

STATE OF MICHIGAN
IN THE 46TH JUDICIAL CIRCUIT
COUNTY OF OTSEGO

MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY
and DAN WYANT,
Director of the Michigan
Department of Environmental Quality,

File No. 09-12933-CE (M)

Honorable Dennis F. Murphy

MICHIGAN DEPARTMENT OF
NATURAL RESOURCES and
RODNEY A. STOKES,
Director of the Michigan
Department of Natural Resources

Plaintiffs,

and

MICHIGAN CHAPTER TROUT UNLIMITED
and PIGEON RIVER COUNTRY ASSN.,

Intervening Plaintiffs,

v

Golden Lotus, Incorporated,

Defendant.

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Assistant Attorney General
Environment, Natural Resources
and Agriculture Division
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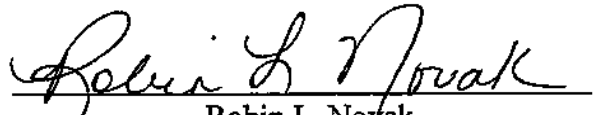
PROOF OF SERVICE

On April 28, 2011, I sent by UPS Overnight a copy of State Plaintiffs' Response to Intervening Plaintiffs' Supplemental Motion to Clarify and Enforce Interim Order to:

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I declare that the above statement is true to the best of my knowledge, information, and belief.



Robin L. Novak

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STATE PLAINTIFFS' RESPONSE TO INTERVENING PLAINTIFFS'
SUPPLEMENTAL MOTION TO CLARIFY AND
ENFORCE INTERIM ORDER

NOW COME Plaintiffs Michigan Department of Natural Resources and Environmental Quality and Dan Wyant, Director; and Michigan Department of Environmental Quality and Rodney A. Stokes, Director, by and through their attorneys, Bill Schuette, Michigan Attorney General, state in support of their Response to Intervening Plaintiffs' Supplemental Motion to Clarify and Enforce Interim Order as follows:

Introduction

The Golden Lotus Song of the Morning Ranch dam (Golden Lotus Dam) is the most significant dam on the Pigeon River. On more than one occasion the dam gates have malfunctioned and/or operational errors were committed resulting in a massive fish kill in the Pigeon River. The parties in this case have a lengthy history of being embroiled in litigation that goes as far back as the mid 1980s. Past attempts to persuade Golden Lotus and the Court to remove this dam have failed. But in the past year, the parties reached a resolution of this case, the terms of which are set forth in an Interim Order entered with this Court on April 5, 2010 (Exhibit A – Interim Order).

One of the most important elements of this Order is that Golden Lotus agreed to voluntarily remove the dam. One point that the parties all agree on and which was so eloquently stated by Dr. Bryan Burroughs (Exhibit B – E-mail from Burroughs):

"The agreement that was reached is a huge benefit to the Pigeon River, and corrects persistent damage to the resource that has been in place for a century. Past attempts to try to remove this dam failed...People all across the state that hold the Pigeon River Country dear to their hearts, perceive this as a "historic" conservation event, and are smiling that it seems "almost too good to be true".

The State Plaintiffs and Golden Lotus have complied with the requirements set out in the Interim Order. The Golden Lotus Plan for Dam Removal will greatly improve the health of the Pigeon River System and accomplish the goals sought in the State Plaintiffs and Intervening Plaintiffs' Complaints. The parties have also committed to the development of the Phase II, Pigeon River Project which will result in total river restoration. It would be tragic to see this historic conservation event jeopardized because of Intervening Plaintiffs' failure to comply with the terms of the negotiated Settlement Agreement and Interim Order.

ARGUMENT

I. The Golden Lotus Plan for Dam Removal Will Greatly Improve the Health of the Pigeon River System and Accomplish the Goals Sought in the State Plaintiffs and Intervening Plaintiffs' Complaints.

A. The Dam Removal Plan will Satisfy the Relief Requested in the State Plaintiffs' and Intervening Plaintiffs' Complaints.

The State Plaintiffs have remained consistent throughout these proceedings as to the injunctive relief requested from this Court. As stated in the State Plaintiffs' Complaint, "This is a civil action seeking injunctive relief to require the Defendant Golden Lotus, Inc., to eliminate illegal discharge of sediment-laden water from the owned dam to the Pigeon River. Further, the State Plaintiffs are seeking to obtain injunctive relief requiring the Defendant to mitigate for the value of the loss of public resources and recreation opportunities along with the costs associated with rehabilitation of the Pigeon River to conditions that existed prior to the release of sediment, including the removal of the dam owned by the Defendant." (State Plaintiffs' Complaint paragraph 1, pg 1)

State Plaintiffs brought this action under Part 31, Water Resources Protection; and Part 301 Inland Lakes and Streams of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.3101 *et seq.*, and MCL 324.30102. Part 31 provides

that the Department of Environmental Quality (DEQ) shall protect and conserve the water resources of the State and Great Lakes which are or may be affected by any type of contamination. Part 301, provides in part that a person shall not fill bottom land, diminish, or structurally interfere with the natural flow of an inland lake or stream without first obtaining a permit from the department.

State Plaintiffs' Complaint alleged that Defendant's mismanagement of the Song of the Morning (SOM) Ranch dam resulted in a massive and uncontrolled discharge of sediment-laden water and drastic flow and temperature fluctuations in the Pigeon River. These conditions were and in the future might be injurious to public health, fish, plants, aquatic life, and other designated uses of the waters of the State, and therefore, in violation of Part 31. (State Plaintiffs' Complaint, paragraph 36, pg 8) The State Plaintiffs further alleged that Defendant failed to effectively manage the dam to control the impoundment's water level resulting in diminishing the impoundment without first acquiring the necessary permits in violation of Part 301.

As a result of these violations, State Plaintiffs requested this Court to grant relief which included in part that the Court grant a permanent injunction enjoining or restraining Defendant from polluting, impairing, or destroying water, air or other natural resources of the State of Michigan and require Defendant to pay costs associated with rehabilitation of the Pigeon River to conditions that existed prior to the release of sediment up to and including the removal of the dam owned by the Defendant. (State Plaintiffs' Complaint Relief Requested Pg 9) The State Plaintiffs have remained consistent in their position that the injunctive relief sought include an Order from the Court requiring Defendant to cease the operation of the dam, remove the dam and draw down the impoundment, thereby, eliminating the future effects of discharge of sediment-laden water, fluctuating temperatures and extreme variability of flow to the Pigeon River.

The goal has always been and remains that a dam removal plan requires that the Golden Lotus dam cease its peaking operation of the dam. It was the continued presence of the dam operation as a peaking facility and the impoundment that resulted in extreme variability in flow, increases in water temperatures, and the potential for future release of a sediment discharge. Until recently, the State Plaintiffs were of the belief that the State's ultimate goal was shared with the Intervening Plaintiffs. In Intervening Plaintiffs' Complaint, they state it is "Defendant's mismanagement and continued use and operation of the dam that caused the violations of the Michigan's statutes referred to in the original Complaint and these activities constituted a public nuisance." (Intervening Plaintiffs' Complaint, paragraph 20)

Thus, the State Plaintiffs and Intervening Plaintiffs agreed that the cause of the statutory violations resulted from Golden Lotus' mismanagement and continued use and operation of the dam. It is important to note that neither the State Plaintiffs nor the Intervening Plaintiffs ever defined dam removal in their Complaints. Instead, dam removal is referred to as a general concept but the dam removal goals are clearly set forth within the Complaints. The Golden Lotus' plan for dam removal will accomplish the goals sought in the State Plaintiffs' and Intervening Plaintiffs' Complaints.

B. The Golden Lotus Plan for Dam Removal will Greatly Improve the Health of the Pigeon River System

For over the past twenty five years, the State Plaintiffs have argued that the continued presence of the Golden Lotus dam and impoundment reduces the overall quality of the fishery and the water quality in the Pigeon River. Golden Lotus has submitted a permit application to remove the existing gates and turbines from the Golden Lotus dam and to draw down the impoundment.

Removal of the gates and turbines, as proposed, allows for a unique opportunity to improve the health of the river system and associated biotic community. Drawing down the impoundment will eliminate the future threat of unnatural release of sediment-laden water to the Pigeon River. Removal of these dam structures will eliminate the potential for the dam to operate as a peaking facility and will make the facility run of the river, resulting in more natural flow conditions for the Pigeon River. The temperature issue would also be resolved as a result of the gate removal, thereby greatly reducing summer warming of the river due to the impoundment of water. (Exhibit C - Borgeson Affidavit; and Exhibit D - Freiburger Affidavit)

II. The Interim Order requires that Golden Lotus be allowed to continue the use of the existing bridge.

The Interim Order is a negotiated settlement agreement between the parties. As is always the case with any settlement agreement, compromise was necessary by all of the parties. One thing the parties can all agree on is that describing the settlement negotiations in this case as "tortuous" is a fair description of the process. In fact it took almost two years of negotiations before an acceptable compromise was reached and entered with this Court.

As a result of the litigation, the relationship between the State Plaintiffs and Golden Lotus became quite contentious and in an effort to continue settlement negotiations, the parties agreed to voluntary facilitation. Mr. Peter Dunlap was retained by the parties as a facilitator and a 9 ½ hour facilitation was conducted on December 21, 2009. In an effort to bridge the communication gap between the State Plaintiffs and Golden Lotus, Bryan Burroughs and his counsel participated in confidential settlement discussions with both the State and Golden Lotus. During the facilitation, one of the important issues for Golden Lotus was retention of the existing bridge.

Golden Lotus' position was that if they were willing to agree to discontinue the operation of the dam and draw down the impoundment, they wanted a commitment from the State and the Intervening Plaintiffs that they would be able to continue to use the existing bridge. (Exhibits C, H, I, and J - Affidavits of Borgeson, Pawloski, Larsen and Wuycheck respectively) There was a great deal of discussion regarding this issue during the facilitation and in further settlement negotiations. In support of their position, Golden Lotus asserted that the main (existing) bridge was an integral part of the operation of the yoga ranch. Since they were a non profit facility, they had limited funding available and replacement of the bridge would be a costly endeavor.

They also had concerns regarding the bridge's structural integrity and wanted the opportunity to have a licensed engineer assess whether there were any structural problems with the existing bridge. Again, the relationship between the State Plaintiffs and Golden Lotus had become so fractured that Golden Lotus was concerned that if their engineer determined that the structural integrity of the existing bridge was compromised, and therefore needed to be removed, that the State would deny a permit for a new bridge. There was much discussion on this issue and a compromise was reached by the parties regarding the bridge issue. As a result, the language in the Order regarding the bridge was carefully crafted, reviewed, revised, edited, and approved by all of the parties. It took over three months for the parties to draft an acceptable Order. The language pertaining to the bridge is quite detailed and reflects the degree of specificity that was warranted, because of the strained relationship between the State Plaintiffs and Golden Lotus. The Order states in paragraph 3 that:

"Subject to and in accordance with the provisions of this Interim Order, Golden Lotus shall remove the private dam it owns and maintains on its property creating the impoundment on the Pigeon River known as the Lansing Club Pond, Corwith Township, Otsego County. The dam removal project will require DNRE permits pursuant to Parts 301, 303, 315, the floodplain portion of Part 31, and Part 305, of the Natural Resources and Environmental Protection Act ("NREPA") and the

rules and regulations promulgated under the NREPA. The DNRE agrees that upon removal of the dam structure, Golden Lotus will be allowed the continued use of the existing bridge or, if the opinion of a Golden Lotus engineer, due to structural concerns with the existing bridge structure, a replacement bridge crossing. Golden Lotus shall apply for and be issued DNRE permits that authorize the construction and placement of a new bridge structure at or near the existing bridge location as long as the replacement bridge crossing is a clear span structure which spans the bankfull channel and has a minimum of five feet clearance between the ordinary high water level and low steel of the bridge and meets the necessary regulatory, engineering, and design requirements. Plaintiffs are willing to support Golden Lotus' application for permit or variance to County zoning authorities under the Natural Rivers Act or otherwise with respect to such bridge authorized by DNRE permits."

The intent of this provision by the State Plaintiffs and Golden Lotus can be summarized as follows: 1) upon removal of the dam, Golden Lotus will be allowed to continue use of the existing bridge; 2) If Golden Lotus engineers determine that the existing bridge is structurally unsound, Golden Lotus will be allowed to have a replacement bridge; 3) If Golden Lotus determines a replacement bridge is necessary, DEQ agrees to process the Golden Lotus permit application for a new bridge; and 4) The parties agreed to the design of the replacement bridge.

Golden Lotus considered this issue to be a "deal breaker" and as a result, required that the language be included not once but twice in the Interim Order. In paragraph 14 of the Interim Order it states, "Golden Lotus shall be entitled to maintain the current bridge." It appears that the Golden Lotus fears were well founded but the interesting twist is that it isn't the State Plaintiffs that are attempting to renege on the agreement, but instead it is the Intervening Plaintiffs. While the State Plaintiffs recognize that it would be advantageous to agree with Intervening Plaintiffs and their "creative" interpretation of the Interim Order, it can not do so since it would be inconsistent with the intent of the parties and in direct violation of this Court's Order to cooperate with each other in good faith to accomplish dam removal in accordance with the provisions of this Order. (Exhibit A - Interim Order, Paragraph 12)

III. Intervening Plaintiffs' allegations that the State Plaintiffs failed to comply, and violated their duties under this Court Order is blatantly false and unsupported by the evidence in this case.

State Plaintiffs have consistently acted in good faith and been in compliance with all of the requirements of this Court's Order. In fact, the State's involvement and commitment to implementing the Order has gone well beyond those requirements. The State Plaintiffs have followed the dam removal planning process described in the Order and included Intervening Plaintiffs in communications and, when appropriate, included them in the decision making process. (Exhibit D - State Plaintiffs' Chronology)

This is not the first occasion where the Intervening Plaintiffs and Bryan Burroughs (as referenced in the Order as "Burroughs") have accused the State Plaintiffs of failing to comply with the Order (Exhibit F - Wuycheck Letter, dated January 21, 2011), nor is it the first time the State has denied these false allegations. As Enforcement Specialist Ronda Wuycheck has previously advised Burroughs, "We respectfully disagree with your interpretation of the Interim Order...the process we have followed to date for this case is in meticulous conformance with the Interim Order. Furthermore, statements by Parties present at the December 8, 2010 status conference represented that progress in this case is in complete conformance with the Interim Order without objection. Your recent assertions simply contradict those statements and the fundamental principles guiding the good faith efforts made to date by all Parties involved. Let me also assure you that the DNRE will painstakingly process and review the permit application to be submitted by Golden Lotus, as required by statute." (Exhibit F - Wuycheck Letter) It is important to note that Intervening Plaintiffs' allegations that the State Plaintiffs failed to comply with the Order is a recent development and was only asserted after the State Plaintiffs disagreed with Intervening Plaintiffs' interpretation of the Order regarding the bridge issue.

A. The State Technical Review Team has Met all of its Obligations under the Interim Order

The State Technical Review Team (Review Team) was established under the Interim Order. The purpose of the Review Team was to conduct the review and approval of the Conceptual Plan for dam removal to be submitted by Golden Lotus. A Conceptual Plan was required by the Order with the express purpose of leading to a permit application. Specifically, the Order requires a Conceptual Plan to be submitted within 30 days following the entry of the Order. (Exhibit A - Interim Order, Paragraph 4) Because the Conceptual Plan was required so soon after entry of the Order, it was not expected to be a complete document outlining all of the information necessary to proceed with dam removal. Furthermore, the Order affirms that the Conceptual Plan was never intended to include "all details and documentation necessary to constitute an administratively complete permit application..." (Exhibit A - Interim Order, Paragraph 4)

On May 3, 2010, a Dam Removal Conceptual Plan was submitted to the Review Team. A meeting was held on May 27, 2010 to discuss the Conceptual Plan and was attended by members of the Review Team, Trout Unlimited, Golden Lotus, Golder Associates, and respective legal staff. During the meeting it was determined that information in the Conceptual Plan would be revised as data was collected and analyzed and, more importantly, this information would eventually morph into a permit application. All parties that attended the May 27, 2010 meeting agreed that Golden Lotus did not need to submit another stand-alone revised Conceptual Plan for review. (Exhibit E – State Chronology; and Exhibit G - Mistak Affidavit)

The Review Team reviewed all of the materials that were submitted to DNRE. When the dam removal Option 1 was selected by Golden Lotus in December of 2010, the Review Team determined that sufficient information existed to allow Golden Lotus to proceed with submission

of a permit application. The information evaluated in making this determination included the Dam Removal Conceptual Plan submitted on May 3, 2010; Revised Field Data Collection Work Plan submitted on June 4, 2010; Interim Drawdown Evaluations and Dam Removal Options Report submitted on October 20, 2010; Technical Memorandum Additional Data and Analysis Addendum submitted on November 15, 2010; Letter of Wade Trim to Schlecte Law Firm, dated November 22, 2010; and Golden Lotus Technical Memorandum Additional Information (Compiled) submitted on December 3, 2010. (Exhibit G – Mistak Affidavit)

On December 15, 2010, a meeting was held in Lansing, the attendees which included the Review Team, Trout Unlimited, Pigeon River Country association, Golden Lotus, Golder Associates and their legal representatives, agreed that existing information on sediment management was adequate and additional information was not needed prior to submission of the permit application. Additionally, as part of the permit application, the attendees recommended against the use of downstream sediment traps; instead requesting that the sediment be removed from in front of the stop logs as needed during the drawdown process and inclusion of a provision to evaluate the need for bank grading after the drawdown was complete. (Exhibit G – Mistak Affidavit)

At the conclusion of the December 15, 2010 meeting the Review Team's obligations under the Interim Order had been completed and their participation in the dam removal process was concluded. The review of materials took place over an 8 month period and involved numerous phone conversations, email communications and face to face meetings with representatives of the Review Team, Trout Unlimited, Pigeon River Country Association, Golden Lotus, Golder Associates and respective legal representatives. (Exhibit E – State Chronology; and Exhibit G – Mistak Affidavit)

B. Since the State Technical Review Team's Collective Education, Experience and Expertise far exceed that of Bryan Burroughs, it was never the State Plaintiffs' Intent to Rely on him as one of their Experts or as an Official Member of their team.

The Intervening Plaintiffs claim that Burroughs is a dam removal expert and while he may be Intervening Plaintiffs' expert, he is not the State Plaintiffs' expert. In addition, Burroughs is not a member of the State Technical Review Team. The State Plaintiffs' intent in creating this team is quite clear by its title alone. The Review Team was always intended to be composed of the State Plaintiffs' dam removal experts. This is clearly evidenced in the Order since the Review Team and Burroughs are referred to separately. (Exhibit A - Interim Order, Paragraphs 4 and 5) The Order specifically requires the Review Team and Burroughs to promptly review the Conceptual Plan. (Exhibit A - Interim Order, Paragraph 5)

The Intervening Plaintiffs appear to misinterpret this provision in the Order, as Burroughs misstates in a recent e-mail, "Section 4 of the Interim Order defines the composition of the "State Technical Review Team," and explicitly lists the Intervening Plaintiffs as part of it myself being one of them." (Exhibit 3, Intervening Plaintiffs' Motion) This conclusion misstates the intent of the Order and Burroughs' role in the process. As stated in the Order, Burroughs' role was to assist Golden Lotus in the preparation of their permit application for dam removal. (Exhibit A - Interim Order, Paragraph 5) The Interim Order does not require Burroughs to be a member of or a decision maker on the Review Team.

An important aspect of the Order was the formation of the Review Team. As established under the Order, the State created the Review Team, which is comprised of seven members and includes some of the State's most experienced experts in dam removal projects. All of the members are employed by the State and have extensive backgrounds and occupational expertise in dam removal projects. (Exhibits C, D, G, H, I and J – Affidavits of Borgeson, Freiburger,

Mistak, Pawloski, Larsen and Wuycheck respectively) The Review Team's collective education, technical experience and expertise cover a wide range of areas including the effects of dam removal on fisheries, dam removal, sedimentation, water quality, dam safety engineering, hydraulic engineering, stream protection and stream restoration. Since the Review Team's qualifications were far more extensive than Burroughs', it was never the State Plaintiffs' intent to rely on him as an expert or include him as an official member of the Review Team.

C. The Interim Order did not require the State Plaintiffs to Confer or Collaborate with Intervening Plaintiffs with the dam removal permit application process.

The Interim Order clearly states that Golden Lotus shall provide to the DNRE all additional information that the DNRE has determined to be necessary for submission and review of an administratively complete application for dam removal. The State Plaintiffs never authorized or delegated any of the State's regulatory authority as related to the processing and review of the Golden Lotus application for permit. The State Plaintiffs have fully complied with the requirements in the Order for collaborating with all Parties. (Exhibit I - Larsen Affidavit)

The Intervening Plaintiffs seem to be under the mistaken impression that the State Plaintiffs were required to delegate its regulatory authority to Burroughs. The Intervening Plaintiffs mistakenly argue that Burroughs was required to be an integral participant in all aspects of the dam removal process. The Order requires the State Plaintiffs to cooperate with the parties in good faith to accomplish dam removal, but it does not require, nor was it ever the State Plaintiffs' intent, to delegate its regulatory authority to the Intervening Plaintiffs. As the Order provides, and as Golden Lotus and the State Plaintiffs intended, Burroughs' role was to assist Golden Lotus in the dam removal process. (Exhibit A - Interim Order, Paragraph 5) And while the State Plaintiffs, acting in good faith, conferred and collaborated with Intervening Plaintiffs, it

was not obligated to include the Intervening Plaintiffs in its regulatory decision making process.

(Exhibit I – Larsen Affidavit)

D. Intervening Plaintiffs' false claim that Golden Lotus and the State Plaintiffs have violated this Court's Order by purposely excluding the Intervening Plaintiffs and Burroughs from the Dam Removal process is ludicrous and not supported by the Record.

As evidenced in the chronology and Affidavits, the State Plaintiffs were in constant communication with the Intervening Plaintiffs during every aspect of the dam removal process outlined in the Order. (Exhibits C, D, E, G, H, I, J – Borgeson Affidavit, Freiburger Affidavit, Chronology, Mistak Affidavit, Pawloski Affidavit, Larsen Affidavit and Wuycheck Affidavit respectively) Here is how Golden Lotus' attorney, Mr. Schlecte, recently described the cooperation of the Parties during the dam removal process (Exhibit K – Court Transcript):

"Your Honor, this has been the most unusual piece of litigation I've ever been involved in, in my 38 years of practice, because it is unbelievably collaborative. Since the Interim Order was entered on April 5th or 6th we have been in constant dialog, communication and meetings with the DNRE technical team that's been assigned to assist in the implementation on the interim order.... It has been an unbelievably collaborative process."

Not only was this description of the process not refuted by Intervening Plaintiffs' attorney, Mr. Gustafson, but as the transcripts clearly establish, he agreed with this "characterization" (Exhibit K – Court Transcript) and when the Court asked during the status conference what type of timeline the parties would anticipate as to resolution to the actual lawsuit, Golden Lotus attorney, Mr. Schlecte, stated that,

"I would be shocked to do anything in this lawsuit other than have a Consent Judgment entered pursuant to the Interim Order. I would be flabbergasted if there is any other action here."

Intervening Plaintiffs agreed with Golden Lotus' representation to the Court. (Exhibit K – Court Transcript)

E. Not only have the State Plaintiffs complied with the requirements set forth in the Order, their involvement in the Pigeon River Restoration project has gone well beyond those requirements.

On December 15, 2010, the Parties discussed and committed to the development of Phase II Pigeon River Total River Restoration Project. Since that date, Golden Lotus, the State Plaintiffs, and nonprofit organizations have participated in the initial development of the Phase II project. Once the work has been completed in Phase I, the partnerships formed between the State, Golden Lotus and the non-profit organizations will allow for further improvement to the river system and for the unimpeded aquatic organism passage proposed under the Phase II. The Intervening Plaintiffs, while expressing an interest in Phase II, have yet to participate in this process.

Conclusion

The Intervening Plaintiffs' Motion to Clarify and Enforce the Court's Interim Order is unwarranted and therefore, should be denied. The State Plaintiffs have fully complied with the Interim Order and vehemently object to any delay in the dam removal permitting process or the removal of the Golden Lotus dam.

Respectfully submitted,

Bill Schuette
Attorney General



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Assistant Attorney General
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Dated: 4-28-11

Index to Exhibits

**State Plaintiffs' Response to Intervening Plaintiffs'
Supplemental Motion to Clarify and
Enforce Interim Order**

Exhibit A	Interim Order
Exhibit B	E-mail from Dr. Bryan Burroughs
Exhibit C	Affidavit and Resume of David J. Borgeson
Exhibit D	Affidavit and Resume of Chris E. Freiburger
Exhibit E	State Plaintiffs' Chronology
Exhibit F	Letter from Ronda Wuycheck to Dr. Bryan Burroughs, dated January 21, 2011
Exhibit G	Affidavit and Resume of Jessica Mistak
Exhibit H	Affidavit and Resume of James T. Pawloski, P.E.
Exhibit I	Affidavit and Resume of William C. Larsen
Exhibit J	Affidavit of Ronda E. Wuycheck
Exhibit K	Court Transcript, Status Conference, December 8, 2010

EXHIBIT A

Interim
Order

EXHIBIT B

Stevenson, Pamela (AG)

From: Bryan Burroughs <bryanburroughs@michigantu.org>
Sent: Wednesday, April 07, 2010 12:26 PM
To: Manning, Peter (AG); Stevenson, Pamela (AG)
Subject: Pigeon River Dam failure case

Peter & Pam,

I just wanted to take a quick opportunity to make sure I express my (and TU's) gratitude for your work on the Pigeon River case. I think you went above and beyond the call of duty to accomplish the agreement. I know it was difficult and tenuous. I know it took a lot of time and resources (and I know there is still much work). The agreement that was reached is a huge benefit to the Pigeon River, and corrects persistent damage to the resource that has been in place for a century. Past attempts to try to remove this dam failed. You helped ensure that the leverage provided this time around was capitalized on. People all across the state, that hold the Pigeon River Country dear to their hearts, perceive this as a "historic" conservation event, and are smiling that it seems "almost too good to be true".

Thank you for your skill and effort in making this happen. We are deeply appreciative.

Sincerely,

Bryan

Dr. Bryan Burroughs
Executive Director
Michigan Trout Unlimited
P.O. Box 442, Dewitt, MI 48820-8820
517-599-5238
bryanburroughs@michigantu.org
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EXHIBIT C

STATE OF MICHIGAN
IN THE 46TH JUDICIAL CIRCUIT
COUNTY OF OTSEGO

MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY,
and STEVEN E. CHESTER,
Director of the Michigan
Department of Environmental Quality,

No. 09-12933-CE (M)

Honorable Dennis F. Murphy

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and REBECCA HUMPHRIES,
Director of the Michigan
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AFFIDAVIT OF DAVID J. BORGESON

I, DAVID J. BORGESON, being first duly sworn, affirmatively state that if sworn as a witness, can testify competently based on personal knowledge to the following facts:

1. I am employed by the State of Michigan and have worked for the Michigan Department of Natural Resources (MDNR) since February of 1987.
2. I received a Bachelor's of Science in Fisheries and Wildlife from the Michigan State University in 1984. Additionally, I received a Master's in Fisheries and Wildlife from Michigan State University in 1990.
3. I currently work as the supervisor for the Fisheries Division unit based at the Gaylord Operations Service Center located at 1732 M.32 West, Gaylord, Michigan and have done so since August of 2000.
4. In this position, I supervise the Northern Lake Huron Management Unit which includes three biologists, one technician supervisor and three technicians whose general duties encompass all fisheries management activities in a multi-county area that includes all watersheds tributary to Lake Huron from the St. Marys River to the Au Sable River, inclusive, for the purpose of planning and implementing activities to assess, improve, and protect fisheries and aquatic resources.
5. In this position, and as a fisheries biologist, I regularly either directly provide, or oversee staff that provides the DEQ with comments regarding permit applications that have the potential to impact the aquatic environment. Included in this wide variety of possible permit applications are proposals for: wetland alterations; dredge and fill applications; dock and marina construction; shoreline modification; stream crossing modifications; gas, oil, and mineral exploration activities; and dam and barrier construction,

modification, and removal. Regarding my specific experience related to dam, barrier and impoundment projects; my unit and I have represented fisheries concerns for a number of projects including:

- a. Hardwood Creek road crossing modification. This road crossing caused an impounding of Hardwood Creek which increased the temperature to a tributary to the Black River. The road crossing was modified to lower the channel at the crossing to remove the impounding affect.
- b. Potagannissing Dam modification. The dam at this wildlife flooding was modified using a series of rock steps to improve fish passage to the watershed above the dam.
- c. Grayling Mill Pond Dam modification. This dam on the Au Sable River was lowered greatly reduce the area impounded and better approximate a riverine system, and was modified to incorporate fish passage via installation of a rock ramp.
- d. Chandler Dam removal. The remnants of an old dam on the Black River were removed to allow the stream to perform natural stream functions without the constraints the remaining dam sill imposed.
- e. Miller Creek Dam removal. Our unit was involved in the removal of this dam belonging to a private landowner on a tributary of the Thunder Bay River.
- f. Hydropower dam operations in general. I am regularly consulted when hydropower companies request partial drawdowns for maintenance purposes. Our unit coordinated with Consumers Energy during the Mio Dam drawdown to have habitat structures placed in the impoundment. I have participated in the ongoing effort to work with Consumers to improve flow conditions below Foote Dam.

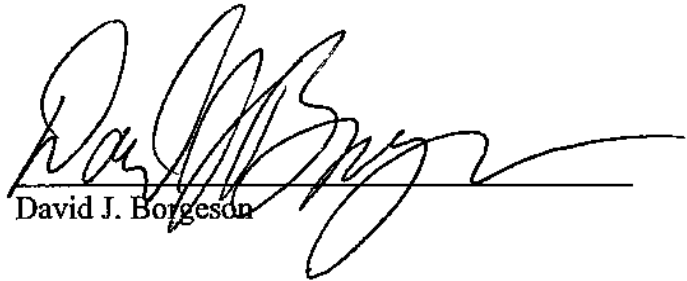
Our unit has worked with Tower Kleber Limited Partnership over the years to improve flows for the sturgeon that spawn below Kleber Dam, and have worked with them to mitigate the impacts of dam operations by having them construct a sturgeon hatchery on their property.

6. It is my understanding that the State of Michigan filed Compliant No. 09-12933-CE(m) on February 17, 2009 in the County of Otsego to seek resolution stemming from the June 2008 illegal discharges of sediment laden water from the Golden Lotus, Incorporated (GLI)-owned Song of the Morning (SOM) dam to the Pigeon River.
7. As part of my work, I actively participated in the December 21, 2009, mediation meeting held in Lansing, Michigan to [seek resolution OR move towards settlement] of the Michigan Department of Environmental Quality, et al. v Golden Lotus, et al. Case No. 09-12933-CE(m). In seeking resolution, the parties agreed to enter into an Interim Order to seek relief requested in the litigation case.
8. As part of my work, I was actively involved in the negotiations and drafting of the terms and conditions of the Interim Order.
9. As part of my work, I actively participated in the State Technical Committee formed via the Interim Order. The purpose of the State Technical Review Team for review and approval of the Conceptual Plan for dam removal to be submitted by the Defendants.
10. It is my understanding that the Interim Order defines the requirements and purpose of a Conceptual Plan for dam removal.
11. It my understanding and recollection, based on mediation and subsequent meetings with the Defendant, that the State agreed in the Interim Order that upon dam removal, GLI would be allowed to maintain the existing bridge located at the SOM Ranch if deemed to be structurally sound.

12. Based on my working knowledge of fisheries, it is in my professional opinion that the Pigeon River fisheries will be improved by the removal of the dam structures that are identified in the Part 301 dam removal permit, drawing down the SOM impoundment, thus eliminating future threat of unnatural releases of sediment laden water to the Pigeon River. Removing these structures will result in more natural flow conditions for the Pigeon River, and greatly reduce summer warming of the river previously observed due to the impounding of water.

13. I make this affidavit based upon personal knowledge of these facts, and, if called as a witness, I am competent to so testify.

FURTHER AFFIANT SAYETH NOT


David J. Borgeson

Subscribed and sworn to me this
27th day of April, 2011.

Loretta A. Cwalinski

Notary Public
Ingham County, Michigan
My commission expires:

LORETTA A. CWALINSKI
NOTARY PUBLIC, STATE OF MI
COUNTY OF OTSEGO
MY COMMISSION EXPIRES Jul 2, 2015
ACTING IN COUNTY OF *Otsego*

David J. Borgeson
Department of Natural Resources
1732 M-32 West
Gaylord, Michigan 49735

EDUCATION

Master of Science Degree, Fisheries and Wildlife.
Michigan State University, East Lansing, Michigan.
June 1990

Coursework included:

- Statistics
- Fish Population Dynamics, Fisheries Communities and Aquatic Ecology, Fish Culture
- Dynamics of Biological Populations
- Applied Limnology
- Advanced Topics Fish Parasitology
- Fisheries Management and Ecological Seminars
- Human Dimensions of Fish and Wildlife management

Thesis: Age and Growth of Saginaw Bay Walleye with Observations on Population Size and Trap Net Mortality

Bachelor of Science, Fisheries and Wildlife,
Michigan State University, East Lansing, Michigan.
June 1984

Coursework included:

- General Biology, Chemistry, Organic Chemistry
- Geology, Soil science
- Animal Ecology, Biometry, Upland Wildlife
- Limnology, Limnological Methods
- Aquatic Insects, Entomology
- Wetland Ecosystems, Plant Ecology, Physiological Ecology, Marine Ecology and Physiology, Ecosystem Processes
- Fisheries Biology and Management, Ichthyology, Genetics

WORK HISTORY

Natural Resource Manager 3, Michigan Department of Natural Resources, Fisheries Division, Gaylord Office.

8/00 to present

- Supervise Northern Lake Huron Management Unit, including supervision of three biologists and one technician supervisor. Oversee all fisheries management activity within the unit.
- Responsible for protection and management of fisheries resources in multi-county area of the state.
- Plan and implement specific activities to improve and protect fisheries, coordinating with other DNR divisions and agencies.
- Oversee planning of lake and stream population and habitat assessments

David J. Borgeson
Department of Natural Resources
1732 M-32 West
Gaylord, Michigan 49735

WORK HISTORY (cont.) Continuing Education Courses:

- Natural Resources Leadership Academy
- Citizen Participation by Objective
- Supervisor Academy Series

Fisheries Management Biologist P11, Michigan Department of Natural Resources, Fisheries Division, Gaylord Office.

10/93 to 12/99

- Prioritized, planned and executed surveys to assess biological conditions of waters within the management unit, coordinated collection of pertinent biological information and measurement of important habitat parameters.
- Developed and implemented management plans for managed waters in the Northern Lower Peninsula, based on biological assessment of those waters.
- Serve as management unit or division representative in multi-agency work groups.
- Worked with public to inform and educate them as to Fisheries Division's programs and priorities, and worked with them to build partnerships to increase management effectiveness.
- Served on Department's Eco-Unit Design Team, planning the current department internal structure to assure implementation of ecosystem management
- Reviewed and commented on environmental permit applications, assessed potential impacts on aquatic community
- Assessed resource damaging events and proposed mitigation measures
- Served as member of Best Management Practices review panel for Northern lower peninsula sites, concentrating on appropriate use of soil erosion control measures by foresters
- Member of Stocking Evaluation Committee, developed appropriate measures of stocking success
- Served on Resource Inventory Planning Committee, which designed new status and trends lake and stream sampling protocol

Continuing Education Courses:

- Michigan Fluvial Geomorphology & Hydrology
- Fluvial Processes in Stream Management
- Soil Erosion and Sedimentation Control

David J. Borgeson
Department of Natural Resources
1732 M-32 West
Gaylord, Michigan 49735

WORK HISTORY (cont.)

Acting Natural Resource Manager 14, Unit Manager,
Northern Lake Huron Management Unit, Michigan
Department of Natural Resources, Fisheries Division.
12/99 to 8/00, and 8/98 to 10/98

- Manage Northern Lake Huron Fisheries Unit programs and personnel.

Acting Natural Rivers Administrator 12, Michigan
Department of Natural Resources, Fisheries Division,
Gaylord Office.
1/98 to 1/99

- Administered Natural Rivers Zoning Program for six Designated Natural Rivers in the Northern Lower Peninsula.
- Reviewed applications for construction within Natural River Zone, determining if plans complied with the zoning plan, or if a variance from the review board was required.
- Organized and presided over public meetings of the Zoning Review Board and provided technical support to the Board to assist them when reviewing variance requests.
- Explained ecological importance of Natural River Zone to riparians and interested public.

Fisheries Technician E10, Michigan Department of
Natural Resources, Rose Lake and Grand Rapids
Offices.

2/87 to 9/93

- Collected and prepared fisheries survey data for analysis. Surveys included fish populations, habitat descriptions, notes on forage and invertebrate communities.
- Actively managed unit's lakes and streams using a wide variety of standard techniques.

Teaching Assistant, Michigan State University.

Winter terms 1986, 1985

- Lectured on various topics for Limnological Methods course. Set up and assisted in laboratory exercises, graded papers, and assisted students as needed during open consultation sessions held weekly.

David J. Borgeson
Department of Natural Resources
1732 M-32 West
Gaylord, Michigan 49735

WORK HISTORY (cont.)

Deck Hand and Commercial Fish House Worker,
Bay Port Fish Company, Bay Port, Michigan.
6/85 to 9/85 and 6/84 to 9/84

- Assisted commercial fishing operation while collecting data for Master of Science Degree.

Student Intern, Michigan State University.
6/83 to 9/83

- Collected, processed data for St. Marys River Winter Navigation Study, designed to assess potential impacts of winter navigation on the biological communities of the St. Marys River. Included adult and larval fish sampling, limnological sampling

Temporary Worker, Michigan Department of Natural Resources, Fisheries Division.
Summers 1982, 1981, 1980

- Built stream improvement structures for Fisheries Division on White River and the North Branch of the Au Sable River. Purpose was to provide increase in available cover habitat for wild trout, and reduce erosion along the stream corridor

EXHIBIT D

STATE OF MICHIGAN
IN THE 46TH JUDICIAL CIRCUIT
COUNTY OF OTSEGO

MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY,
and STEVEN E. CHESTER,
Director of the Michigan
Department of Environmental Quality,

No. 09-12933-CE (M)

Honorable Dennis F. Murphy

MICHIGAN DEPARTMENT OF
NATURAL RESOURCES
and REBECCA HUMPHRIES,
Director of the Michigan
Department of Natural Resources

Plaintiffs,

and

MICHIGAN CHAPTER TROUT UNLIMITED
and PIGEON RIVER COUNTRY ASSN.,

Intervening Plaintiffs

v

Golden Lotus, Incorporated

Defendant.

Pamela J. Stevenson (P40373)
Assistant Attorney General
Environment, Natural Resources
and Agriculture Division
P.O. Box 30755
Lansing, MI 48909
(517) 373-7540

William M. Schlecte (P19991)
Schlecte Law Firm, P.C.
Attorneys for Defendant
116 N. Fourth Avenue, Suite 100
Ann Arbor, MI 48104
(734) 302-1050

Peter L. Gustafson (P24621)
Warner Norcross & Judd, LLP
Attorneys for Intervening Plaintiffs
900 Fifth Third Center, 111 Lyon, NW
Grand Rapids, MI 49503-2487
(616) 752-2000

AFFIDAVIT OF CHRIS FREIBURGER

I, CHRIS FREIBURGER, being first duly sworn, affirmatively state that if sworn as a witness, can testify competently based on personal knowledge to the following facts:

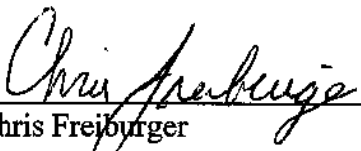
1. I am employed by the State of Michigan and have worked for the Michigan Department of Natural Resources (MDNR) since February 1999. Prior to this I was employed by the Minnesota Department of Natural Resources as a Fisheries Specialist from 1992-1994 and then as Watershed Coordinator from 1994 through 1998.
2. I received a Bachelor of Science in Aquatic Biology and Natural Resources from Ball State University in 1989. Additionally, I received a Masters in Wildlife and Fisheries Science with a Fisheries Option from South Dakota State University in 1992.
3. I currently work as the supervisor for the Environmental Assessment Sub-Unit within the Habitat Management Unit of Fisheries Division since February 2003.
4. In this position, I oversee and direct staff which implement compliance monitoring and provide enforcement support for licensed hydropower operations and 316 a. and b. of Federal Clean Water Act. Also, I review and comment on stream protection and restoration studies, species management plans or other projects required by the license.
5. Further, I review projects and provide planning and design support for stream restoration projects, culvert construction, and dam and fish passage projects for Fisheries Division. Stream habitat improvement proposals generated by Division staff are evaluated against existing agency policies and procedures and assessment methods are reviewed to evaluate the success and stability of the project. Also provide training to staff within the Michigan Department of Environmental Quality and Natural Resources on geomorphology related issues.

6. I have been heavily involved in river related issues throughout the state. Co-founded and organized the Michigan Stream Team which has advanced river science related issues, in particular, the development of regional reference curves, fish passage, stream restoration and offering training courses. I have organized and taught multiple courses and workshops in geomorphology and culvert design and placement throughout Michigan. I have surveyed, designed and actively been involved in over a dozen dam removals throughout the state as well as multiple stream restoration projects. I have been actively involved with assisting other agencies and conservation organizations in reviewing permits and providing technical assistance on geomorphology, rehabilitation and restoration efforts.
7. It is my understanding that the State of Michigan filed Compliant No. 09-12933-CE(m) on February 17, 2009 in the County of Otsego to seek resolution stemming from the June 2008 illegal discharges of sediment laden water from the Golden Lotus, Incorporated (GLI)-owned Song of the Morning (SOM) dam to the Pigeon River.
8. As part of my work, I actively participated in the State Technical Review Team formed via the Interim Order. The purpose of the State Technical Review Team was to conduct the review and approval of the Conceptual Plan for dam removal to be submitted by the Defendants.
9. It is my understanding that the Interim Order defines the requirements and purpose of a Conceptual Plan for dam removal.
10. It is my understanding that a permit application has been prepared and submitted to remove the existing gates and turbines from the Golden Lotus dam. The removal of these portions of the dam will benefit the Pigeon River and the aquatic community greatly.

Fisheries Division has had substantial concerns with increased water temperatures and peaking operation of the Golden Lotus dam for well over fifteen years.

11. Fisheries Division filed comments with the Federal Energy Regulatory Commission (FERC) in 2005 requesting that the Golden Lotus dam be regulated under FERC jurisdiction. The FERC denied this request. The primary purpose of our request was so that negotiations could occur so that the project would be operated as a run of river facility. Removal of the gates and turbines would eliminate the potential to peak at the project and would also make the facility run of river. Further temperature issues would also be resolved as a result of gate removal. These two items alone would greatly improve the health of the Pigeon River system.
12. Removal of the gates and turbines, as proposed, allows us the unique opportunity to improve the health of this river system and associated biotic community. Once this work is completed the partnerships formed as a result of this effort will allow us to further improve the river by relaxing human constraints and restoring natural function to the river system and for unimpeded aquatic organism passage proposed for Phase II.
13. I make this affidavit based upon personal knowledge of these facts, and, if called as a witness, I am competent to so testify.

FURTHER AFFIANT SAYETH NOT


Chris Freiburger

Subscribed and sworn to me this
27 day of April, 2011.

Wendy Shuster Wendy Shuster

Notary Public Shiawassee County
Ingham County, Michigan, Acting in Ingham
My commission expires:

10/19/2014

Mr. Chris Edward Freiburger
1116 West Broadway Highway
Charlotte, MI 48813
517-373-6644 (Work)
Email: freiburg@michigan.gov

WORK EXPERIENCE:

Michigan Department of Natural Resources
530 West Allegan Street
Lansing, MI 48909

Dates Employed: 02/2003-Present
Hours per Week: 40

Supervisor of the Federal Energy Regulatory Commission Unit
Administer the hydropower dam relicensing program to protect aquatic habitat and mitigate for adverse environmental and recreational impacts by participating as a resource agency in hydropower relicensing proceedings under the jurisdiction of the Federal Energy Regulatory Commission (FERC). Elements of the program include environmental impact assessment, instream flow methodology, fish passage, fish protection, habitat rehabilitation, mitigation and compliance monitoring. Oversee the Habitat Improvement Account grant program and serve on steering committees established by hydropower license agreements to implement agreement provisions and resolve disputes. Assist in developing/refining policies, position statements and procedures for the Division under the discretion of the Chief. Review proposed legislation affecting hydropower industry and stream resources. Represent Division on all Farm Bill programs. Monitor program budgets, supervise employees.

Direct and supervise the Michigan Department of Natural Resources (MDNR) involvement in all issues related to 316 a and b of the Federal Clean Water Act throughout Michigan. Job responsibilities include planning, investigating, conducting and evaluating thermal, entrainment and impingement studies requesting detailed studies to determine impacts intakes will have on the biotic community and negotiating for protection, mitigation and restoration of public trust resources. Direct the analysis and comment on rules developed by the U.S. Environmental Protection Agency as it relates to Section 316 a and b.

Design, implement and provide technical expertise on dam removals and fish passage techniques associated with dams and culverts and natural channel design of rivers and streams for the Department. Participate in other aquatic habitat protection or restoration initiatives at the direction of the Unit Supervisor or Division Chief. (Supervisor's Name: Mr. Steve Sutton. Phone: (517) 373-1280.)

Michigan Department of Natural Resources
530 West Allegan Street
Lansing, MI 48909

Dates Employed: 02/1999-02/2003
Hours per Week: 40

Federal Energy Regulatory Commission Coordinator

Supervise the FERC hydroelectric dam licensing process in the southern lower peninsula of Michigan and select upper peninsula projects by planning and investigating data needs to fully evaluate impacts hydro operations have on aquatic systems through study proposal analysis, conducting and participating in data collection such as IFIM and geomorphometry studies, reviewing and developing study reports and other technical documents, recommending license requirements to protect and rehabilitate aquatic environments and mitigation for negative impacts.

Consult on state and federal listed endangered and threatened species. Coordinate with diverse federal, tribal, multi-state, local government units and citizens in the licensing process. Direct and disseminate MDNR views and positions utilizing public meetings, written and oral responses and reports for all phases of the licensing process. Responsible for garnering, organizing, educating and coordinating citizen groups on the FERC licensing process and resource issues so that they may serve as a foundation of our support during the licensing process.

Investigate compliance (USGS gages, establishing and conducting stream flow measurements, developing rating curves and analyzing discharge relationships, surveying and analysis of geomorphic changes, installation of dataloggers below projects to determine flow requirements, installation of temperature sensors, dissolved oxygen meters above and below projects, inspect for impingement and entrainment of fish on trashracks during times with increased fish migration, spot visits at projects to inspect maintenance of recreational requirements, development of dam database to assure that licensee's fulfill license requirements timely, maintain habitat requirements for state and federally listed ESA species as required in the conservation plan) of FERC licensee's and the laws and regulations of the State of Michigan and initiate enforcement action.

Direct and supervise the MDNR involvement in all issues related to 316 a and b of the Federal Clean Water Act throughout Michigan. Job responsibilities include planning, investigating, conducting and evaluating thermal, entrainment and impingement studies requesting detailed studies to determine impacts intakes will have on the biotic community and negotiating for protection, mitigation and restoration of public trust resources. Direct the analysis and comment on rules developed by the U.S. Environmental Protection Agency as it relates to Section 316 a and b. (Supervisor's Name: Dr. Kurt Newman. Phone: (517) 373-1280.)

Minnesota Land Trust
2356 University Avenue West
Suite 400
St. Paul, MN 55144

Dates Employed: 01/1996-02/1999
Hours per Week: 10

Chair of the Grand Rapids Chapter of the Minnesota Land Trust
Initiated, developed and chaired the Grand Rapids Chapter of the Minnesota Land Trust in northern Minnesota to work and develop partnerships with socially and ethnically diverse interest groups consisting of federal, state, tribal, local units of government, citizen groups and private citizens to promote the use of conservation easements or the purchase of property in fee simple.

Our mission was to work with private, corporate and government landowners by providing the necessary expertise and tools to apply conservation easements on their properties into perpetuity. Easements which were held by the Minnesota Land Trust were inspected on an annual basis to confirm compliance and manage the property for specific habitat. Supervised additional management on these properties to eliminate or control exotic species, maintain federal and state listed threatened endangered species and their associated habitat. (Supervisor's Name: Renay Leone. Phone: (651) 647-9590.)

Minnesota Department of Natural Resources
117 Second Street
Aitkin, MN 56431

Dates Employed: 10/1993-02/1999
Hours per Week: 40

Watershed Basin Coordinator

Direct the Big Sandy Area Lakes Landscape Management Project (BSALLMP) and guide the development of a comprehensive watershed management plan involving federal, state, local governments, private organizations and citizens. The BSALLMP served as a pilot Ecosystem Based Management project for the MDNR. Managed two citizen committees and supervised a technical committee on all aspects of adaptive management, established and conducted automated hydrology monitoring and nutrient sampling program. Analyzed nutrient loading using computer modeling (BATHTUB), coordinated and conducted baseline inventory of plant and animal species inhabiting the watershed with Nature Conservancy and Minnesota Natural Features Inventory.

Initiated, organized and conducted education of watershed users on Ecosystem Based Management through public meetings, newsletters, video development and electronic media. Responsible for all phases of grant writing, report writing, negotiation of land purchases, financial recording and auditing of grants. Prepared and presented written and oral briefings to Department Administration and the State Legislator. (Supervisor's Name: Mr. Kit Nelson. Phone: (218) 927-3751.)

**Minnesota Department of Natural Resources
1201 East Highway 2
Grand Rapids, MN 55744**

**Dates Employed: 01/1992-10/1993
Hours per Week: 40**

Fisheries Specialist

Lead worker for the Grand Rapids Area Fisheries Office which directed, planned and managed its fisheries management program for optimal and sustained use of the fisheries resource. Fish management efforts focused primarily on rivers and streams and cold water lakes. Assisted in scheduling of personnel who conducted fish and plant management investigations, habitat improvement projects including preservation, restoration, enhancement and maintenance.

Served as environmental review coordinator and conducted evaluations of the Aquatic Plant Management Program, developments, utilities crossings and timber and mine road crossings as well as timber sales and peat and iron mine development. Supervised walleye and white sucker hatchery operations, conducted equipment maintenance, net building and served on various committees to improve the statewide sampling program and development of annual work plans. (Supervisor's Name: Mr. Dennis Anderson. Phone: (218) 327-4415.)

**South Dakota State University
Cooperative Fish and Wildlife Research Unit
Box 2140B
Brookings, SD 57007**

**Dates Employed: 08/1989-01/1992
Hours per Week: 40**

Graduate Research Assistant

Developed and conducted research on the bioenergetics of rainbow smelt in the Missouri River using computer modeling. Responsible for all phases of research design, field work, data analysis, report writing, publications and oral presentations. Specific duties included maintenance of research vehicles and equipment, supervision of three graduate research assistants and two research technicians; sampling of rainbow smelt at various life stages using gill nets, trap nets seines, trawls; determination of rainbow smelt digestion rates at various temperatures, caloric densities, and diet composition; identification of benthic organisms and zooplankton for abundance estimates, obtaining water samples and conducting analysis for productivity and sedimentation rates; used computerized water quality monitoring equipment to collect data, analysis of data using computer software including graphics (Harvard Graphics), statistical packages (SAS), word processing (WordPerfect) and digitizing applications.

Engaged in consultations concerning the Missouri River Master Plan and the operation of the dams and the impacts change of operation would have on the barge industry, recreation, flood control and endangered species, specifically the pallid sturgeon and piping plover. (Supervisor's Name: Dr. Walter Duffy. Phone: (707) 826-5644.)

**Indiana Department of Natural Resources
5570 North Fish Hatchery Road
Columbia City, IN 46725**

**Dates Employed: 06/1989-08/1989
Hours per Week: 40**

Fisheries Biologist Aide

Assisted research and district fisheries biologists with conducting a fisheries survey of the Wabash River with trap nets, boat, barge, backpack electrofishing gear; identified and controlled aquatic macrophytes and algae; estimated aquatic macrophyte abundance to determine grass carp effects; conducted stream habitat improvement projects; worked within hatchery maintaining tanks and chemically treated ponds and tanks for disease and virus, transported and stocked fish; conducted fish age and growth analysis, conducted public meeting and television interviews; maintained sampling equipment and vehicles. (Supervisor's Name: Mr. Edward Braun. Phone: (260) 691-3181.)

**United States Forest Service
334 Fourth Street
Seward, AK 99664**

**Dates Employed: 06/1988-08/1988
Hours per Week: 40**

Fisheries Technician

Supervised stream classification and documented pre-structure morphometry of Six-Mile Creek; constructed habitat improvement structures; sampled juvenile king, coho, and sockeye salmon; analyzed maps with planimeter; developed instructional manual on habitat improvement structure construction, wrote study results and management recommendations for habitat improvement structures in Six Mile Creek tributaries; assisted in gill net operation for adult king and coho salmon to determine return; built and maintained smolt weirs; enumerated smolt outmigration; transported and stocked trout by backpack; surveyed high country lake fish populations; conducted aerial surveys for mountain goats. (Supervisor's Name: Mr. Daniel Logan. Phone: (907) 424-7661.)

**Indiana Department of Natural Resources
5570 North Fish Hatchery Road
Columbia City, IN 46725**

**Dates Employed: 06/1987-08/1987
Hours per Week: 40**

Fisheries Biologist Aide

Assisted district fisheries biologists with standardized lake and stream fish population surveys using experimental gill nets, trap nets, seines, rotenone, boat, barge, backpack electrofishing gear, and conducted creel surveys; chemically renovated lakes; identified and controlled aquatic macrophytes and algae; transported and stocked fish; conducted fish age and growth analysis, developed lake and stream management plan; conducted public meeting and television interviews; maintained sampling equipment and vehicles. (Supervisor's Name: Mr. Jed Pearson. Phone: (260) 691-3181.)

EDUCATION:

South Dakota State University
Brookings, SD 57007
M.S., 1992
Major: Wildlife and Fisheries Science
Minor: Statistics
GPA: 3.86 out of 4.0

Ball State University
Muncie, IN 47306
B.S., 1989
Major: Biology, Aquatic Option
Minor: Natural Resources
GPA: 3.45 out of 4.0

Indiana University
Bloomington, IN 47405
Transferred Credits, 1989
Major: Biology
GPA: 4.0 out of 4.0

Bishop Dwenger High School
Fort Wayne, IN 46825
1985

JOB-RELATED TRAINING COURSES:

Soil Erosion and Sedimentation Control Training, 2006
HEC-RAS Computer Flow Modeling, 2005
USFS Aquatic Organism Passage, 2004
Expert Witness, 2004
Supervisor Academy Series, 2003
Natural Channel Design and River Restoration, 2002
Planning Accessible Outdoor Environments and Interpretive Opportunities, 2001
Using Arcview GIS in the DNR, 2001
River Assessment and Monitoring, 2001
River Morphology and Application, 2000
Applied Fluvial Geomorphology, 1999
Introduction to ArcView GIS, 1999
Using the Computer Based Physical Habitat Simulation System (IF 310), 1999
Instream Flow Incremental Habitat Sampling Techniques (IF305), 1999
Theory and Concepts of the Instream Flow Incremental Methodology (IF 250), 1999
Instream Flow Incremental Methodology (IF100), 1999
Fluvial Process and Stream Habitat Management, 1994
Leadership Development Academy, 1993
Aquatic Pesticide Applicator Training, 1992
Electrofishing Training, 1992
Creating Satisfied Customers, 1992

JOB-RELATED SKILLS:

Electrofishing Training, Minnesota Department of Natural Resources
Trained for outboard motor use, power tools and rifle use by the United States Forest Service.
Trained by Minnesota Department of Natural Resources in outboard motor repair.

JOB-RELATED CERTIFICATES AND LICENSES:

Soil Erosion and Sedimentation Control Officer

Michigan Drivers License

Basic Firefighting and ICS-220

American Red Cross/CPR and First Aide

JOB-RELATED HONORS, AWARDS, MEMBERSHIPS, ETC.:

Member of the American Fisheries Society

Member of the Michigan Chapter of the American Fisheries Society

Outstanding Partnership Award, Calhoun Conservation District, 2003

Achievement Award, Minnesota Department of Natural Resources, 1995, 1996 and 1998

Big Sandy Watershed Conservationist of the Year, 1997

Best Student Paper Award, 1997

BSALLMP was highlighted by U.S. EPA produced book, "Community-Based

Environmental Protection: A Resource Book For Protecting Ecosystems and

Communities", 1997 while I served as coordinator

Recipient of Skinner Memorial Award from American Fisheries Society, 1991 (1 of 3 in nation)

Recognized as Outstanding Fisheries Graduate Student, South Dakota State University, 1990-91

Awarded Great Plains Fisheries Workers Scholarship, 1990

EXHIBIT E

Golden Lotus, Inc.
Case No. 09-12933-CE
Chronology

April 10, 2010 Interim Order filed in the Otsego County Court

May 4, 2010 email from Jessica Mistak to Technical Team providing copy of Golden Lotus Dam Removal Conceptual Plan

May 5, 2010 email from Jessica Mistak to Technical Team providing copy of draft comments on Golden Lotus Dam Removal Conceptual Plan

May 6, 2010 Technical Team meeting/call re: Conceptual Plan

May 7, 2010 email from Jessica Mistak to Technical Team asking for additional comments on Golden Lotus Dam Removal Conceptual Plan

May 13, 2010 email from Ronda Wuycheck to Bill Schlecte providing Technical Team comments (cc: Bryan Burroughs, Pete Gustafson, Pam Stevenson, and Jessica Mistak)

May 20, 2010 email from Jessica Mistak to Bill Schlecte (cc: Bryan Burroughs, Pam Stevenson, Pete Gustafson, Ronda Wuycheck) regarding data collection methods

May 27, 2010 Golden Lotus Dam Removal Pre-Application meeting - DNRE, Golden Lotus reps, Bryan Burroughs, Pete Gustafson, Bill Schlecte, and Pam Stevenson

June 15, 2010 email from Jessica Mistak to Technical Team sharing field schedule for Golden Lotus consultants

June 17, 2010 email from Jessica Mistak to Technical Team sharing revised field schedule for Golden Lotus consultants

July 15, 2010 email from Jessica Mistak to Technical Team sharing results of sediment samples

July 20, 2010 email from Jessica Mistak to Technical Team re: additional data received, as requested, from Golder Assoc.

August 18, 2010 email from Jessica Mistak to Technical Team regarding cancellation of meeting and data review

September 9, 2010 Technical Team meeting/call to discuss preliminary data and identify additional data needs

September 20, 2010 email from Jessica Mistak to Technical Team sharing Golder Assoc data summary report

September 21, 2010 DNRE technical staff met with Golder Assoc on site

October 4, 2010 email from Jessica Mistak to Technical Team regarding cancellation of October 7 meeting with Golden Lotus

October 20, 2010 email from Jessica Mistak to Technical Team sharing Interim Drawdown Evaluations and Dam Review Options Report

October 22, 2010 DNRE, TU, PRCA, Golden Lotus, Pete Gustafson, Bill Schlecte, and Pam Stevenson meet to discuss dam removal options

November 16, 2010 email from Jessica Mistak to Technical Team re: Technical Memorandum dated November 15, 2010

November 18, 2010 Technical Team meeting/call to discuss Technical Memorandum dated November 15, 2010

December 8, 2010 Technical Team pre-meeting prior to December 15th meeting

December 10, 2010 DNRE (including Bill Creal), Pam Stevenson, Bryan Burroughs and Pete Gustafson meet to discuss water velocity concerns with Option 1 Dam Removal Plan

December 15, 2010 DNRE, TU, PRCA, Golden Lotus, Pete Gustafson, Bill Schlecte, and Pam Stevenson meet to discuss dam removal/permit application. It was communicated that Option 1 was acceptable given Wade Trim's structural analysis of Golden Lotus bridge.

December 29, 2010 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 invited but did not attend)

January 27, 2011 DNRE, Golden Lotus, Golder Assoc. Bill Schlecte and Pam Stevenson meet to discuss permit application as submitted.

February 1, 2011, DNRE, TU, PRCA, Pete Gustafson and Pam Stevenson meet to discuss difference of interpretation of interim order.

February 10, 2011 DNRE sends letter to Golden Lotus and Golder Assoc. requesting additional information for dam removal application

February 24, 2011 DNRE, TU, PRCA, Pete Gustafson, Bill Schlecte and Pam Stevenson meet to discuss TU/PRCA motions to court (not filed to date) and difference of interpretation of interim order

EXHIBIT F



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENT
LANSING



January 21, 2011

Mr. Bryan Burroughs, Executive Director
Michigan Trout Unlimited
P.O. Box 442
DeWitt, Michigan 48820-8820

Dear Mr. Burroughs:

SUBJECT: *Michigan Department of Natural Resources and Environment (DNRE) v. Golden Lotus, Incorporated*, File No. 09-12933-CE

On behalf of the DNRE staff working on the above-mentioned litigation case, I, as the enforcement case manager, am responding to your comments outlined in your December 17, 2010, and January 11, 2011, e-mails to Ms. Jessica Mistak, Upper Peninsula District Office, Water Resources Division, DNRE. Let me assure you that I have discussed this matter at length with Ms. Mistak and Ms. Pam Stevenson, Department of Attorney General (DAG), and we take your comments seriously. We respectively disagree with your interpretation of the Interim Order filed on April 5, 2010, in Otsego County for the above-referenced case number. Frankly, the process we have followed to date for this case is in meticulous conformance with the Interim Order. Furthermore, statements made by parties present at the December 8, 2010, status conference represented that progress in this case is in complete conformance with the Interim Order without objection. Your recent assertions simply contradict those statements and the fundamental principles guiding the good faith efforts made to date by all parties involved. Let me also reassure you that the DNRE will painstakingly process and review the permit application to be submitted by Golden Lotus, as required by statute.

I believe it is important to mention that all parties have discussed a remarkable and unique opportunity to go above and beyond what was negotiated in the Interim Order by working cooperatively with Golden Lotus representatives with the ultimate goal of complete river restoration. The Golden Lotus representatives have expressed their openness, as you are aware, to continue down this path with all interested parties to go beyond what will be required in a court order. I am hopeful that you will participate and support the DNRE in this endeavor.

The DNRE appreciates your cooperation and resolution of this matter. If you have any further questions, please contact me at the number listed below; DNRE, Water Resources Division, P.O. Box 30458, Lansing, Michigan 48909-7958; or wuycheckr@michigan.gov.

Sincerely,

Ronda E. Wuycheck, Enforcement Specialist
Water Enforcement Unit
Water Resources Division
517-241-7832

cc: Ms. Pam Stevenson, DAG
Mr. William Larsen, DNRE
Ms. Jessica Mistak, DNRE

EXHIBIT G

STATE OF MICHIGAN
IN THE 46TH JUDICIAL CIRCUIT
COUNTY OF OTSEGO

MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY,
and STEVEN E. CHESTER,
Director of the Michigan
Department of Environmental Quality,

No. 09-12933-CE (M)

Honorable Dennis F. Murphy

MICHIGAN DEPARTMENT OF
NATURAL RESOURCES
and REBECCA HUMPHRIES,
Director of the Michigan
Department of Natural Resources

Plaintiffs,

and

MICHIGAN CHAPTER TROUT UNLIMITED
and PIGEON RIVER COUNTRY ASSN.,

Intervening Plaintiffs

v

Golden Lotus, Incorporated

Defendant.

Pamela J. Stevenson (P40373)
Assistant Attorney General
Environment, Natural Resources
and Agriculture Division
P.O. Box 30755
Lansing, MI 48909
(517) 373-7540

William M. Schlecte (P19991)
Schlecte Law Firm, P.C.
Attorneys for Defendant
116 N. Fourth Avenue, Suite 100
Ann Arbor, MI 48104
(734) 302-1050

Peter L. Gustafson (P24621)
Warner Norcross & Judd, LLP
Attorneys for Intervening Plaintiffs
900 Fifth Third Center, 111 Lyon, NW
Grand Rapids, MI 49503-2487
(616) 752-2000

AFFIDAVIT OF JESSICA MISTAK

I, JESSICA MISTAK, being first duly sworn, affirmatively state that if sworn as a witness, can testify competently based on personal knowledge to the following facts:

1. I am employed by the State of Michigan and have worked for the Michigan Department of Natural Resources (MDNR) since 2000.
2. I received a Bachelor of Science in Natural Resources from the Ohio State University in 1998. Additionally, I received a Master in Fisheries and Wildlife from Michigan State University in May 2000.
3. I currently work as the Northern Lake Michigan Fisheries Supervisor.
4. In this position, I oversee and direct inland and Great Lakes fisheries management planning and the implementation of these plans in the Management Unit that encompasses multiple counties, watersheds and multi-state jurisdictions.
5. Based on my work experiences and graduate level research, I have occupational expertise in the effects of dam removal projects on habitat and fisheries resources.
6. It is my understanding that the State of Michigan filed Compliant No. 09-12933-CE(m) on February 17, 2009 in the County of Otsego to seek resolution stemming from the June 2008 illegal discharges of sediment laden water from the Golden Lotus, Incorporated (GLI)-owned Song of the Morning (SOM) dam to the Pigeon River.
7. As part of my work, I was assigned the role as the team leader of the State Technical Review Team ("Review Team") established by the Interim Order. The purpose of the Review Team was to conduct the review and approval of the Conceptual Plan for dam removal to be submitted by the Defendants.
8. As leader of the Review Team, I coordinated the review of material submitted to the Department of Natural Resources and Environment. This information included the Dam

Removal Conceptual Plan submitted on May 3, 2010, Revised Field Data Collection Work Plan submitted on June 4, 2010, Interim Drawdown Evaluations and Dam Removal Options Report submitted on October 20, 2010, Technical Memorandum Additional Data and Analysis Addendum submitted on November 15, 2010, Letter of Wade Trim to Schlecte Law Firm dated November 22, 2010, and Golden Lotus Technical Memorandum Additional Information (Compiled) submitted on December 3, 2010. The review of material took place over an 8 month period and involved numerous phone conversations, email communications, and face-to-face meetings with representatives of the Review Team, Trout Unlimited, Pigeon River Country Association, Golden Lotus, Golder Associates, and respective legal staff.

9. It is my understanding that the Interim Order defines the requirements and purpose of a Conceptual Plan for dam removal.
10. A Conceptual Plan was required by the Interim Order with the express purpose of leading to a permit application. Specifically, the Interim Order at paragraph 4 requires a Conceptual Plan to be submitted within 30 days following entry of the Order. Because the Conceptual Plan was required so soon after entry of the Order, it was not expected to be a complete document outlining all of the information necessary to proceed with dam removal. Furthermore, paragraph 4 affirms that the Conceptual Plan is not to be viewed as needing “all details and documentation necessary to constitute an administratively complete permit application . . .”
11. On May 3, 2010, a Dam Removal Conceptual Plan was submitted to the Review Team. A meeting was held on May 27, 2010 to discuss the Conceptual Plan and was attended by members of the Review Team, Trout Unlimited, Golden Lotus, Golder Associates, and respective legal staff. During this meeting it was determined that information in the Conceptual Plan would be revised as data was collected and analyzed and, more

importantly, this information would eventually morph into a permit application. All parties attending the May 27, 2010 meeting agreed that Golden Lotus did not need to submit another stand-alone revised Conceptual Plan for review.

12. When the dam removal Option 1 was selected by Golden Lotus in December 2010, the Review Team determined that sufficient information existed to allow Golden Lotus to proceed with submission of a permit application. The information evaluated in making this determination included the Dam Removal Conceptual Plan submitted on May 3, 2010, Revised Field Data Collection Work Plan submitted on June 4, 2010, Interim Drawdown Evaluations and Dam Removal Options Report submitted on October 20, 2010, Technical Memorandum Additional Data and Analysis Addendum submitted on November 15, 2010, Letter of Wade Trim to Schlecte Law Firm dated November 22, 2010, and Golden Lotus Technical Memorandum Additional Information (Compiled) submitted on December 3, 2010.

13. The attendees (Review Team, Trout Unlimited, Pigeon River Country Association, Golden Lotus, Golder Associates, and respective legal staff) at a meeting held in Lansing on December 15, 2010 agreed that existing information on sediment management was adequate and additional information was not needed prior to submission of a permit application. Furthermore, as part of the permit application, the attendees recommended against the use of downstream sediment traps; instead requesting that sediment be removed from in front of the stop logs as needed during the drawdown process and inclusion of a provision to evaluate the need for bank grading after the drawdown was complete.

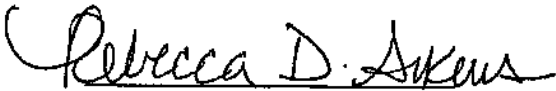
14. I make this affidavit based upon personal knowledge of these facts, and, if called as a witness, I am competent to so testify.

FURTHER AFFIANT SAYETH NOT



Jessica Mistak

Subscribed and sworn to me this
day of DATE. 4-25-11



Notary Public
Ingham County, Michigan
My commission expires

Rebecca D. Arlene
Notary Public, Delta County, MI
My commission expires 2/21/2014



Jessica L. Mistak

DNR Escanaba Field Office
6833 US Highway 2, 41, and M35
Gladstone, MI 49837
Phone 906-786-2351 ext 127
Fax 906-786-1300
mistakj@michigan.gov

N254 Winters Rd.
Rapid River, MI 49878
Phone 906-869-3643

EDUCATION

Michigan State University East Lansing, Michigan 48824
Department of Fisheries and Wildlife
Master of Science, Fisheries and Wildlife GPA 3.79
May 2000

The Ohio State University Columbus, Ohio 43210
School of Natural Resources
Bachelor of Science, Natural Resources
Cum laude with distinction in Fisheries Management GPA 3.57
June 1998

PROFESSIONAL EXPERIENCE

Northern Lake Michigan Fisheries Supervisor November 2011-Present
Michigan Department of Natural Resources
Fisheries Division
6833 US Highway 2, 41, and M35, Gladstone, MI 49837
Supervisor- Jim Dexter, Lake Michigan Basin Coordinator 269-685-6851 x116
40 hour/week

- 40%- Oversee and direct inland and Great Lakes fisheries management planning and the implementation of these plans in the Management Unit, encompassing multiple counties, watersheds and multi-state jurisdictions.
- 30%- Responsible for all administrative management and supervision of facilities, personnel and budgets in the management unit.
- 20%- Integrate fisheries programs and aquatic resource needs with other DNRE Divisions, State and Federal Agencies, local government programs, and nongovernmental organizations.
- 10%- Represent the Division and the Department in public functions.

Senior Fisheries Biologist September 2000-October 2010
Michigan Department of Natural Resources
Fisheries Division
484 Cherry Creek Road, Marquette, Michigan 49855
Supervisor- Chris Freiburger, FERC Sub-Unit Manager 517-373-6644
40 hours/week

- 30%- Serve as a senior level biologist in the Habitat Management Unit to protect aquatic habitat and mitigate for adverse environmental and recreational use impacts by participating as a resource agency in hydropower relicensing proceedings under the jurisdiction of the Federal Energy Regulatory Commission (FERC)
- 30%- Serve as a primary resource person to advise Fisheries Division biologists and other natural resource personnel in recommending best methods for natural resource protection and mitigation
- 20%- Serve as the Upper Peninsula Fisheries Division representative on regional issues, Great Lakes issues, and inland fisheries mitigation issues

- 10%- Assist in the development of Fisheries Division policies, position statements, and procedures for resource protection
- 5%- Prepare technical and scientific reports for projects that involve fish management issues of statewide interest and development of regional reference curves
- 5%- Pursue and provide oversight for significant project funding from multiple sources through grants or other formal processes and ensure that reporting requirements are met

Fisheries Technician 11 August 2000-September 2000

Michigan Department of Natural Resources

Fisheries Division

96 Grant Street, Charlevoix, Michigan 49720

Supervisor- Jan Fenske, Station Manager (currently Dave Clapp)

231-547-2914

40 hours/week

- 50%- Coded-wire tag extraction using a tag detector
- 50%- Enter coded-wire tag information from recovered fish into a computer database

Aquatic Biologist 9 June 2000-August 2000

Michigan Department of Environmental Quality

Surface Water Quality

300 S. Washington Square, Lansing, Michigan 48933

Supervisor- William Creal, Chief of Water Resources Division 517-335-4176

40 hours/week

- 60%- Review National Pollutant Discharge Elimination System (NPDES) permits for toxic substance-related impacts to aquatic life, public health, and uses of receiving water or the value of fish
- 30%- Plan, conduct, or participate in biosurveys of lakes and streams to evaluate the biological effects of wastewater from industrial, municipal, and non-point sources
- 5%- Conduct searches of scientific aquatic toxicology literature
- 5%- Assist with the field investigations for the Fish Contaminant Monitoring Program from designated sites throughout the state

LEADERSHIP EXPERIENCE

Department of Natural Resources

- Department of Natural Resources and Environment Citizen Advisory Council Team 2010
- Fisheries Division, Asian Carp Work Group 2010
- Department of Natural Resources and Environment Technical Advisory Team for the Pigeon River Settlement, Chair 2009-2010
- Department of Natural Resources West U.P. Citizen Advisory Council, Fisheries Division Liaison 2009-present
- Department of Natural Resources Strategic Workforce Plan 2009
- Michigan Department of Environmental Quality/Agriculture/Natural Resources Leadership Academy 2008-2009
- Fisheries Division, Stream Habitat Integrated Management Work Group, Chair 2006
- Fisheries Division Strategic Planning Committee- Commercial Fisheries 2004
- Fisheries Division Inland Fisheries Grant Committee 2004, 2005, and 2008
- Mentorship with Upper Peninsula Field Deputy, Jim Ekdahl, 2003-2004
- Fisheries Division Interview Panel (Research Biologist, Unit Manager) 2002, (Biologist) 2004, (Unit Manager) 2008
- Bond Falls Settlement Agreement Implementation Team- Department of Natural Resources representative 2003-present

- Lower Fox/Green Bay Natural Resource Damage Assessment Technical Advisory Team- Department of Natural Resources representative 2002-present
- Wilderness Shores Implementation Team- Department of Natural Resources representative 2000-present

External

- Janice Lee Fenske Excellence in Fisheries Management Fellowship at Michigan State University, Committee Member 2006-present
- Environmental Leadership Program Fellow 2004-2005, Senior Fellow 2005-present

American Fisheries Society

- American Fisheries Society- member since 1996; Management Committee 2007-2009; Governing Board 2007-2009; Board of Appeals 2008-2009; Governing Board mentors for 2009 Mentor-Mentee Program; Outstanding Chapter Award Committee, Chair 2010; Apprentice Constitutional Consultant 2010-2011; Constitutional Consultant 2011-present
- North Central Division of the American Fisheries Society- First Vice-President 2007; President-Elect 2007-2008, President 2008-2009, Past-President 2009-2010
- Michigan Chapter of the American Fisheries Society- member 1999-present; Resolutions Committee Chair 1999- 2007; President-Elect 2003; President 2004; Janice Lee Fenske Memorial Award Chair 2006-present

PROJECT MANAGEMENT AND BUDGET EXPERIENCE

Grant Project Management

- Menominee River Sturgeon Passage: National Fish and Wildlife Foundation – Sustain our Great Lakes Stewardship Grant \$1.5 million 2010, and USEPA Great Lakes Restoration Initiative – Habitat and Wildlife Restoration Grant \$1.5 million 2010
- Distribution and habitat requirements of freshwater mussels within the Little Quinnesec Hydroelectric Project and adjoining waters 2009, \$28,330 grant from Northbrook Energy, LLC. Responsible for supervision of interagency team and two students from Lake Superior State University.
- White Rapids hydroelectric dam fish passage entrance channel effectiveness testing 2009-2010, \$74,200 grant from Wilderness Shores Settlement Fund
- Menominee River watershed freshwater mussel inventory 2008-2009, \$107,585 grant from Wilderness Shores Settlement Fund. Assisted in supervision of three students from Lake Superior State University.
- White Rapids hydroelectric dam fish passage entrance channel effectiveness testing 2008, \$37,000 grant from Wilderness Shores Settlement Fund
- Upper Menominee River Regional Hydraulic Geometry Curve Grant 2005-2006, \$4,150 grant from Wilderness Shores Settlement Fund. Responsible for supervision of temporary employee for three months.
- Environmental Leadership Program Activity Fund Project Grant 2004, \$3,300
- Juvenile Lake Sturgeon Fish Passage Evaluation 2001, \$7,000 grant from the National Fish and Wildlife Foundation

Budget Oversight

- Northern Lake Michigan Management Unit Budget (~\$100,000/year) 2010-present
- North Central Division of the American Fisheries Society Budget, 2008-2009
- Michigan Chapter of the American Fisheries Society Budget, 2004
- Hanna Mine Settlement, Project Manager 2000-2008
- Escanaba River Gift Accounts, Project Manager 2000-present
- Bond Falls Implementation Team Mitigation Fund 2002-present
- Wilderness Shores Implementation Team Mitigation and Enhancement Fund 2000- present

COMMUNICATION EXPERIENCE**Select Presentations**

- Mistak, J. 2010. Conservation, protection, and management of the U.P.'s aquatic landscape. Upper Peninsula Environmental Coalition- Invited Panelist, Marquette, Michigan. March 20, 2010.
- Mistak, J. 2009. So, if I'm a fish biologist, why do I have to work with people? Invited seminar (by Dr. Jill Leonard) at Northern Michigan University, Marquette, Michigan. March 24, 2009.
- Mistak, J., C. Rachol, and K. Boley-Morse. 2007. Michigan's regional hydraulic geometry curves: the first step for design of stream restoration projects. Midwest Fish and Wildlife Conference, Madison, Wisconsin. December 10, 2007.
- Mistak, J. 2006. The effects of dam removal on fish communities: lessons learned from Michigan's past dam removals. International Joint Commission's Scientific Advisory Board Consultation, Windsor, Ontario. June 6, 2006.
- Mistak, J. and M. Koetje. 2005. Reckoning with the Dead: restoring the Dead River after a catastrophic flood. Midwest Fish and Wildlife Conference, Grand Rapids, Michigan. December 13, 2005.
- Mistak, J. 2003. Dead River flooding- how will it affect fishing and what the heck is a fuse plug? Fred Waara Chapter of Trout Unlimited June 19, 2003, Upper Peninsula Power Company Public Forum June 26, 2003 and Central Lake Superior Watershed Partnership Annual Meeting July 17, 2003.
- Mistak, J. 2002. Dam removal in Michigan- A multimedia presentation! Michigan American Fisheries Society Annual Meeting, Muskegon, Michigan. March 6, 2002.
- Mistak, J., K. Klomp, and D. Hayes. 2000. Stronach Dam removal. Michigan American Fisheries Society Annual Meeting, East Lansing, Michigan. March 6, 2000.
- Mistak, J., K. Klomp, and D. Hayes. 1999. Habitat and fisheries resources associated with a dam removal in a Michigan coldwater stream. 61st Midwest Fisheries and Wildlife Conference, Chicago, Illinois. December 5-8, 1999.
- Mistak, J., K. Klomp, and D. Hayes. 1999. Potential effects of a dam removal on fish and fish habitat. AFS 12th annual NCD Rivers and Streams Technical Committee Meeting, Rock Island, Illinois. April 6-7, 1999.
- Mistak, J., D. Johnson, and W. Lynch. 1998. Seasonal return rate and growth of put-and-take rainbow trout in a small Ohio stream. 60th Midwest Fisheries and Wildlife Conference, Cincinnati, Ohio. December 6-9, 1998.

Select Publications

- Burroughs, B. A., D. B. Hayes, K. D. Klomp, J. F. Hansen, J. Mistak. In press. The effects of the Stronach Dam removal on fish in the Pine River, Manistee County, Michigan. Transactions of the American Fisheries Society.

- Simpkins, D. G., and J. L. Mistak. 2010. Coldwater Rivers. Pages 619-6565 *in* W. A. Hubert and M.C. Quist, editors. *Inland fisheries management in North America*, 3rd edition. American Fisheries Society, Bethesda, Maryland.
- Mistak, J. L., J. J. Braunscheidel, S. K. Hanshue, F. D. Kolson, A. J. Nuhfer, M. A. Tonello, and T. C. Wills. In press. Evaluation of stream habitat improvement projects. Pages xx-xx *in* J. C. Schneider, editor. *Manual of fisheries survey methods II: with periodic updates*. Michigan Department of Natural Resources, Fisheries Special Report 25, Ann Arbor.
- Burroughs, B. A., D. B. Hayes, K. D. Klomp, J. F. Hansen, and J. Mistak. 2009. Effects of Stronach Dam removal on fluvial geomorphology in the Pine River, Michigan, United States. *Geomorphology* 110:96-107.
- Mistak, J. L., and D. A. Stille. 2008. Regional hydraulic geometry curve of the Upper Menominee River. Michigan Department of Natural Resource, Fisheries Technical Report 2008-1, Ann Arbor.
- Mistak, J. L. 2003. Upper Peninsula dams cause extensive damage. *Michigan Trout*, Volume 23, Number 3.
- Mistak, J. L., D. Hayes, and M. Bremigan. 2003. Food habits of coexisting trout above and below Stronach Dam in the Pine River, Michigan. *Environmental Biology of Fishes*. 67(2):179-190.
- Mistak, J. L. 2000. Dam removal effects on fisheries resources, habitat, and summer diet of trout in the Pine River, Manistee County, Michigan. Michigan Department of Natural Resources, Fisheries Research Report 2059, Ann Arbor, Michigan.
- Mistak, J. L. 2000. Dam removal effects on fisheries resources, habitat, and summer diet of trout in the Pine River, Manistee County, Michigan. Master's thesis. Michigan State University, East Lansing, Michigan.

ADDITIONAL CERTIFICATION AND TRAINING

Department of Natural Resources

- Comprehensive Soil Erosion and Sedimentation Control, Certificate C-10-0247 valid April 14, 2010 through April 14, 2015
- Facilitator Excellence Workshop- 2010
- Facilitator Practice Workshop- 2009
- Resource Division Training, Land Issues- 2009
- Conservation Easement Monitoring Training- 2009
- Michigan Department of Environmental Quality/Agriculture/Natural Resources Leadership Academy- 2008-2009
- Forest Certification Overview Training- 2005
- Oil and Gas Lease Training- 2004
- Effective Natural Resources Leadership: Leadership Traps & Leadership Tools- 2003; Retooling Work Groups, Teams, and Meetings- 2003
- Using ArcView GIS in the DNR- 2001

External

- American Fisheries Society Certified Fisheries Professional (#3010)- 2008
- Freshwater Mussel Identification Workshop- 2008
- Michigan Natural Features Inventory Invasive Plant Course- 2006

- How to Work with the Media- DJ Case and Associates- 2005
- Wetland Plant Identification Workshop- 2005
- HEC-RAS 3.1 Basic Training- 2005
- U.S. Forest Service Aquatic Organism Passage: Inventory and Assessment at Road-Stream Crossings- 2004
- Intermediate Access XP- 2004
- Environmental Leadership Program Fellowship 2004-2005, Senior Fellow 2005-present
- Great Lakes Regional Natural Resource Leadership Academy- 2003-2004
- Expert Witness Training- 2004
- Statistical Aspects of Sampling Freshwater Fish Populations and Habitats- 2003
- Rosgen's Applied Fluvial Geomorphology Course- 2001; River Morphology and Applications- 2002
- Engineering Innovative Fish Passage- 2002
- Michigan Fluvial Geomorphology and Hydrology Short Course- 2001
- USGS Instream Flow Incremental Methodology 250- 2001
- Succeeding with a Dam Decommissioning Project- 2000
- PADI Open Water Diving Certification 9806137671
- Adult CPR and First Aid Certification

AWARDS AND RECOGNITION

Professional

- Director's Award- 2010 Great Lakes Restoration Initiative
- American Fisheries Society Certificate of Appreciation for serving as Michigan Chapter President 2005 and North Central Division President 2009
- Natural Resource Leadership Academy Excellence in Natural Resource Leadership: The John Robertson Award 2005

EXHIBIT H

STATE OF MICHIGAN
IN THE 46TH JUDICIAL CIRCUIT
COUNTY OF OTSEGO

MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY,
and STEVEN E. CHESTER,
Director of the Michigan
Department of Environmental Quality,

No. 09-12933-CE (M)

Honorable Dennis F. Murphy

MICHIGAN DEPARTMENT OF
NATURAL RESOURCES
and REBECCA HUMPHRIES,
Director of the Michigan
Department of Natural Resources

Plaintiffs,

and

MICHIGAN CHAPTER TROUT UNLIMITED
and PIGEON RIVER COUNTRY ASSN.,

Intervening Plaintiffs

v

Golden Lotus, Incorporated

Defendant.

Pamela J. Stevenson (P40373)
Assistant Attorney General
Environment, Natural Resources
and Agriculture Division
P.O. Box 30755
Lansing, MI 48909
(517) 373-7540

William M. Schlecte (P19991)
Schlecte Law Firm, P.C.
Attorneys for Defendant
116 N. Fourth Avenue, Suite 100
Ann Arbor, MI 48104
(734) 302-1050

Peter L. Gustafson (P24621)
Warner Norcross & Judd, LLP
Attorneys for Intervening Plaintiffs
900 Fifth Third Center, 111 Lyon, NW
Grand Rapids, MI 49503-2487
(616) 752-2000

AFFIDAVIT OF JAMES T. PAWLOSKI, P.E.

I, JAMES T. PAWLOSKI, P.E., being first duly sworn, affirmatively state that if sworn as a witness, can testify competently based on personal knowledge to the following facts:

1. I am employed by the State of Michigan and have worked for the Michigan Department of Environmental Quality (MDEQ) since 1989.
2. I received a Bachelor of Science in Civil Engineering from Michigan State University in 1983. I received a Master in Civil Engineering from the Michigan State University in 1985.
3. I have specialized training in advanced dam safety engineering, hydrologic engineering, hydraulic engineering, advanced geotechnical engineering, and soil erosion and sedimentation control.
4. I currently work as the Dam Safety Engineer for the Water Resources Division in the Gaylord District Office. My assigned work area includes Otsego County and numerous other counties in the northern lower peninsula and the entire upper peninsula of the state.
5. As a Dam Safety engineer, among other duties, I assist department staff in administering the environmental regulatory programs governing dams and inland lakes and streams throughout my work area state pursuant to the Natural Resources and Environmental Protection Act, 1994, P.A. 451, as amended (NREPA). These programs include the administration of Part 301, Inland Lakes and Streams (Part 301) and Part 315, Dam Safety (Part 315).
6. I have practical experience and have provided detailed engineering and permit review of dozens of dam removal projects statewide, 1989 to present, including but not limited to the following: Salling Dam, Crawford County; Grayling Dam, Crawford County; Sturgeon River Dam, Dickinson County; Red Ridge Dam, Houghton County; Republic

Mine Dams, Marquette County; Munuscong Bay Dam, Chippewa County; Green River Trout Farm Dam, Antrim County; Song of the Morning Ranch Dam, Otsego County; Copemish Dam, Manistee County; Sylvester Dam, Mackinac County; Bear River Dam, Emmet County; Carp River Dam, Marquette County; Manistique Papers Dam, Schoolcraft County; Big Rapids Dam, Mecosta County; Hersey Dam, Osceola County; Boardman Dam, Grand Traverse County; .Brown Bridge Dam, Grand Traverse County; Sabin Dam, Grand Traverse County; Falls River Dam, Baraga County; Kimberly-Clark Dam, Dickinson County; Manton Millpond, Wexford County; Chesaning Dam, Saginaw County; Frankenmuth Dam, Saginaw County; Corunna Dam, Shiawassee County.

7. I served as the project engineer for the design and removal of the Salling Dam on the AuSable River in Grayling, Michigan.
8. I was the featured speaker at an Association of State Dam Safety Officials Regional Seminar, "Removal of Dams" in Kansas City, MO in 1993.
9. I was an invited speaker at the Huron Pines "Small Dam Removal Workshop" held in Grayling in the summer of 2010. I was also a contributing author to the publication which will follow this workshop, "Small Dams Removal Guidebook", which is in publication with Huron Pines.
10. I have been intimately involved since 2004 as a member of the Implementation Team for the removal and modification of four dams on the Boardman River in Grand Traverse County, Michigan.
11. It is my understanding that the State of Michigan filed Compliant No. 09-12933-CE(m) on February 17, 2009 in the County of Otsego to seek resolution stemming from the June 2008 illegal discharges of sediment laden water from the Golden Lotus, Incorporated (GLI)-owned Song of the Morning (SOM) dam to the Pigeon River.

12. As part of my work, I actively participated in the State Technical Review Team formed via the Interim Order. The purpose of the State Technical Review Team was to review and approve of the Conceptual Plan for dam removal to be submitted by the Defendants.
13. It is my understanding that the Interim Order defines the requirements and purpose of a Conceptual Plan for dam removal.
14. It my understanding and recollection, based on mediation sessions and numerous subsequent meetings with the Defendant and Interveners, that the State agreed in the April 2010 Interim Order that upon drawdown of the impoundment and dam removal, GLI would be allowed to maintain the existing bridge located at the SOM Ranch if certain conditions were met, including an engineering assessment of the structural integrity of the bridge and its foundation. It is my understanding that these conditions have been satisfied.
15. I make this affidavit based upon personal knowledge of these facts, and, if called as a witness, I am competent to so testify.

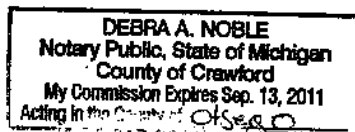
FURTHER AFFIANT SAYETH NOT


James T. Pawloski, P.E.

Subscribed and sworn to me this
27 day of April, 2011.



Notary Public
~~CRAWFORD~~
Crawford County, Michigan
My commission expires:



JAMES T. PAWLOSKI, P.E.

6457 Forest Park Trail
Gaylord, MI 49735
Office 989-705-3443
e-mail: pawloskij@michigan.gov

MAJOR QUALIFICATIONS:

Licensed Professional Engineer, Michigan #34034
Dam Safety, Water Resource, Environmental and Geotechnical Engineering Expertise
Environmental Regulatory Expertise
National and International Water Resources Engineering Experience

SKILLS AND EXPERIENCE:

Supervisory Experience

Acting unit chief, Dam Safety Unit, MDEQ
Acting unit chief, Hydrologic Studies Unit, MDEQ
Acting district supervisor, Marquette district, MDEQ
Water resource engineering project manager, STS Consultants, Ltd. (now AECOM)

Planning, Training, and Engineering Design Skills

Water resource structural design, including wetland, dams and stormwater projects
Developed and implemented project work plans and project budgets
Prepared corporate proposals and qualification statements
Coordinated and conducted state-wide dam safety inspection and inventory program
Graduate teaching assistant in civil engineering, including engineering economics
Planned and instructed seminars and workshops
Feasibility study for development of two hydropower facilities in People's Republic of the Congo, Africa

Construction Management Skills

Supervised rehabilitation of several dams and hydropower installations
Supervised construction of bridges, roads and culvert installations
Complete residential construction
Storage building construction

Agency Relations

Local government—townships, villages, cities
County government—County commissions, road commissions and drain commissions
State government—MDA, MDNRE, MSP and MDOT
Federal government—USDA-NRCS, NWS, FEMA, USDA-FS, USGS, USACE, FERC
Non-governmental organizations—Ducks Unlimited, Trout Unlimited, lake associations, resource and conservation organizations

Communications

Public speaker in a variety of environments, including conducting public hearings
Author of several research and technical papers
Prepared numerous engineering technical reports
Prepared technical documentation for litigation
Expert witness for legal proceedings and contested cases

JAMES T. PAWLOSKI, P.E.

PROFESSIONAL EXPERIENCE:

- 1989 to present Dam Safety Engineer
Michigan Department of Environmental Quality
Water Resources Division
Lansing, Roscommon, Marquette and Gaylord
- 1984 to 1989 Group Manager and Project Manager
STS Consultants, Ltd. (now AECOM)
Water Resources Group
Lansing, Michigan
- 1984 to 1985 Graduate Research and Graduate Teaching Assistant
Michigan State University
Department of Civil and Environmental Engineering
East Lansing, Michigan
- 1981 to 1984 Engineering Technician
Iosco County Road Commission
Tawas City, Michigan

EDUCATION:

- 1985 Master of Science, Civil Engineering
Michigan State University
- 1983 Bachelor of Science, Civil Engineering
Michigan State University

SPECIALIZED TRAINING:

Advanced Dam Safety and hydrologic/hydraulic engineering
Advanced geotechnical engineering
Expert testimony and reducing professional liability
Soil erosion and sedimentation control
Problems of the Technical Manager
Total Quality Management
Contested case preparation
Certified SCUBA diver
Media Relations

JAMES T. PAWLOSKI, P.E.

PUBLICATIONS:

"Hersey Dam Removal 'Frees' Seven Miles of High Quality Trout Stream", 2007 Annual Conference Proceedings, Association of State Dam Safety Officials, September, 2007, with James R. Hegarty, P.E.

"Michigan Dam Safety Update 1998", Pipeline, Third Quarter 1998

"Assessing Impacts of Irrigation on Streamflow", Journal of Irrigation and Drainage, American Society of Civil Engineers, May 1998

"Salling Dam Drawdown and Removal", 1992 Annual Conference Proceedings, Association of State Dam Safety Officials, September, 1992

"Michigan Water Resources Data: An Inventory of Existing Data and a Collection of Identified Data Needs", Water Management in Michigan, Great Lakes Water Resources Planning Commission, October, 1985

"Instream Flow Needs in Critical Areas of the Great Lakes Region", Institute of Water Resources, Michigan State University, August, 1984

"Assessing Irrigation Impact on Streamflow", Water for Resources Development, American Society of Civil Engineers, Irrigation and Drainage conference proceedings, August, 1984

DAM REMOVAL:

Design engineer for design of Salling Dam removal in Crawford County, MI, 1992

Implementation Team Member, Grand Traverse County-City of Traverse City Joint Venture to Study and Remove and/or Modify Four Dams on the Boardman River, Grand Traverse County, 2004-present

Key Presenter, Association of State Dam Safety Officials (ASDSO) Regional Seminar, "Removal of Dams", Kansas City, Missouri, 1993

Committee member, ASDSO Committee on Dam Failure Investigations, 2011-present

Contributing author, "Removal of Small Dams", Huron Pines, Grayling, MI, in production, 2011

Provided detailed engineering and permit review for dozens of dam removal projects statewide, 1989-present, including, but not limited to:

Salling Dam, Crawford County
Grayling Dam, Crawford County
Sturgeon River Dam, Dickinson County

JAMES T. PAWLOSKI, P.E.

DAM REMOVAL (continued):

Red Ridge Dam, Houghton County
Republic Mine Dams, Marquette County
Munuscong Bay Dam, Chippewa County
Green River Trout Farm Dam, Charlevoix County
Song of the Morning Ranch Dam, Otsego County
Copemish Dam, Manistee County
Sylvester Dam, Mackinac County
Bear River Dam, Emmet County
Carp River Dam, Marquette County
Manistique Papers Dam, Schoolcraft County
Big Rapids Dam, Mecosta County
Hersey Dam, Osceola County
Boardman Dam, Grand Traverse County
Brown Bridge Dam, Grand Traverse County
Sabin Dam, Grand Traverse County
Falls River Dam, Baraga County
Kimberly-Clark Dam, Dickinson County
Manton Millpond, Wexford County
Chesaning Dam, Saginaw County
Frankenmuth Dam, Saginaw County
Corunna Dam, Shiawassee County

EXHIBIT I

STATE OF MICHIGAN
IN THE 46TH JUDICIAL CIRCUIT
COUNTY OF OTSEGO

MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY,
and STEVEN E. CHESTER,
Director of the Michigan
Department of Environmental Quality,

No. 09-12933-CE (M)

Honorable Dennis F. Murphy

MICHIGAN DEPARTMENT OF
NATURAL RESOURCES
and REBECCA HUMPHRIES,
Director of the Michigan
Department of Natural Resources

Plaintiffs,

and

MICHIGAN CHAPTER TROUT UNLIMITED
and PIGEON RIVER COUNTRY ASSN.,

Intervening Plaintiffs

v

Golden Lotus, Incorporated

Defendant.

Pamela J. Stevenson (P40373)
Assistant Attorney General
Environment, Natural Resources
and Agriculture Division
P.O. Box 30755
Lansing, MI 48909
(517) 373-7540

William M. Schlecte (P19991)
Schlecte Law Firm, P.C.
Attorneys for Defendant
116 N. Fourth Avenue, Suite 100
Ann Arbor, MI 48104
(734) 302-1050

Peter L. Gustafson (P24621)
Warner Norcross & Judd, LLP
Attorneys for Intervening Plaintiffs
900 Fifth Third Center, 111 Lyon, NW
Grand Rapids, MI 49503-2487
(616) 752-2000

AFFIDAVIT OF WILLIAM C. LARSEN

I, WILLIAM C. LARSEN, being first duly sworn, affirmatively state that if sworn as a witness, can testify competently based on personal knowledge to the following facts:

1. I am employed by the State of Michigan and have worked for the Michigan Department of Environmental Quality (MDEQ) since 1986.
2. I received a Bachelor's of Science in Environmental Science from Grand Valley State University in 1973. I received a Master's in Biology from Michigan Technological University in 1975. Additionally, I received a Doctor of Philosophy in Botany and Plant Pathology from the Michigan State University in 1982.
3. I currently work as the Environmental Manager for the Compliance and Enforcement Unit for Resource Programs in the Water Resources Division (WRD).
4. In this position, I oversee and direct enforcement staff with responsibilities for high priority and controversial complaints of alleged violations primarily involving Part 303, Wetlands Protection, Part 301 Inland Lakes and Streams, the Floodplain portion of Part 31, Water Resources, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.
5. In addition, I assist WRD district and management staff in the development of administrative, civil and criminal cases and potential settlement of enforcement cases impacting WRD administered programs. Additional responsibilities include serving as WRD liaison with the Department of Attorney General for enforcement cases referred by the WRD and as WRD liaison with the State Office of Hearings and Rules regarding contested permit applications for resource programs administered by the WRD.

6. It is my understanding that the State of Michigan filed Compliant No. 09-12933-CE(m) on February 17, 2009 in the County of Otsego to seek resolution stemming from the June 2008 illegal discharges of sediment laden water from the Golden Lotus, Incorporated (GLI)-owned Song of the Morning (SOM) dam to the Pigeon River.
7. As part of my work, I actively participated in the December 21, 2009, mediation meeting held in Lansing, Michigan to [seek resolution OR move towards settlement] of the Michigan Department of Environmental Quality, et al. v Golden Lotus, et al. Case No. 09-12933-CE(m). In seeking resolution, the parties agreed to enter into an Interim Order to seek relief requested in the litigation case.
8. As part of my work, I was actively involved in the negotiations and drafting of the terms and conditions of the Interim Order.
9. It is my understanding that the Interim Order identifies that MDEQ permits for the dam removal activities contemplated by the Interim Order are required pursuant to Parts 301, 303, 315 and the floodplain portion of Part 31.
10. As part of my work, I actively participated in review of documents and meetings with the State Technical Committee formed via the Interim Order. The purpose of the State Technical Review Team included the review and approval of a Conceptual Plan for dam removal necessary for preparing and MDEQ processing of the application for permit(s) to be submitted by GLI for the dam removal project contemplated by the Interim Order.
11. It is my understanding that the Interim Order defines the requirements and purpose of leading to a permit application for dam removal.
12. It my understanding and recollection, based on mediation and subsequent meetings with the Defendant, the State agreed in the Interim Order that upon dam removal, GLI would

- be allowed the continued use of the existing bridge located at the SOM Ranch, if in the opinion of the GLI engineer the existing bridge is deemed to be structurally sound.
13. I participated in a January 27, 2011, pre-application meeting held in Lansing, Michigan with representatives for GLI and MDEQ staff to review information and plans to be submitted by GLI and included with an application for dam removal.
 14. On February 1, 2011, I attended a meeting with Dr. Bryan Burroughs, Trout Unlimited, Mr. Peter Gustafson, attorney for Intervening Plaintiffs, WRD staff and Ms. Pamela Stevenson, Department of Attorney General. During the meeting GLI's application for permit and associated plans for dam removal were discussed.
 15. On February 1, 2011, the Permit Consolidation Unit, WRD received an application for permit prepared and submitted by Golder Associates, Inc., agent for GLI. Within Item 4 on Page 2 of the application for permit describes the project purpose, as follows, "impoundment drawdown and removal of selected dam infrastructure." The application for permit was assigned MDEQ File: 11-69-0001-P and processed for completeness by Ms. Kate Lederle, Permit Consolidation Unit, WRD.
 16. In my review of WRD's permit application tracking information for MDEQ File 11-69-0001-P, Ms. Lederle determined the application to be incomplete and requested, by correspondence dated February 10, 2011 and February 23, 2011, Golder Associates to provide additional identified information necessary for the WRD to continue processing the application. The information requested by Ms. Lederle was submitted by Golder Associates on February 18, 2011 and March 3, 2011. The WRD considered MDEQ File: 11-69-0001-P administratively complete on March 24, 2011.
 17. The WRD issued a Public Notice of MDEQ File: 11-69-0001-P on March 18, 2011, which stated that, " the applicant (Golden Lotus, Inc) has applied for a permit under the

authority of Part 301 and Part 315... The applicant proposes to permanently drawdown the Lansing Club Pond located on the Pigeon River and remove selected infrastructure of the Golden Lotus dam in compliance with the 2010 Interim Order...' In addition, the Public Notice for the application identified that a MDEQ Open House and Public Hearing regarding the application for permit was scheduled for April 14, 2011 at the Vanderbilt Public School.

18. Attachments to the Public Notice included copies of the application for permit, a narrative description of the proposed dam removal project and detailed project plans. Copies of the Public Notice and attachments were provided to agencies and individuals as required by Part 301 and Part 315, identified in the Public Notice documents, including Intervening Plaintiffs.
19. On March 30, 2011, the Gaylord Herald Times, at the request of the WRD, published a Notice of the Public Hearing scheduled for April 14, 2011, on MDEQ File: 11-690001-P. The published hearing notice provided the entire WRD Public Notice statement describing the proposed project and identified the location for the hearing at which interested persons could appear to provide comment regarding the proposed project. The hearing notice stated that the public hearing record would remain open for an additional 10 days after the date of the public hearing for the public to submit to the WRD any additional written comments concerning the proposed project. In addition, the published hearing notice identified that the application was available for review at either the MDEQ website, as provided in the notice, or at the MDEQ Gaylord Office.
20. MDEQ File 11-69-0001-P was forwarded to WRD staff in the Gaylord District Office for processing the application under the statutory permit processing requirements of Parts 301, 303, 315 and the floodplain requirements of Part 31.

21. I make this affidavit based upon personal knowledge of these facts, and, if called as a witness, I am competent to so testify.

FURTHER AFFIANT SAYETH NOT

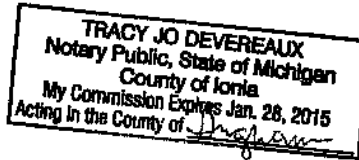


William C. Larsen

Subscribed and sworn to me this
27th day of April, 2011.



Notary Public
Ingham County, Michigan
My commission expires:



TRACY JO DEVEREAUX
Notary Public, State of Michigan
County of Ingham
My Commission Expires Jan. 28, 2015
Acting in the County of Ingham

WILLIAM C. LARSEN

WORK ADDRESS:

Water Resources Division
Department of Environmental Quality
P.O. Box 30458
Lansing, MI 48909-7958
517-373-9249
Larsenb@Michigan.gov

EDUCATION:

Doctor of Philosophy. 1982. Botany and Plant Pathology. Michigan State University, East Lansing, Michigan.

Master of Science. 1975. Biology. Michigan Technological University. Houghton, Michigan.

Graduate Coursework: 1975. Botany. University of Michigan, Biological Station. Pellston, Michigan.

Bachelor of Science. 1973. Environmental Science. Grand Valley State University, Allendale, Michigan.

EMPLOYMENT BACKGROUND:

2006 – Present. Environmental Manager. Compliance and Enforcement Unit for Resource Programs, Water Resources Division, Michigan Department of Environmental Quality.

1986 - 2006. Environmental Quality Specialist. Land and Water Management Division, Michigan Department of Environmental Quality. Division contact for high priority escalated civil enforcement cases and pending administrative contested cases.

EMPLOYMENT RELATED TRAINING COURSES and CERTIFICATIONS:

U.S. Department of Transportation. Federal Highways Administration. National Highway Institute. 1985. Highway Runoff and Water Quality Training Course. Evaluation of highway construction projects on water quality of Michigan streams and waterbodies.

U.S. Army Corps of Engineers and U.S. Fish and Wildlife Service. 1988. Wetland Identification. Kellogg Biological Station, Michigan State University. Hickory Corners, Michigan. Identification and evaluation of regulated wetlands.

U.S. Department of Interior. 1989. Natural Resource Damage Assessment Training. Lansing, Michigan.

Professional Wetland Scientist. 1993 – Present. Society of Wetland Scientist.

Society of Wetland Scientist. 1993 – 1995: National Certification Committee. Review and provide recommendations for applicant certification as certified professional wetland scientist.

The National Wetland Training Cooperative. 1993. Jurisdictional Delineation of Wetlands in Michigan. Kellogg Biological Station, Michigan State University. Hickory Corners, Michigan.

Wetland Training Institute. 1993. Wetland Plant Identification. Kellogg Biological Station, Michigan State University. Hickory Corners, Michigan.

SELECTED PUBLICATIONS AND REPORTS:

Larsen, W. C. 1975. The Vegetation Ecology of Bear Island, Apostle Islands National Lakeshore, Wisconsin. M.S. Thesis. Department of Biological Sciences. Michigan Technological University, Houghton, Michigan. Research funded by the U.S. National Park Service.

Larsen, W. C. 1982. Structure, Biomass and Net Primary Production for an Age Sequence of Jack Pine Ecosystems. Ph.D. Dissertation. Department of Botany and Plant Pathology, Michigan State University, East Lansing, Michigan.

Larsen, W.C. 1982. Aboveground Biomass and Net Primary Production for a Senescent Successional Forest Ecosystem. Bulletin of the Ecological Society of America. 64(2): 64.

Michigan Department of Natural Resources. Land and Water Management Division. 1994. Staff Guidance Manual for Compliance and Enforcement Activities for LWMD Staff. Committee chair.

Michigan Department of Environmental Quality. Land and Water Management Division. 2001. MDEQ Wetland Identification Manual: A Technical Manual for the Identification of Wetlands in Michigan. Committee chair.

EXHIBIT J

STATE OF MICHIGAN
IN THE 46TH JUDICIAL CIRCUIT
COUNTY OF OTSEGO

MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY,
and STEVEN E. CHESTER,
Director of the Michigan
Department of Environmental Quality,

No. 09-12933-CE (M)

Honorable Dennis F. Murphy

MICHIGAN DEPARTMENT OF
NATURAL RESOURCES
and REBECCA HUMPHRIES,
Director of the Michigan
Department of Natural Resources

Plaintiffs,

and

MICHIGAN CHAPTER TROUT UNLIMITED
and PIGEON RIVER COUNTRY ASSN.,

Intervening Plaintiffs

v

Golden Lotus, Incorporated

Defendant.

Pamela J. Stevenson (P40373)
Assistant Attorney General
Environment, Natural Resources
and Agriculture Division
P.O. Box 30755
Lansing, MI 48909
(517) 373-7540

William M. Schlecte (P19991)
Schlecte Law Firm, P.C.
Attorneys for Defendant
116 N. Fourth Avenue, Suite 100
Ann Arbor, MI 48104
(734) 302-1050

Peter L. Gustafson (P24621)
Warner Norcross & Judd, LLP
Attorneys for Intervening Plaintiffs
900 Fifth Third Center, 111 Lyon, NW
Grand Rapids, MI 49503-2487
(616) 752-2000

AFFIDAVIT OF RONDA E. WUYCHECK

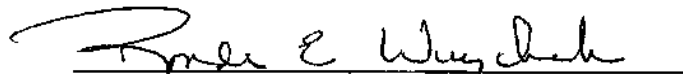
I, RONDA E. WUYCHECK, being first duly sworn, affirmatively state that if sworn as a witness, can testify competently based on personal knowledge to the following facts:

1. I am employed by the State of Michigan and have worked for the Michigan Department of Environmental Quality (DEQ) since December 1990.
2. I received a Bachelor of Science in Resource Development from the Michigan State University in 1989. Additionally, I received a Master in Public Administration from Western Michigan State University in 2001.
3. I currently work as an Enforcement Specialist in the Water Enforcement Unit of the Water Resources Division.
4. In this position, I coordinate escalated enforcement actions for violations of the Natural Resources and Environmental Protection Act, 1994, PA 451, as amended.
5. In this position, I was assigned to be the case manager of the Golden Lotus, Incorporated enforcement case. As Enforcement Specialist it is my responsibility to coordinate work tasks and assist the Michigan Department Attorney General's office in litigation actions related to the case.
6. It is my understanding that the State of Michigan filed Compliant No. 09-12933-CE(m) on February 17, 2009 in the County of Otsego to seek resolution stemming from the June 2008 illegal discharges of sediment laden water from the Golden Lotus, Incorporated (GLI)-owned Song of the Morning (SOM) dam to the Pigeon River.
7. As part of my work, I actively participated in the December 21, 2009, mediation meeting held in Lansing, Michigan to seek resolution of the Michigan Department of Environmental Quality, et al. v Golden Lotus, et al. Case No. 09-12933-CE(m). In

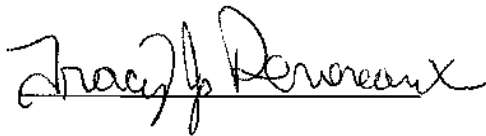
seeking resolution, the parties agreed to enter into an Interim Order to seek relief requested in the litigation case.

8. As part of my work, I was actively involved in the negotiations and drafting of the terms and conditions of the Interim Order.
9. It is my understanding that the Interim Order defines the requirements and purpose of a Conceptual Plan for dam removal.
10. It my understanding and recollection, based on mediation and subsequent meetings with the Defendant, that the State agreed in the Interim Order that upon dam removal, GLI would be allowed to maintain the existing bridge located at the SOM Ranch if deemed to be structurally sound.
11. I make this affidavit based upon personal knowledge of these facts, and, if called as a witness, I am competent to so testify.

FURTHER AFFIANT SAYETH NOT


Ronda E. Wuycheck

Subscribed and sworn to me this
27th day of April, 2011.



Notary Public
Ingham County, Michigan
My commission expires:

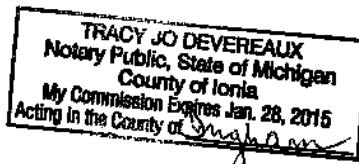


EXHIBIT K

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STATE OF MICHIGAN

46TH JUDICIAL CIRCUIT COURT (OTSEGO COUNTY)

MICHIGAN DEPARTMENT OF ENVIRONMENTAL
QUALITY and STEVEN E. CHESTER,
MICHIGAN DEPARTMENT OF NATURAL RESOURCES

Plaintiff,

v

File No. 09-12933-CE

GOLDEN LOTUS INC.,

Defendant.

STATUS CONFERENCE

BEFORE THE HONORABLE DENNIS F. MURPHY, CIRCUIT JUDGE

Gaylord, Michigan - Wednesday, December 8, 2010

APPEARANCES:

For the Plaintiff: MS. PAMELA J. STEVENSON (P40373)
Assistant Attorney General
Environment, Natural Resources and
Agriculture Division
P.O. Box 30755
Lansing, Michigan 48909
(517)373-7540

For the Intervening
Plaintiffs: MR. PETER L. GUSTAFSON (P24621)
Warner Norcross & Judd, LLP
111 Lyon Street NW, Suite 900
Grand Rapids, Michigan 49503
(616) 752-2121

For the Defendant: MR. WILLIAM M. SCHLECTE (P19991)
Schlecte Law Firm
116 North Fourth Avenue, Suite 100
Ann Arbor, Michigan 48104
(734)302-1050

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TRANSCRIBED BY:

Ms. Penelope A. Shepherd, CER 4639
Certified Electronic Recorder
989-348-9386

TABLE OF CONTENTS

WITNESSES:

None

EXHIBITS:

None

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Gaylord, Michigan

Wednesday, December 8, 2010 - 1:36 p.m.

THE COURT: Okay. 09-12933-CE, MDEQ versus Golden Lotus. Okay. Who do -- I kind of thought this would be by phone but we have a lot of attorneys here; is that right?

MR. SCHLECTE: Yeah, everybody is here, your Honor.

THE COURT: Oh, okay. And make -- get the appearances; start with plaintiff.

MS. STEVENSON: Pamela Stevenson, assistant attorney general.

THE COURT: Thank you.

MR. GUSTAFSON: Pete Gustafson for the intervening private defendants.

THE COURT: Thank you.

MR. GUSTAFSON: Or plaintiffs. I'm sorry.

THE COURT: Plaintiffs? Yeah.

MR. SCHLECTE: Bill Schlecte on behalf of Golden Lotus, your Honor.

THE COURT: All right. Thank you. I think one of the reasons for the conference today was because the last official activity was April 14 and usually every six months there's an automatic call-up of cases where there's been no activity. So I think that's what happened here, this got scheduled. Or did we set it on purpose for today?

1 MR. SCHLECTE: I -- I think we just got a call
2 from your -- your office --

3 THE COURT: Okay.

4 MR. SCHLECTE: -- and they said we need a status
5 conference. And --

6 THE COURT: Okay.

7 MR. SCHLECTE: -- I know everybody knew we could
8 do it by phone today, but I think we preferred -- I wanted
9 to come on up and I had a couple of other things to do up
10 here, --

11 THE COURT: Okay.

12 MR. SCHLECTE: -- so I came up here.

13 THE COURT: Okay. Good. Good. Is that your
14 understanding it's review because of inactivity since April,
15 at least in the court file? I'm sure you folks have been
16 busier than I on that.

17 MS. STEVENSON: That's correct, your Honor.

18 THE COURT: Yeah. Where do we stand here? I
19 mean, is it -- should we keep this on hold or should I
20 schedule some court action? What -- what should we do?
21 Does anyone have any input?

22 MR. SCHLECTE: Sure. Yeah. Yeah. Your Honor, do
23 you want me to stand up or may I stay --

24 THE COURT: No. Yeah, --

25 MR. SCHLECTE: -- seated?

1 THE COURT: -- it's just a informal status
2 conference.

3 MR. SCHLECTE: Yeah. Your Honor, this has been
4 the most unusual piece of litigation I've ever been involved
5 in, in my 38 years in practice, because it is unbelievably
6 collaborative. Since the interim order was entered on April
7 5th or 6th we have been in constant dialog, communication
8 and meetings with the DNRE technical team that's been
9 assigned to assist in implementation on the interim order.

10 There were several conditions to get us to a
11 consent judgment. My client has been in the process of
12 conducting a -- a number of onsite investigations. The
13 initial and probably most important one was to determine
14 whether or not the sediments were or were not contaminated.
15 The results came back; they are not contaminated. So now
16 what we are working toward is an application for and then
17 issuance of a permit to remove the dam.

18 We had a meeting in October, on October 22. We
19 had scheduled another meeting for November 22, but the DNRE
20 technical team wanted some additional data from our experts.
21 We had another meeting scheduled for December 15, so we
22 pushed the November 22 meeting to December 15. We're all
23 meeting in Lansing next Wednesday. Each meeting comprises
24 about 15 or 18 people from the DNRE, our consultants and --
25 and my clients working toward getting an application for

1 permit for dam removal, with the goal that, I think,
2 sometime the DNRE once we file the application will have a
3 maximum 120 under their statute. If they need more
4 obviously there's no problem. But we anticipate that the
5 matter will be brought up for public hearing because of the
6 significance of the case. Once public hearing is held the
7 period of time for comment is up, we'll get our permit and
8 then we start our removal of the gates, draw-down process,
9 restoration of the river itself. It's been an unbelievably
10 collaborative process.

11 THE COURT: Okay. Thank you. Ms. Stevenson,
12 would you like to add anything in that?

13 MS. STEVENSON: No, I think that's an accurate
14 summary of -- of the progress that has been made since the
15 entry of the interim order. And I think it's everybody's
16 goal to continue along this path and, hopefully, by next
17 season we can have the permit in place and begin the dam
18 removal.

19 MR. SCHLECTE: Yeah, we're -- I think we'll know a
20 little bit more next Wednesday what the timing might be on
21 this. It's sort of a critical meeting before actually
22 getting the application filed, I think.

23 MR. GUSTAFSON: Nothing further, your Honor.

24 THE COURT: Okay. Well, I was fearful that, you
25 know, there was a long delay and not much happening, and

1 those fears are obviously misplaced; sounds like you're
2 making great progress, et cetera. And so I guess my next
3 question would be what type of time line would you think
4 we're looking at on this actual lawsuit?

5 MR. SCHLECTE: I would be shocked if we came back
6 to do anything in this lawsuit, other than have a consents
7 judgment entered pursuant to the interim order.

8 THE COURT: Oh, I see.

9 MR. SCHLECTE: I'd be flabbergasted if there's any
10 other action here. We -- now that we know the sediments are
11 not contaminated, it's simply an issue of figuring out
12 exactly what dam removal will entail. The interim order was
13 pretty specific on a variety of items. The -- the D -- DNRE
14 technical team has been working through the different
15 options. It's -- your Honor, if I can -- can indulge the
16 Court for a moment --

17 THE COURT: Sure. Please.

18 MR. SCHLECTE: -- the Court would indulge me.
19 This -- there are many options to -- to dam removal and
20 right now we're concerned with how do we minimize sediment
21 transport. We discovered that there are -- it's
22 predominantly organic sediments, which as long as the
23 concentrations aren't so large that they will eat up the
24 dissolved oxygen, we can let some it pass downstream. We're
25 concerned about sand transport and we're working through how

1 we're going to deal with that. We really have done a
2 tremendous amount of site investigation to try to determine
3 the nature of sediments and sand and the extent and the
4 location. It's just a long process and I think the DNRE
5 will acknowledge that everybody wants to make sure this is
6 done right. We don't want to screw the Pigeon River up by
7 simply removing the dam without consideration of all of the
8 impacts.

9 THE COURT: And when you say "sediments" you're
10 talking about the material at the -- at -- in -- in the area
11 where there used to be the pond,

12 MR. SCHLECTE: Well, it --

13 THE COURT: -- or is the pond?

14 MR. SCHLECTE: -- is a pond in the -- within the
15 impoundment.

16 THE COURT: Impoundment.

17 MR. SCHLECTE: We've got -- we've got a century's
18 worth of sediment build-up in that --

19 THE COURT: Right.

20 MR. SCHLECTE: -- pond in places. It's less --
21 you know, the water depth is six or eight inches in many
22 places.

23 THE COURT: Oh.

24 MR. SCHLECTE: So there's a lot of sediment there
25 and we're just all trying to make sure that it stays in

1 place.

2 THE COURT: I see. Okay. Well, I don't want to
3 schedule meaningless court activity, but I also don't want
4 to lose a handle on -- I guess case control is always a
5 concern here, you know, with these different guide time
6 lines we have to meet. And it is an '09 case. So what --
7 what do you think would be a reasonable next date for an
8 update or -- again, it can be by phone. I don't want
9 everyone to feel like it's a big burden, but I don't want to
10 lose track of the matter. And having the program just spit
11 out a date randomly is probably not the best procedure like
12 we have here today. But what kind of --

13 MS. STEVENSON: April?

14 THE COURT: -- I mean, --

15 MS. STEVENSON: Yeah. We all come up with April,
16 so --

17 MR. SCHLECTE: April.

18 THE COURT: Oh, you did?

19 MS. STEVENSON: Uh-huh (affirmative).

20 THE COURT: Okay.

21 MS. STEVENSON: Just right now.

22 THE COURT: Oh. All right.

23 MS. STEVENSON: I mean, that's -- I think that
24 would be a good time point, because obviously that's the
25 beginning of, you know, the next season and --

1 THE COURT: Right. And what do you think we'll --
2 or we'll be at then? A permit will be issued and --

3 MS. STEVENSON: Hopefully.

4 THE COURT: -- a plan?

5 MR. SCHLECTE: Yeah, we're -- we're hoping. If
6 we -- if -- if at the meeting next week we agree upon which
7 option is to be implemented and we figure out whether we're
8 going to do this during high flow periods or low flow
9 periods, there are -- there are advantages and disadvantages
10 to each. The goal is to try and get this permit in place
11 before the end of April, I think, so we can start a draw-
12 down after the spring rains, sometime next summer.

13 THE COURT: Okay.

14 MR. SCHLECTE: We do have to put it up for public
15 hearing, as I mentioned, --

16 THE COURT: Right.

17 MR. SCHLECTE: -- the -- the process. So, yeah,
18 hopefully. But if we set a status conference in -- sometime
19 in April, mid or late April, we'll have a really good handle
20 on has a permit been issued. If it's not been issued, you
21 know, is it going to be issued within the next 30 or some
22 days, that sort of thing.

23 THE COURT: Do you anticipate -- again, you know,
24 not to quote you or anything, but are you thinking though
25 public hearings would be sometime in this winter?

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MR. SCHLECTE: Yeah, absolutely.

MS. STEVENSON: Yeah.

THE COURT: Right. Okay. All right. Okay.

Well, I appreciate that input and it kind of sets my mind to ease a little bit that -- you know, the worse thing would be to have it put on a long hold and then get back to square one, and we're not going that route it doesn't sound like, which is good. So I'll ask Kay to set up a late April date. Do you want her to just set it or do you want her to call you first?

MR. SCHLECTE: Just set it as far I'm concerned.

We can --

THE COURT: Okay.

MR. SCHLECTE: -- work around it.

THE COURT: All right. That's all right with you?

MR. GUSTAFSON: Yes, your Honor.

THE COURT: Okay. Well, thanks very much. I appreciate you giving that update, and I'll let -- just ask the assignment clerk to schedule a late April status conference; again, at your option by phone.

MS. STEVENSON: Okay.

THE COURT: Thanks.

MR. SCHLECTE: Great. Thank you --

MS. STEVENSON: Thank you, your Honor.

MR. SCHLECTE: -- very much, your Honor.

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MS. STEVENSON: Thank you.

THE COURT: Thank you. Thanks for coming in.

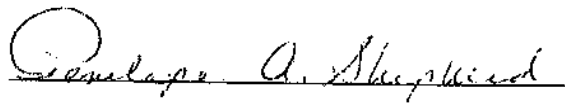
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I certify that this transcript, consisting of 14 pages, is a complete, true and correct rendition, to the best of my ability, of the proceedings and testimony taken in this case on Wednesday, December 8, 2010.

January 6, 2011



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