

Edo. Luthy,  
P.O. Box 232  
Cincinnati, O

Apr 1913

My dear Mr Baker:-  
Reviewing your very thorough letter concerning your interview with the C.C., occupied several of my evenings in comparing your points with the Conservation Laws.

Hence my delay in not acknowledging your kind efforts in my behalf which I assure you I appreciate to the fullest extent.

I fully recognize the bitterness of the various heads of the several departments of the C.C. and I realize that they could not feel kindly disposed under the circumstances. On the other hand, we had good reason to believe that the whole "outfit" had been playing us falsely from the start.

Mr McKim on Aug. 27th, 1913, when he came to the Lake, recommended our filing application and plans for the reconstruction of the dam (in compliance with a sketch he submitted under assurance that these would be approved); said application having been filed for the purpose of conserving the food-fish and not with a view to strengthening the dam, which at the time was not considered unsafe nor dangerous. In fact, at the time Mr McKim inspected the dam he said nothing about it's being dangerous; nor could any one there at that time substantiate it being in a dangerous condition.

After our application and plans were in the hands of the C.C. and were filed by the Commission under the heading "Dam # 786, Upper Hudson Watershed, Eagle Lake, Ticonderoga, N.Y.," the C.C. through Mr R. E. Sherman became involved with Mr I.C. Newton and Mr M.Y. Ferris, who became grantees of the dam-site on or about Nov. 14th, 1913, which was subsequent to the receipt by the Commission of our application and plans; and without advising us or any of the other property owners or giving them a hearing in the matter, directed Newton & Ferris to "cut out" the spillway declaring it unsafe or dangerous. In this connection Mr M.Y. Ferris, who is a civil engineer himself stated that "he examined the dam and in his opinion it was not dangerous".

When we learned on Nov 16th 1913, that the spillway had been "cut out", "thereby lowering the former level of the lake and destroying the former shallows and spawning-grounds of the food-fish near the dam, we naturally thought that Newton acted on his own responsibility, and not having been aware that the C.C. directed Newton in his action, we felt reasonably certain that the C.C. would intervene and summarily order the dam replaced, especially when we knew that the State owned lands on the lake and felt they would enforce the restoration of the spawning-grounds in conformity with their powers and duties as conservers of the food-fish.

On learning that the C.C. refused to intervene, we were both surprised and disappointed, and it was only after the C. Commission's abuse of our confidence that embitterment followed.

So much for preliminaries. However understand me rightly that I do not approve of the tactics of Lodge and Flint. Lodge as V. Prest. had the whole matter in charge and he, together with Flint through their tactlessness put the affair in its present precarious condition.

You, yourself being familiar with the topography of the land at the outlet of the lake, would admit that even though the spillway of the dam were in bad condition, there could be no danger to life west of this spillway as the water had to descend five or six feet under a bridge into a brook and run a stretch of about a half mile through unimproved uninhabited land.

In consequence of Newton's act I fail to see, therefore, where the C.C. have achieved anything as to protecting the safety of life from a "dangerous" spillway; on the other hand, Newton's act not only destroyed the spawning-grounds and injured the propagation of food-fish but also endangered the "public health and welfare" of a community summering east of the dam, by draining the waters ~~effxxxxxxx~~ and exposing swamps--- all of which is violently anti-conservation.

McKim's argument that the C.C.'s position is identical with the enforcement of a building code is ridiculous, for the reason that what no one asked for property rights, when the matter of the dam was conferred about with him-- for the point at issue was on only the conservation of food-fish.

With the acknowledgement that the State owns land bordering on Eagle Lake and with the Commission acting in line with the purpose for which it was created, under chapter 647, it ought to enforce the powers with which it is vested in ordering the level of the lake maintained at its former height, ~~by S. S. S. S.~~ to conserve the fish and that level can only be maintained by the restoration of the spillway to its old height.

For a period of 21 years or more, the property owners on the lake, by maintaining a level of the water advantageous to the spawning grounds etc, and our Association, organized on Sep 13, 1907 and formed mainly for the purpose of protecting the fish and fishing, have done more toward conservation than the C.C., who now seem helpless to enforce their powers, without having some "one" point out how the State, through the C.C. can order a reconstruction of the dam."?

It seems outrageous that the C.C., when it owns land itself on Eagle Lake, should pervert entirely the purpose of the Commission and favor a single new-comer, who never before showed any interest in the lake, whose land is worthless (being located along the shallows and the outlet), ~~discriminate~~ against a number of property owners who for years improved their lands, enhanced the value of and increased the popularity of the lake and who have always shown efforts toward conservation and endeavored to co-operate with the State Conservation Commission.

McKim's heroic suggestion that "if N.&F. continue to ask an outrageous price, that a dam be built higher up in the lake and that if the State owned any of the land upon which the dam might come, there would be no objection," leads one to infer that the C.C. see the necessity of a dam to protect the fish and would like the complaining property owners to build it instead of themselves ordering Newton to restore the old spillway which he destroyed at their command.

Why then, did not the C.C. object to Newton's demolition of the dam, located partly on State land?

I believe the complainants should together take the same attitude assumed by the C.C. and remain as violently anti-conservative as is the Commission.

The cost of re-placing our riparian structures to conform with conditions of the present level of the lake will be much less expensive than the building of a dam where Mr McKim suggested, even if that were feasible.

We may in addition be able by taking legal action, against Newton, recover the expense and damage to our riparian structures and we can say--damn the conservation idea, forever after.

If they are not interested in conserving ' we should worry' "

Our only chance, if we have any at all, is to try and induce the Div. of Fish and Game, through Mr Guy, to recommend a restoration of the spawning grounds for the purpose of conserving the food-fish, or, if ~~the~~ influence can be brought, to induce the C.C. to appropriate by condemnation (parag 487) enough of Newton's land (par 486) on the north end of the dam (since the State owns the land supporting the south end of the dam), then, the control, jurisdiction, perpetual use and occupancy of said dam and spillway would rest entirely with the C.C., under whose care (par 491) it rightly belongs.

Inasmuch as the objects of our Association which was permanently organized on Sep 13, 1907, in order to continue the motives of the property owners, who since about 1894 (when Isaac Harras became grantee of the dam site), agreed to maintain the dam at a height, advantageous to the propagation of food-fish; I am of the opinion that if this phase of the situation where known to the C.C. showing how the property owners, for a period of about 21 years have striven to co-operate with the C.C., they would take up the matter of the dam with us with a view to conservation and I am sure that all the property owners would assist in co-operation with them and thereby enable our Association to continue it's work of conservation, prescribed in it's Constitution, a copy of which is inclosed.

Under paragraph 480, it appears that the C.C. would have imperative jurisdiction in a case like ours, where Newton's action imperiled the public health, safety and welfare of a community, (see par 482 & 483). However in all my suggestions above it is a question whether the C.C. would not force the entire expense of reconstructing the dam on the property owners instead of ordering Newton to repair the damage he did.

If after reading this you have any suggestions or comments to offer, I would be only too glad to hear them. For the present I have written both Lodge, & Flint to drop the matter entirely and await further developments.

Again assuring you of my sincerest appreciation of your efforts in this matter and hoping that the C.C. may soon see the advantage of having us co-operate with them and that they will desist in their discrimination against us in favor of Newton, a "new comer", I am, sincerely yours,