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June 25, 2003

VIA FEDERAL EXPRESS

Mr. Frank M. Dallam
Wisconsin Department of Natural Resources
810 W Maple Street
Spooner, WI 54801

Re: Sawyer County: Lake Levels At Round and Little Round Lakes

Dear Mr. Dallam:

We are writing on behalf of Mr. James Hausman who owns lakefront property on Round Lake near Hayward Wisconsin. As you may know, Mr. Hausman's Round Lake property has and continues to suffer from erosion from the high water levels on Round Lake.

This letter is directed to you because the lake levels at Round and Little Round Lake are governed by the 1941 Public Service Commission Order from Docket 2-WP-513 (the "1941 PSC Order") which is now within the jurisdiction of the Department of Natural Resources ("DNR"). We understand from our discussions with your office that the DNR concurs with us that the 1941 PSC Order remains the governing Order as to these lake levels. We have attached a copy of the 1941 PSC Order as Item 1 for your reference.

Sawyer County has not maintained the appropriate control structures as directed by the 1941 PSC Order, *even though steps can be feasibly taken to come into compliance*. We believe that the inaction by Sawyer County may be in deference to the interests of developers who own property that will be enhanced in value if the lake levels are allowed to remain high.

The purpose of our letter is to provide you with some additional information germane to the issue. We are also seeking the DNR's assistance in insuring that the water levels are brought into compliance with the 1941 PSC Order.

The Events Prior to 1941

The necessity to control the water levels of Round and Little Round Lakes resulted from events prior 1941. The water levels at Round and Little Round Lakes were, at that time, too low. To increase those water levels, the Tiger Cat Flowage was created to divert a significant flow of water into Round and Little Round Lakes from a neighboring lake. Once the Tiger Cat Flowage

was opened, however, the Round Lake water levels started to rise and cause erosion damage to shoreline property around Round Lake. That rise in water levels is what caused Sawyer County to petition the then PSC for an order setting the normal and maximum water levels.

The Requirements Of The 1941 PSC Order

The 1941 PSC Order was issued upon the application of Sawyer County to “find the normal water levels of Round and Little Round Lakes . . . and make such further finding or order as may be necessary for holding said lakes at such normal water level.” Determining the lake levels was an important matter because, as the PSC observed, “Round Lake is rather well developed for resorts and summer homes and *great damage would be caused if the lake levels should rise greatly above the normal elevation fixed by the Commission [PSC].*” (emphasis supplied).

The PSC held an evidentiary hearing and issued the 1941 PSC Order that established the normal lake level at 77.00 feet and the maximum lake level at 77.25 feet. The PSC explicitly ordered Sawyer County to maintain these levels:

“That Sawyer County *shall* maintain Round and Little Round Lakes at the normal elevation of 77.00 feet at all times when a sufficient water supply exists and during freshets and heavy run-off *to prevent the water levels from rising above elevation 77.25 feet.* These elevations are referred to the staff gage at Kaiser’s resort.”

1941 PSC Order at p. 10, ¶ 3 (emphasis added). In order for Sawyer County to maintain and control these lake levels, the PSC ordered:

“[I]t will be necessary to construct an outlet canal no less than ten feet in width from Little Round Lake to Squaw Lake, the high point of which shall be at an elevation of not more than 75.25 feet, and which should contain a control works to regulate the water levels of the lake.”

1941 PSC Order at pp. 9-10. The PSC further ordered that the outlet channel must have the “capacity to discharge 150 CFS, with dam and control gates whereby the water level on Round and Little Round Lakes may be controlled.” 1941 PSC Order at p. 10, ¶ 2.

The Current Round Lake Water Levels

The water levels at Round Lake as of June 10 were at 77.85 feet - - approximately 6 inches above the maximum water levels. These water levels have exceeded the maximum water level for months. According to an engineering firm we retained, Barr Engineering (“Barr”), the average water level for a typical year based on existing structures, precipitation and evaporation

would be 77.6 feet – again, a level that exceeds the maximum water level set by the 1941 PSC Order.

These are the conditions that are continuing to cause erosion around Round Lake and, in particular, on Mr. Hausman's property. The file shows that in the past numerous homeowners around Round Lake have also complained about loss of property through erosion due to high water levels at Round Lake.

Sawyer County Has Not Complied with the 1941 PSC Order

Sawyer County has not complied with the 1941 PSC Order and have suggested that they cannot comply. A committee working on the matter has, thus far, relied on a report by a Daniel Carthel to reach this conclusion. A copy of that report is attached as Item 2. That report is incomplete. It did not conduct any flow study (see points 1 and 2 below). It did not address the fact that the sill of the dam has been raised, thus restricting flow (point 1 below) or that the culverts installed at NN (point 4 below) are undersized and further restrict flow. Further, the Carthel report assumed that the 1941 PSC Orders set 77.0 as the "minimum" water level when, in fact, the Order was explicit that this was the "normal" water level assuming sufficient flow into the Round Lakes.

Sawyer County could comply with the 1941 Order if it wanted to do so. Barr Engineering evaluated and make recommendations about whether and how the high water levels can be remedied. Their evaluation concluded that the Round Lake water levels are controlled by several channel restrictions between Round Lake and County Highway NN. Barr also pointed out at paragraph 3 of its report the solution to address the high water problem to bring it back under control to comply with the 1941 PSC Order and prevent further damage to property around Round Lake. A copy of the Barr presentation materials is attached as Item 3.

1. Sawyer County Placed the Sill of the Dam Too High

In 1943, the PSC wrote to Sawyer County advising that the culvert placed in the outlet canal between Little Round and Squaw Lake "by some error was placed higher than called for the [approved] plans, and the Commission directed Sawyer County to lower the culvert so as to confirm with the plans." (6/23/43 Letter from PSC.) A copy of this letter and the others referenced herein are attached as Item 4.

In 1947 the PSC surveyed the sill of the control structure and determined it was set at over 76.66 feet – *which was over a foot higher than permitted by the 1941 PSC Order*. The PSC sent a letter demanding that Sawyer County remedy the situation. Between June and December 1947 Sawyer County installed a new control structure that was also inadequate. In May 1948, the PSC again required that Sawyer County reconstruct the outlet structures in accordance with the 1941 Order.

In 1949, the County submitted plans for a twin-box culvert with two four-by-six foot openings with the sill set at 75.0 feet. The PSC concluded that “the outlet structure of a twin-box culvert, each four-by-six and with a bottom elevation of 75.0 feet, would be inadequate to comply with the Order requiring a maximum water level of not more than 77.25 feet in the Round Lakes.” (2/23/49 PSC Letter.) The PSC also noted that the “existing outlet structure is inadequate to pass flood flows that may occur in the spring breakup.” (*Id.*)¹

On May 13, 1960, the PSC determined that the top of the sill of the outlet dam at Little Round Lake was 76.00 inches – *a level that still violated the 1941 PSC Order*. (5/13/60 PSC Memo.) In 1961, the PSC stated that the sill of the dam was at 74.3 inches, PSC datum. (10/6/61 PSC Letter.) It also stated that County’s obligations under the Order were to operate the existing dam to achieve the water levels specified in the 1941 Order. Without realizing that more could be done to address this matter, the PSC assumed that if the County removed all of the stop logs and the water level remained above the “maximum established levels” the County was doing all that it could.

In 1967 the DNR again made this assumption and thought that the County was in compliance with the Order as long as the County has “kept the gates removed to allow for the maximum runoff and also to keep the outlet channel free of weeds and debris”. (12/15/67 DNR Letter.)

As it turns out, more could be done and should be done because of the continued erosion damage.

In 1968, the County dredged the channel between Little Round and Osprey Lakes. In issuing the permit for this dredging project, the DNR noted that “it is clearly evident from the erosion that is taking place on the shoreline that the water level must be maintained within the legal limits to protect the property owners on the shoreline.” (4/30/68 DNR Letter.) In 1969, the County applied for and was granted a permit to dredge the channel from Osprey Lake to NN.

The sill of the dam currently has an elevation of 75.8 to 76.0 inches. Mr. Hausman has hired both Dave Rieder and Heart of the North to survey this elevation and both surveyors concur. (We have attached a summary of their survey results as Item 5.) Moreover, we understand that Sawyer County hired Dan Carthell to evaluate the accuracy of Mr. Rieder’s and Heart of the North’s survey results and Mr. Carthell reported that the surveys were accurate. (Our information about Mr. Carthell is based on oral reports and has not been confirmed.)

¹ Although both the then existing structure and the proposed structure were inadequate and in violation of the 1941 Order, the PSC deferred a further decision because the State was negotiating with the Lac Courtes Oreilles over water volume and quality issues downstream from the control structure. (2/23/49 letter) Those issues were fully resolved in August of 1961 and the PSC was informed that the required control structures should be built if they would aid in establishing the proper lake levels. (August 2, 1961 letter).

The sill has been artificially raised by someone, we do not know who. In 1961 the PSC reported the sill had an elevation at 74.3 inches. (10/6/61 PSC Letter.) Today the sill has been surveyed at between 75.8 and 76.0 inches. (Item 5.) There is no evidence that the raising of the sill was reported to or approved by the DNR. Indeed, Barr Engineering inspected the construction of the dam ***and discovered that multiple layers of three-inch boards have been screwed into the sill.*** It is unclear who installed these boards or when. We do know, however, that Sawyer County has been aware of the current elevation of the sill for some time and has done nothing to correct the situation.

The capacity of the dam is far below the 150 CFS that the PSC ordered. Barr Engineering conducted flow measurements on May 3, 2003 at the control structure of the dam, at County Highway NN, and at various inflow points. The flows at the dam measured 10 CFS when the lake was at 77.5 – again higher than the maximum level. The measured flows indicate that the capacity of the dam (10 CFS at 77.5) is far below the PSC order (150 CFS at 77.25). There had been no large runoff events in the weeks prior to this date, and without any other inputs from freshets or heavy runoff, the lake was already 0.25 feet over the maximum level of 77.25.

2. The Diversion Channel No. 4 On The Tiger Cat Flowage Adds More Flow To Round Lake That Causes Higher Water Levels

Barr Engineering investigated and measured the amount of water flowing through the control structure on Diversion No. 4 in the Tiger Cat Flowage at 1.1 CFS on May 3, 2003. This water was flowing ***through*** the poorly maintained stop logs. Based on the flow measurements, the inflows from Tiger Cat Flowage increase the normal outflows by 10% and increases the water level in a system that is already under capacity. Therefore, without any other inputs from freshets or heavy runoff, the water was already 0.25 feet over the maximum level of 77.25. The net volume of water in the Round Lake chains above the normal water level of 77.0 was about 1,640 acre-feet. At an outflow rate of 10 CFS, it would take all summer (over 90 days) to discharge this volume and return to normal (without any additional precipitation and not accounting for groundwater inflows).

3. The Channel From The Dam To Osprey (Squaw) Lake Has Silted In And Further Restricted Flow From the Dam Out Of Round Lake

Barr Engineering and past correspondence from the DNR both acknowledge that the high water levels on the Round Lake chain has caused severe shoreline erosion depositing large amounts of silt and sedimentation into the Round Lake chain. This erosion has increased silt and sedimentation in the lake and the outlet channels. We have attached a chart prepared by Barr as Item 7 that compares the channel elevations from 1941 to the present. This shows that the channel elevation has increased by approximately 1.5 feet. We believe this is due to silt and sedimentation from erosion. As a result of this increased elevation of the channel, the flow from the dam is further restricted and further interferes with the ability to discharge 150 CFS as required by the 1941 PSC Order.

4. The Culverts At County Highway NN Are Undersized And Restrict Flow From Round Lake

Barr Engineering concluded (and we believe that Sawyer County now agrees) that the culverts at County Highway NN are insufficient (e.g. undersized) to accommodate the flows required by 1941 PSC Order. In response to an open records request for the construction plans for the culverts at NN, the County reported that they had no such plans. Moreover, we have heard (but not verified) that the County did not receive the required permits prior to installing the culverts at NN. We understand that the DNR is already investigating this matter.

How Sawyer County Can Comply With the 1941 PSC Order

Sawyer County could comply with the 1941 PSC Order. As more fully set forth at paragraph 3 in the attached Barr presentation materials (Item 3), Barr Engineering has concluded that this compliance can be accomplished by taking the four steps set forth below.

First, improve flow by installing five 48-inch corrugated metal pipes at County NN.

Second, maintain the channel between Osprey Lake to County NN by keeping it clear of debris and beaver dams.

Third, maintain the channel between Little Round Lake dam to Osprey (Squaw) Lake by cleaning out the channel to elevation 74 at the control structure and restoring the channel slope with a one-foot drop in the excavated section. The County could also widen the excavated section to 15 feet. Sawyer County has an easement as to clear out the channel.

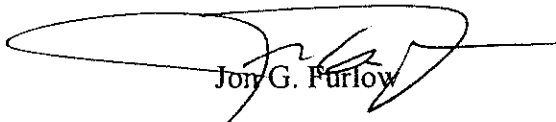
Fourth, lower the opening of Little Round Lake dam to elevation 74.3 and widen it to about 20 feet.

Please contact us once you have had an opportunity to review these matters. We would like to set up a meeting with you to discuss these matters and address any questions you may

have. As noted above, we are seeking the assistance of DNR in insuring that the water levels are properly maintained to prevent further erosion to Mr. Hausman's property.

Very truly yours,

MICHAEL BEST & FRIEDRICH LLP



Jon G. Furlow

JGF:imm

cc: Michael J. Cain, Esq. (via hand delivery)

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