) Burroughs was provided with all substantive communications and documents throughout development of the substantive aspects of this project.

(b) Burroughs was allowed to, and did, participate in all discussions and communications regarding all substantive aspects of this project, and his claims to the contrary are without any foundation.

(c) Burroughs was not excluded from any substantive communications or discussions regarding the project and I am not aware of his exclusion by the State or by

Golder.

17. I am personally familiar with the drawdown incident in 1984 which resulted in prior litigation by the State against Golden Lotus.

18. Based upon personal observation during the eleven days that the impoundment was drawn down as a result of the 1984 incident, the river flowed freely through the spillway with no impoundment of water remaining whatsoever.

19. I have personal knowledge of the facts set forth in this Affidavit except as to those statements made upon information and belief, and if sworn as a witness, can testify competently to them.

Carol Armour  
Carol Armour

State of Michigan, County of Otsego } ss.  
Subscribed and sworn by Carol Armour this 28<sup>th</sup> day of April, 2011.

Lynn Branch  
LYNN BRANCH Notary Public

Otsego County, Michigan  
My Commission Expires: 5-12-11  
ACTING IN OTSEGO Co.

Prepared by:  
William M. Schlecte  
Attorney for Golden Lotus  
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**STATE OF MICHIGAN  
IN THE 46<sup>th</sup> JUDICIAL CIRCUIT COURT  
OTSEGO COUNTY**

Michigan Department of Natural  
Resources and Environment, et al.  
Plaintiffs,

v

Golden Lotus, Inc.,  
Defendant

Case No. 09-12933-CE(m)  
Honorable Dennis F. Murphy

---

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**AFFIDAVIT OF THOMAS A. STANKO**

Thomas A. Stanko, being duly sworn, states:

1. I am a Senior Scientist and Associate of Golder Associates Inc. ("Golder"), a global consulting company, specializing in the ground engineering and science disciplines, including but not limited to aquatic studies; dam construction, modification, rehabilitation and removal; sediment analysis and transport; and stream restoration.

2. My *Curriculum Vitae* is attached as Stanko Affidavit **Exhibit A**.

**GL EXHIBIT 12**

3. Golder was retained by Schlecte Law Firm, PC, in 2008 to act as one of several environmental consultants in connection with the release of water and sediment from the Lansing Club Pond in June of 2008; the subsequent litigation filed by the Michigan Department of Environmental Quality and Department of Natural Resources (collectively, the "State") and by the Intervening Plaintiffs, Michigan Chapter of Trout Unlimited and Pigeon River Country Association ("Intervenors"), being Otsego County Circuit Court Case No. 09-12933-CE(m) (the "Litigation"); negotiation of the settlement agreement between the parties embodied in the Interim Order entered by the Court on April 5, 2010; and, implementation of the Interim Order in accordance with its terms.

4. I am personally familiar with the facts and circumstances surrounding the 2008 incident, the Litigation, negotiation of the terms of the parties' agreement as embodied in the Interim Order, and implementation of the Order.

4. During the course of Golder's work on this project, I have been actively and continuously involved as a technical expert with respect to planning and data collection elements of the project, as well as providing general coordination and integration of other needed disciplines such as geotechnical engineering, dam engineering, hydraulic and hydrologic evaluations, structural evaluations, comparative cost evaluations, sediment transport, fisheries, and bridge engineering.

5. I have been actively and continuously engaged in the ongoing dialogue with the State Review Team assigned to implement the terms of the Interim Order, personnel and legal counsel representing Intervenors, and personnel and legal counsel of Golden Lotus.

6. In anticipation of preparing this Affidavit, I reviewed: Intervenors' Motion to Clarify and Enforce Interim Order; Memorandum in Support of Motion to Clarify and Enforce

Interim Order; Supplement to Motion to Clarify and Enforce Interim Order; the Affidavit of Bryan A. Burroughs ("Burroughs") and exhibits attached to the affidavit; and, my personal file with respect to this matter, including by way of example and not limitation, notes of meetings and conversations, emails, letters, reports, analyses, submissions to the State.

7. I personally attended and actively participated in the December 21, 2009, mediation session conducted in the Lansing offices of Foster Swift (the "Mediation"); and, I actively participated with Golden Lotus and its legal counsel, Bill Schlecte ("Schlecte"), in the negotiations and communications which resulted in the parties agreement embodied in the Interim Order (the Mediation and subsequent negotiations leading up to the Interim Order are collectively referenced as the "Settlement Negotiations").

8. During the Settlement Negotiations:

(a) Burroughs and Interveners' legal counsel, Peter Gustafson ("Gustafson") not only participated in the Mediation, they were personally present with Golden Lotus' personnel [Donald Handyside ("Handyside") and Carol Armour ("Armour")], Schlecte, and myself (collectively, the "Golden Lotus Negotiating Team") during much of it.

(b) It was made clear to Interveners that Golden Lotus could not afford a dam removal project that included removal of the abutments and spillway supporting the bridge, and that any settlement of the Litigation must include the right and ability of Golden Lotus to retain the existing bridge unless a qualified engineer issued an opinion that the existing bridge is structurally unsafe.

(c) Interveners were well aware that the existing bridge comprises not only the bridge deck, but also the structures necessary to support it, namely, the abutments and spillway.<sup>1</sup>

(d) At no time did Interveners raise the issue of removal of the spillway or abutments, nor did they insist upon such removal as part of the parties' agreement.

(e) Had Interveners insisted upon a provision requiring removal of the spillway and abutments as part of the settlement, it was made clear to me that it would have been rejected by Golden Lotus.

9. The Interim Order is excruciatingly detailed and, if it had been agreed that Golden Lotus would be required to remove the bridge abutments and spillway:

(a) It could and would have been expressly set forth in the Interim Order;

(b) It would have been easy to include such a provision, but it was not; and,

(c) The provisions which are included in the Interim Order regarding the right and ability of Golden Lotus to retain the existing bridge would have made no sense and would not have been included in the Interim Order.

10. The claim by Interveners, and particularly by Burroughs as set forth in his Affidavit, that the Interim Order requires removal of the spillway and abutments is additionally belied by a telephone conversation I had with Burroughs on April 14, 2010, in which:

(a) We discussed construction and implementation of the Interim Order;

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<sup>1</sup> I was personally present during on site visit by Interveners prior to the Settlement Negotiations; and, have been informed by Golden Lotus and Schlechte that Interveners and Gustafson had visited the site on numerous occasions and provided with engineering drawings and photographs of the impoundment, dam, and associated structures before the Settlement Negotiations.

(b) I reiterated the importance of Golden Lotus' need to keep the bridge if it was determined to be structurally sound because it did not have the financial resources to construct a new bridge; and,

(c) No objection or comment was made by Burroughs to this statement.

11. I have reviewed the letter of Wade Trim dated November 22, 2010, in which Stephen Wright states that he conducted an examination of the bridge and it is structurally sound; and, I have discussed the condition of the bridge with Golder's geotechnical engineer assigned to this project, Mark Funkhouser ("Funkhouser").

12. Based on the opinions of Wade Trim and of Funkhouser, removal of the spillway will destroy the structural integrity of the bridge and would render ineffective those provisions of the Order which expressly provide that Golden Lotus shall be entitled to keep the "existing bridge."

13. It is worth noting that Burroughs' representation of his "credentials" in Paragraph 1 of his Affidavit and the attached resume disclose that: he has limited practical experience with respect to dam removals; he received his doctorate degree only recently (2006); and, his work experience includes his current position as Executive Director of Michigan Chapter of Trout Unlimited. In my professional opinion, this does not qualify him as an "expert" on all aspects of dam removal; as these types of projects clearly require a team of experts, who collectively command expertise in a wide array of technical disciplines, developed in no small way through real-world, practical experiences. Similarly, no one individual on the review team can claim they are an "expert" on all aspects of dam removal. Therefore, it is my belief that it was never intended that Burroughs be "the" expert whose opinion would hold sway in the application process, but rather that he had "some expertise" which he could contribute to the collective

wisdom of the collaborative effort by the group of experts with diverse expertise and extensive experience.

14. I concur with the statement in Burroughs Affidavit Paragraph 4 that the Interim Order was intended to provide for “open communication, consultation, and cooperation among the parties to bring about safe and successful dam removal.” However, I disagree with the remainder of this Paragraph and other claims made by him because:

(a) To the extent that this paragraph implies that Burroughs was to issue approvals or disapprovals of the Permit Application and plan for removal, it is false.

(b) Burroughs was not “excluded from virtually all such communications, meetings, and conferences” since the Pre-Application Meeting on December 15, 2010.

(c) The purpose of the investigations, analyses, correspondence, and meetings prior to December 15, 2010, was to reach a point where the parties had complied with the Interim Order and formulated the substantive contents of the Permit Application.

(d) Burroughs was an active and continuous participant in this process and was present at the December 15, 2010, Pre-Application Meeting at which all substantive issues were resolved.

(e) The result of the Pre-Application Meeting was that Golden Lotus was to prepare and submit a Permit Application in conformity with the Order and the Pre-Application meeting. The target date for submission was January 31, 2011.<sup>2</sup>

(f) Since the Pre-Application Meeting, there have been no “communications, meetings, and conferences” which involved any substantive issues. They included only:

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<sup>2</sup> By agreement, and due to the schedules of Golder personnel, the date was extended by agreement to February 1, 2011.

(i) A meeting with State personnel Kate Lederle (“Lederle”) and William Larsen (“Larsen”), the persons assigned to assure that the Application was “administratively complete.”<sup>3</sup>

(ii) Preparation of the Permit Application in accordance with the Interim Order and the discussions of the parties through the Pre-Application Meeting.<sup>4</sup>

(iii) Compliance with two “Correction Requests” from the State for the purpose of rendering the Application “administratively complete.” Burroughs was not “deliberately excluded” – there was nothing of a substantive nature in the Requests or responses which dictated consultation with him or anyone else.<sup>5</sup>

(g) All “communications, meetings, and conferences” since the Pre-Application Meeting were for the sole purpose of satisfying technical requirements to implement the substantive aspects already decided upon and in which Burroughs was an active participant.

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<sup>3</sup> Burroughs was not “deliberately excluded” from this meeting. No one thought his attendance was necessary since it was not a substantive discussion about the project. It was strictly for the purpose of making sure that the Permit Application would be completed in accordance with technical, administrative requirements.

<sup>4</sup> The statement by Burroughs in Paragraph 14 of his Affidavit that “[n]either I nor Intervening Plaintiffs received a copy of the permit application when it was filed but, after follow up, we received a copy on February 4, 2011, is deliberately misleading. I personally delivered a hard copy of the Application to the State on February 1, 2011. Because of the intended number of other recipients, rather than send hard copies, it was scanned to a .pdf file for transmittal to the parties and their counsel. I am informed by legal counsel for Golden Lotus that, upon his receipt of the Application, he *immediately* emailed it to Burroughs and to legal counsel for Interveners.

<sup>5</sup> Burroughs assertion in Paragraph 17 of his Affidavit is again disingenuous given the actual content of the Correction Requests and Golder’s responses. He must know from reading them that they were technical only and by no means came close to an “important dialogue about review and comment upon the permit application. I am also informed by counsel for Golden Lotus that copies of the Correction Requests and Golder’s responses were provided to legal counsel for interveners – the first Request and Response shortly after the fact, and the second Response contemporaneous with its filing with the State.

(h) To the best of my knowledge and information, Burroughs and Gustafson have been provided with all of the (few) communications with the State regarding the Permit Application since December 15, 2010.

(i) Burroughs has been an integral part of the collaborative process in which the technical representatives for Golden Lotus, the State, and the Intervening Plaintiffs, have all been included and consulted regarding all aspects of the planning, permitting and implementation of the project in accordance with the Interim Order.

15. I concur with Burroughs' statement in paragraph 3 of his Affidavit that he was "personally involved in negotiation and drafting of the April 5, 2010, Interim Order," but I am perplexed by his interpretation of it because:

(a) Burroughs and Gustafson were told throughout the negotiations that Golden Lotus had limited financial capability; and, it would not be able to afford, and could not agree to, a dam removal project which included removal of the abutments and spillway.

(b) Various removal scenarios were presented and discussed throughout the negotiations and the relative cost of each.

(c) We specifically discussed the fact that bridge removal and construction of a new bridge was financial infeasible.

16. I concur with Burroughs' statement in paragraph 5 of his Affidavit that "the parties embarked on an extended planning process to fulfill" the requirement of Golden Lotus to submit a comprehensive Conceptual Plan.

17. In May 4, 2010, and in full, timely compliance with the Interim Order, Golder submitted a "Dam Removal Conceptual Plan" to the State and Interveners for review and comment.

18. Per the Interim Order, the purpose of the Conceptual Plan was not to prescribe all of the removal elements in specific detail, but to generally describe the removal process, get general consensus on it, and proceed with necessary data collection activities to support the agreed-upon removal.

19. The Conceptual Plan met all requirements set forth in the Interim Order.

20. The Conceptual Plan was fully discussed with the State and Interveners at a meeting on May 27, 2010, in Gaylord at which I and other representatives of Golden Lotus were present.

21. Based on my recollection and belief, no objections to the Conceptual Plan were made by Interveners nor was there any comment or mention that the Plan was otherwise unsatisfactory.

22. Although I agree with the statement of Burroughs in Paragraph 6 of his Affidavit regarding one of the sections of the Conceptual Plan, he omitted that portion of the Plan which expressly set forth the two preferred options for dam removal, *both of which provided for retention of the existing bridge with no or minimal modifications of the supporting structures:*

While detailed structural evaluation of the bridge has not yet been conducted, *the existing bridge is anticipated to remain in place following drawdown to provide continued vehicle access to Song of the Morning's main offices and gathering place.* Additional discussion of bridge disposition is provided in Section 1.4. (Plan, par. 1.1; emphasis added).

#### 1.4 Disposition of the Existing Bridge

The disposition of the existing bridge is described below in descending order of preference:

1. *Existing Bridge remains in place.* No repairs to the abutments, concrete supports, etc. following spill gate, spill gate wood deck, and power house turbine and infrastructure removal are necessary to accommodate continued use.
2. *Existing Bridge remains in place.* Some minor repairs to existing abutments, concrete supports following spill gate, spill gate wood deck, and power house turbine and infrastructure removal are necessary to accommodate continued use. (Plan par. 1.4; emphasis added).

23. I agree with Burroughs' statement in paragraph 9 that he "asked for clarification and additional information about what "preferred Option 1" specifically contemplated"; and, that he expressed concern about the effects of leaving the bridge in place per the Interim Order. However, contrary to his contentions:

(a) All of his concerns were taken seriously by Golder and the State and were subsequently addressed and resolved.

(b) The dam removal plan results in elimination of: the impoundment; the risk of future sediment releases; fluctuation in river flow; and, increases in water temperature.

(c) Discussions with Gustafson and Burroughs throughout the Settlement Negotiations and thereafter have always included the need to keep the bridge if it is structurally sound because Golden Lotus did not have the financial resources to pay for the construction of a new bridge. This was always presented to the Interveners as a non-negotiable principle of any settlement.

24. Specifically with respect to the post-Pre-Application Meeting proceedings with respect to which Burroughs contends he was excluded:

(a) All persons present (Gustafson and Burroughs included) agreed that Golden Lotus was to proceed with preparation and submission of a completed application for drawdown and removal.

(b) Lederle suggested that Golder contact her directly if there were any questions or clarifications associated with preparing a complete permit application.

(c) Interveners concurred in this procedure.

(d) In accordance with this procedure, Golder and Golden Lotus representatives met with Lederle on January 27, 2011 to review a draft application package for the purposes of discerning whether the application package was administratively complete.

(e) At the meeting:

(i) I described the general structure of the permit application including the proposed attachments.

(ii) No copies of an application were given to the state, nor were any technical aspects of the project discussed.

(iii) No State Technical Review Team representatives were present.

25. To the best of my personal information and belief:

(a) Burroughs was provided with all substantive communications and documents throughout development of the substantive aspects of this project.

(b) Burroughs was allowed to, and did, participate in all discussions and communications regarding all substantive aspects of this project, and his claims to the contrary are without any foundation.

(c) I did not deliberately exclude Burroughs from any substantive communications or discussions regarding this project and I am not aware of his exclusion by the State or by Golden Lotus.

26. I want to comment on Burroughs' statement in paragraph 22 of his Affidavit that:

I have serious substantive concerns not only about the incomplete nature of the partial dam removal plan spelled out in the Order, but also about the fact that the application does not properly and prudently address sediment management and control, sand traps, and bank grading, all required in the Interim Order. As a result, I believe that there is a high likelihood that the revised permit application as presented, and without further evaluation and analysis, will create a significant fish kill as a result of the drawdown of the impoundment, and unwanted sand infiltration and degradation of the Pigeon River, could also occur.

And, I want to comment on the related statement in his April 8, 2011, comments submitted to the State with respect to the Permit Application, that:

Our comments/concerns with sediment management proposed in this permit application are broken into several parts; 1) the lethality of the proposed permit activities on trout in the Pigeon River downstream from the Golden Lotus dam, 2) the necessity of sand traps, and 3) the necessity of bank grading activities following dam draw-down for stream bank restoration and control of additional sediment loading through the process of bank slumping, . . .

27. I believe Burroughs may have arrived at some of his conclusions and opinions by misinterpreting certain data and then misapplying that interpretation, either directly or as a result of information provided by Interveners' outside consultant, Cardno Entrix. It is to be first noted that these data were provided and discussed with the State and Burroughs in 2010; and, as set forth above, dam removal projects are complex and require integration and input from many technical disciplines that are outside the limited realm of expertise of any one individual. Accordingly, by providing clarification, I hope to improve the understanding of the data that has been provided, guide its appropriate interpretation and subsequent use, facilitate a better understanding of it, and possibly allay some of the Interveners' concerns.

28. On page 4 of the memorandum, Burroughs states:

Estimate of water content of the organic material collected by Affiliated Researches and by Golder Associates for Golden Lotus have estimated 72% and 65% water content respectively, despite 95% having been mentioned in the permit application.”

29. It appears that Burroughs developed these numbers by using laboratory reported moisture content of sediment samples that comprise sands and not those samples comprising organic debris and silts.

30. Percent solids of sediment samples comprising organic debris ranged from 12-15%. Given the liquid-like nature of the sediments, some water in the samples would decant from the sampling apparatus during collection prior to placement in a sample holding container. As such, the 95% water content description for organic sediment samples is and remains an appropriate approximation, not the 72% and 65% asserted by MCTU and its consultants.

31. Laboratory analytical results were provided to the review team in the summer of 2010 and discussed at meetings with the State and Burroughs. My recollection was that everyone, including Burroughs, had a clear understanding of the water content of the organic sediments and any disagreement regarding the nature of the sediment samples was resolved.

32. Table 1 of the Permit Application provides a conservative estimate of the organic debris and material that would be susceptible to transport downstream with each stop-log removal. It appears MCTU and its consultants used this information to derive estimates of corresponding TSS concentrations with each stop-log removed. Given the clarification on MCTU misuse of the water content information, only the 95% scenario would be appropriate to consider.

33. To be on the safe side, Golder has taken a conservative approach in estimating organic debris and sand material quantities. The material within the an area of the impoundment

on the order of four to five times the width of the channel that is expected to form and this was considered a conservative approach to generating estimates of sediment quantities and for consideration during planning purposes (i.e., estimating quantities to be higher than expected) – it is my professional opinion that an area *less than* four to five times the expected channel width would bound the area of the impoundment where sediments would be transported downstream. This conservative approach was presented to the review team in the December 15, 2011 Pre-Application Meeting. Of additional particular note, this opinion is consistent with observations of Golden Lotus personnel made during the 1984 drawdown and the 2008 event.

34. MCTU noted that a maximum of 8,215 cubic yards (cy) at one time is estimated to move downstream. Five percent of 8,215 cy is 410.75 cy. Given that the area of the impoundment considered to contribute to sediment quantities was purposefully established to be conservatively large, the actual sediment amount associated with each stop-log removal is likely to be less.

35. In the April 8, 2011, Cardno Entrix Memorandum provided as an attachment to the April 8, 2011, MCTU comments, Cardno Entrix appears to have compared the sediment transport capacity estimates provided in Table 2 of Attachment C of the permit application (sand material 2mm to 0.3mm in size) to a total sediment load of 150,490 cy (which is assumed to be the organic and sand estimates referenced in Table 1 of the application), concluding that “at a transport capacity of 243 cy/day, it would take approximately 620 days to move sediment through the system.”

36. This is an incorrect application of information presented in the permit application. The sediment transport capacity estimates were developed for sand material. Generally speaking, the smaller the particle size the greater the capacity to transport a higher load (in cy/day) of that

material. If smaller particle size material was considered (i.e., organic debris and silts), the sediment transport capacity estimates would increase significantly.

35. Estimates to include smaller material were not considered because the State and Burroughs concurred that the organic debris would be effectively moved downstream. The 243 cy/day estimate is to be applied to sand material; and, it was assumed that, if the Pigeon River is capable of moving sand, it is also capable of moving smaller sized material, such as the organic debris.

36. At 243 cy/day, and assuming that 7,427 cy of sand is susceptible to movement downstream, it would take approximately 31 days to move this sediment downstream once it was released from the impoundment. The proposed drawdown period included in the permit application encompasses a period of nearly 3 months.

37. The State, Burroughs, and Golder, also discussed the uncertainties associated with sediment transport dynamics, including sediment transport from the upper reaches of the impoundment and transport downstream in the Pigeon River once released from the impoundment.

38. The rate at which sediment will migrate downstream in the reservoir is unknown. Accordingly, construction and maintenance of a sand trap within the impoundment, just upstream of the spillway was proposed. Rather than physically impact the Pigeon River downstream in areas believed to provide some of the most diverse and productive macroinvertebrate habitat and possibly fisheries habitat, a sand trap was proposed upstream immediately above the stop-logs rather than downstream to avoid any further, albeit temporary, negative impact to the Pigeon River. This, too, was fully discussed and analyzed at and prior to the December 15, 2010, Pre-Application meeting.

39. I have personal knowledge of the facts set forth in this Affidavit except as to those statements made upon information and belief, and if sworn as a witness, can testify competently to them.

Thomas A. Stanko  
Thomas A. Stanko

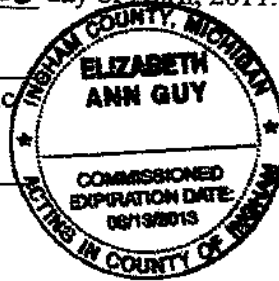
State of Michigan, County of Ingham } ss.

Subscribed and sworn by Thomas A. Stanko this 28 day of April, 2011.

Elizabeth Ann Guy  
Notary Public

Ingham County, Michigan

My Commission Expires: 8/13/13



Prepared by:

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*B.A. Chemistry, Wabash  
College, Wabash, 1991*

**Certifications**

*OSHA 29 CFR 1910.1020,  
(e) (8) 8-Hour HAZWOPER  
Annual Refreshers,  
January 2009*

*OSHA 29 CFR 1910.1020,  
(e) (3) 40-Hour  
HAZWOPER Health and  
Safety Certification,  
January 2001.*

*OSHA 1926 10-Hour  
Construction Safety  
Certification,  
May 2007*

**Golder Associates Inc. – Lansing****Associate and Sr. Scientist**

Mr. Stanko is a Water Resource Scientist and Permitting Specialist with over 17 years of experience managing and conducting water resources studies and investigations to assess the physical, chemical and biological characteristics of water resources including geomorphologic conditions of streams and rivers and the interpretation of results. Specific project experience includes managing and conducting water resource assessment and planning projects for the purposes of supporting watershed assessment and protection studies, water supply planning and management, water withdrawal and wastewater discharge NPDES permitting, agency negotiation and permitting strategy development, and 404/401 permitting for industrial, municipal and state clients.

**Employment History****Golder Associates – Lansing, Michigan**

*Associate and Senior Scientist (2000 to Present)*

Responsible for managing water resource assessment and planning projects, including watershed studies, water resource investigations, NPDES permitting, development of best management practices to improve water quality and wetland stream impact mitigation and restoration. Involved with water supply and management and wastewater discharge projects for industrial, municipal, and state clients as well as the design and management of physical, chemical and biological investigations such as fish and macroinvertebrate monitoring and water quality assessments.

**Atlanta Regional Commission – Atlanta, Georgia**

*Principal Environmental Planner (1996 to 2000)*

Supported regional environmental planning needs in areas of watershed protection and stormwater, water supply and wastewater management. Coordinated multi-jurisdictional watershed protection study. Supported development of State stormwater design manual. Assisted with development of a regional water supply plan. Facilitated review of State water quality model and development of wastewater management options in support of plant expansion and NPDES permitting needs.

**Indiana University – Bloomington, Indiana**

*Chemist (1994 to 1996)*

Set up trace level organic contaminant laboratory for USEPA Great Lakes Integrated Atmospheric Deposition Network (IADN) to analyze PCBs, pesticides, and VOCs in air and rain samples.

**USEPA / GLNPO Contract Staff – Chicago, Illinois**

*Chemist/Limnologist (1992 to 1994)*

Set up trace level organic contaminant laboratory for USEPA/GLNPO to assess open water of Great Lakes. Participated in limnologic surveys on USEPA (R/V



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## Resumé

TOM STANKO

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Lake Guardian) (8) months in field.

***Safety-Kleen – Elk Grove Village, Illinois***

*Laboratory Technician (1991 to 1992)*

Performed BTU and ion analyses on various waste streams. Participated in QC project work for several state certification requirements.



**PROJECT EXPERIENCE – WATER RESOURCES**

- Low Flow Stream Assessment**  
Michigan

Managed and conducted low-flow stream/by-pass channel assessment to assess feasibility of lowering the minimum low-flow requirement associated with a hydro dam operation in Michigan. Project activities included agency negotiation of assessment methods, photo-documentation of flow conditions, stream discharge measurements and channel cross-section and water surface elevation surveys.
  
- Fish Passage Study**  
New York

Managed and conducted study of hydro dam's fish passage structure to assess latent mortality of fish species that travel through the by-pass structure. Project included developing fish collection equipment, design of latent mortality holding tanks and layout, and assessing fish condition prior to and post effect.
  
- Sediment Sampling**  
Georgia / Bibb County

Conducted Chattahoochee River sediment investigation. Collected and analyzed sediment samples from the Chattahoochee River in the vicinity of the Bibb City Municipal Incinerator (Site) to determine lead concentrations present in river sediments upstream of low-head, run-of-the-river hydro dam.
  
- Stream Geomorphic Assessment and Characterization**  
Georgia

Managed and coordinated multi-jurisdictional watershed planning study for 100 square mile water supply watershed. Project included development of hydrology, hydraulics water quality models to evaluate flooding, channel erosion and water quality impacts and corrective actions. Project also included physical assessment of over 40 miles of stream to characterize channel types, channel evolution stage, and evaluate bank and channel stability for the purpose of guiding planning and infrastructure improvement projects.
  
- Stream Relocation – Natural Channel Design**  
Ohio

Managed and directed the design of more than 6000 linear feet of relocated stream channel, including the associated reference reach surveys as well as various USACOE and OEPA agency interactions.
  
- Wetland Permitting / Stream Relocation**  
Michigan

Evaluation of site wetland and stream resources for the purposes of evaluating feasible and prudent alternatives to impacting. Project included wetland delineation, assessment of channel morphology, channel type and stability, as well as evaluation of potential mitigation options including relocation of nearly 8000 linear feet of stream channel.
  
- Dam Removal Options Assessment**  
SE, Michigan

Dam/impoundment removal evaluation for an industrial client's on-site dam and associated impoundment as part of a site-wide demolition and decommission project. Project evaluated ongoing regulatory requirements, associated financial costs associated with dam maintenance and operation relative to potential financial and natural resource restoration benefits associated with its removal.
  
- Wetland Construction and Monitoring (Carleton Farms Landfill)**  
Michigan

Provided construction oversight to client selected contractor and annual monitoring services for permitted wetland mitigation. Project included contractor coordination, impromptu design changes approval, review of alternative planting plan specifications, installation of shallow piezometers, wetland vegetation monitoring and reporting.



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## Resumé

TOM STANKO

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- Wetland Assessment  
(Orchard Hill Landfill)**  
Watervliet, Michigan
- Performed wetland reconnaissance on landfill and adjacent landowner properties as well an assessment of hydrological connection to area included in proposed landfill expansion area. Determined potential for impacts to wetland hydrology as a result of landfill expansion.
- Water Quality,  
Toxicological,  
Biological Assessment**  
Michigan
- Evaluation of water quality, fish and benthic communities and physical habitat of the Paw Paw River near Paw Paw, Michigan to discern potential impacts from an NPDES discharge with elevated TDS levels. Project also included delineating the boundaries of a mixing zone under 95% exceedence flows and predicting toxicity effects on target organisms at various TDS concentrations and cation/anion compositions.
- Water Quality and  
Biological Assessment**  
Michigan
- Evaluation of water quality, fish and benthic macroinvertebrate communities and physical habitat of Stony Creek in SE Michigan to evaluate the baseline condition of the resource. Project also included mixing zone delineation and predictive modelling of water quality conditions associated with "worst case" conditions (i.e., low flow and maximum discharge conditions).
- Biological Assessment**  
Michigan
- Assessment of stream benthic macroinvertebrates over four seasons to evaluate potential impacts associated with lamprey control chemicals within the Pere Marquette River.
- Sediment Transport  
and Chemical  
Fingerprinting**  
West Michigan
- Evaluation of sediment transport characteristics of the Black River near Holland, Michigan to evaluate feasibility of various sediment remedial options including dredging Lake Macatawa. Project also including evaluating near-shore sediment PCB fingerprinting with that found in fish tissues to discern Lake Macatawa systemic PCB is different from site-specific near-shore concentrations.
- Storm Water Treatment  
Wetland**  
Georgia / Gwinnett  
County
- Managed siting, design and construction of retrofit storm water treatment wetlands. Project included the identification and prioritization of suitable sites, development of conceptual and final wetland designs for controlling flooding and downstream erosion, and improving water quality.
- Watershed  
Assessments**  
Dalton, Georgia
- Managed watershed assessment project to evaluate current and future impacts to water resources within a 700 square mile watershed. Project included watershed monitoring of water quality, fish and invertebrate, and assessment of stream habitat. Assessment also included water quality modeling, development of current and future land use conditions and development of watershed management alternatives.
- Water Quality  
Monitoring  
Management**  
Dalton, Georgia
- Provide technical review for daily water quality monitoring of Total Suspended Solids and Turbidity for a GADOT bridge construction project over the Conasauga River, where twelve Federally listed mussels and fish are found to evaluate impacts associated with dry and wet-weather releases of upland sediments to sensitive aquatic habitats, host to three federally listed species of fish and multiple mussels.



<b>Wetland and Stream Impact Mitigation</b> Georgia / Whitfield County	Developed a wetland and stream mitigation bank. Project included identification of wetland and stream mitigation elements, negotiations with the Georgia Mitigation Bank Review Team (3 federal and one state agency), and development of Banking Instrument, which included wetland and stream buffer and channel restoration design work. Project included removal of a low-head dam and restoration of the former impoundment area, restoration of more than 4000 linear feet of stream channel, and conservation and enhancement of wetlands
<b>Wetland and Stream Enforcement Action</b> Georgia / Whitfield County	Coordinated use of solid waste management authority's property for meeting third party enforcement action mitigation requirements. Identified suitable wetland and stream mitigation opportunities, negotiated sale of credits and developed planting plans for mitigation elements.
<b>Environmental Permitting</b> Georgia / Glynn County	Managed and participated in environmental permitting efforts for a combined cycle power plant, which included obtaining a groundwater withdrawal permit, Section 404 wetland permit, local Land Disturbance Permit and negotiating modification of the local municipality's NPDES permit to allow for receipt of cooling tower blow-down.
<b>GIS Mapping</b> Coastal Georgia	Managed GIS mapping of coastal hammocks for coastal counties of Georgia. Hammocks are small, forested islands within the saltwater tidal influence reaches of the coast. Hammocks on the coast of Georgia represent a significant ecological resource and are in some cases subject to severe development pressures. Involved source data review, metadata development, QC/QA and report writing.
<b>Conasauga River Biological Monitoring Program</b> Georgia / Whitfield and Murray Counties	An annual monitoring program on one of the most biologically diverse rivers in the southeast. Yearly monitoring is performed to determine possible impacts on federally listed mussel and fish species from the discharge of an off-stream water supply reservoir. On-going project. Integrated geomorphic assessment into work plan to evaluate stream stability, channel maintenance, and substrate characteristics on fish species diversity and abundance.
<b>Aquatic Assessment</b> Pennsylvania / Berks County	Performed a biological study to analyze the potential effects on stream ecology adjacent to a Superfund site. Gathered water, sediment, and macroinvertebrate samples, measured discharge, and performed habitat assessments at various stream locations adjacent the site.
<b>Wastewater Planning (Metro Atlanta)</b> Georgia	Facilitated review of State water quality model by local governments and establishment of consensus based NPDES permit limits to accommodated regional growth and protection of designated uses. System included consideration of effects from 10 wastewater discharges and three coal-fired power plant withdrawals and discharges.
<b>NPDES Permitting</b> Dalton, Georgia	Coordinated operations assessment, Anti-Degradation Review and identification of pilot testing alternatives in support of pursuing a 10 MGD surface water discharge of treated effluent. Project work focused on reducing phosphorus concentrations in the discharge.



- Water Supply Planning**  
Central Coastal Plain,  
North Carolina  
Water supply planning for 16 counties in the central coastal plain of North Carolina. Identified and evaluated surface water supply sources for potential yields, feasibility of development, water quality impairments, and threatened and endangered species concerns.
- Water Supply Planning**  
**(Metro Atlanta)**  
Georgia  
Developed water supply demand projections for the 10-County metro Atlanta area, incorporated demand reductions associated with conservation measures and allocated available supplies to meet demands.
- Water Supply Needs**  
**Assessment (Etowah**  
**River Basin)**  
Georgia / Cherokee  
County  
Developed population and water supply demand projections for the 5 counties comprising the Upper Etowah River Basin of Georgia. Evaluated future demands with available permitted withdrawals (surface and ground water) and identified deficits and recommendations for evaluating and developing additional supplies.
- Stream Flow Study**  
Roanoke, Virginia  
Estimated frequency and duration of low flows from un-gauged and gauged tributaries of the Roanoke River upstream of a water supply intake to determine 1) the feasibility of maintaining minimum in-stream flow targets while accommodating surface water withdrawals and 2) the need for off-stream storage.
- Biological and Habitat**  
**Assessment**  
**Mississippi**  
Developed biological and habitat assessment work plan to evaluate potential impacts of elevated cadmium levels in groundwater discharging to the subject stream. Negotiated assessment and evaluation methodologies with the MDEQ.

## **PROJECT EXPERIENCE – 316 (A) AND (B)**

- Thermal Plume**  
**Mapping and Modeling**  
Lake Erie, Michigan  
Managed project to map and model the discharge plume of Detroit Edison's Monroe Power Plant located near Monroe, Michigan. Activities included evaluating collected temperature data from Lake Erie and Plume Creek bay, manipulating and presenting for regulatory review. Project also included modeling more than 20 discharge scenarios and describing the resulting discharge plume characteristics as well as modeling scenarios to match MDEQ collected Lake Erie temperatures within a narrow margin of error.
- OPG Fish Assessment**  
**and Modeling**  
Ontario, Canada  
Managed impingement and entrainment data analysis and fish biometrics modeling project for the OPG's Pickerington Plant in Ontario. Project included expanding impingement and entrainment raw catch number, calculating densities, and design flow annual catch numbers, estimating age-1 equivalents for larval fish as well as evaluating foregone yield of forage fish in terms of VEC species.
- OPG Fish Assessment**  
**and Modeling**  
Ontario, Canada  
Provided technical review of impingement and entrainment data analysis and fish biometrics modeling project for the OPG's Darlington Plant in Ontario. Project included expanding impingement and entrainment raw catch number, calculating densities, and design flow annual catch numbers, estimating age-1 equivalents for laral fish as well as evaluating foregone yield of forage fish in terms of VEC species.



**Detroit Edison- 316(b)  
Compliance Reporting  
and Data Analysis  
Michigan**

Developed 316(b) compliance reports for seven (7) of Detroit Edison's coal-fired power plants located on Lake Huron, Lake Erie, and the St. Clair River and Detroit River connecting channels. Responsibilities included project management and senior technical review of source water body information development, estimates of intake hydraulic zones of influence, and impingement and entrainment data reduction and extrapolation to estimate annual catch numbers at design flow conditions. Work also included evaluating intake impingement and entrainment reduction performance.

**NiSource- 316(b)  
Compliance Reporting  
and Data Analysis  
Indiana**

Developed 316(b) compliance reports for NiSource's Bailly Generation Station located on southern Lake Michigan. Responsibilities included project management and senior technical review of source water body information development, estimates of intake hydraulic zones of influence, and impingement and entrainment data reduction and extrapolation to estimate annual catch numbers at design flow conditions. Work also included evaluation impingement and entrainment reductions afforded by the existing off-shore intake structure.

**NPPD- 316(b)  
Compliance Reporting  
and Data Analysis  
Nebraska**

Developed 316(b) compliance reports and calculation baseline estimates of impingement and entrainment for three of Nebraska Public Power Districts coal-fired power plants located in Nebraska. Responsibilities included leading annual, flow expanded estimates of impingement and entrainment, intake technology assessments to reduce impingement and entrainment of fishes, monetary estimates of fish loss, and evaluation of operational scenarios to reduce impingement and entrainment.

**Field Sampling  
Missouri**

Managed impingement field sampling for five power plants located on the Missouri River near Kansas City, Missouri. Field sampling consisted of bi-weekly impingement field sampling, data analysis, statistical analysis and reporting. Sampling being performed to establish calculated baseline for 316(b) regulatory compliance.

**CDS Implementation  
(Marquette Board of  
Power and Light)  
Marquette, Michigan**

Managed project, conducted strategic planning identification of end-game, and prepared Proposal for Information Collection. Conducted technology evaluation to identify feasible technological, operational, and restoration measures for meeting Impingement and Entrainment performance goals. Developed argument for use of historic monitoring data and verified low through-screen velocities (< 0.5 ft/sec) conditions.

**CDS Implementation  
(Wyandotte Municipal  
Services)  
Wyandotte, Michigan**

Conducted strategic planning and prepared Proposal for Information Collection. Conducted technology evaluation to identify feasible technological, operational, and restoration measures for meeting Impingement and Entrainment performance goals. Developed field monitoring plan and initiated impingement and entrainment monitoring program at the Wyandotte Municipal Plant. Assisted with regulatory negotiations on sampling frequency and scope. Technical lead on technology and operational measures evaluation.



**NPDES Permitting  
Support (Excel Energy,  
Inc.)  
Minnesota**

Assisted with the preparation of NPDES permit documentation to support a 500 MS re-powering project. The project includes evaluation and selection of technology to meet 316(b) performance standards during design and engineering of modified cooling system based on demonstrated biological effectiveness and engineering and operation feasibility; modification of the process wastewater system and thermal discharge variance.

**NPDES Permitting  
Support (Detroit  
Edison)  
Michigan**

Performed water body characterizations, technology evaluation and developed low-cost, robust hydraulic zone of influence methodologies for river and open water locations. Delineated area of influences associated with seven power plant facilities located in eastern Michigan. Assisted development of proposed sampling plans, permitting strategy documents and Proposal for Information Collection for each of the seven facilities.

**CWIS Technology  
Evaluation  
(Consumers Energy)  
Michigan**

Performed comprehensive technology (included operational, physical barrier, diversion, collection and conveyance, behavioral, and restoration options) at two power plants located in eastern Michigan. Evaluation included review of engineering, operational, ecology and environmental feasibility and developed a short list of technologies to move forward for possible testing during the Comprehensive Demonstration Study period.

**NPDES Permitting  
Support (Progress  
Energy)  
Florida and South  
Carolina**

Performed water body characterizations, technology evaluation and developed low-cost, robust hydraulic zone of influence methodologies for river and open water locations. Delineated area of influences associated with seven power plant facilities located in eastern Michigan. Assisted development of proposed sampling plans, permitting strategy documents and Proposal for Information Collection for each of the seven facilities.

**NPDES Permitting  
Support (Reliant  
Energy)  
Florida**

Performed water body characterizations, technology evaluation and developed low-cost, robust hydraulic zone of influence methodologies for river and open water locations. Delineated area of influences associated with seven power plant facilities located in eastern Michigan. Assisted development of proposed sampling plans, permitting strategy documents and Proposal for Information Collection for each of the seven facilities.

**NPDES Permitting  
Support (Tampa  
Electric Company)  
Florida**

Performed water body characterizations, technology evaluation and developed low-cost, robust hydraulic zone of influence methodologies for river and open water locations. Delineated area of influences associated with seven power plant facilities located in eastern Michigan. Assisted development of proposed sampling plans, permitting strategy documents and Proposal for Information Collection for each of the seven facilities.

**NPDES Permitting  
Support (Florida Power  
and Light)  
Florida**

Performed water body characterizations, technology evaluation and developed low-cost, robust hydraulic zone of influence methodologies for river and open water locations. Delineated area of influences associated with for various power plant facilities.



**TRAINING**

*Rosgen-Based Stream Classification and Assessment*  
2002

*Rosgen-Based Natural Channel Design*  
2002

*WASP Training Workshop, USEPA*  
2001

*BASINS Training Workshop*  
2000

**PROFESSIONAL AFFILIATIONS**

Member, Society for Mining, Metallurgy and Exploration

Member, Association of State Wetland Managers

**PUBLICATIONS**

**Other**

Stanko, T.A. 2008. Urban Stormwater Treatment Wetland- A Case Study. Michigan Water Environment Association Summer Conference. Boyne Mountain, MI.

Stanko, T.A., Cook, A. 2008. Environmental Auditing. Michigan Aggregate Association Fall Conference.

Stanko, T.A. 2003. Protecting Rural Water Supplies Through Basin-Wide Planning. Georgia Rural Water Association Fall Conference.

Stanko, T.A. 2001. Natural Channel Design to Stream Restoration Alternatives. Peavine Creek Watershed Alliance Meeting.

Brashear, R.W., Santo, J.M., Stanko, T.A., 2001. Development of a Sustainable Water Source for the Big Creek Watershed. Proceedings of the 2001 Georgia Water Resource Conference.

Fischenich, J.C., Sotir, R.W., Stanko, T.A., 2000. Assessing Urban Watersheds: The Case of Big Creek, GA., Stormwater, November/December 2000.

Stanko, T.A., Sotir, R.W. 2000. Watershed Restoration: The Case of Big Creek, GA. Atlanta Greenprints 2000 Annual Conference.

Anderson, D., Bloom, T. Stanko, T.A. 1995. Spatial Distributions of Poly-Chlorinated Bi-phenols in the Great Lakes. Poster presentation. International Association of Great Lakes Research.

Stanko, T.A. 1996. IADN - Integrated Atmospheric Deposition Network. Indiana University School of Public and Environmental Affairs - Environmental



**Resumé**

TOM STANKO

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Symposium.

**STATE OF MICHIGAN  
IN THE 46<sup>th</sup> JUDICIAL CIRCUIT COURT  
OTSEGO COUNTY**

Michigan Department of Natural  
Resources and Environment, et al.  
Plaintiffs,

Case No. 09-12933-CE(m)  
Honorable Dennis F. Murphy

v

Golden Lotus, Inc.,  
Defendant

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**AFFIDAVIT OF MARK FUNKHOUSER**

Mark Funkhouser, being duly sworn, states:

1. I am a Principal and Senior Consultant of Golder Associates Inc. ("Golder"), a global consulting company, specializing in the ground engineering and science disciplines, including but not limited to aquatic studies; dam construction, modification, rehabilitation and removal; sediment analysis and transport; and stream restoration.

2. My *Curriculum Vitae* is attached as Funkhouser Affidavit **Exhibit A**.

3. Golder was retained by Schlecte Law Firm, PC, in 2008 to act as one of several environmental consultants in connection with the release of water and sediment from the Lansing Club Pond in June of 2008; the subsequent litigation filed by the Michigan Department of Environmental Quality and Department of Natural Resources (collectively, the "State") and by the Intervening Plaintiffs, Michigan Chapter of Trout Unlimited and Pigeon River Country Association ("Intervenors"), being Otsego County Circuit Court Case No. 09-12933-CE(m) (the "Litigation"); negotiation of the settlement agreement between the parties embodied in the Interim Order entered by the Court on April 5, 2010; and, implementation of the Interim Order in accordance with its terms.

4. I am personally familiar with the facts and circumstances surrounding the 2008 incident, the Litigation, negotiation of the terms of the parties' agreement as embodied in the Interim Order, and implementation of the Order.

5. During the course of Golder's work on this project, I have been actively and continuously involved as a technical expert with respect to geotechnical engineering, dam engineering, comparative cost evaluations, and structural evaluations elements of the project, as well as providing general coordination and integration of other needed disciplines such as planning and data collection , hydraulic and hydrologic evaluations, , sediment transport, fisheries, and bridge engineering.

6. In anticipation of preparing this Affidavit, I reviewed: Intervenors' Motion to Clarify and Enforce Interim Order; Memorandum in Support of Motion to Clarify and Enforce Interim Order; Supplement to Motion to Clarify and Enforce Interim Order; the Affidavit of Bryan A. Burroughs ("Burroughs") and exhibits attached to the affidavit; and, my personal file

with respect to this matter, including by way of example and not limitation, notes of meetings and conversations, emails, letters, reports, analyses, submissions to the State.

7. I provide the following comments in response to each of the individually numbered items in the April 6, 2011 Affidavit of Burroughs:

(a) Burroughs Affidavit Par. 4: Golder Associates has not held or participated in meetings or conferences to discuss technical issues related to this matter subsequent to the Pre-Application Meeting held on December 15, 2010 at which Burroughs was present; and, Burroughs has not been excluded from any group meetings or communications involving any substantive aspects of the dam removal project.

(b) Burroughs Affidavit Par. 9: At the December 15, 2010 meeting, all questions asked, and concerns raised, by Burroughs "...about the impoundment of water, etc." were addressed and answered by both State and Golder personnel.

(c) Burroughs Affidavit Par. 10: As of the December 15, 2010 meeting, it was clear to all parties that dam removal would involve removal of the gates, turbine, generator and select portions of the powerhouse walls to achieve elimination of the impoundment; and, that the spillway walls (the bridge abutments) and the spillway invert (forming the foundation of the bridge abutments) (i.e., what is referenced as the "spillway" which is an integral part the bridge) would be left in place.

(d) Burroughs Affidavit Par. 11: At the December 15, 2010 meeting, the parties discussed at great length concerns, advantages, disadvantages, alternatives, and costs of the alternatives, and of the provisions and requirements of the Interim Order. The Conceptual Plan had been discussed at length during previous meetings and was revisited at this meeting as well. At the conclusion of the meeting, all agreed that the

dam removal plan set forth in the subsequent Permit Application was one which satisfied the terms of the Interim Order. Golder was directed to prepare and submit a Permit Application in conformity with it, which it has done.

(d) Burroughs Affidavit Par. 13: Golder subsequently met with non-Technical Team representatives of the State on January 21, 2011. This contemplated meeting was discussed at the December 15, 2010 Pre-Application Meeting, during which the State stressed the importance of receiving an “administratively complete” application. The State urged Golder to ask questions or otherwise communicate with Kate Lederle of the State to ensure that this would be accomplished. There was never any intention that Burroughs or anyone else would need to participate in this meeting or the communications because they would have nothing to do with the substantive aspects of the project. At no time during this discussion did Burroughs or any other representative of Interveners indicate a desire to, or the necessity of, Burroughs’ participation. In fact, it was my clear understanding and belief that the numerous meetings and voluminous communications preceding and including the Pre-Application Meeting constituted “framing and preparation” of the permit application. The application that was submitted to the state on February 1, 2011, and consisted of information that had been presented and discussed at and prior to the Pre-Application Meeting on December 15, 2010.

(e) Burroughs Affidavit Par. 17: Golder Associates provided information to the State following the initial permit application submittal on February 1, 2011. None of these instances of “dialogue with the state” involved discussion of technical issues beyond what had been discussed at length during the previous meetings when all parties were present:

(i) The initial correspondence involved nothing more than correcting the name of a road on page two of the Joint Permit Application (JPA) form from "Ranch Road" to "Retreat Road".

(ii) The first numbered response on February 17, 2011, to a Correction Request of the State dated February 10, 2011, consisted of twelve items which were: cross-referencing figure numbers into the text of the Permit Application Narrative; more thoroughly labeling figures; and, including by reference reports that had been previously generated, reviewed, and discussed at previous meetings attended by all parties. No new discussions or "important dialogue" took place.

(iii) The second and final response dated March 3, 2011, to a Correction Request dated February 23, 2011, was simply: a clarification of the JPA Narrative regarding restoration of the former impoundment area and sediment management and control; and, inclusion of the May 2010 Dam Removal Conceptual Plan -- all of which had been presented, reviewed, and discussed during previous meetings where all parties were present.

(f) Burroughs Affidavit Par. 20: The permitting process and associated anticipated sequence and schedule of events relating to the JPA and fulfillment of the requirements of the Interim Order were discussed in detail during the December 15, 2010 Pre-Application Meeting at which all parties were present.

(g) Burroughs Affidavit Par. 22: During meetings where all parties were present, the relative merits of bank grading were discussed. At the time it was agreed that allowing the river to find its natural channel without disturbance would be the best course

of action. It was furthered agreed that bank grading would likely cause more harm than good by creating greater disturbance to material that had already started to stabilize. Dredging and the issue of sediment transport were also discussed at some length in previous meetings.

8. In response to the Memorandum in Support of Motion to Clarify and Enforce Interim Order (The Motion), I offer the following comments.

(a) The Motion makes repeated references to “a concrete wall 2 – 3 feet high”, or a “cross stream barrier wall”, or “cross wall”. This reference is misleading in that there is no wall at present and there will be no wall remaining after dam removal as submitted in the Joint Permit Application. In fact, the bottom, or invert, of the spillway may be above the existing bottom of the stream channel just upstream of the concrete spillway apron on the order of 0.75 feet based on recent survey, or on the order of 2.4 feet based on a straight line estimate of the stream channel riffle to riffle grade over the several miles upstream and downstream of the existing dam location.

(b) The Motion makes reference to “...partial dam removal...” in reference to current JPA. This is misleading in that the applicable definition of “dam removal” includes physical removal of a dam *or impoundment*. The process described in the JPA provides for physical removal of the impoundment, satisfies the definition of “removal” as set forth in the applicable statute and, more importantly, satisfies the explicit terms of the Interim Order. It removes the impoundment; eliminates the risk of another release of water and sediment, such as what happened in 1984 and 2008; eliminates fluctuation in water flow; and, eliminates increases in water temperature.

(c) The Motion makes reference to "...bridges are not constructed with concrete barrier walls and concrete spillways...":

(i) My comment regarding the reference to "cross stream barrier walls" is included in (a) above.

(ii) In regard to spillways not being a part of bridges, the comment is incorrect in context. Where roads are found on top of dams as in this specific instance, and in general, bridges are necessarily and specifically constructed with spillways because spillways provide a pathway to pass water from the upstream side of a dam to the downstream side of a dam, and therefore when there is a road along a dam, a bridge is required over a spillway. A spillway will necessarily have a bottom and two sides that form the bridge abutments. Bridge abutments are an integral part of a bridge (without abutments there is no bridge), and therefore the spillway is an integral part of the bridge in this context.

(d) The Motion makes reference to the dam being twelve feet high. This is correct at locations along the embankment away from the spillway and powerhouse. At the location of interest near the original stream channel and current spillway the dam is on the order of fifteen feet high.

(e) The Motion, in Footnote 2, makes reference to the unknown thickness of the "wall" and the "invert slab." Reference to the invert slab is correct, but the reference to a "wall" is incorrect. The thickness of the invert slab is not shown on any of the available design drawings for this structure, so on Figure 5C of the JPA, the thickness of this slab was clearly labeled "Thickness of Invert Slab Not Known". It is not physically possible to investigate the thickness of this invert slab because the spillway is constantly

passing the Pigeon River flow. Because the thickness of this invert slab may vary with location, to thoroughly investigate its thickness from the upstream limit to the downstream limit would require physical investigation by “coring” or some similar destructive means – which would compromise the integrity of the spillway structure. This is not appropriate given the circumstances.

(f) Interveners’ interpretation of the Interim Order is incorrect because, in addition to what is set forth above:

(i) The Interim Order is detailed and, if it had been agreed that Golden Lotus would be required to remove the abutments and spillway, include such a provision could easily have been expressly set forth in the Interim Order – it was not;

(ii) It is evident from even a cursory examination of the bridge by a layperson, that the bridge could not exist without the abutments and spillway – which fact I believe was known to Burroughs and Interveners prior to the Interim Order and throughout the discussions thereafter; and,

(iii) The provisions which are included in the Interim Order regarding the right and ability of Golden Lotus to retain the existing bridge would make no sense and would not have been included in the Interim Order.

(g) Contrary to the assertions in the Motion and Burroughs Affidavit, Interveners have been well aware that the dam removal plan contemplated retention of the bridge and accompanying support structures. For example, in May 4, 2010, Golder submitted a “Dam Removal Conceptual Plan” to the State and Interveners for review and comment. The Plan which expressly set forth the two preferred options for dam removal,

both of which provided for retention of the existing bridge with no or minimal modifications of the supporting structures:

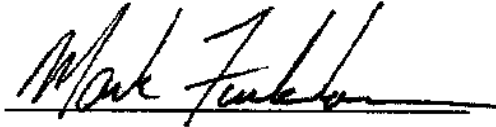
While detailed structural evaluation of the bridge has not yet been conducted, *the existing bridge is anticipated to remain in place following drawdown to provide continued vehicle access to Song of the Morning's main offices and gathering place.* Additional discussion of bridge disposition is provided in Section 1.4. (Plan, par. 1.1; emphasis added).

1.4 Disposition of the Existing Bridge

The disposition of the existing bridge is described below in descending order of preference:

1. *Existing Bridge remains in place.* No repairs to the abutments, concrete supports, etc. following spill gate, spill gate wood deck, and power house turbine and infrastructure removal are necessary to accommodate continued use.
2. *Existing Bridge remains in place.* Some minor repairs to existing abutments, concrete supports following spill gate, spill gate wood deck, and power house turbine and infrastructure removal are necessary to accommodate continued use. (Plan par. 1.4; emphasis added).

9. I have personal knowledge of the facts set forth in this Affidavit except as to those statements made upon information and belief, and if sworn as a witness, can testify competently to them.



Mark Funkhouser

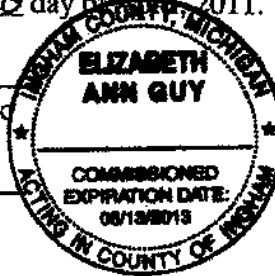
State of Michigan, County of Ingham } ss.

Subscribed and sworn by Mark Funkhouser this 28 day of April, 2011.

Elizabeth Ann Guy  
Notary Public

Ingham County, Michigan

My Commission Expires: 8/13/13



Prepared by:  
William M. Schlecte, Esq.  
Attorney for Golden Lotus  
116 N. Fourth Ave., Ste. 100  
Ann Arbor, MI 48104  
(734) 302-1050

**Education**

*M.S. Civil Engineering  
Geotechnical, University of  
Illinois, Illinois, 1986*

*B.S. Civil Engineering,  
University of Illinois, Illinois,  
1984*

**Certifications**

*Registered Professional  
Engineer: Texas (PE No.  
71712); Georgia (PE No.  
18653); Michigan (PE No.  
38351); Illinois (PE No.  
45605); Kentucky (PE No.  
24851); Kansas (PE No.  
14757); Ohio (PE No.  
67698); Indiana (PE No.  
10911226)*

**Golder Associates Inc. – Lansing**

Mr. Funkhouser has been with Golder Associates for 23 years. He is a Principal predominantly involved in geotechnical and rock mechanics issues for various clients and market sectors. For the past 10 years he has primarily engaged in various underground projects including three years at a hydroelectric development in The Philippines; two years on commuter rail station reconstruction in Jersey City, New Jersey, U.S.A; and the past two years as the Tunnel Geotechnical Engineer for technical oversight during construction of the North South Bypass Tunnels in Brisbane, Australia. Mark is a practice leader in rock mechanics and geotechnical engineering and is frequently involved as a technical reviewer, project manager, and program director on highly complex ground engineering projects. Mark also serves on the Board of Directors of Golder Associates Inc., representing the interests of his fellow shareholders to the management team.

**Employment History**

***Golder Associates Inc. – Lansing, Michigan***  
*Principal (2009 to Present)*

***Golder Associates Pty. Ltd. – Brisbane, Australia***  
*Principal (2007 to 2009)*

Responsible for supervision and management of all underground field related activities of Golder Associates as the geotechnical design engineer for construction of the North South ByPass Tunnel

***Golder Associates Inc. – Lansing, Michigan***  
*Associate then Principal (2001 to 2007)*

Project management of and engineering for rock mechanics, soil mechanics, tunnelling, geotechnical and solid waste projects.

***Golder Associates Inc. – Houston, Texas***  
*Associate (1993 to 2001)*

Responsibilities included engineering and management of geotechnical design, rock mechanics, solid waste landfill design, and construction quality assurance projects. Projects have included: municipal solid waste landfill construction quality assurance; municipal solid waste landfill permitting and design; RCRA facility permit modification; soil mechanics/foundation expert testimony; hard rock tunnel and slope stability design and site engineering for transportation and hydroelectric developments.

***Golder Construction Services, Inc. – East Lansing, Michigan***  
*Senior Engineer (1992 to 1993)*



Responsible for project management and certification for construction quality assurance of solid waste landfills.

***Golder Associates Inc. – Atlanta, Georgia***  
*Geotechnical Engineer (1986 to 1992)*

Responsibilities included engineering and project management for many types of geotechnical related projects. Various types of projects included: soft ground and hard rock tunnel design and site engineering; rock and soil slope stability design and site engineering; braced excavation and tieback design; deep and shallow foundation design and inspection; geotechnical explorations; geotechnical instrumentation planning, monitoring and evaluation; design and inspection of composite lined landfills.

***University of Illinois – Champaign, Illinois***  
*Research Assistant (1984 to 1986)*

Performed field investigations for subsidence response team. Responsibilities included investigation, characterization, monitoring, and remedial design for subsidence damaged land and structures over abandoned coal mines in Illinois.

**PROJECT EXPERIENCE – TRANSPORTATION**

- Bridge Foundation Tiedowns**  
Tallulah Gorge, Georgia  
Design of long, high capacity tendon tiedowns for retro-fitting existing bridge footings for increased capacity. Bond length, corrosion protection, grouting technique, and performance testing were planned and implemented and documented. Work was performed for GADOT to allow increasing of the existing two lane roadway to four lanes.
- Portal Excavation**  
Middlesboro, Kentucky  
Site engineering for a 0.5 million cubic yard rock excavation at the Kentucky portal of the Cumberland Gap highway tunnels. Responsibilities included directing installation, testing and documentation of rockbolts, shotcrete and instrumentation, obtaining and interpreting instrument data and analysis of rock slope stability. The Work was performed for FHWA.
- Geotechnical Engineering and Tunneling**  
Atlanta, Georgia  
Engineering related to geotechnical aspects of all expansions to existing track for the Metropolitan Atlanta Rapid Transit Authority (MARTA). Work involved design and construction inspection of soil and rock excavations, embankments, drilled piers, footings, retaining walls, and tunnels. Extensive monitoring and documentation of the tunnel construction was performed. During tunnel construction, up to six tunneling inspectors were on-site to monitor 24-hour per day construction.
- Landslide Stability Investigation**  
Thistle, Utah  
Evaluation of an active landslide of several million cubic yards of material. Assessment was carried out with geologic mapping, geotechnical explorations, instrumentation and monitoring with inclinometers, piezometers and surveying. Extensive analyses were performed to assess potential remedial work. The work was performed for UDOT.
- Slope Stability and Tieback Wall**  
Steubenville, Ohio  
Extensive stability analysis of weak sedimentary strata to develop recommended tendon length, spacing and capacity for a very large retaining wall 100 feet high and over 1,000 feet long. Recommended tendon details and an instrumentation and monitoring plan were also developed. Along the same state highway, geological and geotechnical assessment of existing rock cuts in sedimentary strata along the Ohio River were performed. Work included geologic mapping, air photo interpretation, oblique photo interpretation, qualitative stability assessment and rockfall potential assessment, and recommending mitigation measures. This work was performed for ODOT.
- Rock Slope Stability**  
New Jersey  
Geologic mapping, qualitative stability assessment, and support recommendations were performed for the extension of Interstate I-287 in northern New Jersey. The work was performed for NJDOT during ongoing, multi-contract construction to the New York state line.
- Rock Slope Stability**  
Ashland, Kentucky  
Rock cut design and stability evaluation for approximately 3,500 ft of side-hill and box cuts up to 120 ft high in flat lying sedimentary strata. Rock types ranged from competent sandstone to fissile, carbonaceous shale and coal. The work was performed for a privately owned rail spur connecting to CSX rail.

**Highway Tunnels**  
Brisbane, Australia

Tunnel Geotechnical Engineer during construction of the North-South Bypass Tunnels in Brisbane, Australia. Supervision and management of all underground geologic mapping, rock support classification, and rock characterization during excavation and support of approximately 3 kilometres of conventional tunnels, 4.5 kilometres each twin 12.4 m diameter TBM tunnels, and 59 individual cross passages.

**PROJECT EXPERIENCE – GEOTECHNICAL ENGINEERING****Foundations**  
Texas

Consulting for legal and insurance firms regarding foundation and structural damage caused by swelling soils. Work involved assessment of construction documentation and as-built data, monitoring data and laboratory tests to assess cause and potential remedial measures.

**Portal Excavation**  
Middlesboro, Kentucky

Site engineering for a 0.5 million cubic yard rock excavation at the Kentucky portal of the Cumberland Gap highway tunnels. Responsibilities included directing installation and testing of rockbolts, shotcrete and instrumentation, obtaining and interpreting instrument data and analysis of rock slope stability.

**Landslide Stability Investigation**  
Thistle, Utah

Evaluation of an active landslide of several million cubic yards of material. Assessment was carried out with geologic mapping, geotechnical explorations, instrumentation and monitoring with inclinometers, piezometers and surveying was performed prior to extensive analyses to assess potential remedial work.

**Tieback Wall**  
Steubenville, Ohio

Extensive stability analyses of weak sedimentary strata to develop recommended tendon length, spacing and capacity for a retaining wall 100 feet high and over 1,000 feet long. Recommended tendon details and an instrumentation and monitoring plan were also developed.

**Tieback Wall**  
Provo, Utah

Stability analyses, design and contract details were developed for a tieback retaining wall to restrain an active talus pile several hundred feet above the valley floor.

**Bridge Footing Tiedowns**  
Tallulah Gorge, Georgia

Design of long, high capacity tendon tiedowns for retro-fitting existing bridge footings for increased capacity. Bond length, corrosion protection, grouting technique, and performance testing were planned and implemented.

**Quarry Reclamation**  
San Antonio, Texas

Site Engineer for rock excavation, slope stability, and rockfall protection for a large development in a 170 acre quarry. The work included all facets of rock cut stability, safety assessment, design and construction supervision. Rockbolts, shotcrete, masonry, draped mesh, rockfall structures, and footing anchors were involved.

**Foundations**  
Georgia

Exploration, design and inspection of deep and shallow foundations for buildings, viaducts and embankments were performed at several sites in Georgia.

**Rock Slope Stability**  
Steubenville, Ohio

Geological and geotechnical assessment of existing rock cuts in sedimentary strata along the Ohio River. Work included geologic mapping, air photo interpretation, oblique photo interpretation, qualitative stability assessment and rockfall potential assessment, and recommending mitigation measures.



**Rock Slope Stability**  
Luzon, Philippines

Site engineering for a 345MW hydroelectric development that involved millions of cubic yards of rock excavations with dozens of permanent and temporary rock slopes ranging up to 600 feet high.

**Rock Slope Stability**  
Kowloon, Hong Kong

Assessment, stability analysis and remedial design of existing cuts in variable quality weathered rock.

**Cedar Grove Pumped Storage Project**  
Georgia, U.S.A

Field investigations and preliminary feasibility designs for geotechnical components of a 500 MW pumped storage scheme.

**Tailings Dam Design**  
Marblehead, Ohio

Design, permitting, construction drawings, and specifications for a tailings embankment for a large limestone quarry in northern Ohio. The embankment ranges up to 40 feet high and is over 3,000 feet long.

**PROJECT EXPERIENCE – HAZARDOUS MATERIALS**

**Hazardous Waste Landfill Design**  
Emelle, Alabama

Engineering design and support calculations for permitting for hazardous waste landfills.

- slope stability calculations for double composite lined landfill cells.
- leachate collection system sizing and design.
- construction and permit level drawings.

**Hazardous Waste Landfill Design**  
Lake Charles, Louisiana

Engineering design and support calculations for permitting for hazardous waste landfills.

- slope stability calculations for double composite lined landfill cells.
- leachate collection system sizing and design.
- construction and permit level drawings.

**Hazardous Waste Landfill Design**  
Wichita, Kansas

Engineering design and support calculations for permitting for hazardous waste landfills.

- slope stability calculations for double composite lined landfill cells.
- leachate collection system sizing and design.
- construction and permit level drawings.

**Construction Quality Assurance of Hazardous Waste Landfills**  
Emelle, Alabama

Construction monitoring and site engineering in support of permitting for compacted clay liners, geomembranes, geotextiles and geonets.

**Construction Quality Assurance of Hazardous Waste Landfills**  
Lake Charles, Louisiana

Construction monitoring and site engineering in support of permitting for compacted clay liners, geomembranes, geotextiles and geonets.



- Construction Quality Assurance of Hazardous Waste Landfills**  
Wichita, Kansas  
Construction monitoring and site engineering in support of permitting for compacted clay liners, geomembranes, geotextiles and geonets.
- Construction Quality Assurance of Hazardous Waste Landfills**  
Beatty, Nevada  
Construction monitoring and site engineering in support of permitting for compacted clay liners, geomembranes, geotextiles and geonets.
- Construction Quality Assurance of Hazardous Waste Landfills**  
Deer Park, Texas  
Construction monitoring and site engineering in support of permitting for compacted clay liners, geomembranes, geotextiles and geonets.
- Municipal and Industrial Waste Landfill Design**  
Monroe, Louisiana  
Engineering design, permit support calculations, permit modifications, construction drawings, and specifications for municipal and industrial waste landfills.
- Municipal and Industrial Waste Landfill Design**  
Tyler, Texas  
Engineering design, permit support calculations, permit modifications, construction drawings, and specifications for municipal and industrial waste landfills.
- Municipal and Industrial Waste Landfill Design**  
Kilgore, Texas  
Engineering design, permit support calculations, permit modifications, construction drawings, and specifications for municipal and industrial waste landfills.
- Municipal and Industrial Waste Landfill Design**  
Houston, Texas  
Engineering design, permit support calculations, permit modifications, construction drawings, and specifications for municipal and industrial waste landfills.
- Municipal and Industrial Waste Landfill Design**  
Waco, Texas  
Engineering design, permit support calculations, permit modifications, construction drawings, and specifications for municipal and industrial waste landfills.
- Municipal and Industrial Waste Landfill Design**  
Victoria, Texas  
Engineering design, permit support calculations, permit modifications, construction drawings, and specifications for municipal and industrial waste landfills.
- Municipal and Industrial Waste Landfill Design**  
Hong Kong, PRC  
Engineering design, permit support calculations, permit modifications, construction drawings, and specifications for municipal and industrial waste landfills.



## Resumé

MARK FUNKHOUSER

- Municipal and Industrial Waste Landfill Design**  
Sinton, Texas
- Engineering design, permit support calculations, permit modifications, construction drawings, and specifications for municipal and industrial waste landfills.
- Municipal and Industrial Waste Landfill Design**  
El Paso, Texas
- Engineering design, permit support calculations, permit modifications, construction drawings, and specifications for municipal and industrial waste landfills.
- Municipal and Industrial Waste Landfill Design**  
Anahuac, Texas
- Engineering design, permit support calculations, permit modifications, construction drawings, and specifications for municipal and industrial waste landfills.
- Municipal and Industrial Waste Landfill Design**  
Austin, Texas
- Engineering design, permit support calculations, permit modifications, construction drawings, and specifications for municipal and industrial waste landfills.
- Municipal and Industrial Waste Landfill Design**  
Lansing, Michigan
- Engineering design, permit support calculations, permit modifications, construction drawings, and specifications for municipal and industrial waste landfills.
- Municipal and Industrial Waste Landfill Design**  
Brent Run, Michigan
- Engineering design, permit support calculations, permit modifications, construction drawings, and specifications for municipal and industrial waste landfills.
- Construction Quality Assurance of Municipal and Industrial Waste Landfills**  
Brent Run, Michigan
- Directed construction quality assurance of compacted clay and composite lined landfills. Work has included developing QA plans which incorporate federal and state regulations, planning pre-qualification and construction lab testing, directing field monitoring staff and preparation of certification documents for owners and state agencies.
- Construction Quality Assurance of Municipal and Industrial Waste Landfills**  
Charlevoix, Michigan
- Directed construction quality assurance of compacted clay and composite lined landfills. Work has included developing QA plans which incorporate federal and state regulations, planning pre-qualification and construction lab testing, directing field monitoring staff and preparation of certification documents for owners and state agencies.
- Construction Quality Assurance of Municipal and Industrial Waste Landfills**  
Waters, Michigan
- Directed construction quality assurance of compacted clay and composite lined landfills. Work has included developing QA plans which incorporate federal and state regulations, planning pre-qualification and construction lab testing, directing field monitoring staff and preparation of certification documents for owners and state agencies.



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## Resumé

MARK FUNKHOUSER

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**Construction Quality Assurance of Municipal and Industrial Waste Landfills**  
Jacksonville, Texas

Directed construction quality assurance of compacted clay and composite lined landfills. Work has included developing QA plans which incorporate federal and state regulations, planning pre-qualification and construction lab testing, directing field monitoring staff and preparation of certification documents for owners and state agencies.

**Construction Quality Assurance of Municipal and Industrial Waste Landfills**  
Houston, Texas

Directed construction quality assurance of compacted clay and composite lined landfills. Work has included developing QA plans which incorporate federal and state regulations, planning pre-qualification and construction lab testing, directing field monitoring staff and preparation of certification documents for owners and state agencies.

**Construction Quality Assurance of Municipal and Industrial Waste Landfills**  
Donna, Texas

Directed construction quality assurance of compacted clay and composite lined landfills. Work has included developing QA plans which incorporate federal and state regulations, planning pre-qualification and construction lab testing, directing field monitoring staff and preparation of certification documents for owners and state agencies.

**Construction Quality Assurance of Municipal and Industrial Waste Landfills**  
Kerrville, Texas

Directed construction quality assurance of compacted clay and composite lined landfills. Work has included developing QA plans which incorporate federal and state regulations, planning pre-qualification and construction lab testing, directing field monitoring staff and preparation of certification documents for owners and state agencies.

**Construction Quality Assurance of Municipal and Industrial Waste Landfills**  
Canton, Ohio

Directed construction quality assurance of compacted clay and composite lined landfills. Work has included developing QA plans which incorporate federal and state regulations, planning pre-qualification and construction lab testing, directing field monitoring staff and preparation of certification documents for owners and state agencies.

**Construction Quality Assurance of Municipal and Industrial Waste Landfills**  
Victoria, Texas

Directed construction quality assurance of compacted clay and composite lined landfills. Work has included developing QA plans which incorporate federal and state regulations, planning pre-qualification and construction lab testing, directing field monitoring staff and preparation of certification documents for owners and state agencies.

**Construction Quality Assurance of Municipal and Industrial Waste Landfills**  
Lufkin, Texas

Directed construction quality assurance of compacted clay and composite lined landfills. Work has included developing QA plans which incorporate federal and state regulations, planning pre-qualification and construction lab testing, directing field monitoring staff and preparation of certification documents for owners and state agencies.



**Construction Quality Assurance of Municipal and Industrial Waste Landfills**  
Belleville, Illinois

Directed construction quality assurance of compacted clay and composite lined landfills. Work has included developing QA plans which incorporate federal and state regulations, planning pre-qualification and construction lab testing, directing field monitoring staff and preparation of certification documents for owners and state agencies.

**Construction Quality Assurance of Municipal and Industrial Waste Landfills**  
Anahuac, Texas

Directed construction quality assurance of compacted clay and composite lined landfills. Work has included developing QA plans which incorporate federal and state regulations, planning pre-qualification and construction lab testing, directing field monitoring staff and preparation of certification documents for owners and state agencies.

**Construction Quality Assurance of Municipal and Industrial Waste Landfills**  
Beaumont, Texas

Directed construction quality assurance of compacted clay and composite lined landfills. Work has included developing QA plans which incorporate federal and state regulations, planning pre-qualification and construction lab testing, directing field monitoring staff and preparation of certification documents for owners and state agencies.

**Construction Quality Assurance of Municipal and Industrial Waste Landfills**  
Conroe, Texas

Directed construction quality assurance of compacted clay and composite lined landfills. Work has included developing QA plans which incorporate federal and state regulations, planning pre-qualification and construction lab testing, directing field monitoring staff and preparation of certification documents for owners and state agencies.

**Construction Quality Assurance of Municipal and Industrial Waste Landfills**  
Sinton, Texas

Directed construction quality assurance of compacted clay and composite lined landfills. Work has included developing QA plans which incorporate federal and state regulations, planning pre-qualification and construction lab testing, directing field monitoring staff and preparation of certification documents for owners and state agencies.

**PROJECT EXPERIENCE – TUNNELLING**

**Rapid Transit Tunnels**  
Atlanta, Georgia

Instrumentation, monitoring and site engineering for twin rapid transit tunnels with very low soil cover under an eight-lane freeway. Tunneling work included portal tiebacks, microtunneling presupport, horizontal jet grouting, mini-pile installation and contact grouting. Monitoring included horizontal inclinometers, tape extensometers, and extensive surveying inside and above the tunnels. Excavation was by hydraulic excavators, and support was steel sets on drilled piles and cast-in-place concrete.

**River Diversion Tunnels**  
Harlan, Kentucky

Review of geologic conditions, tunnel layout, excavation technique, and stress analysis of four parallel 34-foot wide tunnels. Excavation was performed by road header in massive horizontally bedded siltstone, and support was by rockbolts and shotcrete.



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## Resumé

MARK FUNKHOUSER

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- Highway Tunnels**  
Cumberland Gap,  
Tennessee
- Design review and assessment of geotechnical conditions for parallel highway tunnels excavated through dipping sedimentary rock. Geotechnical assessment relied heavily on mapping from a 10 foot by 10 foot pilot bore. Tunnels were approximately 40 foot diameter, excavated by drill-and-blast technique, and supported by rockbolts and shotcrete.
- Park Tunnels**  
San Antonio, Texas
- Design, site engineering and inspection for two tunnels for amusement park rides. Tunnels were excavated by drill and blast through blocky horizontally bedded limestone, and were supported with rockbolts and shotcrete.
- Clearance Improvement Investigation**  
Tomah, Wisconsin
- Site Investigation to assess feasibility and potential methods for clearance improvement in an existing railroad tunnel. Extensive probe hole drilling with video-scope logging was used in the crown of the tunnel to assess existing conditions. The investigation was summarized and support and construction recommendations were made.
- Clearance Improvement**  
Christianburg, Virginia
- Site Engineering during tunnel razing. Work included drilling and blasting, rockbolting and shotcreting during open cutting of an existing railroad tunneling. The excavation was performed in fractured dolomite.
- Stability Assessment**  
Raton, New Mexico
- Assessment of the condition of an existing concrete lined railroad tunnel. The tunnel is located in horizontally bedded sedimentary rocks. Assessment involved review of available geologic and construction records, maintenance records, clearance measurements, and visual observation of existing conditions. Conclusions of observations and recommended monitoring were reported.
- Hydro Electric Development**  
Luzon, Philippines
- Site rock mechanics engineer during construction of a large hydro electric project. Responsibilities included observations, documentation, assessment and evaluation of all underground works. The work included: tunneling with an aggregate length of over 5 miles and dimensions ranging from 35 feet wide by 50 feet high to 12 feet wide by 14 feet high; shafts with an aggregate length of over 1,200 feet and diameters ranging from 20 feet to 72 feet; and a powerhouse excavation with dimension 85 feet wide by 275 feet long by 150 feet deep.
- Transit Tunnels**  
Jersey City, New Jersey
- Lead design engineer for stability analyses and rock support design for new excavations across existing tunnels and station. Spans up to 60 feet wide were designed with rock cover of approximately 30 feet.
- Cooling Water Tunnels**  
Pusan, South Korea
- Performed preliminary design work for select tunnel and shaft components for the submerged cooling water discharge systems planned for two nuclear reactors that are planned for construction.
- Water Supply Tunnels**  
N. Vancouver, B.C.
- Reviewed rock characterization and rock support documentation. Led compilation of the Geotechnical data Report for 15 km of tunnel planned for excavation in altered quartz diorite at depths up to 600m. Extensive exploration and testing were documented and summarized.

**Water Supply Tunnel  
Israel**

Project manager for feasibility assessment and design review for a proposed 14 km long tunnel in central Israel. The excavation will traverse several sedimentary strata dominated by solutioned limestones, marls, and claystones. Initial feasibility work has centered around such issues as TBM tunneling through karstic limestone, lining requirements for high pressure reaches, shaft requirements, and cost evaluations. Work has been performed for over one year and remains in progress.

**Highway Tunnels  
Brisbane, Australia**

Tunnel Geotechnical Engineer during construction of the North-South Bypass Tunnels in Brisbane, Australia. Supervision and management of all underground geologic mapping, rock support classification, and rock characterization during excavation and support of approximately 3 kilometres of conventional tunnels for access, and at portals, starter tunnels, chambers up to 26 m wide, on and off ramps, and ventilation tunnels and shafts. Assessment of rock and groundwater conditions from probing and shutter observations for 4.5 kilometres each twin 12.4 m diameter TBM tunnels. Supervision of precast segment support and rock support during excavation of 59 individual cross passages between the mainline tunnels.

**PROFESSIONAL AFFILIATIONS**

Member, American Society of Civil Engineers

**PUBLICATIONS****Other**

Funkhouser, M.R., Akins, K.P., "MARTA East Line Tunnels Under I-285, Atlanta, Georgia," Third International Conference on Case Histories in Geotechnical Engineering, University of Missouri-Rolla, May 1993.

Funkhouser, M.R., Leech, W.D., Leius, S.S., "Microtunneling for Pre-Support of MARTA Tunnels," Rapid Excavation and Tunneling Conference, June, 1993.

Humphries, R.W., Funkhouser, M.R., "Use of Shotcrete on Recent Tunnel Projects in the South and East USA," Symposium on Shotcrete for Ground Support IV, Niagara on the Lake, Ontario, May 1993.

Humphries, R., O'Connor, E., Gertler, L., Warburton, W., Daly, J., and Funkhouser, M., "Rock Engineering at the San Roque Multipurpose Project," Water Power 2001, Salt Lake City, June 2001.

Funkhouser, M.R., P.E. and M.F. McNeilly, P.E., "Ground Support Design and Analysis: Exchange Place Station Improvements," North American Tunneling/American Underground Association, April 2004.



## **Resumé**

**MARK FUNKHOUSER**

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Humphries, Richard, Wayne Warburton, James Daly, Mark Funkhouser, and Ed O'Connor, "Design and Construction of the Shafts at the San Roque Project," North American Tunneling/American Underground Association, April 2004.

McNeilly, Mark F., P.E., Mark R. Funkhouser, P.E., John F Lupo, PhD, P.E., "Design and Evaluation of Ground Support for the Exchange Place Station Improvements Project," American Society of Civil Engineers – Geo-Trans 2004, July 2004.

**CHRONOLOGY OF EVENTS, COMMUNICATIONS, ETC.  
SINCE MEDIATION ON DECEMBER 21, 2009<sup>1</sup>**

**2009**

Dec 22      Email from P Gustafson to P Dunlap et al. with draft of notes from December 21, 2009 mediation (**GL Exhibit 15**).

**2010:**

Jan 8      Conference call of Bill Schlecte, P Gustafson and P Stevenson to discuss memorialization of terms of settlement.

Jan 13      Email from P Gustafson to Bill Schlecte and P Stevenson with draft of proposed facilitation summary and terms of settlement (**GL Exhibit 16**).

Jan 14      Email from P Gustafson to Bill Schlecte and P Stevenson with revised draft of proposed facilitation summary and terms of settlement (**GL Exhibit 17**).

Jan 19      Email from P Gustafson to Bill Schlecte and P Stevenson with draft of proposed facilitation summary and terms of settlement (**GL Exhibit 18**).

Jan 28      Email from P Gustafson to Bill Schlecte and P Stevenson with draft of proposed Stipulated Order (**GL Exhibit 19**).

Feb 1      Email from Bill Schlecte to P Gustafson re: sequence of submissions and meeting to expedite the process (**GL Exhibit 20**).

Feb 3      Email of Bill Schlecte to P Gustafson and P Stevenson with draft of revised Interim Order (**GL Exhibit 21**).

March 15      Email from P Gustafson to Bill Schlecte and P Stevenson with revised draft of Interim Order (**GL Exhibit 22**).

April 4      Resolution adopted by Golden Lotus Board(**GL Exhibit 23**).

April 5      Interim Order signed by Judge Murphy (**GL Exhibit 1**).

April 6      Email from P Gustafson with attached draft of TU-PRCA press release (**GL Exhibit 24**).

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<sup>1</sup> This compilation does not include numerous email communications directly between members of the DNRE Technical Review Team, Bryan Burroughs, P Gustafson, and other representatives of TU and PRCA.

April 7 Email from Bill Schlecte to *Pete Gustafson*, with copy to *Bryan Burroughs*, to arrange meeting to discuss preparation of Conceptual Plan (**GL Exhibit 25**):

I am setting up a meeting with Tom Stanko next week to get started on the Conceptual Plan. *I am thinking it would be a good thing to include Bryan in the meeting.* If you and he agree – Bryan, will you advise me of your availability next week? We will meet in Lansing at Tom’s office. (Emphasis added).

Email reply of *Bryan Burroughs* to Bill Schlecte advising of dates on which he is available to meet to discuss preparation of Conceptual Plan (**GL Exhibit 26**).

Email reply of Bill Schlecte to *Bryan Burroughs*, with copy to *Pete Gustafson*, advising that he is checking with availability of Tom Stanko.

Email of Bill Schlecte to *Bryan Burroughs*, with copy to *Pete Gustafson*, confirming meeting date of Monday, April 12 (**GL Exhibit 27**).

April 8 Email of *Bryan Burroughs* to Bill Schlecte, with copy to *Pete Gustafson*, confirming meeting on April 12 at Golder offices.

Email reply of Bill Schlecte to *Bryan Burroughs*, with copy to *Pete Gustafson*, acknowledging confirmation of meeting.

Email of Bill Schlecte to *Bryan Burroughs*, with copy to *Pete Gustafson*, which included:

We look forward to getting the rest of this project underway on Monday.

We also want to start exploring sources for grant money on Monday.

I don’t plan on having Don attend on Monday unless you think it is necessary – it will just be Tom and me.

Email reply of *Bryan Burroughs* to Bill Schlecte, with copy to *Pete Gustafson* (**GL Exhibit 28**).

April 9 Lengthy voice mail message from *Pete Gustafson and Bryan Burroughs* for Bill Schlecte regarding items to be discussed at April 12 meeting.

April 12 Email from *P Gustafson* with draft of proposed letter of TU to its members (**GL Exhibit 29**).

## GL EXHIBIT 14

Lengthy meeting of Tom Stanko, Bill Schlecte, and Bryan Burroughs, in Golder offices to discuss preparation of Conceptual Plan. At this meeting, the participants reviewed a wealth of accumulated data, including, but not limited to, blueprints of the dam, the Affiliated Researchers Bathymetric Survey, Dam Inspection Reports, etc. There was specific discussion at the meeting about submission of a Conceptual Plan which included retention of the existing bridge and removal of the spill-gates, turbine, and turbine infrastructure.

April 23 Email from Bill Schlecte to Pam Stevenson, with copies to Pete Gustafson and Bryan Burroughs (Exhibit 30), which included the following text:

I met with Bryan and Tom on the 12th to begin formulating the Conceptual Plan

Tom and Golder then went out on-site last Friday to gather the data necessary for the Conceptual Plan.

I have a call in to Tom to see if we can get the Plan submitted to the DNRE by the end of next week, before the 30-day deadline on May 4.

Do you want to select some possible dates for the Pre-Application Meeting which gives the DNRE Review Team enough time to review the Conceptual Plan before meeting? Send them to me and I will coordinate with Tom and Bryan.

Email reply of Pam Stevenson to Bill Schlecte, with copy to Pete Gustafson, which included:

Some of the staff that will be participating in the meeting aren't here today. On Monday, we will determine some potential dates and email them to you.

Thanks for the encouraging news that the data has been gathered and that the Conceptual Plan may be submitted before the May 4th deadline.

April 28 Email of Pete Gustafson to Pam Stevenson regarding scheduling of the Pre-Application meeting and discuss the Conceptual Plan (GL Exhibit 31):

Pam, May 24 and 25 are open for Bryan and me. If the meeting is to be in Gaylord, May 27 is also open for Bryan in the morning. He has a meeting that evening in Petosky. I am also available on the 27th.

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Email of Pam Stevenson to Bill Schlecte, *with copy to Pete Gustafson*, advising of available dates for the Pre-Application meeting.

Email of Pete Gustafson to Bill Schlecte with copy of letter sent to Paul Rose re: dam removal qualifies for federal and state funds because it is strictly voluntary on the part of Golden Lotus and not part of “compensatory mitigation” (GL Exhibit 32).

April 29 Email of Bill Schlecte to Pam Stevenson, *with copies to Pete Gustafson and Bryan Burroughs* (GL Exhibit 33):

It looks like the 27<sup>th</sup> is the best date for Golder and me. I am waiting to hear from Don and Carol if they want to attend and, if so, if the 27<sup>th</sup> works for them.

Do you want morning or afternoon?

Gaylord works great because it will give the Golder personnel a chance to combine some on-site work with the meeting.

*Have you checked with Bryan already?* I am copying him with this email, too. (Emphasis added).

May 3 Bill Schlecte email to Pam Stevenson, *with copies to Pete Gustafson and Bryan Burroughs*, with the Conceptual Plan (GL Exhibit 34). The 30-day deadline for submission per the Interim Order was May 4.

May 4 Email from Jessica Mistak to Technical Team providing copy of Golden Lotus Dam Removal Conceptual Plan

May 5 Email from Jessica Mistak to Technical Team providing copy of draft comments on Golden Lotus Dam Removal Conceptual Plan

May 6 Technical Team meeting/call re: Conceptual Plan

May 7 Email from Jessica Mistak to Technical Team asking for additional comments on Golden Lotus Dam Removal Conceptual Plan

May 12 Email from Bill Schlecte, *with copies to Pete Gustafson and Bryan Burroughs*, confirming the Pre-Application meeting on May 27, 2010, *and asking for comments on the Conceptual Plan* (GL Exhibit 35).

May 13 Email from Ronda Wuycheck to Bill Schlecte, *with copy to Pete Gustafson* (GL Exhibit 36), providing Technical Team comments. The email referenced Burroughs’ participation in review of, and comments on, the Conceptual Plan:

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Please find attached the comments from the state dam review team *and Mr. Burroughs* on the Golden Lotus, Dam Removal Conceptual Plan.

The Comments accompanying the email (GL Exhibit 37) included the following:

1.1 General Dam Removal Plan

Conceptual plans or drawings should also be provided for the configuration of the dam structures post-removal.

1.4 Disposition of the Existing Bridge

Similar to information requested for the dam, we request detailed plans or drawing of the existing bridge and the options for disposition of the existing bridge.

Email from Bill Schlecte to Ronda Wuycheck re: date for Pre-Application meeting.

Email reply from Ronda Wuycheck to Bill Schlecte advising of date, time, and meeting plan.

Email reply from Bill Schlecte to Ronda Wuycheck confirming meeting, *with copies of the email correspondence "string" with Ronda Wuycheck to Pete Gustafson and Bryan Burroughs.*

Email from Bill Schlecte to Jessica Mistak, *with copies to Pete Gustafson and Bryan Burroughs (GL Exhibit 38)*, requesting a telephone conference to discuss the Conceptual Plan comments of the DNRE *and Bryan Burroughs*:

Ian Wylie and I will be meeting with Tom Stanko and Mark Funkhouser of Golder Associates to start working on items listed in the comments to the Conceptual Plan.

If you are not available, will you give me some dates and times when you are?

Email reply from Jessica Mistak to Bill Schlecte, *with copies to Pete Gustafson and Bryan Burroughs*, confirming availability for conference call.

Email reply from Bill Schlecte to J Mistak, *with copies to Pete Gustafson and Bryan Burroughs*, confirming telephone conference

May 18 Conference call with R Wuycheck, P Stevenson, Bill Schlecte and J Mistak to

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discuss sediment sampling plan, use of GPS in lieu of “total station,” and to coordinate meeting to discuss Conceptual Plan.

Email from Bill Schlecte to Jessica Mistak, *with copies to P Gustafson and Bryan Burrough*, re: reliability of Trimble GPS in lieu of “total station” for survey purposes.

Lengthy email from Bill Schlecte to Jessica Mistak *with copies to Pete Gustafson and Bryan Burroughs*, re: Sediment Sampling Plan, schedule for completion, and coordination for Pre-Application meeting (**GL Exhibit 39**).

May 19 Email reply from Jessica Mistak to Bill Schlecte, *with copies to Pete Gustafson and Bryan Burroughs*, re: Sediment Sampling Plan

Email from Bill Schlecte to Jessica Mistak, *with copies to Pete Gustafson and Bryan Burroughs*, re: GPS technical data from Affiliated Researchers

May 20 Lengthy email from Jessica Mistak to Bill Schlecte, *with copies to Pete Gustafson and Bryan Burroughs*, regarding data collection methods and use of GPS.

Email reply from Bill Schlecte to Jessica Mistak, *with copy to Bryan Burroughs*, re: follow-up to sediment sampling and survey.

May 27 Very lengthy Pre-Application Meeting was held in Gaylord. Participants included (**GL Exhibit 40**):

State’s Representatives:

Pam Stevenson, Assistant Attorney General  
Chris Freiburger (CV attached as **GL Exhibit 41**)  
James Pawloski (CV attached as **GL Exhibit 42**)  
Kate Lederle (CV attached as **GL Exhibit 43**)  
Ronda Wuycheck (CV attached as **GL Exhibit 44**)  
William Larsen (CV attached as **GL Exhibit 45**)  
Mary Knoll  
Dan Rockafellow  
Dave Borgeson (CV attached as **GL Exhibit 46**)  
Jessica Mistak (CV attached as **GL Exhibit 47**)

TU-PRCA’s Representatives:

*Bryan Burroughs*  
*Pete Gustafson*

Golden Lotus' Representatives:

Donald Handyside (Chairman of Board)  
Carol Armout (Board member)  
Ian Wylie (Manager)  
Tom Stanko of Golder Associates (CV attached as **GL Exhibit 48**)  
Mark Funkhouser of Golder Associates (CV attached as **GL Exhibit 49**)  
Bill Schlecte, attorney for Golden Lotus

All aspects of the Conceptual Plan were reviewed, the comments of Burroughs and the State were fully discussed and addressed; and, the parties moved into discussion of performance and completion of the investigations necessary and appropriate to gather the data required by the Interim Order.

All aspects of the proposed Work Plan were discussed, with the result that GL was directed to "tweak" it a bit and submit a revision (which it did).

At the meeting, Golden Lotus invited Burroughs, Gustafson, and the State's representatives to be present during any and all of the site work. Neither Burroughs nor Gustafson nor any other representative of Interveners accepted the invitation despite being provided with the dates and times at which the site work was scheduled to take place.

Despite the fact that all parties then embarked on revision and implementation of the Work Plan and preparation of the formal Permit Application, no other objections to, or comments about, the Conceptual Plan were ever made by Burroughs, Gustafson, or any other representative of TU-PRCA until the false claim of Gustafson in his letter of December 17, 2010, that the Plan had never been "approved."

June 4            Email from Bill Schlecte to Jessica Mistak, *with copies to Pete Gustafson and Bryan Burroughs*, with attached Work Plan for sampling, etc., revised by Golder Associates per May 27 meeting (**GL Exhibit 50**).

June 14          Email from Bill Schlecte to Jessica Mistak, *with copies to Pete Gustafson and Bryan Burroughs*, advising of site work schedule by Affiliated Researchers and inviting attendance during performance of work if desired (**GL Exhibit 51**).

June 15          Email from Jessica Mistak to Technical Team, *with copies to Pete Gustafson and Bryan Burroughs*, providing the field-work schedule for Golden Lotus' consultants.

Email from Jessica Mistak to Bill Schlecte Email from Bill Schlecte to Jessica Mistak acknowledging receipt of work schedule and forwarding Schlecte June 14 email to *Pete Gustafson, Bryan Burroughs* (and others).

- June 17      Email from Bill Schlecte to Jessica Mistak, *with copies to Pete Gustafson and Bryan Burroughs*, with attached Work Schedule from Affiliated Researchers (**GL Exhibit 52**).
- Email from Jessica Mistak to Technical Team sharing revised field schedule for Golden Lotus consultants.
- July 15      Email from J Mistak to Bill Schlecte re: status of sampling (copies to Gustafson and Burroughs sent by Bill Schlecte).
- Email from Bill Schlecte to Jessica Mistak, *with copies to Pete Gustafson and Bryan Burroughs*, re: status of on-site work by Affiliated Researchers (**GL Exhibit 53**).
- Additional email from Bill Schlecte to Jessica Mistak, *with copies to Pete Gustafson and Bryan Burroughs*, re: meeting with Affiliated Researchers to coordinate compilation of accumulated on-site work and results of sampling for contaminants (**GL Exhibit 54**).
- Email from Jessica Mistak to Bill Schlecte, *with copies to Pete Gustafson and Bryan Burroughs*, acknowledging Schlecte emails and results of sediment samples.
- Email from Jessica Mistak to Technical Team sharing results of sediment samples.
- July 19      Email from Bill Schlecte to Jessica Mistak, *with copies to Pete Gustafson and Bryan Burroughs*, with attached TriMax sampling results and re: status of field work (**GL Exhibit 55**).
- Lengthy email from Bill Schlecte to *Pete Gustafson*, *with copy to Bryan Burroughs*, re: status of site work and re: scheduling of its completion (**GL Exhibit 56**).
- July 20      Email from Jessica Mistak to Technical Team re: additional data received, as requested, from Golder Assoc.
- July 30      Email from Ronda Wuycheck to Bill Schlecte, *Pete Gustafson*, and *Bryan Burroughs* to schedule a meeting to discuss the results of site investigation, etc.
- Email from Bill Schlecte to Ronda Wuycheck, *with copies to Pete Gustafson and Bryan Burroughs*, in response to her email and advising that Affiliated Researchers' comprehensive report and data was being sent that day.
- Email reply from Ronda Wuycheck to Bill Schlecte, *with copies to Pete Gustafson and Bryan Burroughs*, coordinating date of meeting.

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July 31 Email from Bill Schlecte to Ronda Wuycheck, *with copies to Pete Gustafson and Bryan Burroughs*, advising of dates for meeting.

August 2 Lengthy email from *Bryan Burroughs* to Bill Schlecte and Jessica Mistak, *with copy to Pete Gustafson*, requesting a delay in the Pre-Application Meeting (GL Exhibit 57). The entire text of his email is:

I'm just digging into a pile of emails from a long week of work on the road last week. I have not read all of the emails on this subject yet, so I apologize if I have missed something pertinent. However, I'd have to point something out, and that's that the 17 or 18th, seems much to (*sic*) soon for the pre-application meeting, given the state of the data currently. We haven't gotten the raw data, and I'm uncertain of how fast Tom Stanko will be able to summarize it, and use it to take a first stab at what it means for the dam removal plans. Since the specifics of the data will need to be reviewed very closely to determine the appropriate plan and timing of the dam removal (e.g., sediment cores results and flow data inform staged removal schedule), I'd think I'd need a good week or more to critically examine the data and Tom's report of it, in order to make the substance of the pre-application meeting highly productive, and give Tom the feedback he'll really need for preparing the application. The week of the 17-18 seems much too quick for adequate technical review and prep for the meeting.

I'd be interested to hear Tom's thoughts on the report, and the state's technical team's comments on their schedules and the ability to adequately review the data and reports.

Email from Jessica Mistak to Ronda Wuycheck Email from Bill Schlecte to Ronda Wuycheck, *with copies to Pete Gustafson and Bryan Burroughs*, advising of available dates for meeting.

Email from Bill Schlecte to Ronda Wuycheck, *with copies to Pete Gustafson and Bryan Burroughs*, advising of Tom Stanko available dates for meeting.

Additional email from Bill Schlecte to Ronda Wuycheck, *with copies to Pete Gustafson and Bryan Burroughs*, advising of email from Tom Stanko and re: possible submission of draft of Application in anticipation of meeting.

August 3 Email from Ronda Wuycheck to Bill Schlecte, *with copies to Pete Gustafson and Bryan Burroughs*, re: purpose of meeting, location, and scheduling (GL Exhibit 58).

Email from *Bryan Burroughs*, *with copy to Pete Gustafson*, advising that he is available for meeting.

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- August 5 Email from Bill Schlecte to Jessica Mistak and Ronda Wuycheck, *with copies to Pete Gustafson and Bryan Burroughs*, re: Pre-Application meeting.
- August 9 Email from Ronda Wuycheck to Bill Schlecte, *with copies to Pete Gustafson and Bryan Burroughs*, re: Pre-Application meeting date, time and place.
- Email from *Pete Gustafson* to Ronda Wuycheck, *with copy to Bryan Burroughs*, acknowledging the Pre-Application meeting and containing the following text:
- Thanks Ronda. As I informed Bryan, I am unable to attend the meeting as I will be in Canada next week. However, my attendance is not crucial, and I understand the meeting will proceed.
- You should also be aware that a representative of the Pigeon River Country Association, most likely Joe Jarecki, will plan to attend so that the Association can be represented.
- Email from Ronda Wuycheck to *Pete Gustafson*, *with copy to Bryan Burroughs*, acknowledging his email.
- August 14 Email from Bill Schlecte to Ronda Wuycheck and J Mistak, *with copies to Pete Gustafson and Bryan Burroughs*, regarding availability of additional information for and in advance of the Pre-Application Meeting:
- I finally received the CD from AR yesterday afternoon with all of the site investigation, sampling, and survey data. AR also sent me an extra disc for you and sent one directly to Tom. Since our meeting is on Wednesday, I have a call in to Tom to see if we can upload all of the data from the CD onto the Golder extranet so that everyone at the DNRE who wants to review the data prior to the meeting can do so. If the DNRE has a site to which I can upload the files, let me know and I will use it instead of the Golder site.
- Sorry for the delay. Tom and I originally got CDs from AR last week, but when we tried to download the data all of it was corrupted and none of the files could be opened. Hence, AR sent the replacement CDs.
- I am in the office all weekend, so if you have any questions, feel free to call or email me.
- August 16 Email from Ronda Wuycheck to Bill Schlecte, *with copies to Pete Gustafson and Bryan Burroughs*, in response to Bill Schlecte email of August 14.

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Email from Bill Schlecte to Ronda Wuycheck, *with copies to Pete Gustafson and Bryan Burroughs*, in response to request for additional data:

I already have a call in to Tom to coordinate getting the data to you – either by CD or via email today. One way or another we will get the info to you so that you and everyone else can review it prior to Wednesday.

I know that Tom is also trying to track AR down to clarify some of the reference points and references. Rollin Reineck has apparently been tied up in meetings, but we are trying to arrange a conference call with him later today.

I will keep you posted.

August 17 Email from Ronda Wuycheck to Bill Schlecte, *with copies to Pete Gustafson and Bryan Burroughs*, re: meeting and review by DNRE and Bryan Burroughs of additional data:

Tom, Jessica, and I discussed the issues with the data and agreed that it is best to cancel our meeting for tomorrow. We agreed that the next steps are to identify in particular which data points are missing or incomplete and hopefully the afternoon call with AR resolves that matter although Tom indicated a potential need for additional field work to fill the gaps. Further agreed was that Tom will provide Jessica with the data and Jessica will begin the technical discussion with the DNRE dam review team *and Mr. Burroughs* on the data gaps. We also discussed potentially conducting a technical meeting with the dam review team and Tom/Golder on the data gaps just to talk through what needs to happen next. We will proceed with conducting the pre-application meeting once the technical issues are resolved. (Emphasis added).

Lengthy email from Bill Schlecte to P Stevenson, *with copies to Pete Gustafson and Bryan Burroughs*, addressing “gaps” in data from site investigation (**GL Exhibit 59**).

August 18 Email from Jessica Mistak to Technical Team regarding cancellation of meeting and data review.

August 31 Golder Associates submits raw data from Affiliated Researchers site investigation by email to J Mistak (**GL Exhibit 60**).

Sept. 2 Golder submits Longitudinal Profile and Aerial Photo by email to J Mistak (**GL Exhibit 61**).

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- Sept. 3 Golder submits Sediment Cross Section by email to J Mistak (**GL Exhibit 62**).
- Sept. 9 Technical Team meeting/call to discuss preliminary data and identify additional data needs.
- Sept 13 Email from J Mistak to DNRE Technical Team, et al., *including Bryan Burroughs*, advising of Pre-Application Meeting at Pigeon River Visitor Center to and site visit following the meeting (**GL Exhibit 63**).
- Sept. 20 Email from Jessica Mistak to Technical Team sharing Golder Associates Data Summary Report.
- Sept 21 Pre-Application Meeting at Pigeon River Visitor Center and subsequent site visit to Golden Lotus property. Attendees at the meeting included:
- State Representatives:
- Chris Freiburger  
Dan Rockafellow  
Tim Cwalinski  
Jessica Mistak
- Golden Lotus Representatives:
- Tom Stanko  
Carol Armour  
Bill Schlecte
- Although invited, neither Bryan Burroughs nor Pete Gustafson attended the meeting.*
- Sept. 27 DNRE technical staff met with Golder Associates at the Golden Lotus site.
- Email from J Mistak to DNRE Technical Team, et al., *including Bryan Burroughs*, to schedule Pre-Application meeting (**GL Exhibit 64**).
- Additional email to DNRE Technical Team, et al., listing persons who should attend the October 22 meeting – *requested attendees included Bryan Burroughs*.
- Sept 28 Email from Bill Schlecte to J Mistak, *with copies to Pete Gustafson and Bryan Burroughs*, re: attending meeting, etc. (**GL Exhibit 65**).
- Sept. 30 Email from Bill Schlecte to *Pete Gustafson and Bryan Burroughs* with Outlook appointment for meeting with DNRE .

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- October 4 Email from Jessica Mistak to Technical Team, *with copies to Pete Gustafson and Bryan Burroughs*, regarding cancellation of October 7 meeting with Golden Lotus and rescheduling for later date (GL Exhibit 66).
- Email from Jessica Mistak to Technical team, *with copy to Bryan Burroughs*, to schedule meeting and advise of request to Golden Lotus for “dam removal alternatives, *ranging from removal of only the gates* to removal of the entire structure.” (GL Exhibit 67).
- October 20 Tom Stanko email to J Mistak attaching Interim Evaluation of Drawdown and Dam Removal Options (GL Exhibit 68)
- Email from Jessica Mistak to Technical Team with Interim Drawdown Evaluations and Dam Review Options Report.
- October 22 Very lengthy Pre-Application Meeting was held in Lansing to discuss all aspects of the dam removal plan, results of data collection, additional data which may be necessary, etc. Participants included (GL Exhibit 69):

State’s Representatives:

Pam Stevenson, Assistant Attorney General  
Chris Freiburger  
James Pawloski  
Kate Lederle  
Ronda Wuycheck  
William Larsen  
Dan Rockafellow  
Dave Borgeson  
Jessica Mistak

TU-PRCA’s Representatives:

*Bryan Burroughs*  
*Pete Gustafson*  
*Joe Jarecki*

Golden Lotus’ Representatives:

Carol Armout (Board member)  
Ian Wylie (Manager)  
Tom Stanko of Golder Associates  
Mark Funkhouser of Golder Associates  
Bill Schlecte, attorney for Golden Lotus

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- October 25 Email from J Mistak to Technical Team re: purpose of next meeting on November 22, 2010
- Nov. 15 Submission of "Technical Memorandum – Additional Data and Analysis Addendum" by Tom Stanko email to J Mistak (**GL Exhibit 6**).
- Nov. 16 Email from Jessica Mistak to Technical Team re: Technical Memorandum dated November 15, 2010
- Nov. 18 Technical Team meeting/call to discuss Technical Memorandum dated November 15, 2010
- Email from J Mistak to Technical Team re: November 22 meeting
- Additional email from J Mistak to Technical Team advising of cancellation of November 22 meeting in order for additional information to be collected and provided.
- Nov. 22 Opinion of Stephen Wright of Wade Trim Engineers that bridge is structurally sound (**GL Exhibit 70**). The Curriculum Vitae of Mr. Wright is attached as (**GL Exhibit 71**).
- Nov. 30 Email from T Stanko to J Mistak re: working to address comments and requests from prior meeting and conversations (**GL Exhibit 72**).
- Dec. 3 Email from T Stanko to J Mistak and Ronda Wuycheck with additional Technical Memorandum to address questions and requests of DNRE and Burroughs (**GL Exhibit 73**).
- Dec. 8 Technical Team pre-meeting prior to December 15<sup>th</sup> meeting.
- P Stevenson, Bill Schlecte, and P Gustafson attend Status Conference in Otsego Circuit Court - *no mention by P Gustafson of any dissatisfaction with progress of fulfillment of terms of Interim Order.*
- Email from Bill Schlecte to P Stevenson and P Gustafson with attached copy of additional information requested by DNRE
- Dec. 9 Email from P Gustafson to Bill Schlecte acknowledging Bill Schlecte email of December 8 and attachment
- Dec. 10 DNRE (including Bill Creal), Pam Stevenson, Bryan Burroughs and Pete Gustafson meet to discuss water velocity issues with Option 1 Dam Removal Plan.

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- Dec. 15 DNRE, TU, PRCA, Golden Lotus, Pete Gustafson, Bill Schlecte, and Pam Stevenson meet to discuss dam removal/permit application. (Attendance Sheet attached as **GL Exhibit 84**). Option 1 was the agreed-upon plan based on Wade Trim's structural analysis of Golden Lotus bridge.
- Dec. 17 Email from Gustafson objecting to dam removal plan.
- Dec. 29 Email from Jessica Mistak to Technical Team discussing Dissolved Oxygen monitoring.
- DNRE, Golden Lotus, Bill Schlecte and Pam Stevenson meet to discuss Phase II conceptual plan (TU and Pete Gustafson were invited to the meeting, but declined to attend).
- 2011:**
- January 27 DNRE, Golden Lotus, Golder Assoc. Bill Schlecte and Pam Stevenson meet to discuss permit application as submitted.
- February 1 Golder hand-delivers Joint Permit Application to DNRE (copy of the Permit Application attached as **GL Exhibit 7**).
- DNRE, Intervenors, Pete Gustafson, and Pam Stevenson meet to discuss difference of interpretation of Interim Order. Golden Lotus was not included in the meeting.
- February 4 Email from Pete Gustafson to Bill Schlecte advising that he has not received copy of Permit Application and email reply from Bill Schlecte to Pete Gustafson advising that he has not yet received a copy but would forward as soon as he gets it (**GL Exhibit 74**).
- Bill Schlecte receives copy of the Permit Application from Golder Associates and immediately emails it to Pete Gustafson and Bryan Burroughs (**GL Exhibit 75**).
- February 7 Tom Stanko advises K Lederle of minor technical error in Application (**GL Exhibit 76**).
- February 8 Tom Stanko emails corrected page 2 of Application to K Lederle (**GL Exhibit 77**).
- February 9 Email of Bryan Burroughs acknowledging receipt of Application on February 4
- February 10 State faxes Application Correction Request #1 to Golder Associates asking for technical clarification of certain items in Permit Application (**GL Exhibit 78**).

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- February 11 Email from Pete Gustafson to Bill Schlecte re: Motion to Clarify and Enforce Interim Order to be filed by Interveners.
- February 18 T Stanko files Response to State's Correction Request #1 (**GL Exhibit 8**).
- February 23 Fax from K Lederle to T Stanko with State's Correction Request #2 (**GL Exhibit 79**).
- February 24 DNRE, TU, PRCA, Pete Gustafson, Bill Schlecte and Pam Stevenson meet to discuss TU/PRCA proposed Motion for Clarification and Enforcement of Interim Order and difference of interpretation of Interim Order
- February 25 Email from Bill Schlecte to P Gustafson re: scheduling additional meeting
- February 28 Email from Bill Schlecte to P Gustafson re: meeting  
Telephone conference of Bill Schlecte and P Gustafson re: scheduling meeting
- March 1 Email from P Gustafson to Bill Schlecte re: meeting  
Email reply by Bill Schlecte to P Gustafson re: meeting
- March 2 Email from P Gustafson to Bill Schlecte re: meeting
- March 3 Email from Bill Schlecte to P Gustafson re: meeting  
Email reply from P Gustafson to Bill Schlecte  
Additional lengthy email from Bill Schlecte to P Gustafson re: meeting  
Additional email from Bill Schlecte to P Gustafson re: availability of D Handyside  
Email reply from P Gustafson to Bill Schlecte  
Additional email from Bill Schlecte to P Gustafson requesting confirmation of conditions for meeting
- March 4 Bill Schlecte is advised by Pam Stevenson that the Permit Application has been accepted by the State as "administratively complete."  
Bill Schlecte immediately calls Pete Gustafson to advise him of this fact, but has to leave a voice mail message for him.
- March 5 Bill Schlecte emails Pete Gustafson in follow-up to voice mail message advising that Application has been accepted by State as administratively complete (**GL Exhibit**

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