

L.H.M.

My dear Mr. Luthy:

Saw Mr Guy<sup>y</sup> deputy commissioner, who brought Mr McKim into the conference and the matter was fulsomely gone into. Primarily, Mr McKim very much deplored the vocabulary attitude of Mr Flint---Mr Moore, not pugnacious but aggressive, was an especial object of both Flint and Lodge vituperation. Flint even wrote the Governor, who, of course, turned the letter over to Mr Moore. Obviously Mr Moore was not kindly disposed.

The C C has 3 divisions, each in charge of a commissioner and a deputy. Inland waters- Mr Moore; Lands and Forests-Mr Van Kennan; Fish and Game- Mr Fleming. Each is wholly distinct from the other, i.e., as a general matter.

Mr McKim says Mr Flint misconceives the law and wanders <sup>wide</sup> afield. I mailed you a copy of the law. Read Sect. 22, that portion beginning with ~~It~~ "No structure ..... danger therefrom". You will note that the whole underlying thought is to safeguard life and property from danger. It does not say "from damage"; purely "from danger".

Mr McKim points out that the filing of plans and specifications or their acceptance by the C C, in no wise involves consent to either construct or re-construct a dam--merely, that if either was done, the CC must see that life & C, are not endangered. In this the C C position is identical with that of an official enforcing a building code, where the acceptance of plans etc., confers no property rights. That, thus, the division of Inland waters can take no cognizance of those above a dam but only with those below, where life and property might be endangered by impounding waters. These were his views. Of course, one could readily conceive of a situation where the impounding of waters above might be carried on to an extent endangering etc., but even so it would not help you, out.

"It is true," he said, ~~It~~ "that the State owns land there" that the CC would certainly have the level of the lake maintained, and if anyone will but point out how the State through the CC can compel a private owner to construct or re-construct a dam, the CC may order it ~~removed~~, <sup>done under Sec 22 - the C C may order it removed</sup> if dangerous---nothing more. When it does its order is absolute.

2The CC shall have power-----to make and ~~serve~~ an order directing any person.....to remove or re-construct" Sec 22

MR McKim says" John Smith may own land on both sides of a stream and builds a bridge across. In time people on account of bridge, build around it.. There is no obligation on Smith to keep it up if he wants to tear it down. Safety can be demanded else order it ~~tax~~ torn down. If Smith owned land on one side and the State on the other, Smith when he built was a trespasser on State lands, so if the State decided later to re-build, it would become a trespasser on Smiths land.

Sec 22 also reads "N<sup>o</sup> order made by the Commission shall be deemed to authorize any invasion of property rights, public or private, by any person carrying out the requirements of the order.

This <sup>1</sup> assume, intends that he cannot plead the order of the CC in abatement if litigation should arise, from his consummating the order.

No "2"

So much for the division of inland waters. Before taking that of fish and game, would say Mr Guy assured me personally that if I would suggest a base for action, he would proceed.

Sec "243 of the Law of Bass etc on spawning beds in the close season shall not be disturbed ....." It is a question, very gravely in doubt, whether under the circumstances this section could be enforced. You are entering the criminal field and the larger circumstance involved in Sec "22" would unquestionably dominate.

As to your private rights bearing on the incident of easement to a certain level, which, obviously, is what it comes to, and the hooking up of the easement to the maintainance of the dam.. Earlier and with superficial indulgence I felt that it gave you an absolute right. Upon analysis, I confess, my opinion must change. When this dam was built any one owning bordering land might well object to an increase in level, it being a violation of riparian rights.. If he who built the dam, succeeded in maintaining it the prescriptive period, it altogether likely that his rights would evolve absolute, but in the specific absence of specific agreement it would be very difficult for land owners to compel him to maintain it after any number of years.

I complained to Mr Guy that it was a dog-gone shame; that the thing, i.e., the destruction of the dam, in itself perverted the entire notion associated with the C C purpose. Destroying fishing, spawn and spawning grounds, lowering the lake etc., were violently anti-conservation.. Mr Guy will do anything I suggest but the sine qua non, is one leg, anyway..

Under SEC 66, the C C may appropriate lands and such a conclusion could, perhaps, have been induced if the fire-eating tactics of Lodge and ~~Mc~~ Flint had not been indulged. Flint evidently permitted an impetuous impulse to disregard proper contemplation of the law.. He first? Lodge later aroused Moore and if the writer had not been known, Moore would point-blankly have refused to discuss it.

Moore would gladly do most anything within the power of the commission but after the denunciations made, he positively will do nothing, for no one except what the law specifically compels; and, of course, neither negatively or affirmatively, does the Conservation law point out procedure in re- the Lake.

McKim suggested that if Newton & Ferris continue to ask an outrageous price, that a dam be built higher up in the lake. I

I replied that if my memory of this part of the lake was correct the thing wasn't feasible on account the topography and that perhaps ownership wasn't an available asset.. He advised that if the State owned any of the land upon which the dam ~~is~~ might come, there would be no objection; that such a dam might entail a lesser cost than the price of the N & F property plus a dam. All of which is purely for your information.

After reading the law if there is a thing you can suggest, kindly advise

As to rebuilding the dam or a new dam, consent has been assured.. Advise letting the dam sleep awhile..