

B. BAKER BEEF CO.  
DRESSED BEEF AND PROVISIONS  
GREEN ISLAND, N. Y.

CODES: ROBINSON AND UTILITY

Green Island, N.Y.,  
April 2nd 1914

My dear Mr Luthy,

Press of many arduous circumstances prevented my getting to the N&F item earlier. I may too add another to my calendar of ailments, viz., tonsillitis-----I want no more.

Saw Mr Guy, the 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---reminder of flies and molasses---and vinegar. 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 CC 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 wide afield. I have mailed you a copy of the law. Read Sec 22, that portion beginning with "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 CC, in nowise involves consent to either construct or re-construct a dam: merely, that if either was done, the CC must see that life etc., are not endangered. In this the CC 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," said he, "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 will gladly order it done. Under Sec 22, the CC may order it removed, if dangerous---nothing more, when it deems its order is absolutely.

*Copy  
sent  
2/1/14*

*Ans  
April 11/14*

*copy*

*Safeguard vs  
Damage not damage  
And Sec 22  
Sec 22  
2014 copy*

*McKim in  
his account  
did not believe  
that this dam  
should be  
reconstructed  
recommending  
filing application  
nowadays  
2/1/14*

*Be only  
chance  
in they will  
order it not  
to do it*

*Concl  
10/1/14*

*has no power of building a dam above*

*(2)*

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"The 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, account 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 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 rebuild, it would become a trespasser on Smith's land. *times EL Pass by instead of same would be trespasser on Smith's land*

*affairs to  
to  
to build*

Sec 22 also reads " No 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, I assume, intends that he <sup>(Mention)</sup> cannot plead the order of the CC in abatement if litigation should arise, from his consummating the order. *Remedy*

*chance  
suggest a  
base for  
action*

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

Sec 243 of the Law " 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 maintenance of the dam. Earlier and with superficial indulgence, felt that it gave you an absolute right. Upon analysis, I confess, my opinion must change. *X* 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. *by right of riparian* If he, who built the dam, succeeded in maintaining it the prescriptive *will* period, it altogether likely that his rights would evolve absolute, *but* In the 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 CC 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. *(in this particular condition)*

*unpaired  
to get CC  
to take possession of NY land at same time*

Uner Sec 66, the CC may appropriate lands and such a

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conclusion could, perhaps, have been induced if the fire eating tactics of Lodge and 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.

<sup>George</sup> He 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 N&F continue to ask an outrageous price that a dam be built higher up in the lake. I replied that if my memory of this portion of the lake was correct, the thing wasn't feasible <sup>to</sup> 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 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.

Regretted to read of your spraining an ankle. "Luthy at 50 enjoying life" is an appropriate title but kindly describe for me the secret of enjoying life with an infirm foot. Your courage is high. Mrs Baker was fixing a roast for dinner and tried to lard it with a substantial piece of her finger. I foolishly put cotton soaked with peroxide on it; the cotton coagulated into the cut and two days later pussd underneath and precious nearly developed poisoning. She is alright now---"enjoying life at--? (dare not say) but the pain was intense.

I'm very sorry I couldn't help you out more substantially in the "dam" matter but Flint and Lodge aroused such an antagonism that mentioning Eagle Lake is like red-flagging a bull, with the CC. (Since I have read the law can only say that Flint should have known better and Lodge the compounded friend of Balaam's friend he simply salted the wound.

Give my regards to all. With kindest wishes to yourself and Mrs Luthy, beg to remain,

Yours,

*B. Baker*

*McKim's price was to build this dam on the State property. I told him that if the State owned the land there would be no objection. I told him 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.*

*As to building the dam on a new dam. I'm letting the dam slip. I'll be in touch with you.*

*No 7  
check  
com  
the*

*From  
McKim's  
revised*