

## Destruction of Eagle Lake Dam

### Raises the Question: May the Individual Abrogate the Written Directions of the Conservation Commission?

By PETER FLINT

The Attorney-General of the State of New York may soon be called upon to decide this important question:

Whether any individual owner of land containing a dam upon the shores of an Adirondack lake, stocked with trout and bass from the State's hatcheries, and open to all persons for fishing, can lawfully, from mere caprice or for any other reason, and without notice to the riparian summer residents, demolish such a structure, thereby lowering the surface of said lake fully  $3\frac{1}{2}$  feet below ordinary low water mark and thus defy and set aside various express written directions of the Conservation Commission, to said owner given before and since his removal of said dam, that a new one of concrete be at once constructed adjacent to the old structure; and that the latter be allowed to stand until the new be completed.

Especially, too, when such action has been taken by the Commission at the written request of a majority of the riparian owners of cottages and other buildings and piers on said lake for the express purpose and none other of preventing the great loss of bass, pike and other game fish each spring, caused by their being swept from said lake over the old dam, and for the maintenance of a suitable spawning and feeding ground for pike and other game fish by keeping a uniform water level in said lake equal to that held by the old dam for upwards of twenty years past. This is the proposition as tersely as it can be stated.

The facts are that the Eagle Lake Property Owners Association, composed of city men from New York, Brooklyn, Cincinnati, Columbus, Ga., and several from Albany, N. Y., owning handsome residences, cottages and bungalows, at that attractive summer resort in the Adirondack foothills about 10 miles west of Lakes George and Champlain, and valued at upwards of \$150,000.00, besides the extensive cottage sites owned by the Eagle Lake Improvement Company, a corporation of Ticonderoga, the large Eagle Lake House, and the Moore Farm Cottages, at the head of this water, at a special meeting held at the residence of its Secretary-Treasurer, Mr. Edmund O. Luty, at the lake, early last season, voted unanimously to invite Mr. Tarleton N. Bean, State Fish Culturist, of the Conservation Commission, to visit Eagle Lake as the guest of the Association and give expert advice as a State official, how best to conserve and maintain our supply of game fishes in this lake, consisting of pike and perch, as well

as bass and trout, which had been planted there in previous years by the Conservation Commission.

Mr. Bean promptly and courteously replied, expressing great interest in the subject, and suggested that, as the high water in spring had probably caused the loss of fish, he would refer the matter to the Division of Inland Waters of the Commission so that he might learn from their inspector of Docks and Dams whether a fishway were needed to save the fish from loss.

Accordingly, in August last, the association received a visit from Mr. McKim, the Commissioner's expert on Docks and Dams, and took that official in a launch down Eagle Lake and its outlet, about four miles, to the old dam which was at that time holding up the water stoutly and  $3\frac{1}{2}$  feet above its present "drop."

Mr. McKim and the officers and advisory board of the local association, with its civil engineer member, Mr. Ollie Runge, of Flushing, N. Y., spent a long time looking over the location and talking over the matter, and Mr. McKim recommended and directed the construction of a dam of concrete, having wide spillways, so as to prevent any sudden accumulation of water hereafter in the outlet of the lake and thus to maintain a uniform level throughout the lake during the year and especially on the pike spawning marshes at the outlet in spring-time.

Mr. McKim also gave the association full and expert directions as to how said new dam could be most economically constructed, pointing out the abundance of stone at hand, both for foundation and piers and recommending particularly that the old dam be maintained until the new one should be completed a few feet further down stream. He said, further, that if Mr. Runge would prepare blue prints of the proposed structure and send them to him at Albany, that he would personally O. K. them and return them to our Secretary from his own personal inspection of the locality and knowledge of local conditions, and thus avoid possible delays in the Commission's office routine work. Mr. McKim expressed himself as delighted with all conditions at Eagle Lake and predicted that the fishing would return with the building of the new dam as he had recommended.

The blue prints were at once prepared and forwarded to Mr. McKim and the Commission for attention.

The question then arose who was the real owner of the dam site. The old structure was erected about twenty-five years ago by Isaac Har-

ris, a wealthy Brooklyn contractor, on a 160 acre deserted farm owned by him and contained in Lot 41, Schroon Tract, for the express purpose of maintaining a uniform water level, as nearly as might be, during the year, for the convenience of riparian land-owners in the erection of their boat houses and piers along the lake shore. Mr. Harris also at that time constructed a most attractive summer residence on Moore's Bay, about four miles up the lake from his dam—in fact, he was the first city man to make his permanent summer home at Eagle Lake, which was then called variously Long Pond, Paragon Lake and Chilson Lake.

This Harris dam had been continuously and carefully maintained by the owner during his lifetime and that of his widow, and since the latter's death by the Farmers Loan & Trust Co., of New York, N. Y., as trustee. This Company was informed in November, 1913, by the Chairman of the Association's Committee on Fisheries and Game, Mr. Peter Flint, a New York attorney, who erected the first summer log bungalow on the south shore of Eagle Lake about fourteen years ago, and has since been active in every local effort for the protection and propagation of game and game fishes in that locality, and who reported said action taken by the Conservation Commission at his Committee's request to improve fishing conditions at Eagle Lake. The Company then stated that it had lately conveyed the lot containing the old dam to Mr. Irving C. Newton, of Ticonderoga, N. Y., to whom reference could be made.

Subsequent to his interview with the Trust Company and about November 27, 1913, Mr. Flint received a letter containing an appeal from the proprietor of the Eagle Lake House, to the effect that Mr. Newton, of the Ticonderoga Pulp & Paper Company, and another gentleman from that village, had purchased the said Harris lot and that Mr. Newton had taken the dam out entirely, with the result that the water in Eagle Lake had gone down  $3\frac{1}{2}$  feet, leaving all docks and boat houses out of water, giving as an illustration of damage done that the writer could now walk around the hotel piers and landing, where at least twenty-five rowboats, owned by the hotel are kept in summer, and where fully fifty motor launches, canoes and pleasure boats put in daily during the season for the purpose of mailing letters in the hotel post-office, kept by Mr. George Houghtailing, the proprietor and owner, a G.A.R. veteran. The letter referred to the action of the owner in demolishing the dam and expressed an opinion that the State would not tolerate what the writer plainly called an "outrage."

Mr. Flint, as Chairman, then wrote on Dec. 2, 1913, to the Conservation Commission, giving full information as to all facts then known to him, as set forth above, and received the following reply:

Conservation Commission,  
Albany, December 4, 1913.

MR. PETER FLINT,  
New York City, N. Y.

Dear Sir: Yours of December 2nd concerning Dam No. 786, Upper Hudson Watershed at Eagle Lake,

received. Mr. W. S. Lodge has also called upon us in reference to this matter and also Engineer Ferris, representing Irving C. Newton, the owner of Lot 41.

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. There is some question, however, as to who owns the property. We have been informed that Mr. Harris deeded the roadway to the County (of Essex) and we have written the County Clerk's office at Elizabethtown to find out if the road had been deeded to the County. 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.

Very truly yours,

CONSERVATION COMMISSION,

By John D. Moore,  
Commissioner.

McK/C

Mr. Flint also received the following letter from the Conservation Commission, dated Dec. 8, 1913:

Dear Sir:

Concerning Dam No. 786, Upper Hudson Watershed at Eagle Lake

In reply to my letter to the Essex County Clerk's office, I have received the following reply:

"In reply to your letter of recent date in regard to Lot No. 41, Paradox Tract, will say: that the Farmers' Loan and Trust Company, as executor of Carolyn Wilson Harris, conveys a right of way to the Champlain and Sanford R. R. Co., and also conveys 160 acres to Irving C. Newton, of Ticonderoga, taking out the exception sold to the R. R. Co., and Newton conveys a half interest in the lot to Mortimer Y. Ferriss, of Ticonderoga.

"I also find no deeds of record from the time Isaac Harris gets title, of any part of the lot being conveyed to the County of Essex or to the Town of Ticonderoga for a highway. Find nothing in the deeds that refer to any dam."

I have sent a copy of this letter to Mr. W. S. Lodge, of Albany, and to the present owner, Mr. Irving C. Newton, of Ticonderoga.

Very truly yours,

CONSERVATION COMMISSION,

By John D. Moore,  
Commissioner.

McK/C.

Awaiting action from the Commission and learning that nothing had been done to relieve the local situation, Mr. Flint again wrote the Commission, requesting that as the true owner of the dam site had now been clearly ascertained, the Commission take steps at once to enforce its direction previously given to Mr. Newton, as owner of the dam, that same be rebuilt. Mr. Flint's letter referred to a reported recent statement by Mr. Newton that Mr. Sherman, of the Conservation Commission, had advised him (Newton) that this dam was in an unsafe condition and that it would be better to have same torn out.

In reply to this letter, Mr. Flint received from the Commission the following reply not signed, however, by John D. Moore, the Commissioner, Division of Inland Waters, as all previous letters had been, but by Richard W. Sherman, Chief Engineer of said division.

This letter referred to an enclosed copy of Section 22, Chapter 65, Consolidated Laws of New York, as amended by Chap. 736, New York Laws of 1913, and Mr. Sherman argued 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 he, 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, it was 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 when none now exists, or to construct one in lieu of a dam that has been discontinued or abandoned by its owners, following \* \* \* its total or partial removal by the owner."

Now, Section 22 is 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, i. e., dams are placed under the jurisdiction of the Conservation Commission for the purpose of guarding life and property against the failure or going out of dams. That is one reason why the property owners of Eagle Lake are now entitled to and therefore claim the protection of the Conservation Commission in their present predicament. They request this Commission to guard their property against the loss consequent to the removal of this dam, as well as from the possible loss of health and life which will arise from the destruction of this dam and lowering of said waters.

The association therefore suggests that the Commission, after such hearing as may be deemed by it necessary, make and serve upon the owners an order directing them to reconstruct said dam.

But this is not the chief reason for requesting such action by said Commission. The records of its Department of Inland Fisheries will show that the association some two years ago made application to State Fish Culturist Tarleton N. Bean, for advice and direction how best to conserve and increase our fish supply, and particularly to prevent the loss of pike and bass from being swept over the small dam at the outlet of Eagle Lake during spring high water. After considerable correspondence that official informed the chairman that our case had been referred by his direction to the Department of Docks and Dams, Division of Inland Waters, and that it would be well to have our trouble investigated by a visit from an Inspector of that Department, who would be able to solve all difficulties by advising the erection of proper structures to prevent such loss.

Mr. Sherman's theory that new riparian owners can elect to remove their old dam whenever they may imagine it to be in any way insecure, thereby destroying the former spawning places of pike and other game fish and ruin the fishing generally, besides inflicting great damage to the riparian property of a large summer colony, which has built its piers, boat houses and other structures along the shores of that lake and has relied for many years upon the continued maintenance of said waters at the height of said dam, besides

imperiling the health of said people, is simply preposterous and entirely unworthy of an officer of the Conservation Commission of this state.

The letter of the engineer referred to in response to the chairman's inquiry as to whether he (Sherman) ever suggested to anyone that the old dam was unsafe, is clearly evasive. That official 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 he did or did not authorize the tearing out of the dam for the reason given?

There is clearly here a misunderstanding as to the requests of the association in the Engineering Department, Division of Inland Waters.

As may be seen by reference to the foregoing correspondence, dictated presumably by Mr. McKim, who knew the facts, the Commissioner, John D. Moore has assumed all along the perfect power of the Commission to direct the owners of the dam site to rebuild a dam there as soon as their identity could be established.

The effort of the owners of the dam, as shown by Mr. Sherman's said letter, to avoid responsibility for their unwarrantable conduct in destroying a structure fairly satisfactory to the association by relying upon some casual remark of Engineer Sherman, who is clearly unacquainted with the true local situation, will utterly fail as soon as the facts come out that the visit of Mr. McKim was not made for the primary purpose of having a new dam constructed, but really to advise as to the construction of a fishway at Eagle Lake, supposed to be needful at the time of his said visit in 1913, but was changed by him to a recommendation to the Commissioner for the construction of a new concrete dam with larger spillway than the old one, as a substitute for said fishway.

The original request of the association to the Conservation Commission made through Mr. Bean, of Department of Inland Fisheries, was for expert advice and personal consultation with an officer of said Commission how best to conserve and increase our food fish supply in Eagle Lake which had frequently been stocked by the State hatcheries.

That question, the association now holds, is still in the hands of Mr. Bean and his department, and not with the Chief Engineer of the Department of Inland Waters.

Can it be conceived, therefore, that the Conservation Commission, having undertaken to act in a matter clearly within its legal province and having once assumed direction of the question of conservation of the State's fish in Eagle Lake, can be ousted from jurisdiction to enforce its directions, given as aforesaid, by any arbitrary act of a new riparian owner whose title was obtained under conditions and circumstances such as have been already described, and whose only defense now is some mysterious reply given by an engineer in a Division of the Commission, acting apparently without a written order of the Commission and, surely, without any hearing having been afforded to the afflicted property owners on the important questions involved in the act of destroying said dam.

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