



CRANE, GREENE & PARENTE

*Attorneys and Counsellors at Law*JOHN P. STOCKLI, JR.
jstockli@cgplaw.com

April 22, 2003

VIA FACSIMILE/473-2534Joseph Kocazaja, Esq.
Department of Law
The Capitol
Albany, New York 12224VIA FACSIMILE/402-9018Mark D. Sanza, Esq.
Office of the General Counsel
New York State Department
of Environmental Conservation
625 Broadway, 1st Floor
Albany, New York 12233RE: CANADA LAKE/DEPARTMENT OF ENVIRONMENTAL CONSERVATION/ARTICLE
78 PROCEEDING

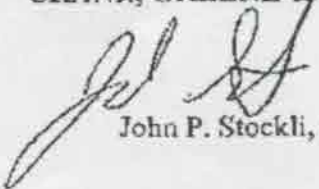
Gentlemen:

As per Joe's request, I am hereby faxing you copies of the papers upon which my request for an order to show cause and for a temporary restraining order and preliminary injunction will be based. We are to appear before Judge McNamara at 9:00 a.m. on Wednesday, April 23, 2003 in Room 72 of the Albany County Courthouse.

Thank you for your cooperation.

Very truly yours,

CRANE, GREENE & PARENTE


John P. Stockli, Jr.JPS/nam
Attachments
03512000110

APPLICATION FOR INDEX NUMBER

ALBANY COUNTY CLERK

Application for INDEX NUMBER pursuant to CPLR 8010(a). FEE \$170.00

Specimen below to be TYPED OR PRINTED by applicant.

INDEX NUMBER
DO NOT WRITE IN THIS SPACE

TITLE OF ACTION OR PROCEEDING

DAVID F. JUNG, JOHN ROBINSON and JAMES HAYS,

Plaintiffs/Petitioners,

-against-

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION,

Defendant/Respondent.

TYPE BELOW NAME AND ADDRESS OF ATTORNEY(S) FOR PLAINTIFF

CRANE, GREENE & PARENTE
90 State Street
Albany, New York 12207
(518) 432-8000

TYPE BELOW NAME AND ADDRESS OF ATTORNEY(S) FOR DEFENDANTS

INDEXED AND ENTERED (CLOCK DATE)

Indexed and Entered

DO NOT WRITE ON LINE ABOVE

DO NOT DETACH

Title of Action or Proceeding to be TYPED OR PRINTED BY APPLICANT.

STATE OF NEW YORK

SUPREME COURT ALBANY COUNTY

DAVID F. JUNG, JOHN ROBINSON and JAMES HAYS,
Plaintiffs/Petitioners,

-against-

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION,

Defendant.

Endorse this INDEX NUMBER on all papers and advise your adversary of the number assigned.

INDEXED AND ENTERED
093511 IndexNumber

REQUEST FOR JUDICIAL INTERVENTION

Supreme Court, Albany County

Index No.: _____

Plaintiff(s)/Petitioner(s):

DAVID F. JUNG, JOHN ROBINSON and JAMES HAYS,

Defendant(s)/Respondent(s):

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION,

For Clerk Only
IAS Entry Date
Judge Assigned
RJI Date

Date Issue Joined: _____

Bill of Particulars served: [] Yes [x] No

NATURE OF JUDICIAL INTERVENTION (check ONE box only AND enter information)

- | | |
|--|--|
| <input type="checkbox"/> Request for preliminary conference | <input type="checkbox"/> Notice of Petition (return date _____) |
| <input type="checkbox"/> Note of issue and/or certificate of readiness | Relief sought: _____ |
| <input type="checkbox"/> Motion of motion (return date _____)
Relief sought: _____ | <input type="checkbox"/> Notice of medical or dental malpractice action
(Specify _____) |
| <input checked="" type="checkbox"/> Order to show cause
(click enter return date: _____)
Relief sought temporary restraining order and
preliminary injunction | <input type="checkbox"/> Statement of Net Worth |
| <input type="checkbox"/> Other ex parte application (specify _____) | <input type="checkbox"/> Writ of habeas corpus |
| | <input type="checkbox"/> Other (specify _____) |

NATURE OF ACTION OR PROCEEDING (check ONE box only)

MATRIMONIAL

- Contested -CM
- Uncontested -UM

COMMERCIAL

- Contract -CONT
- Corporate -CORP
- Insurance (where insurer is a party
Except arbitration) -INS
- UCC (including sales, negotiable
Instruments) -UCC
- *Other Commercial -OC

REAL PROPERTY

- Tax Certiorari TAX
- Foreclosure -FOR
- Condemnation -COND
- Landlord/Tenant -LT
- *Other Real Property -ORP

OTHER MATTERS

- -OTH

TORTS

- Malpractice
- Medical/Podiatric -MM
- Dental -DM
- *Other Professional -OPM
- Motor Vehicle -MV
- *Products Liability -PL
- Environmental -EN
- Asbestos -ASB
- *Breast Implant -BI
- *Other Negligence -OTN
- *Other Tort (including intentional) -OT

SPECIAL PROCEEDINGS

- Art. 75 (Arbitration) -ART75
- Art. 77 (Trusts) -ART77
- Art. 78 -ART78
- Election Law -ELEC
- Guardianship (MHL Art. 81) -GUARD81
- *Other Mental Hygiene -MHYG
- *Other Special Proceeding -OSP

*If asterisk is used, please specify further.

Check "YES" or "NO" for each of the following questions. Is this action/proceeding against a:

- YES NO Municipality: (Specify: _____) YES NO Public Authority: (Specify: NYS Department of Environmental Conservation)
- YES NO Does this action/proceeding seek equitable relief?
- YES NO Does this action/proceeding seek recovery for personal injury?
- YES NO Does this action/proceeding seek recovery for property damage?

Pre-Note Time Frames:

(This applies to all cases except contested matrimonials and tax certiorari cases)

Estimated time period for case to be ready for trial (from filing of RJI to filing of Note of Issue):

- Expedited: 0-8 months
- Standard: 9-12 months
- Complex: 13-15 months

Contested Matrimonial Cases Only: (check and give dates)

Has summons been served? NO YES Date: _____

Was a Notice of No Necessity filed? NO YES Date: _____

ATTORNEY(S) FOR PLAINTIFF(S):

SELF REP?	NAME	ADDRESS	PHONE
	John P. Stockli, Jr., Esq. Crane, Greene & Parente	90 State Street Albany, New York 12207	(518) 432-8000

ATTORNEY(S) FOR DEFENDANT(S):

SELF REP?	NAME	ADDRESS	PHONE

*Self Representation: Parties representing themselves, without an attorney, should check the "Self Rep" box and enter their name, address and phone number in the space provided above for attorneys.

INSURANCE CARRIERS:

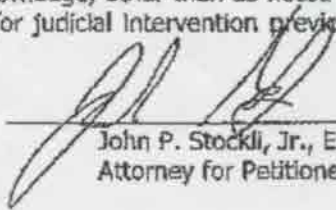
RELATED CASES (if NONE, write "NONE" below)

Title	Index #	Court	Nature of Relationship
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None

I affirm under penalty of perjury that, to my knowledge, other than as noted above, there are and have been no related actions or proceedings, nor has a request for judicial intervention previously been filed in this action or proceeding.

Dated: April 22, 2003



 John P. Stockli, Jr., Esq.
 Attorney for Petitioners

Attach rider sheet if necessary to provide required information

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

-----X
DAVID F. JUNG, JOHN ROBINSON and JAMES HAYS,

Petitioners,

For Judgment Pursuant to Article 78 of the Civil Practice
Law & Rules

-against-

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION,

Respondent.
-----X

ORDER TO SHOW CAUSE
WITH TEMPORARY
RESTRAINING ORDER

INDEX No.: _____

PRESENT: HONORABLE THOMAS J. MCNAMARA

Upon the reading and filing of the accompanying Verified Petition verified on April 22, 2003, the Affidavit of David Jung sworn to on April 22, 2003 and the Affidavit of John P. Stockli, Jr. sworn to on April 22, 2003.

Let the Respondent New York State Department of Environmental Conservation show cause before a Justice of this Court at an all purpose term of this Court held in and for the County of Albany at the Albany County Courthouse, Eagle Street, Albany, New York 12207 on _____, 2003 at 9:30 a.m. why an Order should not be made and entered hereto (i) that the Respondent has acted in an arbitrary, capricious and unlawful manner in failing to maintain the Canada Lake summer water level at 1,542.87 feet above sea level as reflected in the Water Level Agreement or, alternatively, at the level of 1,543.1 above sea level as reflected in the Amended Water Level Agreement; (ii) that the Respondent has violated the Water Level Agreement and the Amended Water Level Agreement by failing to maintain said water level; (iii) ordering the Respondent to comply in all respects with the Water Level Agreement, or

alternatively, the Amended Water Level Agreement; (iv) ordering that the Respondent comply with the Environmental Conservation Law by ceasing and desisting any activities that cause needless erosion along the shore of Canada Lake and (v) granting such other relief as this Court deems just and proper.

ORDERED, that in the meantime and until the determination of the proceeding brought on by this Order to Show Cause and the entry of an Order thereon, Respondent New York State Department of Environmental Conservation be hereby stayed, enjoined and restrained from maintaining a summer water level at Canada Lake, located in Fulton County, New York, in excess of 1,543.1 feet above sea level.

ORDERED, that Respondent's answering papers shall be served by hand or overnight mail on or before _____; Petitioners' reply papers are to be served by hand or overnight mail seven (7) days thereafter.

ORDERED, that service of a copy of this Order shall be personally served upon Respondent in accordance with the Civil Practice Law and Rules on or before April 25, 2003.

Dated: April _____, 2003
Albany, New York

_____, J.S.C.
Thomas J. McNamara

03351/acc

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

-----X
DAVID F. JUNG, JOHN ROBINSON and JAMES HAYS,

Petitioners,

For Judgment Pursuant to Article 78 of the Civil Practice
Law & Rules

VERIFIED PETITION

INDEX No.: _____

-against-

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION,

Respondent.

-----X
Petitioners, David F. Jung, John Robinson and James Hays, by and through their
attorneys, Crane, Greene & Parente, as and for their Verified Petition allege as follows:

PARTIES

1. Petitioner David F. Jung owns a home along the shores of Canada Lake, located
in Fulton County, New York. He has been a homeowner on the lake since 1970 and a summer
resident since the 1940s.

2. Petitioner John Robinson owns a home along the shores of Canada Lake, located
in Fulton County, New York. He has owned this home, along with approximately 400 feet of
shoreline, since 1997.

3. Petitioner James Hays owns a home along the shores of Canada Lake, located in
Fulton County, New York. He has been a homeowner on the lake since the 1980s. He has been a
summer resident since the 1930s.

4. Respondent New York State Department of Environmental Conservation
("DEC") is an agency of the State of New York with its headquarters located in the City of

Albany, Albany County, New York. Respondent is charged with protecting the natural environment of the State of New York and is the State agency which exercises control over the water levels of Canada Lake through its operation of the Stewart's Landing Dam.

BACKGROUND

5. Canada Lake is an approximately 3 mile long by ½ mile wide lake located in the Adirondack Mountains in Fulton County, New York. Upon information and belief, the lake has existed in one form or another for over 10,000 years, but its water level began to be controlled by operation of the Stewart's Landing Dam in the early part of the 20th century.

6. Upon information and belief, during 1974 the State of New York, by deed from Fulton County, took control of the Stewart's Landing Dam.

7. During 1978, there were extensive negotiations between the DEC and the residents who reside along the shores of Canada Lake to establish a water level for Canada Lake during summer months.

8. As a result of these negotiations, the DEC reached an agreement (the "Water Level Agreement") in 1978 which established, among other things, summer water levels. A copy of the Water Level Agreement is attached as Exhibit "A." Petitioners, as owners of shoreline property, are the beneficiaries of the Water Level Agreement.

9. As reflected in the Water Level Agreement, the DEC agreed -- clearly and unequivocally -- that a summer water level of 1,542.82 feet above sea level will be maintained on Canada Lake. Upon information and belief, in 1986 the level was increased to 1,543.1 feet above sea level, through a purported amendment to the Water Level Agreement ("Amended Water Level Agreement") (Exhibit "B").

10. Upon information and belief, the Amended Water Level Agreement was not agreed to by all of the parties and interests upon whose behalf the Water Level Agreement was initially made and thus may be null and void.

11. Upon information and belief, the water level gauge located at the Green Lake Bridge which has been used by DEC to measure compliance with the Water Level Agreement, erroneously reflects the elevation of the lake surface above sea level, hereinafter referred to as the water level or lake level.

12. By letters dated as early as 1983 and more recently July 30, 2002 and January 10, 2003, and through several telephone conversations, Petitioner David Jung and others attempted to convince the DEC to make necessary adjustments at the Stewart's Landing Dam to maintain the target water level of 1,543.1 feet above sea level at Canada Lake, as required by the Amended Water Level Agreement.

13. In response to such correspondence, Mr. Jung received a letter dated January 7, 2003 from Scott Orr, an official land surveyor for the DEC, which included surveyed elevation information regarding the water level gauge (Exhibit "C").

14. The calculations made by DEC's own land surveyor showed that the gauge at the Green Lake Bridge, which DEC uses to assess its compliance with the Amended Water Level Agreement, is 1,543.77 feet above sea level instead of 1,543.1 feet. Thus, the gauge to which the DEC has been maintaining the water level is off by .67 feet. This is consistent with independent measurements taken by Petitioners David F. Jung and James Hays (see accompanying Affidavit of David F. Jung, ¶14).

15. The DEC's surveyor's readings also show that the elevation of the top of the spillway of Stewart's Landing Dam is 1543.1 feet, the exact level needed to maintain the surface

of Canada Lake in the summer at the level identified in the modified Amended Water Level Agreement (see Exhibit "A"). However, subsequent to the construction of the concrete portion of the dam, wooden splash board were added to the top of the dam. These splash boards effectively raise the top of the dam and hence the level of Canada Lake by .67 feet.

16. Notably, the increased elevation of the surface of Canada Lake caused by the addition of splash boards to the Stewart's Landing Dam and the water level gauge level error at the Green Lake Bridge are the same number. Because DEC has exclusive responsibility for both the dam and the water level gauge, it appears that the concrete spillway was improved so that water flows over it at the exact water level set forth in the Amended Water Level Agreement. Indeed, it is only through use of additional splash boards that the water level is kept artificially high.

17. The effect of this .67 foot difference in water level at the Stewart's Landing Dam results in approximately eight feet of shoreline flooding (as measured perpendicular to the lake) for each of the Petitioners' properties. The flooding results in extensive erosion of the shoreline and the deterioration and destruction of trees and vegetation upon the Petitioners' properties (see also accompanying Affidavit of David Jung).

18. Subsequent to Mr. Orr's letter, the DEC issued a second letter on March 11, 2003 (Exhibit "D"). In that letter, the DEC confirms the Amended Water Level Agreement but then contends that DEC is not bound by its plain language.

19. Indeed, the letter curiously states that although the current summer water level being maintained by the DEC is not 1,543.1 feet above sea level -- as required by the Amended Water Level Agreement -- the DEC is nonetheless "confident" that it is complying with the Amended Water Level Agreement.

20. The DEC has offered no support for its contention that 1,543.77 feet above sea level equals 1,543.1 feet above sea level.

21. The DEC offers no explanation of why it feels that it is in compliance with the Amended Water Level Agreement even though its own measurements show that the water level is being maintained at 1,543.77 feet as opposed to the clear requirement of the Amended Water Level Agreement that it be maintained at 1,543.1 feet above sea level.

22. The DEC refuses to comply with the Water Level Agreement or the Amended Water Level Agreement.

AS AND FOR A FIRST CAUSE OF ACTION

23. The Petitioners repeat and reallege each and every allegation contained in paragraphs "1" through "22" as though fully set forth herein.

24. Pursuant to Article 78 of the New York Civil Practice Law and Rules, the decision of the DEC is arbitrary, capricious, lacks substantial evidence and is in violation of applicable law.

AS AND FOR A SECOND CAUSE OF ACTION

25. The Petitioners repeat and reallege each and every allegation contained in paragraphs "1" through "24" as though fully set forth herein.

26. The DEC is in breach of the Water Level Agreement and the Amended Water Level Agreement and, as a result, the Petitioners have suffered, and will continue to suffer in the future, extensive damage to their shorelines through flooding and needless erosion.

AS AND FOR A THIRD CAUSE OF ACTION

27. The Petitioners repeat and reallege each and every allegation contained in paragraphs "1" through "26" as though fully set forth herein.

28. Pursuant to Environmental Conservation Law Section 1-0101(1) it is the policy of the State of New York "to conserve, improve and protect its natural resources and environment ..."

29. Pursuant to ECL §1-0101(2):

[i]t shall further be the policy of the state to improve and coordinate the environmental plans, functions, powers and programs of the state, in cooperation with the federal government, regions, local governments, other public and private organizations and the concerned individual, and to develop and manage the basic resources of water, land, and air to the end that the state may fulfill its responsibility as trustee of the environment for the present and future generations.

30. Pursuant to ECL §3-0301(1)(c) it is the duty of the Respondent to

[p]rovide for the protection and management of marine and coastal resources and of wetlands, estuaries and shorelines (emphasis added).

31. The Respondent, by actively managing the water level of Canada Lake in a manner which results in needless shoreline erosion is arbitrarily, capriciously and unlawfully violating its obligations as set forth in the New York State Environmental Conservation Law.

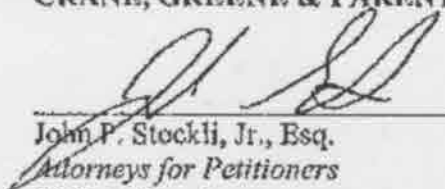
WHEREFORE, it is respectfully submitted that this Court issue an order (i) that the Respondent has acted in an arbitrary, capricious and unlawful manner in failing to maintain the Canada Lake summer water level at 1,542.8 above sea level as reflected in the Water Level Agreement or, alternatively, at the level of 1,543.1 above sea level as reflected in the Amended Water Level Agreement; (ii) that the Respondent has violated the Water Level Agreement and the Amended Water Level Agreement by failing to maintain said water level; (iii) ordering that the Respondent comply in all respects with the Water Level Agreement, or alternatively, the Amended Water Level Agreement; (iv) ordering that that the Respondent comply with the Environmental Conservation Law by ceasing and desisting any activities that cause needless

erosion along the shore of Canada Lake and (v) granting such other relief as this Court deems just and proper.

Dated: April 22, 2003

CRANE, GREENE & PARENTE

By:



John P. Stockli, Jr., Esq.
Attorneys for Petitioners
90 State Street
Albany, New York 12207
(518) 432-8000

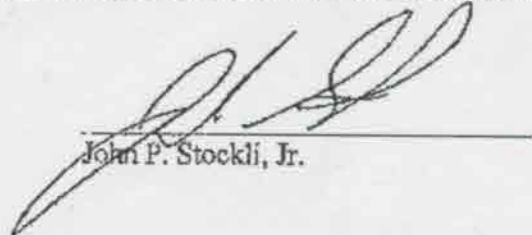
fr US1/verified petition

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

JOHN P. STOCKLI, JR., being duly sworn, deposes and says:

I am the attorney for Petitioners and am a partner of Crane, Greene & Parente, 90 State Street, Albany, New York 12207. I have read the foregoing Verified Petition and know the contents thereof and the same is true of my own knowledge except as to matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true. The reason why I am making this verification instead of the Petitioners is because the Petitioners do not have their principal offices within the County of Albany, which is the county where I have my office. The grounds of my belief as to all matters in the Verified Complaint not stated upon my knowledge are as follows: I am the attorney for the Petitioners herein and as attorney have fully reviewed the documentation of the transactions and have been informed of the facts and circumstances of this action by the Petitioners.


John P. Stockli, Jr.

Sworn to before me on the
22nd day of April, 2003.


Notary Public

MARTHA R. MARTINEZ
Notary Public, State of New York
No. 01MA8088463
Qualified in Columbia County
Commission Expires Jan. 21, 2005

EXHIBIT A

New York State Department of Environmental Conservation

Rye Brook, NY 12977

September 28, 1978

Peter A. A. Berle,
CommissionerMr. John Kasson, Vice President
Canada Lakes Protective Association
County Building
Johnstown, NY 12905

Dear Mr. Kasson:

Re: Stewart's Landing Dam

Enclosed is a copy of the adopted Stewart's Landing Dam water level operating schedule. Thank you for your contributions and participation in the development of this schedule.

As you know, our water level objective between ice out in the spring, to October 1, is 1542.82 feet. We have been monitoring the 1977 and 1978 water level readings as influenced by our dam operating procedures. We plan to adjust our procedures, including the modification of the height of the splash boards as may be necessary to assist us in maintaining the objective level.

The Department is sincerely aiming to maintain the scheduled objectives and assure that advance information is extended relevant to unscheduled events. We wish to assure you and the two (2) associations that we will seek to maintain a policy of communication over matter influencing this location.

Very truly yours,

T. D. Shearer
Thomas D. Shearer
Regional Supervisor, Land Resources
and Forest Management

TDS:lal

Enclosure

cc: T. Monroe
H. VanValkenburgh
W. Kriehbaum
M. Otis
D. Halletts

SEP 19 1978

NEW YORK
BY FAX, N. Y.

September 13, 1978

Stewart's Landing Dam
Water Level Operating Schedule

The gates at Stewart's Landing Dam will be closed annually immediately when ice is off the subject lakes promptly (within one week) raising the water level to 1542.83 feet. This water level will be maintained until October 1. On October 1 the water level will be promptly (one week) dropped to 1540.83 feet and will remain at this level until about December 1. On December 1 the water level will be dropped and maintained at the winter level of 1536.41 feet. Routine dam maintenance by DEC is required and will be accomplished when necessary between May 20 - June 25 and/or Labor Day - October 1. During the period of routine dam maintenance the water level will not be dropped below 1541.00 feet.

The Department will give advance notice of intended water level change during this period to the presidents of the Canada Lakes Protective Association and Stewart's Landing Association. Should emergency circumstances and/or non-routine major maintenance require exception to the above water elevations and dates the Department will give advise notice to presidents of the two (2) associations. The presidents of either association acting under authority of their membership may request the Department to consider changes in the above schedule.

Victor Glider, Director
ENCOH Field Services

Norman J. Van Valkenburgh
Director, Division of Land
Resources and Forest Management

Operation of Stewart's Landing Dam
Minutes of Meeting at Northville
June 6, 1978

Attendance

Richard Schyler	Daniel Green Company
George Dieffenbacher	President, Stewart's Landing Association
Jane Dieffenbacher	Stewart's Landing Association
Jackson Shultz	Stewart's Landing Association
Charles Guile	Stewart's Landing Association
John Kasson	Canada Lakes Protective Association
Morton Lesser	Canada Lakes Protective Association
William Fielding	Canada Lakes Protective Association
Barbara McMartin	Canada Lake Resident
Bruce Berlin	Canada Lake Resident
James McLellan	Canada Lake Resident
Nelos Mallette	Regional Forester, D.E.C.
Donald Decker	Operations Supervisor, D.E.C.
Bruce Busch	Dam Operator, D.E.C.
Alan Koechlein	Division Fish and Wildlife, D.E.C.
Mark Putnam	Environmental Conservation Officer, D.E.C.
Thomas Shearer	Regional Supervisor, Land Resources & Forest Management

Thomas Shearer opened the meeting at 10:00 A.M. Introductions were made and reference documents were reviewed including:

1. Summary of operating schedule, 1977-May, 1978;
2. Summary of proposed operating schedule;
3. Summary of erosion task force report; and
4. 1976 Fish Survey Report by Division of Fish and Wildlife

The objective of the meeting was directed toward an understanding of various interests to collectively develop realistic solutions to water level management on the several lakes influenced by Stewart's Landing Dam.

The influence of the dam on the level of the upper lakes was discussed and it was observed that Canada Lake was not influenced by the dam below approximately 1,540 feet level. The question of cleaning channel obstructions near Lot 76, Old Stone Dam, and Pine Island was reviewed. Removal of stones must be handled by the Associations but would require application for a permit and approval by the Department of Environmental Conservation (DEC). Annual repairs to dock structures was discussed and Mark Putnam explained the requirements for obtaining permits from DEC prior to dock construction or major maintenance work on docks over 200 sq. ft.

The proposed future water level operating schedule was submitted and reviewed as follows: "The gates at Stewart's Dam will be closed annually immediately when the ice is off the subject lakes promptly (within a week) raising the water level to 1,542.83 feet. The summer water level will be maintained at 1,542.83 feet until October 1. Beginning October 1 the water level will be dropped to the 1,539.83 foot level by October 15. Between October 15 and

-2-

December 1 the water level will be maintained at 1,539.83 feet. On December 1 the water level will be dropped to winter level and maintained at 1,536.41 feet. Periodic dam maintenance by DEC is required and will be accomplished annually when necessary between May 20-June 25 and Labor Day-October 25. During dam maintenance the water level will be dropped to not less than 1,541.00 feet.

Meeting participants generally agreed with the above proposal with reservations expressed by some participants as follows:

1. Could the top of the splash boards now at 1,543.16 feet be replaced with splash boards the top being at 1,542.83 feet.
2. Could the water level be maintained at the summer level of 1,542.83 feet until approximately December 1 annually.

The above two (2) reservations were discussed with resolution to leave the top of splash boards as now exist. The reservation to maintain summer water levels until December 1 was not resolved.

The question of autumn water levels seems to be the outstanding problem preventing complete agreement among the majority of interested parties. Further discussion is necessary on the autumn water levels following independent association membership meetings and review by the Division of Fish and Wildlife. The important elements to consider in review of the autumn water levels are:

1. The Division of Fish and Wildlife advises that when the water level is dropped after October 1 annually there is greater chance that eggs spawned by lake trout will be lost. Year around stable water levels is the only way to minimize loss of spawned eggs. Since it is concluded by DEC dam operators that the water must be dropped to 1,536.41 feet by December 1, to prevent dam damage, it is obvious that some loss of eggs will occur during winter months.
2. Some members of the Stewart's Landing Association wish to have water level in Stewart's Flow at a higher level than 1,539.83 feet. An October 1 water drop to 1,539.83 feet is unacceptable, they point out, in view of the past practice of water drop to this level on October 15 and in view of duck hunting and deer hunting needs in late October through November.
3. Members of the Canada Lake Association desire that a definite date be established in October or early November when the water level will be dropped 1'-3' to allow annual dock maintenance.
4. Possible long range solutions include the disappearance of lake trout from these waters and the construction or replacement of docks designed to be installed and maintained at water levels of 1,542.83 feet.

A possible short range solution might be to operate at a water level
1'-2' below 1,542.83 feet between October 1 and December 1.

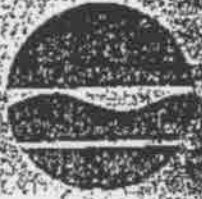
T. D. Shearer
Thomas D. Shearer
Regional Supervisor, Land Resources
and Forest Management

TDS:dm

6/6/78
[Signature]



York State Department of Environmental Conservation
 Ray Brook, New York 12977
 October 3, 1978



Peter A. A. Berle
 Commissioner

Re: Stewart's Landing Dam

The Department is in the process of rehabilitating the spillway on the Stewart Landing Dam. This work includes chipping out the old concrete, anchoring into the solid concrete new reinforcing, forming and pouring new concrete. It will be necessary to lower the water level to one foot below the bottom of the Tainter Gate (1535.41 feet) in order to complete the concrete work and install a timber sill prior to freezing weather. This level will have to be maintained throughout the winter in order to give the new concrete on the spillway required time to cure.

We wish to advise you that the water level at the dam will be lowered to 1535.41 feet beginning October 16 and reaching this level by October 19. For your information the 1535.41 feet level is 7.42 feet below the agreed summer level, 5.42 feet below the agreed October 1-December 1 level, and 1.00 foot below the agreed winter level. As you know drawdown will not affect water level below 1540 feet in the upper lakes due to channel obstructions near Lot 75, Old Stone Dam.

Please take prompt action to protect boats and other personal property in view of the above emergency plan. We are pleased to have the funds and technical manpower to make these much needed repairs at this time. We are sorry for the inconvenience that this emergency repair may cause you.

Very truly yours,

T. D. Shearer

Thomas D. Shearer
 Regional Supervisor, Land Resources
 and Forest Management

TDS:dpl

cc: T. Monroe
 N. VanValkenburgh
 V. Glider
 W. Decker

EXHIBIT B

home file

STATE OF NEW YORK
DEPARTMENT OF
ENVIRONMENTAL CONSERVATION
ALBANY, NEW YORK 12233-1010

THOMAS C. JORLING
COMPTROLLER

OCT 6 1988

Dear Mr. Jung:

Thank you for your letter of June 2, 1988 to our DEC Northville Office addressing concerns over the water level of Canada Lake. My staff advises me that they had telephone conversations with you on this matter and advised you that the lake levels were maintained according to the schedule established pursuant to a standing operational agreement. They also advised you that the gates would be opened only in cases of extreme emergency. The telephone conversations were thought to be sufficient for advising you that there was no corrective action warranted.

The agreement referenced above was signed in 1986 and established a water level control schedule for Stewarts Landing Dam which regulates the level of Canada Lake. This agreement was among DEC, Stewarts Landing Association and the Canada Lake Protective Association. I have attached a copy of the agreement which basically updated a previous version which governed operations for the most of the preceding decade.

As we are all aware, water level control is not an exact science. Every action has an equal reaction, and the schedule is an attempt to blend many expressed concerns into a regime which will give partial satisfaction to lake residents, water level managers, and the natural resources of the area.

Get letter

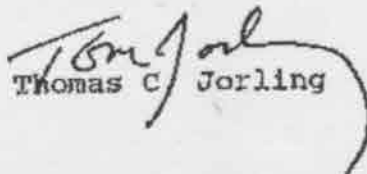
My staff has received a letter of appreciation from the Canada Lake Protective Association for the prompt response and cooperation in the regulation of the water level in Canada Lake for the 1988 summer season.

2.

Since DEC has an agreement with the above referenced Associations, we recommend problems resulting from the water level regulation schedule be directed to the Department through them. All concerns will then be periodically evaluated by my staff.

Thank you again for your concern.

Sincerely,


Thomas C Jorling

Attachment

cc: The Honorable Glenn Barris

Mr. Patrick N. Jung
Star Route 82A
Canada Lake, NY 12032

**Water Level Control Schedule for
Stewart's Landing Dam**

1. Spring Closing of the Gates

The gates on the dam will be closed at ice-out of Canada Lake or May 15, whichever is sooner, raising the water level to the elevation of 1543.1 feet above sea level.

2. Summer Water Level

The summer water level of 1543.1 feet above sea level will be maintained by natural flow of water over the dam. Gates will be opened only in cases of extreme emergency.

3. Fall Drawdown

The summer water level of 1543.1 feet above sea level will be maintained until November 15, unless severe weather conditions occur which, in the judgment of the Department of Environmental Conservation, mandate an earlier drop in water levels.

On November 15 the water level of the dam will be drawn down to the winter level of 1536.41 feet above sea level. This level will be maintained throughout the winter until the gates are closed in the spring.

4. Adjustments to Drawdown Schedule

A. Every four years, beginning in 1988, the gates will be opened for an intermediate drawdown in the fall on October 15. Water will be lowered to the 1539.83 level to facilitate dock and shorefront maintenance. On November 15 the water level will be lowered to 1536.41, unless weather conditions mandate an earlier lowering.

B. Any request to deviate from the proposed water level control schedule must be made in writing to the Regional Supervisor of Operations, N.Y.S.D.E.C., Ray Brook, New York 12977. If an adjustment is approved, a minimum of 30 days notice of such change will be provided to each Association.

C. The Department of Environmental Conservation retains the right to periodically adjust water levels for maintenance of the Stewart's Landing Dam. DEC will notify both Associations in writing at least thirty (30) days prior to any drawdown necessary for scheduled maintenance.

Page 2

- D. The Department of Environmental Conservation retains the right to draw the water levels down whenever, in their judgement, an emergency condition exists. The Department will inform both Associations of such emergency actions as soon as practically possible.

EXHIBIT C

New York State Department of Environmental Conservation
Division of Lands and Forests, Region 5
701 South Main Street - P. O. Box 1316, Northville, New York 12134
Phone: (518) 863-4545 or 863-8881 • FAX: (518) 863-2548
Website: www.dec.state.ny.us



~~January 7, 2003~~

David F. Jung
P.O. Box 478
Canoga, New York 12032

Dear Mr. Jung:

Attached are the elevations that were measured at the Stewarts Landing Dam and for the gauge at the bridge between Green Lake and Canada Lake. The vertical control to obtain these elevations was provided to me by our Albany Real Property office utilizing GPS. The USGS benchmark U308 located on the southeast abutment of said bridge was also checked and seems to agree with the published elevation.

I have given you the elevations in both vertical datums NAVD 88 and NGVD29. The 1543.1 foot elevation in the existing agreement does not specify which vertical datum it refers to. The agreement does not have a date, but according to some correspondence in our file it was prior to 1928. It would seem that the 1543.1 would be in reference to NGVD 29.

Sincerely,



Scott Orr
Land Surveyor

SC:lou

cc: J. McEneaney
L. Eggleton
Alfred Major L.S.

**ELEVATIONS AT STEWARTS LANDING DAM
AND BRIDGE BETWEEN
GREEN LAKE AND CANADA LAKE**

NOVEMBER 17, 2002

U308-BM in southeast abutment of bridge between Canada Lake and Green Lake:

NAVD 88 = 1549.14 ft

NGVD 29 = 1549.59 ft

PK Nail in concrete: NAVD 88 = 1550.49 ft ----- NGVD 29 = 1550.94 ft

Brass plug in boulder: NAVD 88 = 1531.00 ft ----- NGVD 29 = 1531.45 ft

~~DATA~~
NOT A AM

Three shots on top of wooden flash boards:

NAVD 88 = 1543.24 ft ----- NGVD 29 = 1543.69 ft

NAVD 88 = 1543.27 ft ----- NGVD 29 = 1543.72 ft

NAVD 88 = 1543.23 ft ----- NGVD 29 = 1543.68 ft

----- AVERAGE ELEVATION - NAVD 88 = 1543.25 ft

NGVD 29 = 1543.70 ft

Natural Grade

169

Δ NGVD 29
NAVD 88
= .4

= 5 1/2"

Two shots on top of concrete spillway:

NAVD 88 = 1542.55 ft ----- NGVD 29 = 1543.00 ft

NAVD 88 = 1542.56 ft ----- NGVD 29 = 1543.01 ft

AVERAGE ELEVATION - NAVD 88 = 1542.56 ft

NGVD 29 = 1543.01 ft

Gauge at bridge between Green Lake and Canada Lake:

1543.1 ft on gauge is actually - NAVD 88 = 1543.32 ft

NGVD 29 = 1543.77 ft

THIS IS REDICULOUS - THE USGS DATUM WAS ADJUSTED 5" in 1988 WHAT WAS THE ESTABLISHED ELEV 17 1921 THE DAM WAS BUILT in 1920 IF THERE IS AN ADJUSTMENT in 2004 DO THESE PEOPLE THINK WE SHOULD RAISE OR LOWER THE LAKE TO conform TO THE ^{NEW} DATUM

EXHIBIT D

New York State Department of Environmental Conservation
Division of Operations, Region 5
701 South Main Street - P. O. Box 1316, Northville, New York 12134
Phone: (518) 863-4545 or 863-8881 • FAX: (518) 863-2548
Website: www.dco.state.ny.us



March 11, 2003

Mr. David Jung
P. O. Box 478
Canoga Lake, NY 12032-0478

Dear Mr. Jung,

This letter is in response to your letter dated January 30, 2003, regarding the water level of Canada Lake.

There has been and continues to be a great deal of interest and concern regarding the water levels of Canada Lake and Stewart Landing. The Department has determined that the gauge at Green Lake, where we take the readings to regulate the water levels, is not accurate. It is either approximately 2 inches off using the 1988 data or 8 inches off using the 1929 data. The Department is confident however, that the actual lake level agreed to, which was believed to be 1543.1 feet above sea level, has been and is currently being maintained.

Our operating procedure and target water level is consistent with the level which was believed to be 1543.1 feet at the time of the 1986 agreement. It is the Department's intent to continue to maintain the water at this level. Many factors were taken into consideration before a conclusion and subsequent agreement was reached in 1986.

The Department recognizes your concerns regarding shoreline erosion and failing septic systems and this complaint has been forwarded to the Department's Division of Water Resources in Ray Brook. If there is anything we can do to help guide or assist you in these areas, please contact our Water Quality specialists in Ray Brook at 518-897-1200.

I trust this letter is responsive to the concerns in your January 30, 2003 letter.

Sincerely,



James T. McEnaney Jr.
Conservation Oper. Supv. III

JTM:lou

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

-----X
DAVID F. JUNG, JOHN ROBINSON and JAMES HAYS,

Petitioners,

For Judgment Pursuant to Article 78 of the Civil Practice
Law & Rules

AFFIDAVIT OF DAVID F. JUNG

INDEX No.: _____

-against-

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION,

Respondent.
-----X

STATE OF NEW YORK)
) ss.:
COUNTY OF FULTON)

DAVID F. JUNG, being duly sworn, deposes and says:

1. That this Affidavit is in support of the above-captioned Article 78 proceeding.
2. That your deponent is well acquainted with Canada Lake and the water levels that have been maintained thereon for many years.
3. That in the late 1940's, my family built a summer home on the east shore of Canada Lake, and I resided there every summer thereafter until approximately 1970.
4. In 1970, I was deeded my own lot on the east shore of Canada Lake and built a home thereon. I occupied it as a summer resident until approximately 1984 and have lived there year round ever since.
5. Upon information and belief, in the early 1900's, New York Power & Light Corporation constructed a dam at the west end of Canada Lake for the purpose of generating

hydro-electric power. That dam commonly known and designated as the Stewart's Landing Dam has existed ever since and is used to control the outlet of waters from Canada Lake.

6. A concrete spillway, as it presently exists, is approximately 1,543.01 feet above sea level. That elevation was provided by the State of New York through its land surveyor, Scott Orr, and his letter of transmittal dated January 7, 2003 and accompanying survey results are attached hereto and marked Exhibit "A."

7. By various deeds recorded in the Fulton County Clerk's Office, conveyances were made from New York Power & Light Corporation's successor, Niagara Mohawk Power Corporation, to various entities, and eventually the Stewart's Landing Dam was conveyed to the County of Fulton and remained under the control of the County of Fulton, State of New York until February 11, 1974 when the dam and adjoining property was conveyed to the State of New York.

8. Throughout all of the years that I have resided at Canada Lake, there was never a problem with the water height until the State of New York, through the Department of Environmental Conservation (the "Respondent"), took control of the dam.

9. Through all of the years previously mentioned, there was a beautiful sandy beach approximately ten feet wide that ran along the entire eastern shore of Canada Lake, both along the London Bridge portion thereof and the Kasson Drive portion thereof.

10. For a few years after Respondent obtained title and control to the Stewart's Landing Dam, water levels were maintained fairly consistently and accurately. However, from the early 1980's to the present time that has not been the case, and serious flooding and erosion has occurred.

THIS IS
IMPORTANT
"Now they say it
suddenly changed
in 1990 -"

11. In 1978 an agreement was reached to maintain the summer water level at 1,542.8 feet above sea level (the "1978 Agreement"). This is evidenced by the agreement and confirmatory letters attached hereto and marked Exhibit "B."

12. Respondent was put on written notice of the problem as early as May 2, 1983, as evidenced by a letter from my brother, Peter N. Jung, bearing said date, a copy of which is attached hereto and marked Exhibit "C." Countless telephone calls and letters have been made to Respondent thereafter echoing the same complaint, but to no avail.

13. It is obvious to your deponent and others that the gauge ostensibly relied upon by Respondent to ascertain water height, was inaccurate. The gauge is located on the Canada Lake side of the bridge on Route 10, which separates Canada Lake from Green Lake.

14. A metal benchmark is embedded in concrete on the Green Lake side of the bridge, and by simply measuring with a tape measure from the benchmark to the water level, it was easily ascertained by your deponent and James Hays, a petitioner herein, that the gauge was inaccurate by nearly 8 inches. It took Mr. Hays less than five minutes to take that measurement and make that calculation, while in my presence.

15. Finally, after repeated complaints, Respondent agreed to have its surveyors check the accuracy of the benchmark that had been placed in the bridge many years ago by the State; the gauge, which is a small wooden plaque attached to the underside of the bridge; and the concrete spillway at the Stewart's Landing Dam itself. That effort by Respondent led to the results set forth in Exhibit "A" attached hereto.

16. At some point subsequent to the 1978 Agreement, it appears that there was an amendment to the agreed upon water level to 1,543.1 feet above sea level. Your deponent is not sure how the elevation of 1,543.1 feet above sea level was arrived at (Exhibit "D"), but I assume

NOT THAT
SIMPLE!
THE DATUM
IS PRE 1929

that it was the result of the Respondent's acknowledgement that this level would decrease unnecessary erosion.

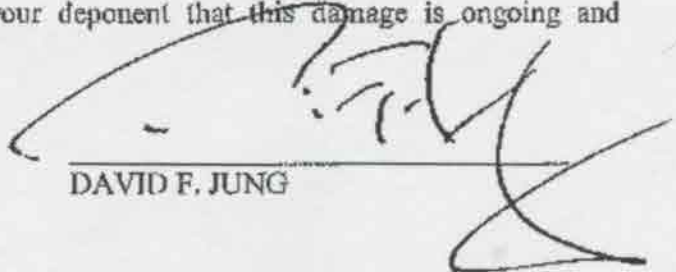
SPILLWAY IS AT 1543.1 ACCORD TO JUNG

17. Notably, the concrete spillway itself is at the exact same elevation.

18. But for periods of heavy rain, the post-1978 agreed-to water height could be easily maintained by permitting water to run over spillway whenever it exceeded 1,543.1 feet. However, for reasons unknown to Petitioners, Respondent has added a splashboard of approximately 8"-12" causing the lake level to be at least that much higher than it should be. These boards are simply that: wooden boards that are easily removed or re-installed with little effort or expense.


19. After receiving the data contained in Exhibit "A," your deponent wrote a letter to Respondent dated January 30, 2003, a copy of which is attached hereto and marked Exhibit "B." The baffling response that I received from Respondent, dated March 11, 2003, is attached hereto as Exhibit "D."

20. As previously stated, destruction to the environment will continue if Respondent is permitted to violate all agreements previously made and maintain a water level which has caused massive erosion of soil, the loss of all beaches, and the loss of numerous large trees, some of which remain in jeopardy right now (since all soil has been eroded away and the trees are standing in water). It is the opinion of your deponent that this damage is ongoing and irreparable.



DAVID F. JUNG

Subscribed and sworn to before me this 22nd day of April, 2003.



Notary Public
9551 Quaker Hill Rd

GERALDINE A. BASTOLLA
Notary Public, State of New York
No. 01KU4860417
Qualified in Saratoga County
Commission Expires May 27, 20 26

WHY WOULD THE
Petitioner think that
THAT THE Amended
water level was
the result of Respondent
"Acknowledgment that
this level would decrease
unnecessary erosion" (The
Amended level is 3" higher)

EXHIBIT A

New York State Department of Environmental Conservation
Division of Lands and Forests, Region 5
 701 South Main Street - P. O. Box 1316, Northville, New York 12134
 Phone: (518) 863-4545 or 863-8531 • FAX: (518) 863-2546
 Website: www.dec.state.ny.us



January 7, 2003

David P. Jung
 P.O. Box 478
 Caroga, New York 12032

Dear Mr. Jung:

Attached are the elevations that were measured at the Stewarts Landing Dam and for the gauge at the bridge between Green Lake and Canada Lake. The vertical control to obtain these elevations was provided to me by our Albany Real Property office utilizing GPS. The USGS benchmark U308 located on the southeast abutment of said bridge was also checked and seems to agree with the published elevation.

I have given you the elevations in both vertical datums NAVD 88 and NGVD29. The 1543.1 foot elevation in the existing agreement does not specify which vertical datum it refers to. The agreement does not have a date, but according to some correspondence in our file it was prior to 1988. It would seem that the 1543.1 would be in reference to NGVD 29.

Sincerely,

Scott Orr
 Land Surveyor

SO:lou

cc: J. McInaney
 L. Eggleton
 Alfred Major L.S.

LICENSED
 WHY WOULD A SURVEYOR
 ASSUME THAT THE DAM BUILT
 IN 1922 CONFORM TO
 NGVD 29 (NATIONAL GEODESIC
 VERT. DATUM 1929)

**ELEVATIONS AT STEWARTS LANDING DAM
AND BRIDGE BETWEEN
GREEN LAKE AND CANADA LAKE**

NOVEMBER 17, 2002

UJ08-BM in southeast abutment of bridge between Canada Lake and Green Lake:

NAVD 88 = 1549.14 ft

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NGVD 29 = 1543.01 ft

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1543.1 ft on gauge is actually - NAVD 88 = 1543.32 ft

NGVD 29 = 1543.77 ft

Look

.69'
= 8.4"

$\Delta = .07'$
= .84"

EXHIBIT B

New York State Department of Environmental Conservation

Ray Brook, NY 12977

September 28, 1978

Peter A. A. Serio,
Commissioner

Mr. John Kasson, Vice President
Canada Lakes Protective Association
County Building
Johnstown, NY 12905

Dear Mr. Kasson:

Re: Stewart's Landing Dam

Enclosed is a copy of the adopted Stewart's Landing Dam water level operating schedule. Thank you for your contributions and participation in the development of this schedule.

As you know, our water level objective between ice out in the spring, to October 1, is 1547.82 feet. We have been monitoring the 1977 and 1978 water level readings as influenced by our dam operating procedures. We plan to adjust our procedures, including the modification of the height of the splash boards as may be necessary to assist us in maintaining the objective level.

The Department is sincerely aiming to maintain the scheduled objectives and assure that advance information is extended relevant to unscheduled events. We wish to assure you and the two (2) associations that we will seek to maintain a policy of communication over matter influencing this location.

Very truly yours,

T. D. Shearer
Thomas D. Shearer
Regional Supervisor, Land Resources
and Forest Management

TOS:lsl

Enclosure

cc: T. Monroe
N. VanValkenburgh
W. Krichbaum
M. Otis
D. Mallette

SEP 19 1978

BY: [illegible]

September 13, 1978

Stewart's Landing Dam
Water Level Operating Schedule

The gates at Stewart's Landing Dam will be closed annually immediately when ice is off the subject lakes promptly (within one week) raising the water level to 1542.83 feet. This water level will be maintained until October 1. On October 1 the water level will be promptly (one week) dropped to 1540.83 feet and will remain at this level until about December 1. On December 1 the water level will be dropped and maintained at the winter level of 1536.41 feet. Routine dam maintenance by DEC is required and will be accomplished when necessary between May 20 - June 25 and/or Labor Day - October 1. During the period of routine dam maintenance the water level will not be dropped below 1541.00 feet.

The Department will give advance notice of intended water level change during this period to the presidents of the Canada Lakes Protective Association and Stewart's Landing Association. Should emergency circumstances and/or non-routine major maintenance require exception to the above water elevations and dates the Department will give advance notice to presidents of the two (2) associations. The presidents of either association acting under authority of their membership may request the Department to consider changes in the above schedule.

Victor Glider, Director
ENCON Field Services

Norman J. Van Valkenburgh
Director, Division of Land
Resources and Forest Management

Operation of Stewart's Landing Dam
Minutes of Meeting at Northville
June 6, 1978

Attendance

Richard Schlyer	Daniel Green Company
George Dieffenbacher	President, Stewart's Landing Association
Jane Dieffenbacher	Stewart's Landing Association
Jackson Shultz	Stewart's Landing Association
Charles Guile	Stewart's Landing Association
John Kasson	Canada Lakes Protective Association
Merton Lesser	Canada Lakes Protective Association
William Fielding	Canada Lakes Protective Association
Barbara McMarkin	Canada Lake Resident
Bruce Berlin	Canada Lake Resident
James McLelland	Canada Lake Resident
Delos Mallette	Regional Forester, D.E.C.
Donald Decker	Operations Supervisor, D.E.C.
Bruce Busch	Dam Operator, D.E.C.
Alan Kocochlein	Division Fish and Wildlife, D.E.C.
Mark Putnam	Environmental Conservation Officer, D.E.C.
Thomas Shearer	Regional Supervisor, Land Resources & Forest Management

Thomas Shearer opened the meeting at 10:00 A.M. Introductions were made and reference documents were reviewed including:

1. Summary of operating schedule, 1977-May, 1978;
2. Summary of proposed operating schedule;
3. Summary of erosion task force report; and
4. 1976 Fish Survey Report by Division of Fish and Wildlife

The objective of the meeting was directed toward an understanding of various interests to collectively develop realistic solutions to water level management on the several lakes influenced by Stewart's Landing Dam.

The influence of the dam on the level of the upper lakes was discussed and it was observed that Canada Lake was not influenced by the dam below approximately 1,540 feet level. The question of cleaning channel obstructions near Lot 75, Old Stone Dam, and Pine Island was reviewed. Removal of stones must be handled by the Associations but would require application for a permit and approval by the Department of Environmental Conservation (DEC). Annual repairs to dock structures was discussed and Mark Putnam explained the requirements for obtaining permits from DEC prior to dock construction or major maintenance work on docks over 200 sq. ft.

The proposed future water level operating schedule was submitted and reviewed as follows: "The gates at Stewart's Dam will be closed annually immediately when the ice is off the subject lakes promptly (within a week) raising the water level to 1,542.83 feet. The summer water level will be maintained at 1,542.83 feet until October 1. Beginning October 1 the water level will be dropped to the 1,539.83 foot level by October 15. Between October 15 and

-2-

December 1 the water level will be maintained at 1,539.83 feet. On December 1 the water level will be dropped to winter level and maintained at 1,536.41 feet. Periodic dam maintenance by DEC is required and will be accomplished annually when necessary between May 20-June 25 and Labor Day-October 25. During dam maintenance the water level will be dropped to not less than 1,541.00 feet.

Meeting participants generally agreed with the above proposal with reservations expressed by some participants as follows:

1. Could the top of the splash boards now at 1,543.16 feet be replaced with splash boards the top being at 1,542.83 feet.
2. Could the water level be maintained at the summer level of 1,542.83 feet until approximately December 1 annually.

The above two (2) reservations were discussed with resolution to leave the top of splash boards as now exist. The reservation to maintain summer water levels until December 1 was not resolved.

The question of autumn water levels seems to be the outstanding problem preventing complete agreement among the majority of interested parties. Further discussion is necessary on the autumn water levels following independent association membership meetings and review by the Division of Fish and Wildlife. The important elements to consider in review of the autumn water levels are:

1. The Division of Fish and Wildlife advises that when the water level is dropped after October 1 annually there is greater chance that eggs spawned by lake trout will be lost. Year around stable water levels is the only way to minimize loss of spawned eggs. Since it is concluded by DEC dam operators that the water must be dropped to 1,536.41 feet by December 1, to prevent dam damage, it is obvious that some loss of eggs will occur during winter months.
2. Some members of the Stewart's Landing Association wish to have water level in Stewart's Flow at a higher level than 1,539.83 feet. An October 1 water drop to 1,539.83 feet is unacceptable, they point out, in view of the past practice of water drop to this level on October 15 and in view of duck hunting and deer hunting needs in late October through November.
3. Members of the Canada Lake Association desire that a definite date be established in October or early November when the water level will be dropped 1'-3' to allow annual dock maintenance.
4. Possible long range solutions include the disappearance of lake trout from these waters and the construction or replacement of docks designed to be installed and maintained at water levels of 1,542.83 feet.

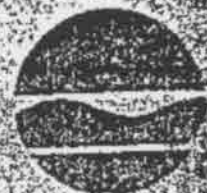
-3-

A possible short range solution might be to operate at a water level
1'-2' below 1,542.83 feet between October 1 and December 1.

T. D. Shearer
Thomas D. Shearer
Regional Supervisor, Land Resources
and Forest Management

TDS:dnt

York State Department of Environmental Conservation
 Ray Brook, New York 12977
 October 3, 1978



Peter A. A. Berle
 Commissioner

Re: Stewart's Landing Dam

Tainter Gate is at 1536.41 ✓

The Department is in the process of rehabilitating the spillway on the Stewart Landing Dam. This work includes chipping out the old concrete, anchoring into the solid concrete new reinforcing, forming and pouring new concrete. It will be necessary to lower the water level to one foot below the bottom of the Tainter Gate (1535.41 feet) in order to complete the concrete work and install a timber sill prior to freezing weather. This level will have to be maintained throughout the winter in order to give the new concrete on the spillway required time to cure.

We wish to advise you that the water level at the dam will be lowered to 1535.41 feet beginning October 16 and reaching this level by October 19. For your information the 1535.41 feet level is 7.42 feet below the agreed summer level, 5.42 feet below the agreed October 1-December 1 level, and 1.00 feet below the agreed winter level. As you know drawdown will not affect water level below 1540 feet in the upper lakes due to channel obstructions near Lot 75, Old Stone Dam.

Please take prompt action to protect boats and other personal property in view of the above emergency plan. We are pleased to have the funds and technical manpower to make these much needed repairs at this time. We are sorry for the inconvenience that this emergency repair may cause you.

Very truly yours,

T. D. Shearer
 Thomas D. Shearer
 Regional Supervisor, Land Resources
 and Forest Management

TDS:dm

cc: T. Monroe
 M. VanValkenburgh
 V. Glidor
 H. Decker

EXHIBIT C

EXHIBIT D

home file

STATE OF NEW YORK
DEPARTMENT OF
ENVIRONMENTAL CONSERVATION
ALBANY, NEW YORK 12233-1010

THOMAS C. JOPLINO
Commissioner

OCT 6 1988

Dear Mr. Jung:

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As we are all aware, water level control is not an exact science. Every action has an equal reaction, and the schedule is an attempt to blend many expressed concerns into a regime which will give partial satisfaction to lake residents, water level managers, and the natural resources of the area.

Get letter

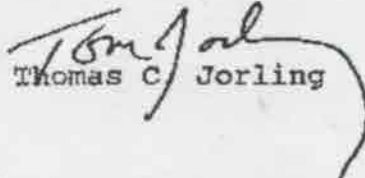
My staff has received a letter of appreciation from the Canada Lake Protective Association for the prompt response and cooperation in the regulation of the water level in Canada Lake for the 1988 summer season.

2.

Since DEC has an agreement with the above referenced Associations, we recommend problems resulting from the water level regulation schedule be directed to the Department through them. All concerns will then be periodically evaluated by my staff.

Thank you again for your concern.

Sincerely,


Thomas C Jorling

Attachment

cc: The Honorable Glenn Harris

Mr. Patrick M. Jung
Star Route 82A
Canada Lake, NY 12032

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Stewart's Landing Dam**

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B. Any request to deviate from the proposed water level control schedule must be made in writing to the Regional Supervisor of Operations, N.Y.S.D.E.C., Ray Brook, New York 12977. If an adjustment is approved, a minimum of 30 days notice of such change will be provided to each Association.

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Page 2

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EXHIBIT E

January 30, 2003

New York State
Department of Environmental Conservation
P.O. Box 1316
701 S. Main St.
Northville, NY 12134

At: Janice McInaney
Re: Canada Lake Water Level

Dear Mr. McInaney:

The purpose of this letter is to reiterate our telephone conversation of today's date with regard to the above.

As you know, we received the report from your land surveyor, Scott Orr, dated November 17, 2002 and transmitted to me by letter dated January 7, 2003 and thank you therefor.

Since all agreements affecting the lake level are dated prior to 1988, we have relied upon the 1979 data when making our calculations.

Per agreement, the lake level should be maintained during the summer at 1,543.1 feet, but in fact, for many years, has been 8 inches or more above that, as a result of reliance upon a gauge located at the Green Lake bridge, which, due to faulty installation, is off by over 8 inches.

I have correspondence to your office dating back to 1981 complaining of the excessive height of the lake during the summer and the resultant damage to the environment caused by it and responsive correspondence from your office indicating that the lake level was being maintained at the agreed-upon height. Obviously, the lake has not been maintained at the height agreed upon, and extensive damage has been caused as a result thereof. I believe much of that damage to be irreparable.

From the data received, it appears that the concrete spillway is exactly at the height of the agreed-upon summer level, i.e. 1543.1 feet. Consequently, removal of the wooden flashboards would put the state in compliance with the agreement and cause an immediate cessation of the ongoing environmental destruction.

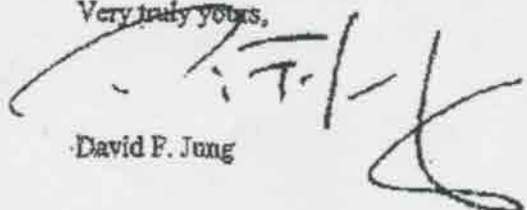
Page 2

January 30, 2003

With the advent of spring, we would like written assurance from the state that it will comply with the agreement. As you know, we have retained an engineering firm and have consulted with a law firm. It is our hope that the state will voluntarily protect the environment and will not be compelled to do so through legal action.

Because of the urgency of the situation, we must insist on a written response within thirty (30) days from the date of this letter.

Very truly yours,


David F. Jung

- cc: John Robinson
81 Old Niskayuna Road
Loudonville, NY 12211
- cc: James Hays
P.O. Box 76
Tuscola Park, NY 10987
- cc: Vollner Associates LLP
P. O. Box 422
Johnstown, NY 12095
- cc: Crane, Greene and Parente
Attn: John Stockli, Esq.
90 State St.
Albany, NY 12207
- cc: NYSDEC
ATTN: Stuart Buchanan, Regional Director
Route 86
P.O. Box 296
Ray Brook, NY 12977

EXHIBIT F

New York State Department of Environmental Conservation**Division of Operations, Region 5**

701 South Main Street - P. O. Box 1316, Northville, New York 12134

Phone: (518) 863-4546 or 863-8891 • FAX: (518) 863-2546

Website: www.dec.state.ny.usErin M. Crotty
Commissioner

March 11, 2003

Mr. David Jung
P. O. Box 478
Canoga Lake, NY 12032-0478

Dear Mr. Jung,

This letter is in response to your letter dated January 30, 2003, regarding the water level of Canada Lake.

There has been and continues to be a great deal of interest and concern regarding the water levels of Canada Lake and Stewart Landing. The Department has determined that the gauge at Green Lake, where we take the readings to regulate the water levels, is not accurate. It is either approximately 2 inches off using the 1988 data or 8 inches off using the 1929 data. The Department is confident however, that the actual lake level agreed to, which was believed to be 1543.1 feet above sea level, has been and is currently being maintained.

Our operating procedure and target water level is consistent with the level which was believed to be 1543.1 feet at the time of the 1986 agreement. It is the Department's intent to continue to maintain the water at this level. Many factors were taken into consideration before a conclusion and subsequent agreement was reached in 1986.

The Department recognizes your concerns regarding shoreline erosion and failing septic systems and this complaint has been forwarded to the Department's Division of Water Resources in Ray Brook. If there is anything we can do to help guide or assist you in these areas, please contact our Water Quality specialists in Ray Brook at 518-897-1200.

I trust this letter is responsive to the concerns in your January 30, 2003 letter.

Sincerely,

James T. McEnaney Jr.
Conservation Oper. Supv. III

JTM:lon

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

-----X
DAVID F. JUNG, JOHN ROBINSON and JAMES HAYS,

Petitioners,

For Judgment Pursuant to Article 78 of the Civil Practice
Law & Rules

AFFIDAVIT OF JOHN P.
STOCKLI, JR.

-against-

INDEX No.: _____

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION,

Respondent.

-----X
STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

JOHN P. STOCKLI, JR., being duly sworn, deposes and says:

1. I am the attorney for the Petitioners in the above-referenced matter and make this affidavit in support the Verified Petition and request for a temporary restraining order and preliminary injunction.

2. As set forth fully in the Verified Petition and accompanying Affidavit of David Jung, the actions of the New York State Department of Environmental Conservation (the "DEC") in its management of the water levels of Canada Lake violate at least two previous agreements with interested parties, as well as the Environmental Conservation Law.

3. Indeed, the DEC has in the past managed, and in the foreseeable future will manage, the water levels in Canada Lake in such a way as to severely erode the shoreline and destroy a significant amount of the property owned by the Petitioners herein. This will include

the flooding of former beach areas, treed areas and over eight (8) feet of shoreline as measured perpendicular to the lake shore.

4. The Petitioners herein will be irreparably harmed by such flooding in that once the erosion takes place, it is virtually impossible to return the eroded parcels to their original state. Moreover, to the extent that standing trees are flooded, the entire viability of such trees will be irreparably threatened.

5. Petitioners are likely to succeed in the merits of this case because the DEC:

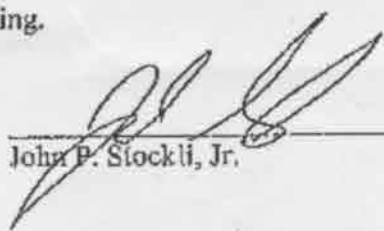
(i) admits that it has previously agreed to maintain the water level in Canada Lake to a set figure above sea level;

(ii) admits that it is currently managing that water level to a height of approximately eight (8) inches above such level (by virtue of which the shoreline properties of Petitioners Jung and Robinson are flooded by eight (8) feet [as measured perpendicular to the lake]); and

(iii) provides no explanation for this violation of previous agreements or its failure to fulfill obligations under the New York State Environmental Conservation Law to avoid needless erosion of the shoreline.

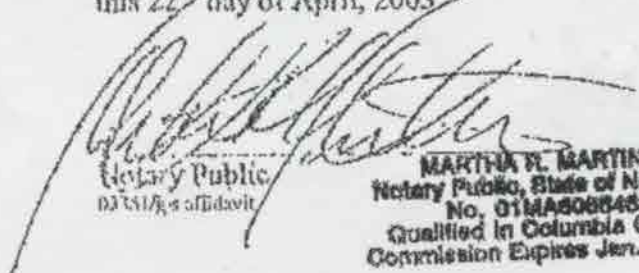
6. Given the current Spring thaw, it is critical that injunctive relief be granted pending resolution of this Article 78 proceeding that will bar the DEC from artificially maintaining the height of the water in excess of 1,543.1 above sea level. Otherwise, additional damage will occur to the Petitioners property.

WHEREFORE it is respectfully requested that this Court issue a temporary restraining order and preliminary injunction barring the New York State Department of Environmental Conservation from maintaining the water level in Canada Lake at height higher than 1,543.1 above sea level during the pendency of this proceeding.



John P. Stockli, Jr.

Subscribed and sworn to before me
this 22nd day of April, 2003



Notary Public
01145174's affidavit

MARTHA R. MARTINEZ
Notary Public, State of New York
No. 01145088483
Qualified in Columbia County
Commission Expires Jan. 21, 2007