

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT  
INGHAM COUNTY

PLATTE LAKE IMPROVEMENT  
ASSOCIATION, a Michigan non-profit  
corporation, BIG PLATTE LAKE, a  
natural living body of water in the  
State of Michigan,

Plaintiffs,

File No. 86-57122-CE

v

HON. THOMAS L. BROWN

MICHIGAN DEPARTMENT OF  
NATURAL RESOURCES, an agency of  
the State of Michigan; GORDON E.  
GUYER, Director of the Michigan  
Department of Natural Resources; JOHN  
A. SCOTT, Chief of the Fisheries Division,  
Michigan Department of Natural  
Resources,

Defendants.

---

Frederick D. Dilley (P26090)  
Attorney for Plaintiffs

James L. Stropkai (P24588)  
Attorney for Defendants  
Michigan Department of Attorney General  
Natural Resources Division  
P.O. Box 30028  
Lansing, MI 48909  
(517) 373-7540

---

CONSENT JUDGMENT

The Plaintiffs are the Platte Lake Improvement Association (PLIA), a Michigan non-profit corporation and Big Platte Lake, a natural living body of water in the state of Michigan.

The Defendants are the Michigan Department of Natural Resources (MDNR), an agency of the state of Michigan; Gordon E Guyer, Director of the Michigan Department of Natural Resources; John A. Scott, Chief of the Fisheries Diversion, Michigan Department of Natural Resources (MDNR). The Parties to this Judgment are the original Plaintiffs and Defendants.

The Judgment is in reference to the following facts:

A. On September 10, 1986, plaintiffs initiated this litigation pursuant to the Michigan Environmental Protection Act MCL 691.1201 *et seq.*; MSA 14.528 (201) *et seq.* (MEPA). This statute is now codified as Part 17 of Natural Resource and Environmental Protection Act (NREPA) MCL 324.1701 *et seq.*; MSA 13A.1701 *et seq.*

B. On October 13, 1986, the Court heard proofs in support of plaintiffs' Motion for Preliminary Injunction and issued its preliminary injunction regarding discharges of phosphorus from the Platte River Hatchery (the Hatchery).

C. Following the entry of its Preliminary Injunction of October 13, 1986, the Court convened a Bench Trial in late November and early December of 1987. The plaintiffs' proofs at that time ultimately resulted in the Court's Opinion and Order of July 15, 1988.

D. In several of the years following the entry of the Court's Opinion and Order of July 15, 1988, the parties sought various relief from the Court which entered numerous orders regarding inter alia; The operation of the lower weir of the Hatchery relating to the passing of migratory fish; the taking of salmon eggs at the upper weir; and the discharge of phosphorus from the operation of the Hatchery.

E. On September 29, 1995, the Court found MDNR being in contempt of court for two violations of the Courts orders.

F. On October 1, 1995, Executive Order 1995-18 moved most of the permitting functions, including the NPDES program, of the Department of Natural Resources into the new Department of Environmental Quality (MDEQ).

G. On June 12, 1998, the Michigan Department of Environmental Quality issued an NPDES permit no. MI0035769, to the MDNR which would allow the permittee to discharge a regulated amount of treated fish rearing water from various described outfalls to the Platte River. As a consequence of the daily operation of its fish hatchery, certain limits are placed on the discharge and requirements for monitoring by the permittee are specified. On August 7, 1998, the plaintiffs filed its Petition for Contested Case Hearing with the MDEQ-Administrative Hearings Division (the administrative

proceeding) and sought to invalidate or modify the referenced permit.

The purpose of this Consent Judgment (Judgment) is to provide for the control and reduction of phosphorus discharges from the Platte River Fish Hatchery (Hatchery) operated by the Michigan Department of Natural Resources (MDNR) located in Benzie County, Michigan and to address other related matters as set forth below. The Defendants agree not to contest (a) the authority or jurisdiction of the Court to enter this Judgment or (b) any terms or conditions set forth herein.

The Parties agree, and the Court by entering this Judgment finds, that the reduction of phosphorus discharge from the Hatchery and facility related operations and the future good faith attempts to further reduce the level of phosphorus discharge will be environmentally neutral to the Platte River watershed and more specifically to Big Platte Lake. As long as the Platte River State Fish Hatchery and its facility related operations are operated in accordance with the provisions of this Judgment, it shall be considered to be an environmentally neutral facility. Facility-related operations of the Hatchery include all aspects of the Platte River State Fish Hatchery; lower and upper weir operations; and salmon egg take facilities at the Hatchery or any subsequent egg take facility.

The PLIA and MDNR now desire to settle the litigation, as well as the administrative proceeding and all current or future disputes between themselves regarding the permits, the Hatchery, the administrative proceeding and the litigation.

NOW, THEREFORE, upon the consent of the Plaintiffs and Defendants (herein after jointly referred to as the Parties) and their respective attorneys, it is hereby STIPULATED, ORDERED, and ADJUDGED:

### **1. INTENT**

This Judgment shall constitute a complete disposition of all controversies between the parties related in any manner to matters that were or could have been raised in litigation. In entering into the Judgment, it is the mutual objective of the Parties to resolve the on going dispute relating to the level of phosphorus discharge

from the Hatchery and facility related operations, and to provide a mechanism for assuring that the level of discharge achieved from the Hatchery and facility related operations, will be environmentally neutral. It is the further purpose of this Judgment to specify a procedure for its implementation, including the appointment of a third-party Implementation Coordinator, a protocol and methodology for communication between the parties and a mechanism to resolve any disputes which might arise under this Judgment

## **2. PARTIES BOUND**

This Judgment shall bind the Parties and any successor entity(ies), public or private, which replace, take over or subsume proprietary, regulatory or administrative functions of the Parties now bound by this Judgment. It is further intended that no re-organization, privatization, or delegation of functions and authorities presently held shall in any way diminish the rights of the plaintiffs to enforce the terms and provisions of this Judgment.

## **3. OPERATION OF THE HATCHERY**

The Parties recognize that the Platte River and Big Platte Lake and the associated watershed are valuable public resources. In the spirit of settlement of all controversies, the MDNR will design, reconstruct, modify and operate the Hatchery in a manner that will reduce all effluent discharges from facility-related operations to their lowest feasible levels in order to operate an environmentally-neutral facility. To this end the following standards and procedures for the Hatchery shall be employed:

- A. Discharge Volume.
  - i. The objective of this provision is to ensure that water use by the Hatchery is minimized and all flow rates and volumes are measured with the appropriate accuracy.
  - ii. MDNR or its successor(s) shall discharge no more than 20 million gallons of water per day into the Platte River watershed. The MDNR or its successor(s) shall make a good faith effort to reduce discharge volume, to maintain it at a minimum at all times, and to implement and maintain appropriate flow rate measuring equipment and technologies.
- B. Future Water Supply Wells.

- i. The objective of this provision is to prevent the altering of the alkalinity (mg CaCO<sub>3</sub>/L) of the water receiving Hatchery discharge.
  - ii. The MDNR or its successor(s) agree to determine alkalinity levels for any groundwater used by the Hatchery in its operation and to maintain an overall discharge alkalinity no more than 5% greater than that found in the flow weighted average from the various sources of the surface water used at any given time by the Hatchery. Sampling techniques and frequency shall be determined by mutual agreement of the Parties and the Implementation Coordinator.
- C. Hatchery Effluent Limit.
- i. The objective of this provision is to ensure reduction of all effluent discharges from the Hatchery and facility-related operations to their lowest possible level in order to operate an environmentally-neutral facility.
  - ii. Commencing in calendar year 1999 and continuing until the renovation of the Hatchery begins (pre-construction period) as detailed in the current Capitol Outlay Project, the MDNR or its successor(s) shall discharge annually no more than 210 lb. of total phosphorus from the Hatchery. During this pre-construction period, the maximum total allowable discharge of total phosphorus for any three consecutive month period shall not exceed 75 lb.
  - iii. Upon commencement of physical on-site construction of Hatchery renovations and until the renovations are completed or until December 31, 2002, which ever is sooner, the maximum allowable yearly discharge of total phosphorus from the Hatchery shall increase to 250 lb. and the maximum three consecutive month discharge of total phosphorus shall not exceed 75 lb. The parties may agree to an extension of the discharge limits contained in this paragraph, which must then be approved by the Court.
  - iv. Upon the completion of the Hatchery renovation project or on December 31, 2002, which ever occurs, first, the MDNR or its successor(s) shall on an annual basis discharge from the Hatchery not more than 225 lb. of total phosphorus with a maximum three consecutive month discharge total not to exceed 70 lb. total phosphorus during the first three years of operation of the renovated Hatchery. This three-year test period will expire three years from the completion of the Hatchery renovation or December 31, 2005, which ever date is earlier.
  - v. After the expiration of the three year test period, the MDNR or its successor shall not discharge from the Hatchery more than 175 lb. of total phosphorus per year with a maximum three consecutive month discharge total of total phosphorus not to exceed 55 lb.
  - vi. If the MDNR or its successor(s) for whatever reason does not start the on site renovation project by May 15, 2002, the Hatchery discharge will be as set forth in Paragraph (3)(C)(v) above-until such renovation is started. Once the on site Hatchery renovation commences, the discharge limits for phosphorus shall be as set forth using the time frames and similar schedule in Paragraph (3)(C)(ii) to

Paragraph (3)(C)(v).

- vii. If at any time the MDNR or its successor(s) finds that it is practicable to operate the Hatchery at lower phosphorus discharge levels than those agreed to in this Judgment, it will propose reductions to the PLIA and the Court in a timely fashion.

D. Lower Weir Operation

- i. The objectives of this provision are to insure accurate assessment and control of salmon passage into the watershed above the lower weir and to control a potential source of phosphorus into Big Platte Lake and the watershed above Big Platte Lake.
- ii. The MDNR or its successor shall operate the lower weir each year, including jack grates, from August 15 through November 14. These operational dates shall remain in effect unless it is determined that different operating dates will more accurately assess and control the passage and access of salmon into the watershed above the lower weir and these new dates are mutually agreed upon by the Parties and implemented by the Court. The MDNR may pass beyond the lower weir no more than 20,000 adult coho salmon annually. The MDNR may pass beyond the lower weir natural running non-salmonid species, and brook, brown, lake and rainbow trout. The adult chinook salmon passage during the above period shall be limited to a maximum of 1,000 fish annually. The MDNR is not responsible for coho and chinook salmon that pass the weir when it is not in operation. If it is found that coho and chinook salmon are migrating at other time periods other than stated above, the weir operation dates shall be adjusted by mutual agreement to meet the above target numbers for these species. Additional salmonid species may be passed by mutual agreement of the Parties.
- iii. Numbers of salmon above the limits in Paragraph (3)(D)(ii) received at the lower weir shall be harvested or removed from the watershed and their phosphorus contribution shall not be permitted to reenter the watershed as an additional point or non-point source load as a result of disposal.
- iv. The MDNR shall notify the PLIA and the Implementation Coordinator at least 5 days prior to the date it intends to pass fish beyond the lower weir during the period noted in Paragraph (3)(D)(ii) so that the PLIA may have the opportunity to participate in the fish count.

E. Upper Weir Operation

- i. The objectives of this provision are to ensure accurate assessment and control of salmon passage into the watershed above the upper weir and to control a potential source of phosphorus into the watershed above Big Platte Lake.
- ii. The MDNR shall harvest and remove in a timely fashion all migrating salmon that are blocked at the upper weir and shall dispose of them in such a way that their phosphorus content cannot reenter the Platte River watershed. The MDNR shall use its best efforts to prevent all migrating salmon from escaping upstream past the upper weir. The upper weir shall be operated annually from August 15

through December 14 unless it is determined that different operating dates will better eliminate salmon from migrating beyond the upper weir and these new dates are mutually agreeable to the Parties and implemented by the Court. The MDNR may pass beyond the upper weir natural running non-salmonid species, and brook, brown, lake and rainbow trout.

F. Platte Lake Phosphorus Limit

- i. The objective of this provision is to establish a protective phosphorus standard for Big Platte Lake.
- ii. The Court has determined that the phosphorus standard for Big Platte Lake is a maximum of 8.0 microgram/liter (ug/l). This Judgment sustains that determination. The Parties agree that the standard shall be attained no less than 95% of the time, i.e. the volume weighted total phosphorus concentration of Big Platte Lake shall be less than 8.0 micro-gram/liter 95% of the time. The determination of compliance with the standard shall utilize the present lake sampling plan data, sampling frequency and current Court Masters volume weighted in lake phosphorus concentration determination methodology, unless changed by mutual agreement of the parties. The Implementation Coordinator may recommend and implement alternate sampling practices and event frequencies in an effort to optimize the data required to determine compliance with the 95% attainment criteria for the 8.0 ug/l phosphorus standard. As long as the Hatchery maintains the discharge limits prescribed in Section (3)(C) and the salmon passage requirements prescribed in Section (3)(D) and Section (3)(E) of this Judgment or lowers the agreed upon limits by subsequent petition to the Court, the Parties agree that MDNR will be deemed to be meeting its responsibility for maintaining the above stated Big Platte Lake phosphorus limit under the terms of this Judgment. In an effort to ensure continued compliance with the 8.0 ug/l Big Platte Lake phosphorus standard 95% or more of the time, the MDNR will use its best efforts to encourage and assist other entities, public and private, to reduce their discharge of phosphorus to the Platte Lake watershed.

#### **4. COMPLIANCE MONITORING**

A. Effluent Sampling

- i. The objective of this provision is to ensure accurate identification and quantification of all Hatchery phosphorus discharges on a regular and systematic basis.
- ii. The MDNR, or its successor(s), shall monitor all Hatchery inflows and outfalls for total phosphorus, temperature, suspended solids and flow to calculate the Hatchery discharge a minimum of twice per week (Tuesdays and Fridays) with triplicate sampling utilizing the Implementation Coordinators recommended sampling techniques, and locations, and shall use an independent laboratory for analysis of samples. Standard composite samples (24 hour) shall be utilized for the collection of all water samples except where composite sampling is not practical (e.g. due to freezing, etc.) in which case grab sampling may be employed. The sampling shall include all water sources in use, including

Brundage Spring whenever it is accessible. The sampling technique employed and other relevant details shall be noted on data sheets, which will become part of the Hatchery permanent record.

- iii. All Hatchery and facility related sampling costs shall be the sole responsibility of the MDNR.

B. Effluent Phosphorus Determination

- i. The objective of this provision is to ensure that the effluent phosphorus determination for the Hatchery is made using standard auditable methods with accuracy sufficient to meet the requirements of this Judgment.

- ii. In order to accurately define the Hatchery phosphorus discharge the following procedures shall be used:

- a. The MDNR shall measure water flow rates from all the discharge points using the best available methodology. Subject to the provisions of Paragraph (4)(C)(ii) and until Hatchery renovation efforts enable and result in improved flow measurement methods, the MDNR shall employ the method of measuring effluent presently in use. The current method is as follows: The water level (head) in both upper and lower discharge chambers is measured by reading a staff gauge permanently attached to the wall in each chamber. The staff gauges are standard commercial gauges marked in 0.02 feet intervals. The zero discharge level for the upper discharge is 0.00 feet on the staff gage and 0.04 feet on the staff gage for the lower effluent. The true water elevation is the actual stage height from the staff gage for the upper discharge and is 0.04 feet lower than the indicated stage height for lower discharge. The discharge flow rate of each effluent outfall ( $Q$  in cubic feet/second) shall be calculated using the following formulas: a) lower discharge -  $Q = 3.3 * (\text{Width in feet}) * (\text{Height in feet})^{1.5}$ ; and b) upper discharge -  $Q = 3.55 * (\text{Width in feet}) * (\text{Height in feet})^{1.5}$ .  $Q$  is then converted to units of millions of gallons/day by dividing by 1.547. The MDNR shall provide and use a previously-established and calibrated ratings table for each discharge chamber to allow easy analysis of the above stage-discharge relationships.

- b. The MDNR shall calculate the total daily phosphorus discharge using the following equation: Daily P Discharge (Pounds) =  $Q(\text{Discharge in Millions of Gallons of water/day}) * 3.785 * \text{Average P Concentrations for the period (in milligrams/liter)} * 2.2046$ .

- c. The method used to calculate phosphorus discharge from the Hatchery shall conform to standard NPDES methodology and negative discharges shall be reported as zero. The calendar year discharge shall cover the period from January 1 through December 31 and will be calculated and reported monthly.

- d. If the Parties disagree as to the proper discharge calculation methodology, the Implementation Coordinators recommendations shall be used.

C. Discharge Monitoring

- i. The objective of this provision is to ensure the accuracy of the measurements of



the amount of water used and discharged by the Hatchery.

- ii. All intake and outfall flow measurements shall be re-calibrated by June 30, 2000 in accordance with procedures mutually agreeable to the Parties. Changes or modifications to the existing intakes or outfalls and any intakes or outfalls added shall be calibrated prior to use and recalibrated using the as found measurements taken after one year if still in use. At that time, the Parties and the Implementation Coordinator will mutually agree upon a recalibration schedule to be implemented for each outfall, taking into account the measurement methodology employed.

D. Watershed Monitoring

- i. The objective of this provision is to ensure appropriate, timely on- going monitoring of the Big Platte Lake watershed so that the progress of lake and river remediation can be evaluated by the Parties.
- ii. The current watershed lake and river monitoring program shall continue to be conducted as it has been in the year prior to the effective date of this Judgment until the 175 lb. annual total phosphorous standard contained in Paragraph (3)(C)(v) has been in effect and achieved continuously for five years after Hatchery renovation. If Hatchery renovation is delayed and the 175 lb total P/yr -55 lb total P/3 mo. standard is implemented prior to renovation, the program will continue without interruption until Hatchery renovation is completed and the five year 175 lb total P/yr- 55 lb total P/3 mo. standard has been in effect and achieved continuously for five years. Monitoring may be reduced or increased by mutual agreement of the Parties. Cost savings which result from any mutually agreed upon reductions in the present monitoring program during the five year monitoring period shall be used for mutually agreed upon Platte River watershed improvements and/or non-point source phosphorus reduction unless the Parties agree otherwise. The MDNR will pay 98% and the PLIA will pay 2% of the lake and watershed monitoring costs which shall include funding for the USGS gauging station and any associated Implementation Coordinator fees from the date of the Court's approval of this document, through the end of the five year 175 lb total P/yr 55 lb total p/ 3 mo. discharge period after renovation as provided for above.
- iii. The Parties agree that only data necessary for the analysis of the impacts of the effluents from Hatchery and facility-related operations shall be required under this agreement. The watershed sampling protocol shall be reevaluated on an annual basis and revised as necessary by mutual agreement. This agreement recognizes and the parties agree that additional sampling as specified by the Implementation Coordinator may be required.

E. Antibiotics, Antiseptics and Other Effluent Sampling

- i. The objective of this provision is to ensure evaluation of whether antibiotics or antiseptics are being released from the Hatchery into the watershed.
- ii. The MDNR shall conduct suitable and timely tests of the Hatchery discharges for antibiotics or antiseptics (including formalin), to determine whether and to what

extent these classes of materials are being released into the watershed. Testing will be conducted using replicate samples over three consecutive days when these compounds are being utilized at their maximum level. Test results above detection limits shall require additional testing or remedial action, when the parties jointly agree that such action is necessary. Any dispute on the need for remedial action shall be resolved expeditiously by the Implementation Coordinator. Non-detectable results shall not require additional testing unless the amounts, formulations or concentrations of the antibiotics or antiseptics used at the Hatchery change or if the methodology used was found in error, in which case additional testing shall be conducted. If the testing methodology significantly improves, additional testing may be required for non-detectable results. Testing will be under the direction of the Implementation Coordinator. Samples will be collected by the MDNR using methods approved by the Implementation Coordinator and shall be analyzed by an independent laboratory. Test data will be available to the PLIA in a timely fashion and to the public upon request.

- iii. Additional testing for the above items and other compounds or substances may be requested by the Implementation Coordinator upon the written request of PLIA whereupon such testing shall be conducted by the MDNR using an independent laboratory.

## **5. JUDGMENT COMPLIANCE**

### **A. Compliance Audits**

- i. The objective of this provision is to ensure periodic formal review of all aspects of hatchery and facility-related operations.
- ii. The Parties agree that annual audits of the Hatchery's compliance with this Judgment shall be conducted by the MDNR under the supervision of the Implementation Coordinator. The results of any audits in the form of detailed reports shall be made available to the Parties in a timely fashion, generally no more than 45 days after audit completion. Violations shall be corrected and mutually agreeable recommended changes shall be implemented in a timely fashion. These audits shall continue until the Hatchery discharges contained in Section (3)(C)(v) have been attained for a five year period after Hatchery renovation.
- iii. The MDNR shall in a timely manner, with reasonable prior notice allow representatives of the PLIA to view all facility design reviews, planning, construction, operations, processes, determinations, measurements, calculations, operating records and reports, including all activities associated with Hatchery renovation. The Implementation Coordinator at his/her convenience may visit the Hatchery and review the operation at any time.

B. Hatchery Monitoring and Reporting

- i. The MDNR shall develop, maintain and implement an appropriate monitoring and reporting schedule in consultation with and with the agreement of the PLIA. All Hatchery and facility related operations monitoring, reporting and subsequent actions to maintain compliance with this agreement shall be the sole financial responsibility of the MDNR or its successor(s). The reporting schedule shall continue as long as the Hatchery and related operations are continued. This schedule shall be developed and agreed to within 45 days of the entry of this Judgment.

**6. JUDGMENT IMPLEMENTATION**

A. Judgment Implementation Meetings

- i. The objective of this provision is to ensure that meetings between the Parties about the operation of the hatchery and its facility-related operations are timely, and effective communications on matters pertaining to this Judgment.
- ii. The Parties agree to meet on an annual basis (within the first three months of each calendar year), or more often as the Parties agree to review compliance with this Judgment. The Implementation Coordinator shall conduct the meeting, unless otherwise agreed to by the parties. The results of the most recent compliance audit shall be made available for discussion and shall be an agenda item for the annual meeting. Additional meetings may be called by either Party with 14 days written notice. Prior to any such meetings, the Parties agree to inform each other of any significant changes to the Hatchery operation or anticipated impacts from such changes. The Parties agree to prepare a joint set of minutes for each meeting.

B. Communications Between Parties

- i. The objective of this provision is to ensure that all parties receive all Judgment related correspondence.
- ii. The present correspondence protocol shall be followed. This protocol shall be reviewed, documented and implemented by the Parties within 45 days of the entry of this Judgment.. 3/10/00
- iii. All required formal notices pursuant to this Judgment shall be in writing and mailed, first class, postage prepaid, to the other Party and the Implementation Coordinator, at the addresses set forth below, or such other address as a party or the coordinator may from time-to-time designate in writing to the Parties:
  - a. PLIA  
Wilfred Swiecki  
28991 Glenbrook  
Farmington Hills, MI 48331
  - b. Implementation Coordinator

- c. MDNR Chief  
MDNR Fisheries Division  
P.O. Box 30446  
Lansing, MI 48909

C. Appointment and Duties of the Implementation Coordinator

- i. A mutually agreed upon third party shall oversee and supervise the implementation of this Judgment. This individual shall be referred to as the Implementation Coordinator. This individual may be the current court master, but this is not specifically required by this Judgment. The Implementation Coordinator shall be selected no later than 60 days after the Court accepts this Judgment. Until the Implementation Coordinator is selected, the court master shall be the Acting Implementation Coordinator.
- ii. If the Parties cannot agree on an individual to be appointed Implementation Coordinator, each party shall submit a candidate to the Court together with a statement of qualifications. The Court will then select the most qualified candidate to be Implementation Coordinator from the two names submitted.
- iii. The Implementation Coordinator will be appointed or re-appointed annually by agreement of both parties.
- iv. The Implementation Coordinator shall maintain involvement in this settlement until the facility renovation has been completed and the MDNR or its successor(s) has successfully demonstrated compliance of the Hatchery for five years with the discharge limitation contained in Paragraph (3)(C)(v).
- v. The Implementation Coordinators fees and expenses will be paid 100% by the DNR for all Hatchery operations. The PLIA will be responsible for 2% of any watershed/lake related expenses with the DNR being responsible for the remaining 98%.
- vi. It is recognized that minor changes in the terms and conditions of this agreement as recommended by the Implementation Coordinator may be ordered by the Court upon notice and hearing.
- vii. The parties shall mutually agree upon the duties of the Implementation Coordinator. The parties agree that the Implementation Coordinators duties shall include, but not be limited to:

Conduct Annual Meetings

Review of Audit Reports and provide comments to the parties and the Court on the Audit Reports

Sampling design assistance

Timely maintenance of the watershed database and its promulgation

Limnological modeling

Compliance analysis

Judgment implementation supervision and assistance

Provide advice and direction to the parties

Dispute resolution as required  
Any other Court required duties  
Coordination with other agencies  
Respond in a timely manner to requests from either party

## **7. GENERAL MODIFICATION CLAUSE**

- A. General Modification Clause
  - i. The terms and conditions of this Judgment may be modified by the mutual agreement of the Parties and approval of the Court.

## **8. DISPUTE RESOLUTION**

- A. Jurisdiction
  - i. The Court shall retain jurisdiction over the Parties and subject matter of this action to enforce this Judgment and to resolve disputes arising under this Judgment.
- B. Dispute Resolution Process
  - i. If a dispute arises as to any provision of this Judgment, the Party which believes a dispute exists shall serve on the other a written notice of dispute which shall include at a minimum a statement of the dispute and the facts which caused it. The Party served shall respond to the notice of dispute in writing within 14 days of receiving the notice explaining its position, including any facts to support its position. The Parties shall then meet within 10 days of receipt of the served Party's explanation to try and resolve the dispute. If the Parties cannot reach agreement on resolving the dispute within 15 days of the meeting, or after a longer period if mutually agreed upon, the Implementation Coordinator shall be requested to assist in resolving the dispute. If the dispute cannot be resolved within 14 days of the Implementation Coordinator's involvement either party may file the necessary documents with the Court to resolve the matter.

## **9. PENALTIES AND VIOLATIONS**

- A. Limit Violations
  - i. If the MDNR exceeds the limits set forth in Section 3 of this Judgment, it shall pay \$500 per violation into the Watershed Improvement Account established in Paragraph (9)(A)(ii). A violation is defined as each one (1) pound of phosphorus in excess of the annual or the three month limits; each one (1) million gallons of water per day in excess of the daily limits; each one 1,000 coho salmon in excess of the annual limit established by this Judgment; each one 100 chinook salmon in excess of the annual limit established by this Judgment; or each failure to sample effluents, antibiotics and/or antiseptics as stated in the above provisions of this Judgment, or in mutually agreed plans or procedures implemented under this Judgment.

- ii. An account shall be established in a Federally insured financial institution, entitled the Watershed Improvement Account (Account). This Account shall be administered by the PLIA and only be used to fund projects beneficial to the Platte Lake Watershed.
- iii. Prior to any funds being expended from the Account, MDNR shall be notified of the use for which the funds are to be expended. The MDNR shall annually provide a list of recommended projects, which will benefit the Platte River watershed and its fisheries, for which the Account could be used. If MDNR believes that the use of the funds are not in conformity with purpose set forth for their use as stated in Paragraph 9 (A)(ii), it may utilize the Dispute Resolution process contained in Section 8 of this Judgment to resolve the matter. PLIA shall on an annual basis, after the first deposit is made into the account, provide MDNR an accounting of the Account, including all deposits and expenditures for the previous calendar year. The MDNR recognizes that such expenditures may not all occur in a single fiscal or calendar year.

B. Other Judgment Violations

- i. In the event that any party fails to comply with other Judgment provisions that do not have specific numeric limits, the Court may upon the motion of any party enforce any provision of the Judgment. Additionally, any party may file with the Court an Order to Show Cause when a party is not in compliance with the settlement and can request that the offending party demonstrate to the Court why it should not be held in contempt of this Judgment. The Court may award the prevailing party its costs including reasonable attorney fees in such a contempt proceeding.

C. Acts of God

- i. The Parties shall not be responsible for violations that are outside of their control or are considered Acts of God.

D. Violation Limits

- i. When penalties accrued in any calendar year equal or exceed \$10,000, the MDNR or its successor(s) shall be required to Show Cause to the Court as to why it is in violation of the Judgment provisions, show what steps it is taking to prevent the reoccurrence of the events which caused the penalties and why it should be allowed to continue to discharge. If the penalties equal or exceed \$10,000 in three consecutive years, the penalties shall be doubled for the third consecutive year.

**10. SETTLEMENT OF CONTESTED CASE HEARING DOCKET# MI0035769**

There is currently pending before the Administrative Tribunal of the Michigan Department of Environmental Quality (MDEQ) a proceeding relating to the discharge limits contained in NPDES permit # MI0035769. The Parties agree that they shall within 30 days of the entry of this Judgment submit the necessary documents to the

Administrative Law Judge to dismiss the administrative proceeding. The Parties shall also jointly request that MDEQ amend NPDES permit # MI0035769, to reflect the discharge limits contained in this Judgment. In the event that MDEQ does not amend NPDES permit # MI0035769, as requested, MDNR shall nevertheless operate the Hatchery so that its discharge shall conform to the limits provided for in this Judgment or in any NPDES permit issued now or subsequently by MDEQ, whichever is lower.

**11. PRIOR ORDERS AND JUDGMENTS ARE DISSOLVED AND RESCINDED**

All future rights and duties of the Parties with respect to the subject matter of this litigation are governed by this Judgment, which dissolves and rescinds all prior orders and judgments previously entered in this case. All such prior orders and judgments are hereby declared null and void and of no further force and effect.

Nothing in this Judgment shall constrain or limit the right of either party to advance its own interests when dealing with other entities outside of this Judgment.

**Stipulation For Entry**

The Parties, by and through their respective counsel stipulate and agree that:

1. The Courts prior Judgments and the subsequent Remedial Orders in this proceeding, may be declared null and void and of no further force and effect.
2. Plaintiffs agree to dismiss their complaints in this action with prejudice and shall assert no other claims against Defendants arising out of the subject matter of this action, except that plaintiffs retain their right to enforce the Consent Judgment. .
3. Defendants agree that they shall assert no claims against Plaintiffs, either the PLIA, or its individual members arising out of the subject matter of this action, except that defendants retain their right to enforce the Consent Judgment.
4. The Parties agree that no costs shall be awarded to any party to this action except as provided in the Consent Judgment.
5. The parties agree to entry of this Consent Judgment and to be bound by its terms and conditions.

6. The parties agree that the Court shall retain jurisdiction for the purposes enforcing the terms and conditions of the Consent Judgment.

It is so stipulated and agreed

BOYDEN, TIMMONS, DILLEY & HANEY

Dated: March 3, 2000

By: Frederick D. Dilley  
Frederick D. Dilley (P26090)  
Attorneys for Plaintiffs  
85 Campau, N.W., #3000  
Grand Rapids, MI 49503  
(616)235-2300

MICHIGAN DEPARTMENT OF ATTORNEY GENERAL

Dated: 3/7/00

By: James L. Stropka  
James L. Stropka (P24588)  
Attorney for Defendants  
Natural Resources Division  
300 S. Washington Square  
Lansing, MI 48913

**COURT ORDER**

At a session of said Court, held in the Courthouse for the County of Ingham, Lansing, Michigan, this 10<sup>th</sup> day of March, 2000.

PRESENT: HON. THOMAS L. BROWN  
CIRCUIT COURT JUDGE

Upon reading of the Consent Judgment and the parties' Stipulation for Entry, IT IS HEREBY ORDERED AND ADJUDGED that:

1. The Court's prior Judgments, and subsequent Remedial Orders in this proceeding, are declared null and void and of no further force and effect.
2. The Complaint filed in this proceeding is dismissed with prejudice and Plaintiffs shall assert no other claims against defendants arising out of the subject matter



of this action, except that plaintiffs retain their right to enforce the Consent Judgment-

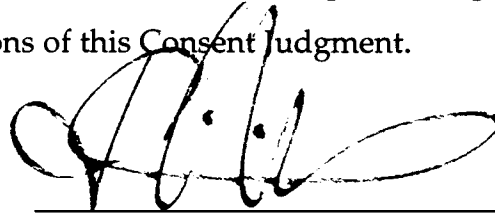
3. Defendants shall assert no claims against plaintiffs and/or its individual members, arising out of the subject matter of this action, except that defendants retain their right to enforce the Consent Judgment-

4. No costs shall be awarded to either party to this proceeding except as provided in this Consent Judgment-

5. The parties agree to entry of and to be bound by this Consent Judgment.

6. The Court shall retain jurisdiction of the Parties to this proceeding for the purposes of enforcing the terms and conditions of this Consent Judgment.

IT IS SO ORDERED.



Hon. Thomas L. Brown  
Circuit Court Judge

ATTESTED: A TRUE COPY

TRACY D. SMITH

Deputy Clerk

