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(Copy)

Dec. 30, 1913.

Mr. Peter Flint,
Chairman, Eagle Lake Property Owners Assn.,
Committee on Fisheries & Game, 55 E 21st St.,
New York City.

Dear Sir:

Yours of the 29th inst. on the subject of "Dam 786 Upper Hudson Watershed, Eagle Lake, Ticonderoga, Essex County, N.Y." has been received and referred by Commissioner Moore to the undersigned (Chief Engineer)

Your long letter has been read with interest and its contents carefully noted.

The jurisdiction of the Conservation Commission on the subject of Dams is derived from Chapter 65 of the Consolidated Laws, known as the Conservation Law, and from Section 22 thereof as amended by Chapter 736 of the Laws of 1913. A copy of Section 22 so amended is enclosed herewith.

By a careful reading of the law you will notice that its purpose in placing "structures for impounding water" under the jurisdiction of the Conservation Commission is to guard life and property against the consequence of the failure or going out of Dams or structures for impounding water. If a Dam were found to be in a dangerous condition and the owner thereof, in lieu of repairing, strengthening or reconstructing it or building a new Dam to take the place of it, should elect to entirely remove his old Dam or to remove so much thereof as would prevent its longer being a structures for impounding water, it is at least doubtful that the Conservation Commission could prevent his doing so. The commission could doubtless require him to remove his dam or portion of it in such a manner as would prevent flood damage to property below during the process of removal. If, by reason of the basin formerly filled with water being permanently emptied by the removal or partial removal of the dam, unhealthy conditions were produced, the matter should be taken up with the local health authorities or the State Department of Health, not with the Conservation Commission. If damage resulted to persons above the dam by reason of its discontinuance as such, a remedy, if any, would be through the Courts and not through the Conservation Commission.

The Conservation Commission is powerless to order any person to construct a dam where none now exists, or to construct one in lieu of a dam that has been discontinued or abandoned by its owners following total or partial destruction by natural causes, such as floods, or its total or partial removal by the owner.

The Conservation Commission not having delegated to any of its officers the power to make orders, such as the commission is authorized to make by Section 22 of the Law aforesaid, any direction given by its officers cannot have the force and effect of an order by the commission. Mr. Alex R. McKim, Inspector of Docks & Dams, travels about the state extensively, inspecting dams, gathering information and data pertaining to them and interviewing owners and interested parties for the purpose of obtaining information, etc.

Mr. McKim is an expert on the subject of structures for impounding water. It is almost inevitable that in his interviews with owners of dams and others as to which there is any question, his opinion and advice should be asked and it probably would give a great deal of offense and devoid of good results if he were to refuse to make suggestions or give advice. That such advice and suggestions by him have been beneficial to a large number of owners of dams and others there is no doubt. It is not strange that some persons should misconstrue such suggestions and advice, in view of Mr McKim's official position, to be orders of the commission. Probably such has been the case in the dam as to which your letter applies.

In your letter you state in quotations, "Mr. Sherman of the Conservation Commission at Albany, told him (Newton) that the dam at the foot of the lake (Eagle) was in an unsafe condition and that Mr. McKim advised that it would be better to have it torn out". The Mr. Sherman referred to is evidently the writer (Chief Engineer) The allegation by Mr Ferris as to what Mr Sherman said, as above quoted, may be true.

Trusting that this letter will make the situation clear to you, so far as the Conservation Commission is concerned, we remain,

Yours truly,

Conservation Commission

by

Sigd. R.W.Sherman,

Chief Engineer.