

Appendix A

Correspondence related to a jurisdictional review of Golden Lotus Dam by the Federal Energy Regulatory Commission, 2005–06. (Documents were reduced to fit these pages.)

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STATE OF MICHIGAN

DEPARTMENT OF NATURAL RESOURCES
LANSING

JENNIFER M. GRANHOLM
GOVERNOR

REBECCA A. HUMPHRIES
DIRECTOR

April 15, 2005

Ms. Magalie Roman Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

RE: GOLDEN LOTUS DAM JURISDICTIONAL REVIEW (FERC Docket # UL05-1)

Dear Ms. Salas:

The Michigan Department of Natural Resources (MDNR) would like a jurisdictional review conducted on Golden Lotus Dam and hydroelectric project, located on the Pigeon River in Cheboygan County, Michigan. MDNR has concerns that the dam owner is generating hydroelectric power at the expense of public trust resources. Specifically, we are concerned that the project is negatively impacting the fish populations and other aquatic resources of the Pigeon River by increasing stream temperatures below the dam and the peaking operational mode of the hydropower unit. A jurisdictional review is necessary to ensure that fish and wildlife resources are not impacted by unauthorized activities.

The following is specific information related to the dam (per Michigan Department of Environmental Quality Dam Safety Database):

Name - Golden Lotus Dam (aka. Lansing Club Dam)	Height - 13 feet
Owner - Golden Lotus, Inc. 9607 Sturgeon Valley Road Vanderbilt, MI 49795-9742 (989) 983-4107	Impoundment - 45 acres Storage - 365 acre feet Fish Passage - No Latitude - 45.145° N Longitude - 84.473° W Town - 32N Range - 1W Section - 19 SE 1/4
Dam Position - 1	
Hazard - Low	
Material - Earthen	
Purpose - Electrical Generation	
Generation Capacity - 100kw	

We appreciate your assistance in this matter. If you have any questions, please contact me at: Michigan Department of Natural Resources, Mio Field Office, 191 S. Mt. Tom Rd., Mio, MI 48647.

Sincerely,

Kyle Kruger
Senior Fisheries Biologist
Habitat Management Unit
FISHERIES DIVISION
989-826-3211 Ext. 7073
krugerk@michigan.gov

cc: Mr. Henry Ecton, FERC Washington
Mr. Chris Freiburger, Fisheries, Lansing
Mr. David Borgeson, Fisheries, Gaylord

NATURAL RESOURCES COMMISSION
Keith J. Charters-Chair • Mary Brown • Bob Garner • Gerald Hall • John Madigan • Frank Wheatlake
STEVENS T. MASON BUILDING • P.O. BOX 30028 • LANSING, MICHIGAN 48909-7528
www.michigan.gov/dnr • (517) 373-2329



STATE OF MICHIGAN

JENNIFER M. GRANHOLM
GOVERNOR

DEPARTMENT OF NATURAL RESOURCES
LANSING

REBECCA A. HUMPHRIES
DIRECTOR

April 29, 2005

Ms. Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

**RE: CORRECTION TO GOLDEN LOTUS DAM JURISTITION REVIEW
REQEUST DATED APRIL 15, 2005 (Docket Number UL05-1), LOCATION
INFORMATION REVISION**

Dear Ms. Salas,

In my filing regarding the above mentioned request, I indicated the project location was in Cheboygan County, Michigan. The correct county location is Otsego County, Michigan. Please update your files regarding this facility. Thank you. If you have any questions or comments, please feel free to contact me at: Michigan Department of Natural Resources, Mio Field Office, 191 S. Mt. Tom Rd., Mio, MI 48647.

Sincerely,

Kyle Kruger
Senior Fisheries Biologist
Habitat Management Unit
FISHERIES DIVISION
(989) 826-3211 Ext. 7073

cc Henry Ecton, FERC, Washington

NATURAL RESOURCES COMMISSION
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FEDERAL ENERGY REGULATORY COMMISSION
Washington, D. C. 20426

OFFICE OF ENERGY PROJECTS

Docket No. UL05-1-000
Lansing Club Hydroelectric Project - MI
Golden Lotus, Inc.

Judy Tracy, Chair
Board of Directors
Golden Lotus/ Song of the Morning
9607 Sturgeon Valley Road E.
Vanderbilt, MI 49795

JUN 07 2005

Dear Ms Tracy:

On April 21, 2005, the Federal Energy Regulatory Commission (Commission) received an environmental complaint from the Michigan Department of Natural Resources concerning the operation of the Lansing Club Hydroelectric Project (project). As a result, we are beginning a review of the project to determine whether the project is subject to the Commission's licensing jurisdiction under Part I of the Federal Power Act.

Section 23(b) of the Federal Power Act established the jurisdiction of the Commission over the construction, operation, or maintenance of hydropower projects which:

1. are located on navigable waters of the United States; or
2. occupy public lands or reservations of the United States; or
3. utilize the surplus water or water power from a federal dam;¹ or
4. are located on waters which are non-navigable but over which congress has jurisdiction under its authority to regulate interstate and foreign commerce, and the project would affect interstate or foreign commerce (such as transmission of its power in interstate commerce), and there has been project construction or modifications other than routine maintenance after 1935.

¹ Commission jurisdiction under 1, 2, and 3 does not attach if the project is constructed, operated, and maintained in accordance with the terms of a valid federal permit issued prior to June 10, 1920.

A river is navigable under section 3(8) of the Federal Power Act if (1) it is currently being used or is suitable for use, or (2) it has been used or was suitable for use in the past, or (3) it could be made suitable for use in the future by reasonable improvement, to transport persons or property in interstate or foreign commerce. Note that navigability is not destroyed by obstructions or disuse of many years; personal or private use may be sufficient to demonstrate the availability of the river for commercial navigation; and the seasonal floatation of logs is sufficient to determine that a river is navigable.

The Lansing Club Project may fall under one or more of the bases of Commission jurisdiction. Please provide for the record the following information:

- The power generated by the project is used for what purpose?
- Is any excess power sold to the local power company?
- Do you purchase any power from the local power company to supplement the power generated by the project?
- If all of the power generated by the project is used on site, how is this power distributed?
- What do you use instead of the power generated by your project do in the event of a shut-down caused by low water, a frozen reservoir, equipment failure, etc.?

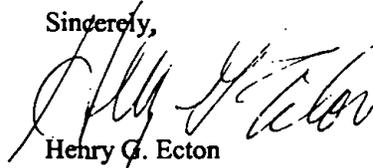
We request that Golden Lotus, Inc. file a response to this letter with the Commission's Secretary within 45 days of the date of this letter. In your response please refer to Docket No. UL05-1-000. The Secretary's address is:

Secretary
Federal Energy Regulatory Commission
Mail Code PJ-12
888 1st Street NE
Washington, D.C. 20426

If we do not receive a timely response from you, the matter will be referred to the Commission's enforcement group in the General Counsel's Office. Please be aware that any party may file a license application for an unlicensed project and, if the license is issued, obtain authority, through the use of eminent domain, to own and operate the project.

We, therefore, urge your cooperation. If you have any questions, please do not hesitate to contact me at (202) 502-8768.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry G. Ecton", written in a cursive style.

Henry G. Ecton
Division of Hydropower Administration
and Compliance



Golden Lotus, Inc.

August 17, 2005

Ms. Magalie Roman Salas, Secretary
Federal Energy Regulatory Commission
Mail Code PJ-12
888 First Street, NE
Washington, DC 20426

FILED
OFFICE OF THE
SECRETARY
2005 AUG 26 A 10:21
FEDERAL ENERGY
REGULATORY COMMISSION

Re: Docket # UL05-1-000
Golden Lotus, Inc. Hydroelectric Project

Dear Ms. Salas:

We are in receipt of your letter of June 7, 2005 which was addressed to our Board Chair, Judy Tracey. In my capacity as General Manager of Golden Lotus, Inc., she has asked me to respond on her behalf. We understand that you are beginning a jurisdictional review of our hydroelectric project at the request of the Michigan Department of Natural Resources. In that letter you ask us a series of questions which I will respond to shortly.

I would like to preface our answers by describing who we are and what we are doing with a hydroelectric project in the first place. Golden Lotus, Inc. is a Michigan-based, non-profit religious organization that operates a retreat center called *Song of the Morning*. The hydroelectric project was installed in the 1950's to provide renewable energy for the buildings and it would certainly constitute an economic hardship for us to remove it. The impoundment, known as the Lansing Club Pond, was already there and creates a lake that is the jewel at the center of the retreat.

One issue raised by your questions concerns connection of the hydroelectric project with the local power company and hence the electricity grid. In light of this fact and the concern it creates, we wish to advise you that we intend to disconnect our hydroelectric project from the electrical grid. This act will ensure that the buildings serviced by our hydropower will not be able to get power from the grid, and the buildings that will be serviced by the grid (should we choose to have any do that) will not be able to get power from the project; in other words, a closed circuit. The connection with the grid was fairly recent and is only used as a backup. We do also have a diesel generator for emergency backup.

Now to answer the questions:

The power generated by the project is used for what purpose?

We use the power to run our buildings, that is, for lights, office computers, maintenance, kitchen, well, and laundry.

Is any excess power sold to the local power company?

No. We are not set up that way, nor have we ever been.

Do you purchase any power from the local power company to supplement the power generated by the project?

We have occasionally; as stated above, we will be disconnecting the power grid line from our project so that this will not be the case in the future.

If all of the power generated by the project is used on site, how is this power distributed?

The power is distributed from the control room beside the turbine room through 4 switches. One goes to the turbine and generator room, another to the Main House, another to the Domes and Wheelhouse, and the last to the Lodge, Boathouse, trailers and maintenance shed.

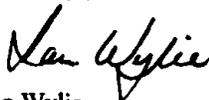
What do you use instead of the power generated by your project in the event of a shut-down caused by low water, a frozen reservoir, equipment failure, etc.?

We switch to either the backup diesel generator or to the local power company. As we will be removing the power company option from the generator control room and either not accessing the interstate grid or using it alone for some of the buildings, the backup diesel generator will provide all emergency power.

A couple of further points should be made. I notice that the MDNR complaint says that the project has a 100 kw capacity. This is incorrect. In fact, it is a 50 kilowatt project with actual output below 40 kw. As specified in the complaint it is a low hazard earthen dam that is regularly inspected for the Michigan Dept. of Environmental Quality, Dam Safety.

Should any further clarification be needed, please do not hesitate to contact me.

Sincerely yours,



Ian Wylie
General Manager
Golden Lotus Inc.
(989) 983-4107

UNITED STATES OF AMERICA 114 FERC ¶62,083
FEDERAL ENERGY REGULATORY COMMISSION

Golden Lotus, Inc.

Docket No. UL05-1-000

ORDER FINDING LICENSING OF HYDROELECTRIC PROJECT
NOT REQUIRED

(Issued January 31, 2006)

1. On April 21, 2005, the Federal Energy Regulatory Commission (Commission) received an environmental complaint from the Michigan Department of Natural Resources concerning the operation of the Lansing Club Hydroelectric Project (project), located on the Pigeon River near the town of Vanderbilt in Otsego County, Michigan. A review of the project was undertaken to determine whether the project is subject to the Commission's licensing jurisdiction under Part 1 of the Federal Power Act. We have determined that the Lansing Club Hydroelectric Project is not subject to the Commission's licensing jurisdiction.

2. Pursuant to Section 23(b)(1) of the Federal Power Act (FPA), §817(1), a non-federal hydroelectric project must (unless it has a still-valid pre-1920 federal permit) be licensed if it:

- * is located on a navigable water of the United States;
- * Occupies lands of the United States;
- * utilizes surplus water or waterpower from a government dam; or
- * is located on a body of water over which Congress has Commerce Clause jurisdiction, project construction has occurred on or after August 26, 1935, and the project affects the interests of interstate or foreign commerce.

3. The Lansing Club Hydroelectric Project, a run-of-river project owned and operated by Golden Lotus, Inc., consists of: (1) a 45-acre reservoir; (2) a 13-foot-high, 255-foot-long earthen dam; (3) a powerhouse containing one generating unit with an installed capacity of 74 kW; and (4) appurtenant facilities. The project is not connected to an interstate grid, and will not occupy any tribal or federal lands.

4. No evidence has been found to document past or present usage of the Pigeon River for navigation in interstate commerce from above and past the project site. The project does not occupy any public lands or reservations of the United States and does not use surplus water or waterpower from a federal government dam. Although the project was constructed after 1935 and is located on a Commerce

Clause water, the project is not connected to an interstate grid. Consequently, Section 23(b)(1) does not require licensing of the Lansing Club Hydroelectric Project.

The Director orders:

(A) Section 23(b)(1) of the Federal Power Act does not require licensing of the Lansing Club Hydroelectric Project. This order is issued without prejudice to any future determination, upon new or additional evidence, that licensing is required.

(B) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.

William Y. Guey-Lee
Chief, Engineering and Jurisdiction Branch
Division of Hydropower
Administration and Compliance

UNITED STATES OF AMERICA 114 FERC ¶62,083
FEDERAL ENERGY REGULATORY COMMISSION

Golden Lotus, Inc.

Docket No. UL05-1-000

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NOT REQUIRED

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Appendix. These changes in flow are responsible for reducing the abundance and diversity of aquatic organisms downstream of the project. The adverse effects of peaking operations are well documented in the literature. Data from nearby streams of similar physical characteristics (temperature, flow, etc.) and upstream of the impoundment not affected by the peaking flows verify the degradation of the Pigeon River and its aquatic resources downstream of the Lansing Club Project.

In Section 4 of the Order, the commission indicated:

No evidence has been found to document past or present usage of the Pigeon River for navigation in interstate commerce from above and past the project site.

The Department provided the Commission staff with reference to a Michigan Supreme Court case determining that the Pigeon River was deemed navigable based on floating logs to a distance of 40 miles upstream of Mullet Lake which is above the location of the Lansing Club Project (*Nelson v Cheboygan Slack-Water Nav. Co.*, 44 Mich 7; 5 NW 998 [1880]). This determination was based on evidence presented in the case or known to the court when the case was heard. The Department has included a summary of that case (Appendix 2). The Department has also included an excerpt from a historical work on log marks in northeastern Michigan that covers the region including the Pigeon River and indicating that logs were floated on the Pigeon River and that these forest products from the Cheboygan River system were exported to locations outside of the state of Michigan (Appendix 3). The Department also provided Commission staff reference to deeds (circa 1910) for the location of the Lansing Club Project which includes specific reference to use of the property for a dam to float timber (Appendix 4). To provide additional support to the Department's position that the Pigeon River is a navigable stream from a point upstream of the Lansing Club Project, we have attached portions of the US Army Corps of Engineers (ACE), Detroit District publication *A Report of the Findings of Navigability, Cheboygan River and Inland Waterway Basin, Michigan* that includes the following information:

The Pigeon River, as with most tributaries to this system, flows through lands once covered with marketable pine and cedar. An 1871 Army Corps of Engineers report stated that, "logs are now run for an extent of 45 miles in the Pigeon River"

And

The Pigeon River is cited as having logs run in it for 45 miles. While the method of measure is uncertain, it can be assumed that this extends log driving to the source.

It is clear from this document that the ACE holds the opinion that logs were floated throughout the Pigeon River, from the headwaters to Mullet Lake. The source and the mouth are points both above and below the location of the Lansing Club Project. The pertinent sections of the above mentioned ACE report are included in Appendix 5. In addition to the court case and

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historical documents, saw logs persist in the stream bed upstream and downstream of the project. And, finally, on this point, the FPA gives the following definition:

(8) "navigable waters" means those parts of streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States, and which either in their natural or improved condition notwithstanding interruptions between the navigable parts of such streams or waters by falls, shallows, or rapids compelling land carriage, are used or **suitable for use** [emphasis added] for the transportation of persons or property in interstate or foreign commerce, including therein all such interrupting falls, shallows, or rapids, together with such other parts of streams as shall have been authorized by Congress for improvement by the United States or shall have been recommended to Congress for such improvement after investigation under its authority;

Clearly, the burden of proof suggested by the Order is not reflected in FPA. The definition only requires that a waterbody be "suitable for use", not "proven to have been used" for interstate commerce. The Department believes it has provided ample evidence of use, notwithstanding the characteristics of the Pigeon River are clearly "suitable for use" in interstate commerce given the history of lumbering in the state of Michigan. If the Commission requires proof that a river was (is being) used for interstate commerce in order to enforce regulations under the FPA, then the Commission should lobby Congress to amend the FPA to reflect that requirement.

The Order also indicates that the Lansing Club Project is not connected to the interstate grid. While at the time the order was issued that may be true, when the Department requested jurisdictional review, the Lansing Club Project was in fact connected to the interstate grid (through Great Lakes Energy, a Michigan based utility) and Commission staff at the Chicago Regional Office were provided that evidence in late May 2005, which was confirmed back to the Department on May 24, 2005. This information regarding hooking up to and unhooking from the interstate grid provided to the Commission is additional proof that the Lansing Club Project has affected interstate commerce.

The Department is very concerned that the Commission allowed the owners of the Lansing Club Project time to disconnect from the grid with the sole purpose to avoid jurisdiction after operating illegally for some unknown period of time prior to the Department's request. Therefore, the Department requests that the Commission utilize the information regarding the Lansing Club Project at the time the Department requested jurisdictional review, and not after the Commission allowed the Lansing Club Project to unhook from the interstate grid. At the time of the Department's request, the Lansing Club Project did in fact meet all of the requirements of the FPA to find that the project requires licensing by the Commission.

Given the information presented above, the Department respectfully requests upon rehearing that the Commission:

Magalie R. Salas
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1. Rescind the delegated Order finding licensing of hydroelectric project not required issued January 31, 2006, and
2. Find the Lansing Club Project does require a license through the Commission to operate the project on the Pigeon River in northern Michigan and direct the owners of the Lansing Club Project to begin the licensing process.

Sincerely yours,

/S/

Pamela J. Stevenson
Assistant Attorney General
Environment, Natural Resources
and Agriculture Division
517-373-7540

PJS/jls
S:CASES/FERC/Lansing Club (Golden Lotus)/01 Ltr-Rqst for Rehrq

CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2006, I served the foregoing document and attachments upon the parties identified on the official service list in this matter.

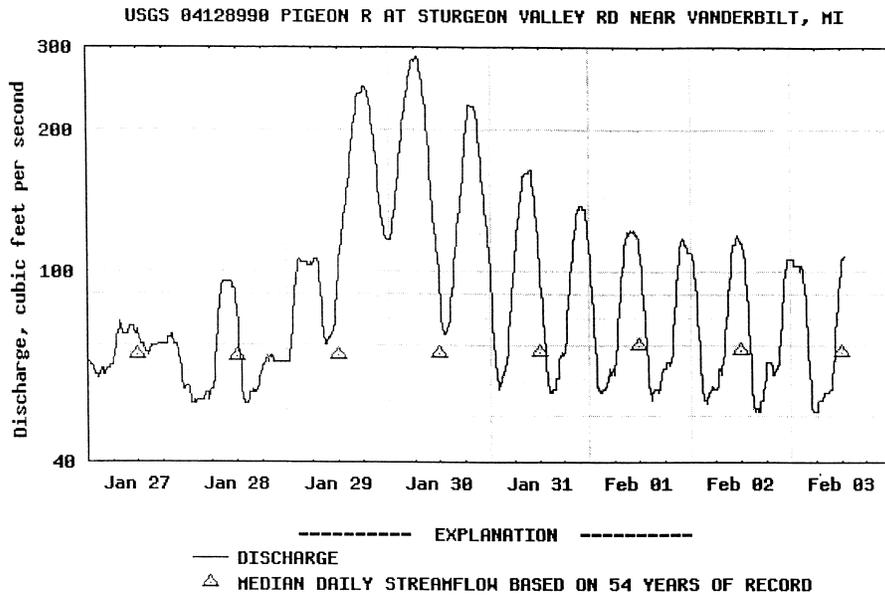
/s/
JoLynn Satterelli

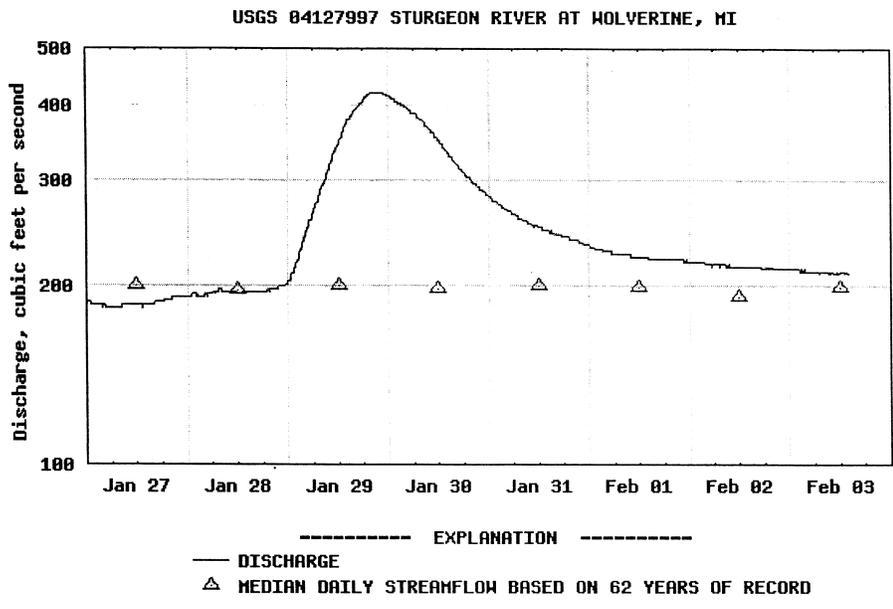
Appendix 1

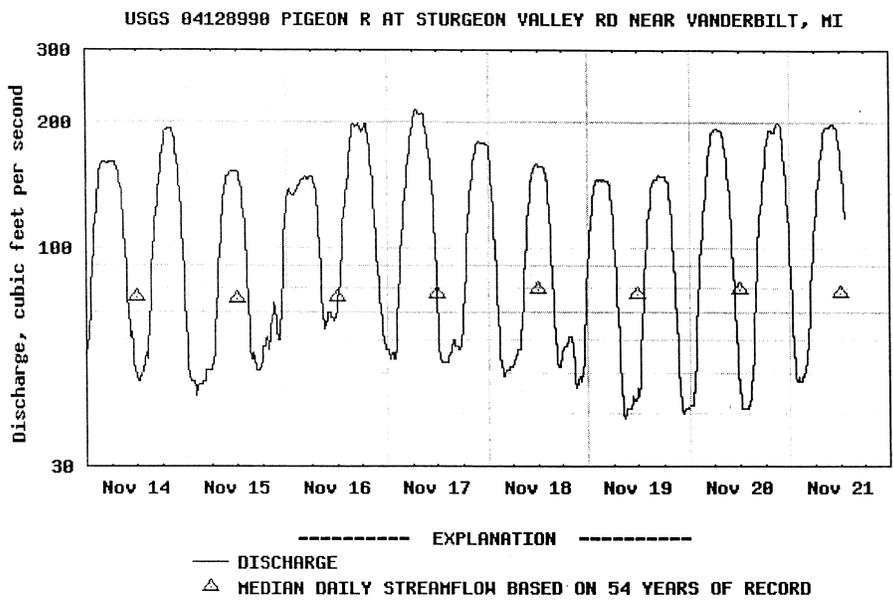
ESTIMATED INCREASES AND DECREASES IN PAIRED FLOWS FOR SELECTED PERIODS FOR THE PIGEON AND STURGEON RIVERS VIA USGS DATA

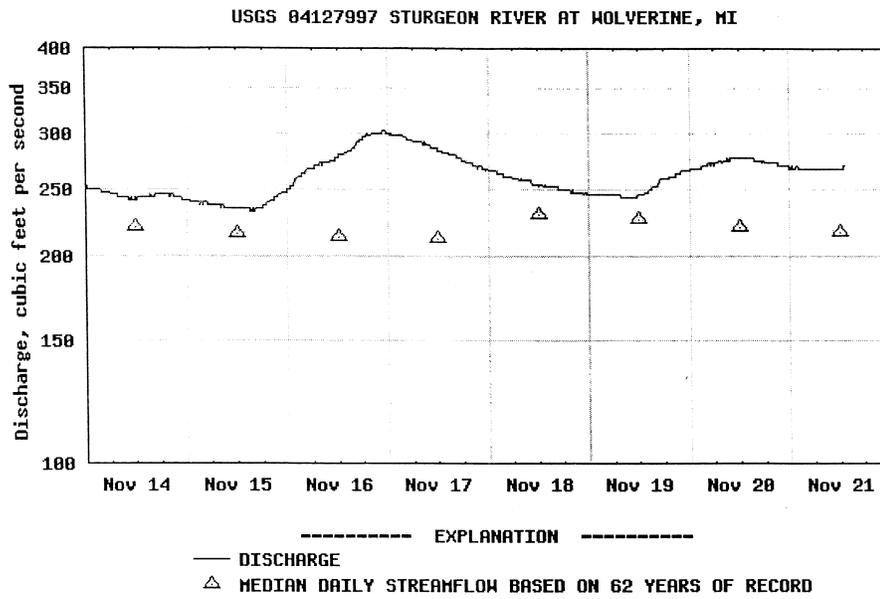
WEEK	DATE	COMMENTS
1/27-2/3/06	1/29-31	Sturgeon: about 2X Qr increase in ≤ 24 hrs. Pigeon: about 4X Qr increase in ≤ 24 hr; 75% decreases in Qr in ≤ 6 hs. Peaking.
11/14-21/05	All week	Sturgeon: Weeks biggest Qr change is about 1.3X. 2 small Qr increases during week. Pigeon: Qr changes $\leq 4.8X$ in ≤ 6 hrs; 13 large Qr increases. Peaking .
11/3-10/05	11/5-7	Sturgeon: A big flow surge, about 2.2X increase Pigeon: 11/6-about 5.3X increase in Qr in < 24 hrs; 11/8-Qr cut $\geq 75\%$ in 6 hrs; Peaking
10/21-10/29/05	10/25	Sturgeon: Stable Qr, only 5% changes in Qr Pigeon: 3.3X Qr increase in 6 hrs; Peaking
9/30-10/7/05	9/30, 10/3	Sturgeon: 9/30- Qr drop of 4% in 6 hr; 10/3- 1.6X increase in Qr in 12 hrs Pigeon: 9/30- Qr drop of 75% in 6 hr; 10/3- 3.8X increase in Qr in 12 hrs. Peaking
9/26-10/3/05	9/26, 9/28-29	Sturgeon: 9/26- 9% Qr drop in 6 hrs; 9/28- 1.4X increase in Qr in 24 hrs. Pigeon: 9/26-75% Qr drop in 6 hrs; 9/28- 4.2X increase in Qr in 24 hrs. Peaking
8/19-26/05	8/21-22	Sturgeon: 32% Qr drop in < 18 hrs Pigeon: 91% Qr drop in < 18 hrs. Peaking
8/3-8/10/05	8/4-5	Sturgeon: A big Qr increase, 2.9X in just over a day; 3% Qr drop in 12 hrs. Pigeon: 11X Qr increase in just over a day; 90% Qr drop in 12 hrs. Peaking
7/26-8/2/05	7/26	Sturgeon: 1.7X Qr increase in a day; 17% Qr drop in 9 hrs. Pigeon: 5.6X Qr increase in just 18 hrs; 83% Qr drop in 9 hrs. Peaking
6/15-22/05	6/15-16	Sturgeon: A big Qr increase, 2.9X in 12 hrs. 20% Qr drop in 7 hrs Pigeon: 6.7X increase in Qr in 18 hrs; 77% Qr drop in 7 hrs. Peaking
5/24-5/31/05	5/24	Sturgeon: 4% Qr drop in 6 hrs. One peak in week Pigeon: 72% Qr drop in 6 hrs. 10 peaks in week. Peaking.
5/19-26/05	5/23	Sturgeon: 1.4X increase on 5/23; one peak. Dry weeks before rain event. Pigeon: 5.4X increase on 5/23; 5 peaks. Peaking
4/14-21/05	4/20-21	Sturgeon: 1.7X increase over the day; 24% Qr drop in 12 hrs. Stable until 1peak. Pigeon: 5.8X increase over the day; 80% Qr drop in 12 hrs. 8 peaks. Peaking.
4/6-13/05	All week	Sturgeon: No peaks, steady decline over the week. Pigeon: 2X-3.5X variation (up & down) all week over 6 hr periods. 11 peaks. Peaking.
3/30-4/6/05	All week	Sturgeon: 1.7X Qr increase over 3/30-31. 2 peaks. Steady decline in Qr. Pigeon: 3.6x Qr increase over 3/30-31. 4/1-4.6X increase < 12 hrs. 4/2- 78% decrease in < 12 hrs. 10 peaks. Peaking.

Sturgeon River USGS gage – 04127997
Pigeon River USGS gage- 04128990



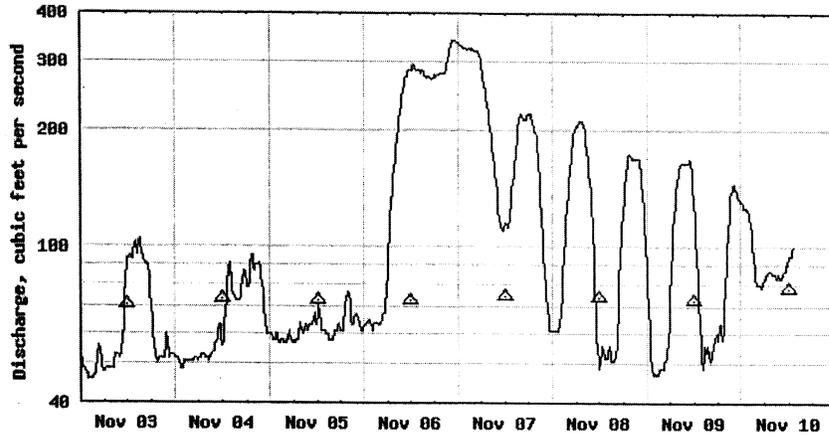








USGS 04128990 PIGEON R AT STURGEON VALLEY RD NEAR VANDERBILT, MI

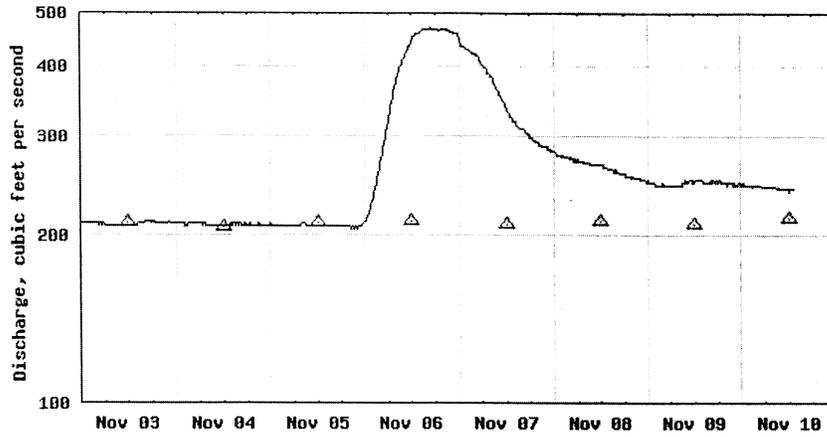


----- EXPLANATION -----
— DISCHARGE
△ MEDIAN DAILY STREAMFLOW BASED ON 54 YEARS OF RECORD

Provisional Data Subject to Revision

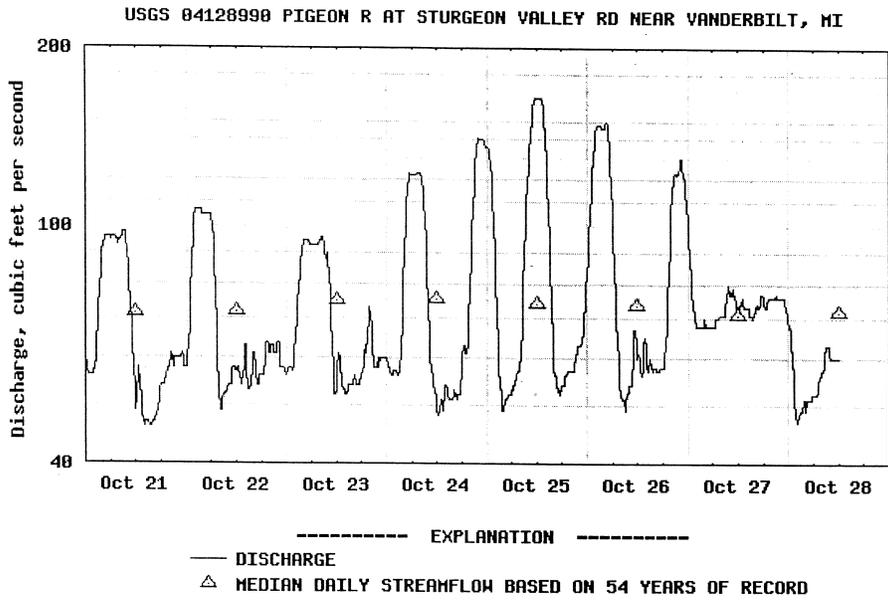


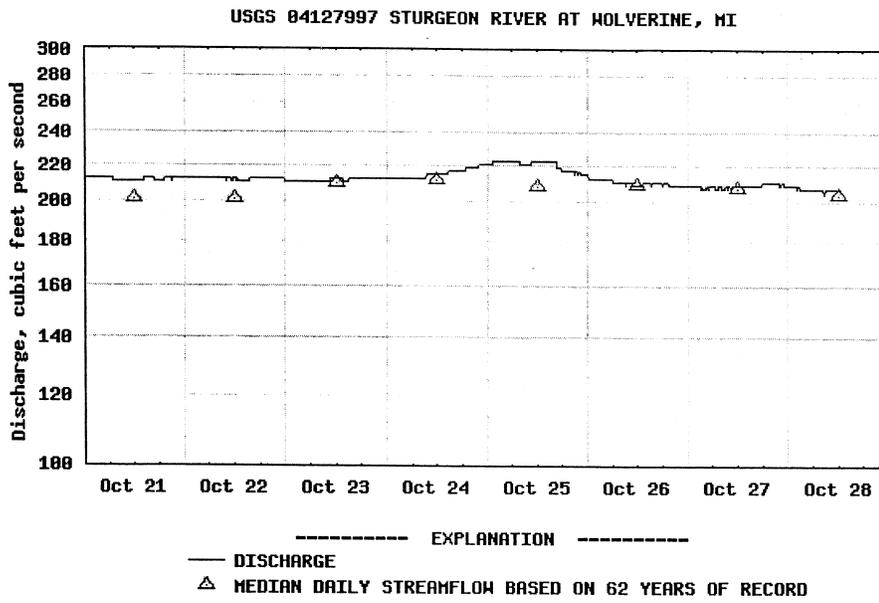
USGS 04127997 STURGEON RIVER AT WOLVERINE, MI

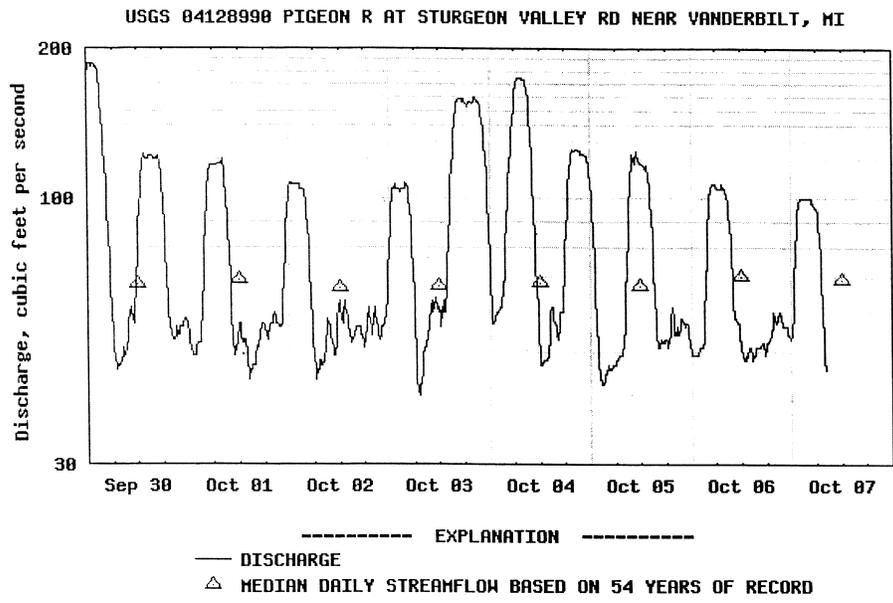


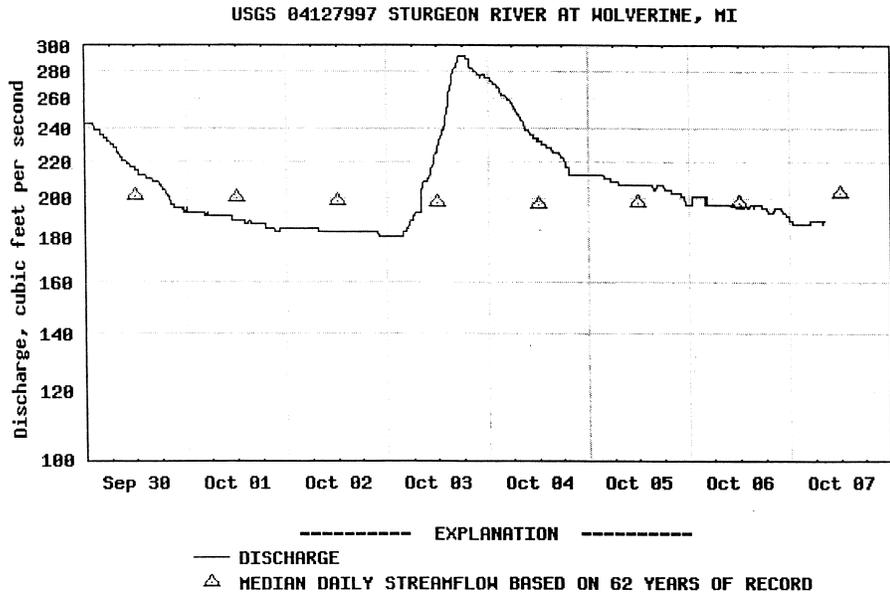
----- EXPLANATION -----
— DISCHARGE
△ MEDIAN DAILY STREAMFLOW BASED ON 62 YEARS OF RECORD

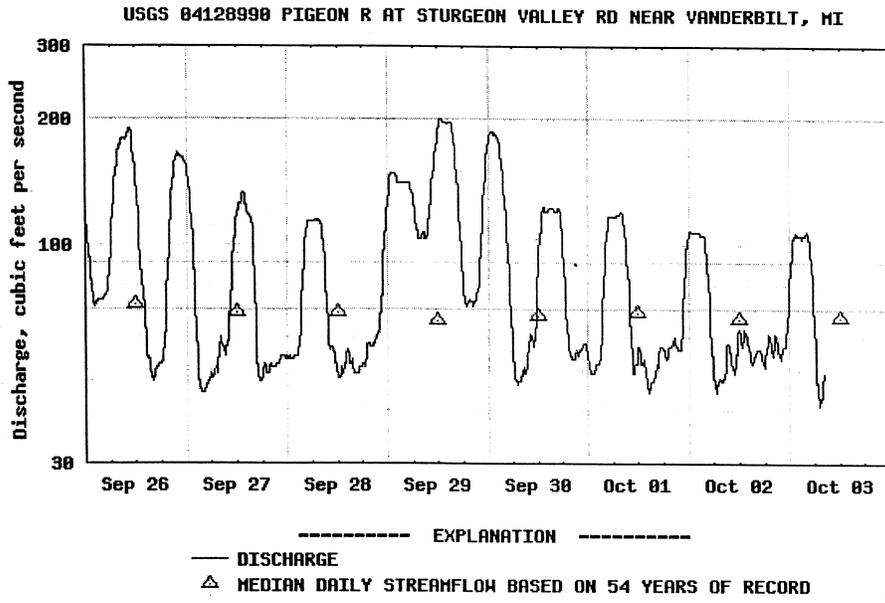
Provisional Data Subject to Revision

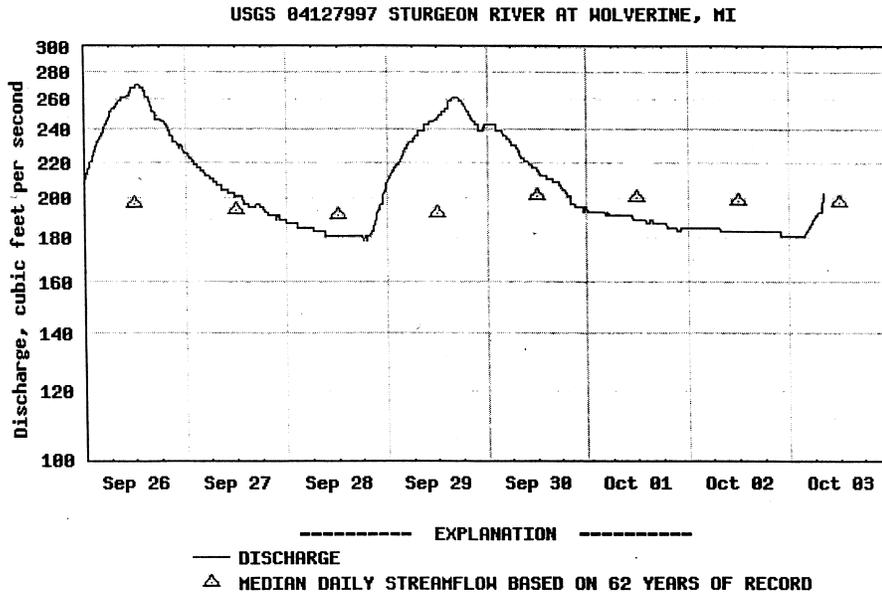












Appendix 2

LEXSEE

Ephraim Nelson et al. v. The Cheboygan Slack-water Navigation Company.

[NO NUMBER IN ORIGINAL]

SUPREME COURT OF MICHIGAN

44 Mich. 7; 5 N.W. 998; 1880 Mich. LEXIS 463

April 28, 1880, Submitted

June 11, 1880, Decided

PRIOR HISTORY: [***1] Error to Cheboygan. Submitted April 28. Decided June 11.

DISPOSITION: Judgment affirmed with costs.

HEADNOTES: *Improvement of navigable streams – Tolls.*

OPINIONBY: Cooley

It is not competent for the State to give the control of one of its navigable streams to private parties for improvement, with power to charge toll at discretion. *Semble.*

OPINION:

But it is competent to authorize such parties to charge toll, at rates fixed by the legislature, for the use of improvements made by them. And the provision in the Ordinance of 1787 that the navigable waters of the Northwest Territory shall be "forever free" does not interfere with this, as the meaning of that provision is that the use of the waters in their natural condition shall be free. *Benjamin v. Manistee etc. Co. 42 Mich. 628.*

[*8] [**998] This is a suit to recover of the defendant a considerable sum of money which the plaintiffs have paid under protest, as tolls for passing through a canal around a [**999] dam constructed by defendant across the Cheboygan river about a mile above its mouth where, before the construction of any dam, there were rapids. To an understanding of the legal questions it is necessary to have some knowledge of the water courses which find an outlet by way of this river.

Tolls for the use of the improvement of a navigable stream may be charged, notwithstanding the stream was capable of such use in its natural condition, provided the improvement facilitated it.

The stream named the Cheboygan is eight miles long, passing from Mullett lake to Mackinaw straits. Mullett lake is twelve miles long by three or four wide, and is connected with Burt lake of like size by Indian river, a stream five miles long. Crooked river, five miles long, connects Crooked lake, six miles long and a mile wide, with Burt lake. Round lake, about a mile in diameter, is near Crooked lake and connected with it. About five miles above the mouth of the Cheboygan river, Black river comes into it. This [***3] is a stream sixty miles long, and passes through Black lake, which is ten miles long and three wide. Rainy river, thirty miles long, empties into Black lake. Pigeon river, forty miles long, empties into Mullett lake. Sturgeon river, seventy miles long, empties into Indian river. Maple river, thirty miles long, empties into Burt lake. Two small steamers, capable of carrying a hundred passengers each, navigate the waters from the head of Crooked lake to the straits of Mackinaw. All the waters mentioned are made use of for floating logs and lumber on their way to the place of manufacture or to market, and vessels drawing five feet of water run up to the head of Mullett lake, and those

The question whether a navigable stream has been dammed without permission of the board of supervisors will not be considered on error, when the record does not show it was raised in the court below.

SYLLABUS: Trespass on the case. Plaintiffs [***2] bring error. Affirmed.

COUNSEL: Watts S. Humphrey and Atkinson & Atkinson, for plaintiffs in error.

G. W. Bell and C. I. Walker for defendants in error.

JUDGES: Cooley, J. The other Justices concurred.

44 Mich. 7, *; 5 N.W. 998, **;
1880 Mich. LEXIS 463, ***

drawing two and a half feet to the head of Crooked lake. Freight boats and lighters are also used on Black river.

In the year 1847 a dam was built by one McLeod across the Cheboygan river where that of the defendant now stands. It was not so high as defendant's dam now is, but high enough to raise the water so that such craft as the plaintiffs now make use of on the river could navigate it to Mullett's lake. [*9] The case does not show how or why McLeod came to build this dam, nor how the defendant [***4] comes to be now in possession of its site with a higher dam. In 1867 an act of the Legislature was passed to provide for the incorporation of slack-water navigation companies for the improvement of rivers in the counties of St. Joseph, Cass, Berrien and Cheboygan, and in the following year defendant was organized and constructed the dam complained of. By the act of incorporation any company that should be formed was authorized to take possession of any navigable river proposed to be improved, and to improve the same by the erection of dams [**1000] and the construction of locks, and it was provided that "said river, when so improved, and the lock constructed by such company, shall be deemed and taken to be public highways, and free to all persons whatever, to pass and repass with their boats and other water craft, and with their produce, goods and chattels, wares and merchandise, such persons conforming to such rules and regulations as may be established by the company for the navigation of such river, and paying such tolls as may be established and required for the same by such company." 2 Laws of 1867, p. 840. As the act did not in any way limit the tolls that might be charged by the companies [***5] formed under it, or confer upon any public officer or authority the right to limit them, or to supervise the action of the companies in any manner, it was in effect an act to transfer to voluntary organizations the control of navigable streams, with power to levy burdens upon commerce at discretion, and was probably inoperative under the principles laid down in *Ames v. Port Huron etc. Co.* 11 Mich. 139. But in 1871 this power was restricted, and a schedule of tolls which might be charged was fixed by legislation: General Laws 1871, p. 176. The constitutional validity of these acts was contested, but the lawful existence of defendant as a corporation was affirmed in *Nelson v. Cheboygan etc. Co.* 38 Mich. 204.

To prove a personal grievance the plaintiffs gave evidence tending to show that they owned a mill above the dam, and used in their business a tug and several lighters; that in 1876 the tug made a hundred and sixteen trips each way, and the [*10] lighters two hundred and six trips up and two hundred and four trips down; that in 1877 the lighters made forty-eight trips up and forty-nine trips down; that in going up they were light and drew ten to twelve inches of water; [***6] that in going down

they were loaded and drew from three to three and a half feet of water; that plaintiffs sent over the waters of the Cheboygan in 1876, 7,596,000 feet of lumber and a considerable quantity of wood, bark and shingles, 1,151,000 feet of the lumber being shipped on the lighters and the remainder on rafts to the mouth of the river; that the dam, so far as vessel navigation and rafts were concerned, completely obstructed the stream, and to get around it with their tugs, lighters and merchandise, plaintiffs were compelled to use defendant's canal, for which defendant compelled them to pay tolls, amounting in all to \$ 2767.70; that in the natural stage of water in the Cheboygan river without any dam the lighters used by the plaintiffs could have passed in the [**1001] condition they were in on their up trips--that is, unloaded--and that rafts of lumber could have been run down. This constituted the case for the plaintiffs.

It was decided in *Benjamin v. Manistee River etc. Co.* 42 Mich. 628, that the State might lawfully authorize corporations to make improvements of navigable rivers and to charge tolls for the use of the same, notwithstanding the compact in the Ordinance of 1787 [***7] that the navigable waters of the Northwest Territory should be forever free. The tolls, it was said in that case, are not charged for the use of the navigable river thus made free, but are imposed in respect of the improvements, and to obtain the benefit thereof, and the compact itself might have been a curse to the Territory instead of the blessing it was meant for, had it required the water highways of the Territory to remain unimproved in order that they might be used in their natural condition without toll or impost. That case governs this, to the extent at least of determining the general question of the right to take tolls.

But it is insisted on the part of the plaintiffs that the right to the free navigation of public streams must still exist, notwithstanding the improvements, as to whatever property or [*11] vehicle of commerce might previously have navigated them. Also that defendant can have no right to stop at its dam and require tolls for the passage through its canal of that which before the dam was built would have floated in the river at that point, thereby making the improvement a burden on such navigation as did not need it. The true construction of the act under [***8] which defendant is organized is claimed to be, to give the company a right to charge tolls to those who need and use its improvements, and it is only permitted to obstruct such navigation as the stream in its natural condition is capable of, on condition that it provides locks for getting around its obstructions, and makes them free.

We do not think the broad question which the plaintiffs attempt to raise is in the case. There was no attempt in the court below to show that the commerce carried on by the plaintiffs was not facilitated by the improvement,

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or that any portion of it was burdened with tolls for the use of that which did not benefit it. It was shown, negatively at least, that the tug and lighters required the facilities of the canal in passing down, and though it was proved the lighters could have passed up unloaded before the dam was constructed, it did not appear that their going up, when they could not also go down, would be of advantage [**1002] to the interest of any one. The rafts, it was shown, could have passed down before, but whether as conveniently and safely did not appear. It is consistent with everything appearing in the record that every use made by the plaintiffs [***9] of the river was facilitated by the construction of the dam and canal. If they were so, the exaction of tolls for the use of the canal was as proper and just as it would have been if the dam had first made the use of the waters practicable. The tolls are charged in respect to the enjoyment of benefits conferred by the expenditures of defendant; and whether these benefits originate with the improvement the defendant has made, or are only enhanced by it, is immaterial to the justice or legality of the impost.

It is further contended that defendant is the successor and assign of McLeod in respect to this dam, and is charged with all his duties; and that there was legislation under which [*12] McLeod built which required him to construct a lock for the passage without charge of whatever navigated the river. The deduction is that defendant must maintain such a free passage now. But in the first place no such legislation appears to have been brought to notice in the court below, and in the second place it is not

shown that defendant is the assign of McLeod. The supposition that McLeod may have abandoned his dam as useless, is consistent with anything that appears in the evidence; and [***10] in that case the appropriation of it by any one else who should find it a convenience in improving the river would have been perfectly proper, provided the authority of the appropriator from the State was such as would justify the erection as a new one. Certainly so long as defendant does not claim under McLeod, or need any grant McLeod may have had to justify damming the river, his obligations cannot be said presumptively to have been assumed by it.

But it is said that defendant must claim under McLeod, who built his dam before the present Constitution was adopted, because since that time no dam can be constructed across a navigable stream except with the consent of the board of supervisors of the county, which defendant has never obtained. The conclusive reply to this suggestion is that no question of the consent of the board of supervisors appears to have been made in the court below, and we neither know what the fact was, nor could we act upon it if we did. We sit here to review only the rulings of the circuit judge. [**1003] The circuit judge gave instructions to the jury corresponding to the views above expressed, and verdict and judgment were rendered for defendant.

This judgment [***11] must be affirmed with costs.

The other Justices concurred.

Appendix 3

log mark, recognized by law and respected by fight-loving men, was the symbol that created order in the rampaging, Herculean task that was river driving.

The tradition behind log marks is old. In early Colonial times, Queen Anne's Surveyor General marked with a "Broad Arrow" and attempted to reserve for the Royal Navy the finest pines of New England. Lumbermen, aggressive and acquisitive then as ever since, disregarded royal attempts to appropriate American property. Efforts to enforce the Broad Arrow policy, though unsuccessful, aroused such resentment that the incidents formed part of the background for the American Revolution. Lumbermen, however, continued the policy of identifying ownership of logs by hacking or stamping symbols upon them, and much later, when Michigan's waterways began to writhe with their burdens of logs, the English tradition was still strong. Michigan's first log mark law was patterned closely after that of the English, and log marks numbering thousands, widely varied as to design, were colorfully interwoven in the patterns of the pine harvest.

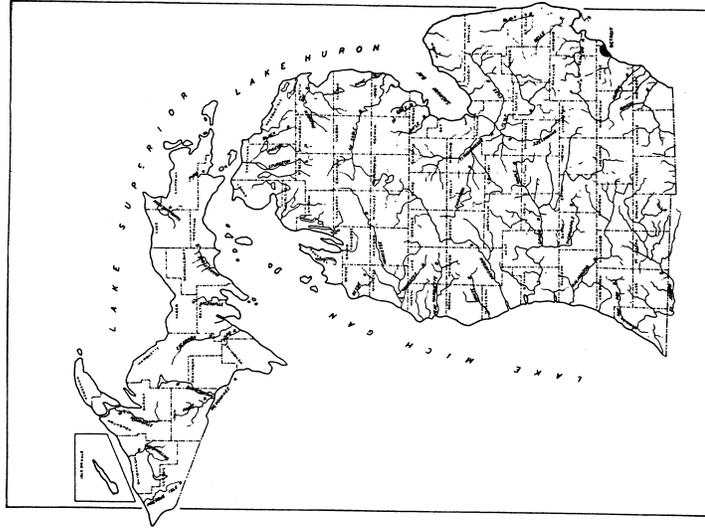
For many years, including the earliest logging era in Michigan, log marks were cut into the bark by ax, and, of necessity, such hacks, or bark marks, were limited in design to patterns of straight lines, simple initials, triangles, squares, and combinations of these.

Logging on a rapidly increasing scale began about 1840 to create in the state complex problems of operation that demanded solution. On the Muskegon River, although only the lower reaches were at first used to float logs, many operators made common use of the stream to get their logs to mill. Serious questions often arose concerning the similarity of bark marks. By 1842, the Michigan Legislature answered the need and enacted a law requiring log marks to be registered in the county where the logs were to be manufactured into lumber. The statute followed the plan of an English law of 1692 intended for the protection of New England lumbermen.

Before 1850, lumbermen of the Muskegon Valley found a solution for another angle of the problem, which eliminated

MICHIGAN LOG MARKS

much of the confusion and high cost of duplicated efforts in river driving. An arrangement was effected whereby a mutual drive was made, the force of rivermen being assembled from the crews of all participating operators. However, the task of sorting logs for the growing number of mills, once the river's end was reached, was still unorganized and continued



Location of rivers and counties mentioned in this bulletin.

ALPHEA COUNTY



Davidson & Crawford



Bewick, Comstock & Co.



Bewick, Comstock & Co.



Cunningham, Robertson, Holmes & Co.



Campbell, Palmer & Co.



E. O. Avery

TOM

Thomas Collins



Davidson & Collins



Huron Mills & Lumber Co.



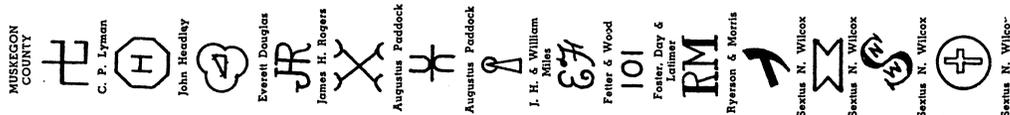
Greif Bros. Co.

geon, all presented special difficulties, and logs that floated upon them carried their marks hell-bent for quick descent, breaking dams and men placed to control them. Operators, lumberjacks, and rivermen surmounted challenging obstacles to get their logs out. The Lumberman's Memorial, raised on the Au Sable, is a monument to their daring exploits.

The name of David Ward recurs in the history of this area as that of the great timber cruiser opening the region to seekers of pine and, later, as an operator. Others had made extensive buys also. Big names showing early on the records are Loud, Alger, Packs of Pack, Woods & Company, Smith, Brackenridge, Potter, Luce, Noxon, Fletcher, Richardson, Avery & Company, George Prentiss, and many others whose marks here appear. In the Cheboygan region, the name of Merritt Chandler was one to reckon with, for he had secured, through the Saint Mary's Falls Ship Canal Company, large holdings on Cheboygan River tributaries.

Organization of booming companies for northeastern rivers followed closely upon that of the Tittabawassee. The Au Gres Boom, that of C. D. Hale of Tawas City, and several in connection with the Cheboygan Slack Water Navigation Company were built in 1867. The Thunder Bay River Boom began business in 1868, and one on the Rifle in 1870. The great Oscoda Boom of the Au Sable was not formed until 1877, but logs had been streaming down for years then. The bays formed by rivers emptying into Lake Huron made excellent booming grounds, allowing the sorting pockets to be built around river mouths, freeing the river channels for passage of logs into the booms, and giving plenty of space for the many tugs to operate. The Hale boom at Tawas City, a six-acre enclosure of piling, received many rafts from the Au Gres and Rifle rivers, and the place became the chief manufacturing center for lumber of the immediate region.

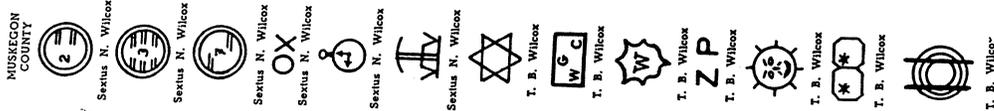
At Black River village, headquarters for R. A. Alger interests, a spar and mast industry began in 1868 and grew to be the world's largest, supplying New York, Boston, and many other seaports, besides sending great rafts of lumber



to Great Lakes ports as far as Buffalo. At Alpena, where the storage boom was located on the south side of Thunder Bay River, one of the many mills was situated on an island in the middle of that stream. On the Cheboygan system of waters, dominated by the Navigation Company, many mills and booms were built on Burt, Mullet, and Black lakes. A problem arose because of the great rapids over which that river dropped after leaving Mullet Lake. This was solved by building a lock and canal, 18 feet wide, 85 feet long, with a lift of nine feet, through which the company annually passed millions of feet of logs and lumber, besides the operating tug boats. A large sluice dam at the outlet of Black Lake took care of a like problem there, controlling the level of the lake for booming logs at the Black Lake mouth of the Upper Black.

The Oscoda Boom Company was typical of those of the whole region. Capitalized at \$25,000, later increased to \$100,000, it included among its stockholders David Ward, William T. Smith, Edward A. Brackenridge, Woods & Pack, Oscoda Salt & Lumber Company, and Smith, Kelley & Company. Its directors were E. and W. T. Smith, H. N. Loud, Ward, and Brackenridge. The company built and controlled many dams on the Au Sable and had miles of booms at Oscoda and along the lower river. The Dwight interests, organizing the Au Sable River Boom Company, had already improved the upper river. The Van Ertten Boom Company, headed by H. N. Loud and with E. F. Holmes as secretary, operated on Pine River and Van Etten Lake, north of Oscoda, employing a tug on the lake and having a force of 40 or 50 men. First officers of the Thunder Bay River Boom Company were Benjamin F. Luce, president, and S. M. Noxon, secretary. There, also, the great difficulty was one of the swiftness of the stream, and many dams were maintained.

As in other sections, many log marks of great interest were lost by fires here, which destroyed records, and, in some cases, where work was confined to one county on short streams, marks were not necessarily recorded. In Alpena County, however, the record is fairly complete, beginning





A group of rather unusual log marks.

1. Monroe, Boyce & Co., Ottawa, 1875. 2. "Old Hat"—Farr Lumber Co., Osceola, 1883. 3. "Pistol"—John F. Brown, Newigo, 1881. 4. "Daisy"—Newigo Co., Osceola, 1883. 5. "Old Hammer"—Farr Lumber Co., Osceola, 1883. 6. "Ox Head"—Muskegon Shingle & Lumber Co., Newigo, 1883. 7. "Two Face"—D. C. Bowen, Muskegon Region, 1871. 8. "Elf"—H. G. Billings, Newigo, 1881. 9. W. Holland, Saginaw, 1890. 10. "Snow Man"—Farr Lumber Co., Osceola, 1883. 11. "Mandolin"—Levi Truesdale, Osceola, 1881. 12. "Chain Hook"—John Torrent, Osceola, 1885. 13. "Chicken on a Fence"—Farr Lumber Co., Osceola, 1883. 14. "Trunkhardt"—Thomas Richardson, Cheboygan, 1886. 15. "Lady Bug"—Muskegon Shingle & Lumber Co., 1883. 16. "Bed Bug"—Storrs & McDougall, Muskegon, 1872. 17. Gow & Campbell, Clare, 1902. 18. Huron Log Booming Company, Huron, 1869. 19. "Pig"—W. S. Prettigman, Cheboygan, 1889. 20. "Bottle P"—Joseph T. Palmer, 1869. 21. A. J. McIntyre, Saginaw, 1892.

with 1870, when Folkerts & Butterfield recorded yellow, red, and green paint marks. F. W. Gilchrist was identified by white paint daubed on the log, and A. N. Spratt used blue. This was not general practice, however, for a great variety of bark marks and end marks were also registered, including

MICHIGAN LOG MARKS

triangle and octagon marks (Gilchrist) and Spratt's "Square Snake."

Nelson LeBlanc, of Alpena, was a lumberjack and riverman for more than 20 years, working mainly on Thunder Bay River waters. His wages as a loader were usually \$26 per month and board, and as a riverman he was paid \$2 a day. He drove logs on Gilchrist, Hunt, Beaver, and McGinn creeks and on the Little Wolf and Big Wolf, all tributaries to Thunder Bay River, and on the main river and its branches, besides working other streams of the region. Logging camps in which he worked were usually crude, built of logs or rough lumber covered with tar-paper, furnished with double-decker bunks of springy poles covered with cedar boughs. His pillow was his "turkey"—the grain sack in which spare clothing was carried—and many nights he slept with his shoes on and with soaking wet feet, for fear he could not get his shoes on again in the morning. Mr. LeBlanc remembers a tough job of picking a channel through rapids of the "Cheboygan Black" River, and many other difficult tasks of the big times.

While driving the rivers, the men made no camp. They slept in the open air in the blankets they carried. Drivers worked from early morning until after dark, and on these swift streams constant vigilance was necessary. The rocky, winding beds of the streams were certain to hang up the drives in jams, if they were not constantly freed of stopped logs. The general practice here was to install dams every few miles, taking the drive through sluice gates in sections, to keep close control over water and logs. With a sluice dam below a rapids, the shallow could be flooded so that logs were floated over, and, by placing the sluice gate above the rapids, logs and water could be accumulated and sent down in great rushes.

Steam railroads were generally used in this region, spreading out from lumber centers. Because logs sent to mill by rail did not pass through the usual sorting arrangements, the log marks were not needed in many places on each log, and it became usual for marks to be stamped in only one place

MUSKEGON COUNTY



Smith & Andrews



Geo. F. Ouhwattie



Peter Swanson



G. B. Peck & Co.



S. M. Allen



S. M. Allen



Bullock & Hall



S. C. Hall



S. C. Hall



S. C. Hall



Nicholas Zuidema



Nicholas Zuidema



Storrs & McDougall



Storrs & McDougall

on each end of each log. The Potts mark was plain "JEP", and Loud's was "Circle L". Pack, Woods & Company used a "PW" and other marks, including a "K" either boxed or in a diamond. It is claimed that most of the marks used in Iosco and Arenac counties were never registered, but Charles W. Kotcher registered a pink-paint daub mark used on Au Sable and Pine rivers. T. T. Allen & Company, for use on the same rivers, registered a yellow paint mark and various box marks, besides its "TTA". The Maltby Lumber Company had its initials in varying combinations, with a white paint mark to use on the Au Gres and Rifle rivers. Another white paint mark was that of Penoyer Lumber Company, and this was known as the "Snowball Mark".

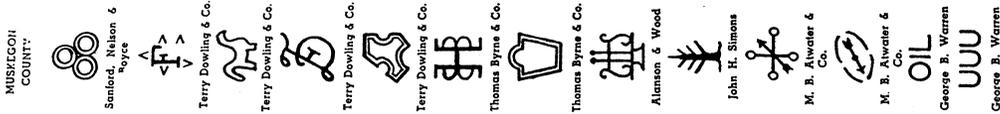
The log mark record of Alpena County, comprising 252 pages when transcribed, includes many of the best-known marks of the lumber business. A. N. Spratt's list, besides the "Square Snake", "Dumbell", crossed keys and commoner symbols, presents a group, from 1878 and 1879, designed to read the same right side up or upside down. These are "HOH", "808", "906", "SXS", "AXA" (the last letters inverse), "X, lying S, X", "T" (last letter inverse), "E, reverse E", and "010". Some log marks of this kind are found in every region. Frank D. Spratt used only hack marks, "Square Cross", "Long Thirty", "Long Forty", "Long Box, Five Hacks, etc. Richardson, Avery & Company's "Circle R" was varied by replacing the initial with numbers for grade reference; Porter and Parmeater's triangle mark enclosed the company initials with reference numbers, and Cunningham, Robertson, Haines & Company's long-familiar log mark was "Circle crossed axes".

A. R. Richardson's property was easily identified by an ox-yoke mark, and George Prentiss & Company's by a hand with forefinger and thumb extended. That firm's series mark was the outline of a heart enclosing numerals. The famed "Pitcher" belonged to Warner & Davis, and the "Single Handcuff" to Thomas B. Johnson. R. D. Taylor, in 1878, used a "Crawfoot", and Smith Brown marked logs with a fish outline. The "Square & Compass" emblem was Camp-

ball Potter & Company's mark until 1883, when it represented W. H. & E. K. Potter. Another well-known emblem was the "Snuff Box" of E. O. Avery, and Thomas Collins was known by his plain "TOM". John Donovan chose a "Buzz Saw" outline, with or without initial, to mark his logs. Sentimentality was reflected in the three entwined hearts of James Woods; Alonzo Davis stamped a neat jew's-harp on his logs; F. C. Falkert, a snowshoe; George Masters, either a house outline or anchor; and Falkert & McRae, a congress boot.

A chair, or "Circle Chair", marked Alpena Hoop & Lumber Company logs; two fishhooks, those of Besser Churchill Company; while a picture of the end of a veneer bolt identified those of Michigan Veneer Company. Two distinctive cross marks were those of W. H. Campbell and of Platt & Miller, the former's a circled Botones cross and the latter's resembling the German Iron Cross. Bolton & McRae recorded a clay pipe in 1882, and W. L. & H. D. Churchill a slightly different one in 1886. Arthur Pack & Company used two variations of picture frame marks, while Salling, Hanson & Company used the letters "RH" with a pine tree. Morris & McKay had three unusual log marks: the Odd Fellows emblem (three links), a bird's head, and an anvil. "A Fork for a Barn" was one of the George Holmes marks, and another tool, the brace, was one of Menroe Kluek's. A pair of horseshoes marked James O. Cann logs.

Movements of individuals and companies in changing operations may be seen in mark recordings. Salling, Hanson & Company used the same mark noted above when they logged on Cheboygan River tributaries, and they registered it in Cheboygan County. "JOE", of Turner and Tousey, Cheboygan County in 1885, is found in 1891 in Presque Isle County to be owned by Wilson & Platz, and in 1895 Morris R. Tousey recorded a plain "Circle T" in that county. The snowshoe mark, when recorded in Presque Isle County in 1888, became Whitney & Stinchfield's. Many others who logged further south in the region registered log



marks, usually in later years, in Presque Isle and Cheboygan counties.

Merritt Chandler's was the "C X C-in-C" mark. The Cheboygan River Boom Company had a "JPP" mark, and the Cheboygan Towing Company was known by its "Q", sometimes combined with other letters. Michigan Veneer Company, in Cheboygan County, marked logs "MVCo", while Turner and Tousey's "Trunk Handle" resembled the one called "Hat" elsewhere. For unique design, W. S. Prettyman would be awarded first prize anywhere for his outline of a pig.

These are only a few of the log marks that mingled on the turbulent currents of northeast rivers, and the narrative tells only a little of the story. In general, the picture was the same as elsewhere—confusion first, with simple marks predominating, then the necessity for orderly organization, registration of marks in greater numbers, together with increased control by boom companies, and finally the decline with disappearance of pine. Here, however, the boom period was later, ending in the first decade of the present century, and here steam entered largely into the work. Lumberjacks and riverthogs did the bulk of the work, as ever, and these rivers were paradise to the drivers. One old riverman claims that often, while working in this part of the state, he "had to turn his head to catch his breath, the logs he rode travelled so fast." At any rate, it was a continual fight for them in making the waters carry stupendous burdens to mill.

As samples of work done, these figures are enlightening: In one year, 1893, sixteen mills of the Cheboygan district cut 200 million feet of lumber. In 1871, the Black River alone carried 100 million feet in logs. In 1872, 80 million feet of timber passed through the Rifle River boom, and the next year the Au Gres Boom Company handled 63 million feet. That year, the Au Sable River Boom Company, in which Alfred A. Dwight was the dominating figure, rafted out 86 million, and the total estimated output of that boom for all time was 500 million. All told, the total production

of the Lake Huron shore from Saginaw Bay to Alpena was estimated at 12 billion board feet. One little detail of that immense business was the hauling of one load of logs scaling 31 thousand feet, weighing probably 100 tons, by a team belonging to Pack, Woods & Company. Brute force did the work, while order was maintained by use of the controlling symbols—log marks.

MUSKOGON
COUNTY



Woodruff



Woodruff



Woodruff



Manan



Jones &
Leon



& Green



& Green



West



Bros. &



Hood



& Hood



Went



Kent



Kent

MUSKOGON
COUNTY



Alba B. Kent



William Glue & Co.



William Glue & Co.



D. C. Brown & Co.



Andrew Olson



Andrew Olson



Andrew Olson



G. F. Goodrich & Co.



John Eldred



Mason Lumber Co.



D. C. Mills & Co.



Mears, Bates & Co.



Mears, Bates & Co.

Appendix 4

This instrument was presented and received for record this 10th day of Nov. A. D. 1910 at 2 o'clock P. M. (as a proper certificate was furnished in compliance with Section 3957, Compiled Laws of 1897.

ESTATE OF LEWIS CORNWELL TO

John J. Mueger, Register of Deeds. This Indenture, Made this 22nd day of October 1910

RICHARDSON LUMBER CO.

BETWEEN Edgar L. Cornwell, William C. Cornwell and Elmer J. Cornwell, trustees of the Estate of Lewis Cornwell, deceased; Edgar L. Cornwell, a single man of Flushing, Mich. William C. Cornwell, and his wife, Cornelia, Elmer J. Cornwell, and his wife Olga S. Cornwell, of Saginaw, County of Saginaw, and State of Michigan, of the first part, and Richardson Lumber Co., of Alpena, County of Alpena, and State of Michigan,

Witnesseth, That the said parties of the first part, for and in consideration of the sum of One dollar and other valuable considerations

to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, do hereby covenant, grant, bargain, sell, release, alien and confirm unto the said party of the second part, and his heirs and assigns, FOREVER, ALL THAT certain piece or parcel of land situate and being in the County of Otsego, and State of Michigan.

and described as follows, to-wit: All of said first parties right, title and interest in and to a certain

Dam located on Section 13, Town 24 North, Range One West, provided that the right and privilege is reserved to said first parties or any one of them to operate said Dam in connection with said second party, if said first parties or any one of them so desire for the purpose of driving or floating timber of any kind, which they own or control or may hereafter acquire where the use of the Dam may be necessary; and it is agreed that said first parties or any of them shall not sell, assign or transfer the reserved, right and privilege herein mentioned to any other person or persons.

This deed is made in accordance with the terms, conditions, and covenants of a certain land contract made and executed between the parties hereto, and dated the 16th day of October, 1907.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining: To HAVE AND TO HOLD the said premises as herein described, with the appurtenances, unto the said party of the second part, and to his heirs and assigns, FOREVER. And the said Edgar L. Cornwell, William C. Cornwell and Elmer J. Cornwell, trustees of said estate

do hereby covenant, grant, bargain, sell, release, alien and confirm unto the said party of the second part, and to his heirs and assigns, that at the time of the enrolling and delivery of these presents, said Estate is well seized of the above granted premises in FEE SIMPLE; that they are free from all incumbrances whatever;

and that said Estate will, and its heirs, executors, and administrators shall WARRANT AND DEFEND the same against all lawful claims whatsoever.

In Witness Whereof, The said party of the first part, hereunto set their hand, seal and seal. The day and year first above written. EDGAR L. CORNWELL (SEAL) W. C. CORNWELL (SEAL) MAUDE G. CORNWELL (SEAL) ELMER J. CORNWELL (SEAL) OLGA S. CORNWELL (SEAL)

On this 22nd day of October 1910 in the year one thousand nine hundred and ten before me a Notary Public in and for said county, personally appeared William C. Cornwell, Maude G. Cornwell, Elmer J. Cornwell and Olga S. Cornwell

to me known to be the same person described in and who executed the within instrument, who severally acknowledged the same to be their free act and deed for the intent and purpose therein stated individually, and as trustees of the Estate of Lewis Cornwell, deceased. A. L. F. R. E. D. D. A. V. T. E. S.

(NOTARIAL SEAL) Notary Public. STATE OF MICHIGAN, County of GENESEE. On this 25th day of October in the year one thousand nine hundred and ten before me, a Notary Public in and for said county, personally appeared Edgar L. Cornwell to me known to be the same person described in and who executed the within instrument, who acknowledged the same to be his free act and deed, for the intent and purpose therein stated individually, and as one of the trustees of the Estate of Lewis Cornwell, deceased.

My Commission Expires March 14, 1911. Notary Public.

This instrument was presented and received for record this 22nd day of Nov. A. D. 1912 at 8 o'clock A. M. (as a proper certificate was furnished in compliance with Section 3957, Compiled Laws of 1907.)

John J. Hooper
Register of Deeds.

GEDROS BOLINGER & WIFE

JOHN & THOMAS YUILL

This Indenture,

Made this 20th day

of Sept. in the year of our Lord one thousand nine hundred and twelve, Between GEORGE BOLINGER and ALICE BOLINGER (his wife), of Corwith Township, Otsego County, Mich. parties of the first part, and JOHN YUILL and THOMAS YUILL, of Vanderbilt, Mich. parties of the second part.

WITNESSETH, That the said parties of the first part, for and in consideration of the sum of One dollar and other valuable considerations of the second part, the receipt whereof is hereby confessed and acknowledged, do by these presents to them in hand paid by the said parties of the second part, grant, bargain, sell, remise, release, alien and confirm unto the said parties of the second part, and their heirs and assigns, FOREVER, ALL that certain piece or parcel of land situate and being in the County of Otsego, and State of Michigan, and described as follows, to-wit:

The North half of the Southeast quarter and the South half (S.1/2) of the Northeast quarter (NE.1/4) of Section Nineteen (19) town Thirty-two (32) North Range One (1) West, according to government survey thereof, excepting and reserving therefrom, all rights, privileges and franchises in and to the Dam, across Pigeon river, located on said Section (19) the same having been heretofore deeded to Richardson Lumber Co., and said second parties shall not have any claim for losses or damage caused by the use or operation of said Dam by overflow or otherwise to the lands described herein.

Together with all and singular the hereditaments and appurtenances thereunto in anywise appertaining: To HAVE AND TO HOLD the said premises, as herein described, with the appurtenances, unto the said parties of the second part, and to their heirs and assigns, FOREVER. And the said George Bolinger and Alice Bolinger,

parties of the first part, for themselves, their heirs, executors and administrators, do covenant, grant, bargain, and agree to and with the said parties of the second part, their heirs and assigns, that at the time of the ensembling and delivery of these presents, they are well seized of the above granted premises in FEE SIMPLE; that they are free from all incumbrances whatever;

and that they will, and their heirs, executors, administrators, shall WARRANT AND DEFEND the same against all lawful claims whatsoever.

In Witness Whereof, The said parties of the first part, have hereunto set their hand and seal the day and year first above written.

Signed, Sealed and Delivered in presence of

GEO. C. HOOPER
SAMUEL YUILL

GEORGE BOLINGER
ALICE BOLINGER

[SEAL]
[SEAL]
[SEAL]
[SEAL]
[SEAL]

STATE OF MICHIGAN }
County of O T S E G O } ss.

On this 30th day of Sept. in the year one thousand nine hundred and twelve before me, a notary public

in and for said county, personally appeared George Bolinger and Alice Bolinger,

to me known to be the same persons described in and who executed the within instrument, who each acknowledged the same to be their free act and deed.

My commission expires Oct. 8 - 1912.

G. E. O. C. HOOPER
Notary Public, Otsego County, Mich.

This instrument was presented and received for record this 22nd day of Nov. A. D. 1912, at 8 o'clock A.M. (as a proper certificate was furnished in compliance with Section 3937, Compiled Laws of 1897.)

John J. Munger, Registrar of Deeds.

CHARLES E. CORNWELL & WIFE

GEORGE BOLTNGER

This Indenture, Made this thirteenth day of September

Between CHARLES E. CORNWELL and IDA L. CORNWELL, his wife, of the City of Saginaw, County of Saginaw and State of Michigan,

and GEORGE BOLTNGER, of Vanderbilt, Osego County and State of Michigan,

WITNESSETH That the said parties of the first part, for and in consideration of the sum of Six hundred and forty dollars (\$640.00) of the second part,

to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, do hereby present grant, bargain, sell, release, alien and confirm unto the said party of the second part, and his heirs and assigns, Forever, That

cert in piece or parcel of land situate and being in the County of Osego and State of Michigan, and described as follows, to-wit: The North Half (N. 1/2) of the Southeast quarter (SE. 1/4) and the South half (S. 1/2) of the Northeast quarter (NE. 1/4) of Section Nineteen (19), Town Thirty-two (32) North,

Range One (1) West, according to the government survey thereof. Excepting and reserving therefrom all rights, privileges and franchises in and to the Dam across the Pigeon River located on said Section Nineteen (19), the same having been heretofore deeded to Richardson Lumber Company.

And said second party shall not have any claim for losses or damage caused by the use or operation of said Dam by over-flow or otherwise to the lands described herein.

Together with all and singular the hereditaments and appurtenances therunto belonging or in anywise appertaining: To HAVE AND TO HOLD the said premises, as herein described, with the appurtenances, unto the said party of the second part, and to his heirs and assigns, FOREVER. And the said Charles E. Cornwell and Ida L. Cornwell,

parties of the first part, for themselves, their heirs, executors and administrators, do covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the sealing and delivery of these presents, they are well seized of the above granted premises in FREE SIMPLE that they are free from all incumbrances whatever;

and that they will, and their heirs, executors, and administrators shall WARRANT AND DEFEND the same against all lawful claims whatsoever.

In Witness Whereof, The said parties of the first part, have hereunto set their hand and seal the day and year first above written. Signed, Sealed and Delivered in presence of

ALFRED DAVIES EDNA SHEEHAN

CHARLES E. CORNWELL [SEAL] IDA L. CORNWELL [SEAL]

STATE OF MICHIGAN County of SAGINAW. On this thirteenth day of September in the year one thousand nine hundred and twelve in and for said county, personally appeared Charles E. Cornwell and Ida L. Cornwell, before me, a Notary Public

to me known to be the same person described in and who executed the within instrument and severally acknowledged the same to be their free act and deed. My commission expires December 28, 1915. ALFRED DAVIES, Notary Public (NOTARIAL SEAL)

Received for record the 25th day of July A. D. 1920 at 2:30 o'clock P. M., and recorded in Liber 30 of Deeds, on page 258

THE RICHARDSON LUMBER COMPANY

James Allen Register of Deeds.

This Indenture, Made the Nineteenth day

JOHN YUILL et al of July in the year of our Lord one thousand nine hundred... Twenty.

BETWEEN The Richardson Lumber Company of Alpena, Michigan parties

John Yuill and Thomas Yuill of Vanderbilt, Michigan, parties

Witnesseth that the said parties of the first part in consideration of the sum of One Dollar and other valuable consideration to it in hand paid by these presents, grant, bargain, sell, convey, transfer, release, quitclaim and acknowledged, do hereby certify that the said parties of the second part and to their heirs and assigns, Forever,

a certain Dam Otsego Michigan known and described as follows:

All of said first parties rights, title and interest in and to a certain Dam located on Section Nineteen (19) Township Thirty-two (32) North, Range One (1) West, as conveyed to the parties of the first part by Edgar L. Cornwell, Etal. by Deed dated October 22nd 1920 and recorded in Liber 24 of Deeds on page 242 in the office of the Register of Deeds of Otsego County Mich.

Together with all and singular rights and appurtenances thereto in anywise appertaining: To Have and to Hold Described premises to the said parties their heirs and assigns forever for their proper use, benefit and behoof of the said parties of the first part.

In Witness Whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written. THE RICHARDSON LUMBER CO. By Roy S. Richardson President By Lee Richardson Secretary

Guy Eaton (CORPORATE SEAL) Mildred E. Berger (Secretary) Nineteenth day of July in the year one thousand nine hundred Twenty before me the subscriber a Notary Public Roy Richardson, (President) and Lee Richardson have acknowledged the same to be their My Commission expires March 1st, 1921. GUY EATON Notary Public, Alpena County, Michigan

Received for record the 14th day of Oct. A. D. 1911 at 8 o'clock A. M. and recorded in Liber of Deeds, on page

EST. OF LEWIS CORNWELL TO

This Indenture, Made the 20th day

CHARLES E. CORNWELL at January in the year of our Lord one thousand nine hundred eleven, BETWEEN EDGAR L. CORNWELL, WILLIAM C. CORNWELL and ELMER J. CORNWELL Trustees of the Estate of Lewis Cornwell (deceased) Edgar L. Cornwell (a single man) of Flushing, Genesee County, Mich., William C. Cornwell and his wife, Maude G. Cornwell; Elmer J. Cornwell and his wife, Olga S. Cornwell of the first part, and CHARLES E. CORNWELL of Saginaw, Michigan,

Witnesseth, that the said parties of the first part, to, and in consideration of the sum of One dollar and other valuable consideration to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, do by these presents, grant, bargain, sell, remise, release and forever QUI-CLAIM unto the said party of the second part, and to his heirs and assigns, Forever that certain piece or parcel of land, situated in the County of Otsego, and State of Michigan, known and described as follows:

The North half (N.1/2) of the Southeast quarter (SE.1/4) and the South half (S.1/2) of the Southeast quarter (SE.1/4) of Section 19, town 32 north, range 1 west., according to the Government survey thereof.

Excepting and reserving therefrom all rights, privileges and franchises in and to the Dam across the Pigeon River, located on said Section 19, the same having been heretofore deeded to Richardson Lumber Co. And said second party shall not have any claim for losses or damage caused by the use or operation of said Dam by overflow or otherwise of the lands described herein.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining; To Have and to Hold the said described premises to the said party of the second part, and to his heirs and assigns, to the sole and only proper fit and behoof of the said party of the second part. His heirs and assigns, Forever.

In Witness Whereof, the said parties of the first part have hereunto set their hand and seal the day and year first above written. EDGAR L. CORNWELL (L.S.) WILLIAM C. CORNWELL (L.S.) MAUDE G. CORNWELL (L.S.) ELMER J. CORNWELL (L.S.) OLGA S. CORNWELL (L.S.)

STATE OF MICHIGAN, ss. On this 20th day of January in the year one thousand nine hundred eleven before me, the subscriber, a Notary Public in and for said county, personally appeared William C. Cornwell, Maude G. Cornwell, Elmer J. Cornwell and Olga S. Cornwell

to me known to be the same persons described in and who executed the within instrument, and severally acknowledged the same to be their free act and deed for the intent and purposes therein stated individually and as trustees of the Estate of Lewis Cornwell (deceased).

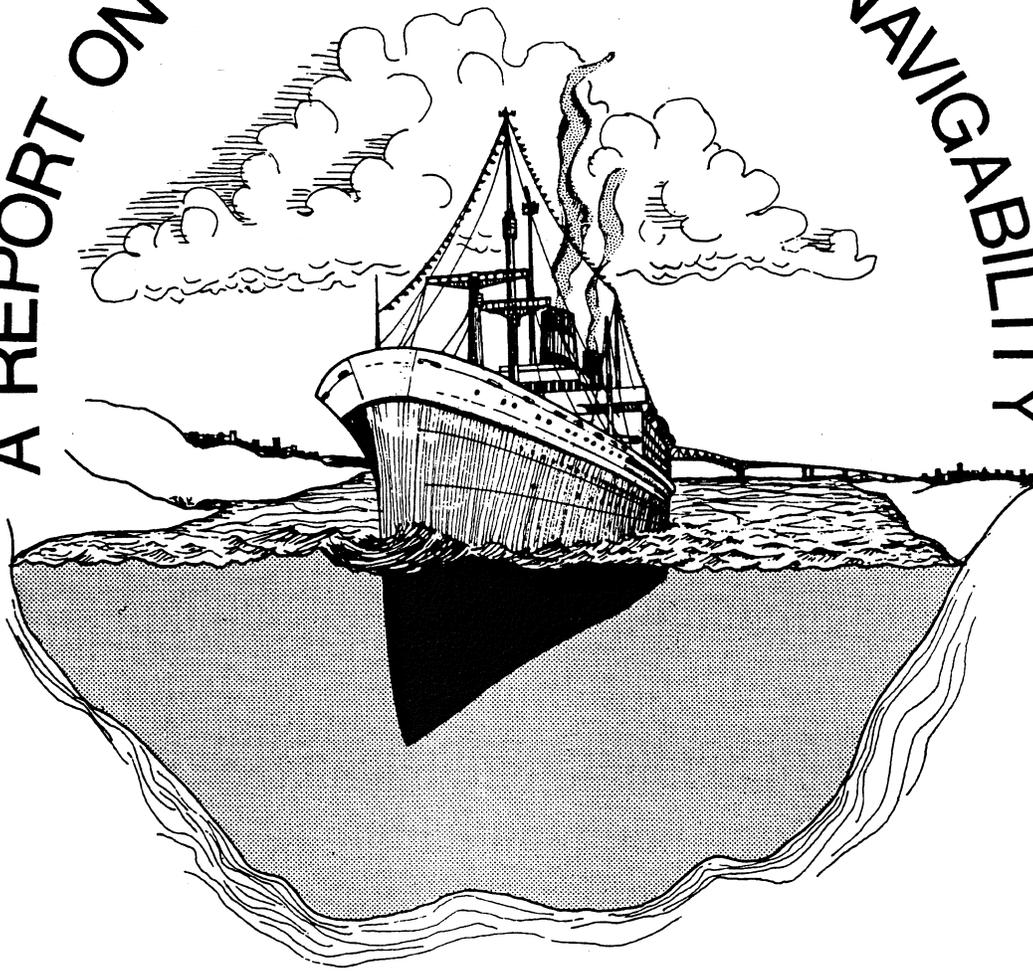
(NOTARIAL SEAL) ALFRED DAVIES, Notary Public, Saginaw County, Michigan. My commission expires Jan. 2, 1912.

STATE OF MICHIGAN, ss. On this 23rd day of January in the year One thousand nine hundred and eleven, before me the subscriber, a Notary Public in and for said County, personally appeared Edgar L. Cornwell, to me known to be the same person described in and who executed the within instrument and acknowledged the same to be his free act and deed, for the intent and purposes therein stated, individually and as one of the trustees of the Estate of Lewis Cornwell, (deceased)

FRED D. SAYRE, Notary Public My commission expires March 14, 1911.

Appendix 5

A REPORT ON THE FINDINGS OF NAVIGABILITY



CHEBOYGAN RIVER AND INLAND WATERWAY BASIN, MICHIGAN

WATERWAY NUMBERS 29 - 34

U.S. ARMY CORPS OF ENGINEERS • DETROIT DISTRICT

U. S. ARMY CORPS OF ENGINEERS
DETROIT DISTRICT

NAVIGABLE STATUS OF
CHEBOYGAN RIVER/INLAND WATERWAY BASIN
MICHIGAN

NAVIGABILITY REPORT: 29 THRU 34
DECEMBER 1979

GAI CONSULTANTS, INC.

<u>River and Harbors Act</u>	<u>Project Authorized</u>	<u>Document and/or Report</u>
1954 River and Harbor Act	Channel of 5-Foot depth and 30-Foot width	H. Doc. 142, 82d Cong., 1st sess.
1964 River and Harbor Act	Lock and Dam	Chief of Engineers Report

6. Past and Present Interstate Commerce -

a. Past Usage - Use of the Cheboygan River and the Inland Waterway for commercial purposes is well documented. Primarily, this use consisted of transportation of wood from the lumbering regions in the upstream reaches. Several tributaries to this system were also used for this purpose.

Sources indicate that the Black River and Black Lake were used for gathering logs and floating them to mills in and around Cheboygan. An Army Corps of Engineers publication (1871, p. 183) reported that, "all the way up into...Black Lake, the navigation is excellent". Hudgins (1961, p. 62) included Black Lake in the list of lakes which were used as gathering points for logs prior to sending them downriver. Lieutenant Colonel C. Townsend (House Document 303/61/2, 1910, p. 4) reported on investigations into deepening of Black River. He wrote, "As Black Lake is centered in a farming area," deepening the channel would, "facilitate the movement of the crops to Cheboygan."

The Pigeon River, as with most tributaries to this system, flows through lands once covered with marketable pine and cedar. An 1871 Army Corps of Engineers report

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stated that, "logs are now run for an extent of 45 miles in Pigeon River" (p. 183).

The Maple River flows from Douglas Lake to Burt Lake. Douglas Lake is cited as one of several lakes used for gathering logs prior to sending the timber down river (Hudgins, 1961, p. 62). Fuller (no date, p. 87) quotes a source which reports that mills flourished on the Maple River and these mills exhausted the merchantable pine in Emmett County forests.

The main course of the Inland Waterway was extensively used for transporting logs to Cheboygan. A U. S. House of Representatives Document (303/61/2, 1910, p. 3) reported that considerable pulp wood was floated to Cheboygan and that several mills in Alanson received their logs from Crooked River. This document further states that:

The inland route has been extensively employed in removing the timber products from the surrounding country, and while there has been a diminution in the supply as the forests are cleared off there is still a considerable commerce in these articles.

An earlier House Document (537/59/1, 1906, pp. 2-3) mentions Burt Lake and its connecting streams as "Fine navigable bodies of water." Hudgins (1961, p. 62) includes Burt and Mullett Lakes in the group used to gather logs prior to floating them to mills. Larson (1977, p. 1-54) indicates that the Inland Waterway, in 1906, was still used for, "considerable commerce in logs, timber, bark, and farm products. The route was also being used by summer residents and tourists. More

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board feet of lumber was boomed from the Cheboygan basin in 1893, it is probable that these improvements were made.

Each stream must be considered individually as to the extent of the usage of the waterway for log driving. Black Lake was used to gather logs prior to floating them downstream to the Cheboygan River. It is reasonable to assume that these logs were cut upstream and floated into Black Lake via the Black River however, specific documentation was not found. Certainly, the valuable timber was there, and the marshes associated with the upstream reaches of the river may be the result of removal of trees and other vegetation from soils which are poorly drained.

The Pigeon River is cited as having logs run in it for 45 miles. While the method of measuring this mileage is uncertain, it can be assumed that this extends log driving to the source. Currently, the river is mapped as being 36 miles long, measured from Sparr, Michigan, to its mouth.

The Sturgeon River roughly parallels the Pigeon. No specific references to milepoints or log drives were found; however, legal references indicate that boom companies operated at the mouth. Nevertheless, lacking substantive evidence to the actual use of the Sturgeon River for driving logs, no recommendation of navigability can be offered.

Douglas Lake was used as a gathering point for logs. The only outlet of this lake, Maple River, was the avenue by which these logs were moved to the Inland

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Appendix IV

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