

January 9, 1914.

*Copy letter
Peter Smith
to*

H. Lewellyn Legge, Esq.,
Chief Game Protector,
Conservation Commission,
Albany, N.Y.

Dear Sir:-

As a result of requesting your Division last Spring through Tarleton N. Bean, State Fish Culturist for directions how best to conserve the game fish in Eagle Lake, Ticonderoga, and increase the supply thereof, we property owners there have now to face the recent destruction of fishing conditions as well as almost irreparable injury to riparian property and destruction of the former perfect healthful conditions that have hitherto prevailed in that beautiful locality on the Stage Route between Lake George and Schroon Lake? The line of the new State Road.

That such a result was unpremeditated by your Division and Mr. Bean is undoubtedly true; that you will promptly restore us at least to our former condition is our sincere belief.

During the years 1911 and 1912, both Mr. Edmund O. Luthy and myself, representing the Eagle Lake Property Owners Association, had extended correspondence with your Division through my friend, Mr. Bean, asking how best to conserve the pike and bass in our lake and provide for spawning grounds in Springtime and thus increase the quantity of food fishes to meet the rapidly increasing demands of our summer colony, our visitors and the neighboring population that fishes in those waters. We invited Mr. Bean to be our guest for a day or two. He expressed great interest in our problem, intimated that our loss was probably due by fish going over the dam during high water and suggested that an inspector of docks and dams visit our Lake and report back to the Division of Fisheries what sort of protection was needed for the fish there.

Accordingly Mr. McKim, Inspector of Docks and Dams, Division of Inland Waters, came to Eagle Lake last August and after looking over the situation carefully, told our Committee as we all stood by the dam at the outlet of Eagle Lake together, that what we needed there was not a fish way at all, but a new dam of concrete with very wide spillways which would prevent any high water at the outlet in Spring. Mr. McKim went on to point out most particularly how the pike and bass could be prevented from going over the new dam which he advised constructed JUST BELOW the old structure, leaving the old dam where it was to maintain the usual water level in the Lake until the new one should be completed. He told our engineering member, Mr. O. Runge of Plushing, N.Y. that if he would send the blue prints of a new dam, such as he described, to Albany, that he (Mr. McKim) would O.K., them, from his own personal knowledge of the facts and situation and return them to Mr. Luthy, our Secretary-Treasurer and thus enable us to get to work before frost set in.

Various letters passed between Mr. Luthy and your Division, but the blueprints, for some reason, were never sent to us and still remain as evidence of what I assert in your offices, or those of Mr. Moore, Commissioner of Division of Inland Waters, Conservation Commission.

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Along in November our Association was astonished to learn that some one had torn out the old dam, leaving all our motor and other boat and canoe houses 3½ feet high and dry above low water mark and utterly ruining our beautiful shores; the piers belonging to the Eagle Lake House, for instance being 5 feet outside of the present water margin. Suspicion pointed toward Mr. Irving G. Newton of Ticonderoga, a recent purchaser of Lot No. 41, 5 chroon Tract, where the old dam had stood for the last twenty years or more, as having committed what local and city residents now term an "Outrage".

It required considerable effort on the part of Commissioner Moore to prove Mr. Newton to be the real owner of the dam site. It was represented at first to Mr. Moore that Isaac Harris, who built the dam more than twenty years ago to maintain a constant water level in the Lake and for the benefit of his own large estate three miles up the Lake, had deeded this dam site to Essex County, N.Y., or to Ticonderoga, N.Y. Mr. Newton then maintaining that he was not the owner of the dam, although it now appears he had at that time destroyed it.

As Chairman of our Committee on Fisheries and Game, I wrote immediately to The Commission about the matter and received a letter from Mr. Moore, dated December 4, 1913, re Dam 786 Upper Hudson Watershed at Eagle Lake, Ticonderoga, N.Y., in which he said "We have written to the Harris Estate several times and also to Mr. Newton in reference to the dam, notifying both parties that a proper dam should be constructed at the outlet of this Lake." xxxxxx "We are now waiting for an answer from the County Clerk, in order to ascertain to whom the property on which the dam is built belongs."

Waiting for three weeks and hearing nothing further from the Commission, I wrote the Conservation Commission December 29, 1913, requesting that body to relieve the distress and anxiety of our people residing in various parts of the Country U.S. by ordering Messrs. Newton & Ferris to begin the construction of the new dam in accordance with the Commission's written directions already given to the owner to do so. I also stated in my letter that Mr. Newton was giving as an excuse for his most unwarranted act, that a Mr. Sherman of the Conservation Commission had advised him (Newton) that it would be better to have the dam demolished and asked the Commission if that was a fact, pointing out the directions of the Division of Inland Waters to Mr. Newton that he construct a new dam there. I at once received from R.W. Sherman, Chief Engineer of that Division, a most astonishing letter and beg to refer you to a copy thereof in his department dated December 30, 1913. Mr. Sherman apparently holds a brief for the owners, for he practically admits having advised Mr. Ferris, one of the owners experts that it would be better to have the dam torn out. Now, this is just what Mr. McKim advised our Association not to do or to have done until the New Dam had been Erected a few yards further down stream.

Mr. McKim was acting for the Division of Inland Fisheries last August and for the protection of the peoples' fish at Eagle Lake, when he visited our colony, and not primarily for the purpose of Having any Dam Removed at all. The old structure was in a very good condition and continued to remain so down to the time of its destruction.

Mr. McKim came there, as he will himself tell you, as Mr. Bean knows, to see if a Fishway was needed to protect the loss of fish, many trout and bass having been lately planted in Eagle Lake by your Commission. Our Association had not even thought of any new dam at the time of his said visit. The health of the place was perfect at that time. The suggestion from Mr. McKim that a new dam of concrete be erected instead of

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a fishway to preserve our fish from loss was, in my judgment, entirely within the jurisdiction of the Division of Inland Fisheries, under the circumstances, and Mr. McKim acted for your Division and for us at the said suggestion of Mr. Bean, as your correspondence and ours to your Division will clearly show.

Mr. Sherman also sent me a pamphlet containing amended Section 22, Chap. 736, N.Y. Laws 1913 (Chap. 65 Consolidated Laws of N.Y.) and argued at considerable length that the purpose of the law "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," said Mr. Sherman, "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 its place of it, should elect to entirely remove his old dam, it is at least doubtful that the Conservation Commission could prevent his doing so. Mr. Sherman also stated that "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 xxxxx its total or partial removal by the owner."

Now, Section 22 is merely a part of the Laws of 1911. An Act relating to the Conservation of Land, Forests, Waters, Parks, Hydraulic Power FISH AND GAME, constituting Chap. 65 of N.Y. Consolidated Laws, commonly called The Conservation Law, and, as stated by Mr. Sherman: "Structures for impounding waters" (that is dams) "are placed under the jurisdiction and control of the Conservation Commission for the purpose, among other things, of guarding life and property against the failure or going out of dams." That is ONE REASON why we property owners of Eagle Lake are entitled to, and, therefore, now claim the protection of the Conservation Commission in our present predicament. We wish this Commission to guard our property against the loss consequent upon the unlawful removal of this dam as well as from the possible loss of health and life which will arise from the destruction of this dam.

We, therefore, suggest that the Commission, after ascertaining the true facts from the records of the Division of Fisheries and Division of Inland Waters, shall after such hearing granted to our Association as shall be deemed necessary, make and serve upon the owners said Newton and Ferris an order of the Commission directing them forthwith to construct a dam at Eagle Lake in place of the one destroyed by them in direct disregard of the directions given by the Division of Fisheries to the property owners of Eagle Lake, as well as by the Division of Inland Waters, both before and after the actual destruction of the dam by said owners.

Mr. Sherman's theory, as expressed, that a new riparian owner can elect to remove a dam found on his premises and maintained by his grantor for more than 20 years, whenever he may imagine it to be in an insecure condition and without notice of any kind on his part to his neighbors, thereby inflict great damage upon those who have built piers, boat houses and other structures along the shores, relying upon the continued maintenance of said waters at the height of said dam, is simply preposterous and unworthy of an officer of the Commission.

In response to my letter as Chairman of our Association to the Commission, as to whether Mr. Sherman had ever suggested to Mr. Newton that the old dam was unsafe, Mr. Sherman's reply is completely evasive. He states in his said letter: "The allegation by Mr. Ferris, as above quoted, may be true". Why does not Mr. Sherman come out squarely and assume responsibility and state whether or not he did advise the taking out of the

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Eagle Lake Dam?

This letter will show your Division that Mr. McKim's visit was not primarily for the purpose of ordering a new dam constructed at Eagle Lake, but in Reality to advise us as to the construction of a fishway or other structure supposed to be needed at the time of his said visit in 1913. At his suggestion, the Fishway project was abandoned as not necessary and his recommendation that a new dam of concrete be at once built to save our fish from loss and to give them better spawning grounds, was adopted by us in place of the fishway.

Our Original Request for conservation of our fish supply is, therefore, still before your Division of Inland Fisheries in the Conservation Commission and fully within your legal powers as Commissioner.

Can it be conceived, therefore, that your Division having once undertaken to act and having assumed jurisdiction of the question of conservation and protection of the State's Fish in Eagle Lake can be ousted from such jurisdiction and power to exercise its directions given as aforesaid, by the arbitrary act of a new riparian owner whose only excuse for violating your direction as well as that of the Division of Inland Waters is some mysterious suggestion emanating from an engineer of the latter Division, acting apparently without a written order of the Commission or that even of his own Division Commissioner, and surely without any hearing on the subject having been afforded to the afflicted property owners on this most important question.

Is this the treatment, Mr. Commissioner, that we should receive after asking the Conservation Commission to direct the best way to preserve and increase the fish in Eagle Lake? This is what has come from our trust in the Commission.

Awaiting a reply at your earliest convenience, and with the hope that you will see your way to do common justice to our cause, I remain,

Sincerely yours,

(Signed) PETER FLINT.

Chairman Eagle Lake Property Owners
Association, Com. on Fisheries & Game.

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