

COPY

Peter Flint.

Feb. 6/14.

Hon. Martin N. Glynn,
Governor of The State of New York.

Dear Sir:-

I am in receipt of your kind favor of Feb/2/14 including copy of State^{to} Your Excellency made by George E. Van Kennen, Esq. Chairman of Conservation Commission, and referring to a communication from yourself to the Commission of Jan. 24/14 (enclosing a letter from our Committee to you and written by me as chairman thereof).

As stated in my last letter dated Jan 31/14 and which had probably not reached you when your letter of Feb. 2 was dictated, Mr. Van Kennen's report is extremely erroneous in many particulars.

The Dam at Eagle Lake is at least One Hundred and fifty feet long by 5 to 7 feet high and NOT 12 feet long by 3 feet high as stated by Mr. Van Kennen. It stretches across the marshy outlet of Eagle Lake from two closely approaching mountain slopes. This dam is constructed mostly of stone and the highway from Ticonderoga-Schroon Stage road leading to The Pyramid Club Houses runs along the Crest of this Dam the entire length. In the center of the dam there is a LOG SPILLWAY-(a LOG CRIB) about 12 feet wide over which the water runs passing under a plank bridge about 15 feet wide built right opposite the Spillway. This Crib has been mistaken for the dam in Mr. Van Kennen's report.

I am glad that the Chairman admits that Mr. McKim went to Eagle Lake last August "for the purpose of determining whether a fishway should be constructed at that dam". This shows for just what purpose our Association invoked the aid of the Commission viz: the Protection and maintenance of our game fish supply which had been largely lost by going over the old dam, said dam being necessary to give proper spawning grounds to the pike and other fish which had been introduced by the state into this rock shoed lake.

Just at this point Mr. Van Kennen drops the real purpose of the investigation and begins the construction of a sort of defense for the Commission's attitude which has been somewhat hostile all along in my judgment.

What Mr. McKim did actually say in substance and what we property owners all heard him say, too, was: "You do not need any fishway here, gentlemen; your loss of fish is caused by the spillway of the present dam being too small, to handle the volume of water during the spring freshets etc. Now what you do want is a new dam built of concrete, with spillways wide enough to keep a uniform water level in the lake and upon your spawning marshes above here at all times. After you have finished this new structure a few feet below the old crib you can, of course, take the old crib out at any time. But leave it standing at present to save expense in construction of the new structure."

This was said to our Committee standing in the highway along the crest of the dam. Our engineer member, Runge of Flushing, N.Y. and myself being at that time investigating a location for the foundation of the new concrete crib there.

NOT ONE WORD WAS SAID BY ANY PROPERTY OWNER AS TO ANY DANGEROUS CONDITION OF THE DAM. 'NOR DID MR. MCKIM STATE TO ANY ONE THAT DAY THAT A NEW DAM SHOULD BE CONSTRUCTED IN ORDER TO RENDER IT SAFE. Safe for what? He knew there was nothing below that dam that could be injured with that slight head of water and the only Safety sought for from the Conservation Commission was Safety for our game fish during spawning time from being swept over the dam. This last condition is SOMETHING that the commission HAS and HAD jurisdiction over, & why did they send Mr. McKim? This was the only thing the Commission was asked by us to exercise its jurisdiction over.

We then sent blue prints for the approval of the Commission. We did not own the dam site, it is true, but we had consulted the then trustees of the Harris Estate, The Farmers Loan and Trust Co. of N.Y. City in June 1913 and they had made no objection to the movement to preserve our fish--in fact they seemed to approve.

We have Mr. Moore's own letter of Dec. 4/13, in which he informs us that the commission have written several letters to the Harris Estate and to Mr. Newton of Ticonderoga NOTIFYING both parties that a proper dam should be constructed at the outlet of the lake". This certainly shows that Mr. Moore THEN BELIEVED that the Commission had some POWER to direct some one to REBUILD this destroyed DAM or CRIB. These letters to us are signed by Mr. Moore and not by Mr. Richard F. Sherman the engineer. Just why Mr. Sherman should have been directed to write to Mr. Newton, and why he should have injected into this discussion the question of the dam's alleged unsafe condition does not appear. From our point of view it was quite impertinent to the Real Question before the Commission.

Now as a matter of fact, Your Excellency, Mortimer Y Ferris of Ticonderoga a civil engineer there and part owner of the dam site went to Albany about Dec. 2, '13 and consulted the commission. Since that time the Commission has declined to take any action in our behalf along the lines of protection to our fish in Eagle Lake and maintaining our pike spawning marshes there, and, following a letter written by Mr. Sherman dated-----has simply confined itself to a defense of its INTERFERENCE with the original purpose of our Application by the Substitution of an entirely foreign issue: that of the alleged dangerous condition of a small log crib.

Mr. Van Kennan's statement that no order was ever issued by the Commission to the owners to reconstruct this dam is at once disproved by Mr. Moore's letter above referred to. What does the word "NOTIFY" mean in an official communication. It is surely a direction and mighty near an order, not quite. Citizens who receive such Notifications generally get busy.

Mr. Van Kennen's last statement is at least debateable, and from a study of the law I personally cannot agree that the Commission cannot compel a recent owner to maintain an ancient dam or crib on his own property when the removal thereof might interfere with or result in a Change in the Habitat of FISH.

Now if the State of New York cannot protect and preserve the peoples fish, planted by it in open waters, what is the use of a Conservation Commission? Its duties prescribed by Statute relate to the Conservation of land Forests, Waters, Parks hydraulic power, FISH AND GAME.

The Conservation of Fish in Eagle Lake I hold, therefore, is the only question that has ever been properly and lawfully brought to the attention of the Conservation Commission and the only one that they should now consider, and that this attempt to substitute any entirely different question or issue as a defense for what the commission direct on an EX-PARTE application from the Ticonderoga owners and without giving our Association a chance to be heard ~~is~~ is entirely improper and unjust. The original ruling of Mr. Moore "Notifying Mr. Newton that a proper dam should be BUILT at Eagle Lake should now be promptly enforced by the Conservation Commission.

Mr. VanKennen also very kindly directs our Association to the open doors of the Supreme Court and expensive litigation, which, as peaceable, law abiding citizens we wish to avoid.

The Commission cannot, in my opinion, escape the charge of having forced us to this suggested recourse to the Court. It directed the owners to remove this crib without any suggestion or complaint whatever from any one relating to same, and thus precipitated great damage to our properties by the removal of a structure at all times perfectly satisfactory to owners of riparian structures, even if not all that could be desired by those desiring to maintain and increase the supply of food fishes there.

Now by putting our Fish Preservation question into the hands of the Conservative Commission and trusting to the State's guidance in regard to same, we find our fishing ruined and we are now compelled either to make terms with these owners regarding the erection of a new dam, now made many times more costly by the unnecessary removal of the old crib, or on the other hand bring damage suits as suggested by the Commission. Meanwhile our lake will remain in an unhealthful condition, our fishing is spoiled and our colony of more than twenty cottages and bungalows with the large hotel will be unable to use the boat houses, piers or even row under bridges or motor over reefs owing to this unwarranted lowering of waters.

The local inhabitants of that region, generally jealous of any guidance by the commission, are already beginning to find fault with us city men for activity in the attempt to increase our fish supply and a resident owner wrote us yesterday complaining of the great damage caused by the lowering of the water. His letter closed as follows: "I guess you people are to blame, take it all around, for the water being down. You had that Inspector (Mr/McKim) come up to see the dam and THIS IS WHAT YOU GOT."

I therefore hope, Your Excellency, that this clearly substituted and erroneous issue of alleged dangerous condition of the log crib and spillway at Eagle Lake, a part of its large dam there, shall not be allowed by you or by the Conservation Commission to obstruct its plain duty to conserve the State's fish in Eagle Lake at the reasonable request of the property owners there. This being the only proper question at present before that body.

I therefore, shall not advise our Association to apply to the Court for relief until the real issue involved as now SHOWN by the correspondence, shall have again been brought to the attention of yourself and the Conservation Commission. I hope that the Commission's former hasty action will be speedily reviewed and justice to us be done.

Sincerely yours,

PETER FLINT

Chairman Eagle Lake Property Owners Association Com on Fisheries & Game