

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30755
LANSING, MICHIGAN 48909

BILL SCHUETTE
ATTORNEY GENERAL

April 12, 2017

Ingham County Circuit Court
Attn: Clerk of the Court
313 W. Kalamazoo Street
Lansing, MI 48933

Re: *Platte Lake Improvement Association, et al. v Michigan Department of Natural Resources, et al.*
Ingham County Circuit Court File No. 86-57122-CE

Dear Clerk:

Enclosed please find an original, fully executed Joint Motion for Entry of Consent Order Regarding Hatchery Operations, Compliance Monitoring, Judgment Compliance and Implementation and Other Matters Supplemental to Consent Judgment Dated March 10, 2000; an original and two (2) copies of the proposed Consent Order Regarding Hatchery Operations, Compliance Monitoring, Judgment Compliance and Implementation and Other Matters Supplemental to Consent Judgment Dated March 10, 2000; and \$20.00 motion fee regarding the above-referenced matter.

If this meets with the court's approval, please return two true copies of the Consent Order back to my attention upon entry. I have enclosed a self-addressed, stamped envelope for your convenience.

Ingham County Circuit Court

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April 12, 2017

Thank you for your assistance. If you have any questions, please feel free to contact me at your convenience.

Sincerely,



Robert P. Reichel
First Assistant Attorney General
Environment, Natural Resources, and
Agriculture Division
(517) 373-7540

RPR:jls

Enclosures

cc: Frederick D. Dilley
Ed Eisch, DNR
Kirk Lapham, DNR

LF: Platte Lake Improvement#2009-0041243-A-L/Letter – Court 2017-4-12

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,

No. 86-57122-CE

Plaintiffs,

HON. JOYCE DRAGANCHUK

v

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)
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Attorney for State Defendants

**JOINT MOTION FOR ENTRY OF CONSENT ORDER REGARDING
HATCHERY OPERATIONS, COMPLIANCE MONITORING, JUDGMENT
COMPLIANCE AND IMPLEMENTATION AND OTHER MATTERS
SUPPLEMENTAL TO CONSENT JUDGMENT DATED MARCH 10, 2000**

The Parties, by their respective undersigned counsel and pursuant to MCR 2.119(D), jointly move for entry of the proposed Consent Order Regarding Hatchery Operations, Compliance Monitoring, Judgment Compliance and Implementation and Other Matters Supplemental to Consent Judgment Dated March 10, 2000, submitted herewith and state:

1. This action involves environmental impacts associated with the Platte River Fish Hatchery operated by the Michigan Department of Natural Resources.

2. A Consent Judgment was entered on March 10, 2000.

3. Section 7 of the Consent Judgment provides that the terms and conditions of the Consent Judgment may be modified by mutual agreement of the Parties and approval of the court.

4. The Consent Judgment has previously been amended and supplemented by the following orders: (1) the November 6, 2001 Stipulated Order to Amend the Consent Decree of March 10, 2000; (2) the November 12, 2010 Consent Order Supplemental to Consent Judgment dated March 10, 2000; and (3) the May 2, 2011 Consent Order Regarding the Disposal of Phosphorous Supplemental to the Consent Judgment dated March 10, 2000.

5. The Parties have reached an agreement to further amend various provisions of the Consent Judgment, as previously amended and supplemented by the orders list above, concerning the sections dealing with Operations of the Hatchery, Compliance Monitoring, Judgment Compliance, and Judgment Implementation and other matters supplemental to the Consent Judgment.

6. The Parties have stipulated that certain provisions of the Consent Judgment be modified and supplemented as specified in the proposed Consent Order submitted herewith.

7. The Parties waive hearing on entry of the proposed Consent Order.

Accordingly, the Parties respectfully request that the court approve and enter the proposed Consent Order Regarding Hatchery Operations, Compliance Monitoring, Judgment Compliance and Implementation and Other Matters Supplemental to Consent Judgment Dated March 10, 2000.

Date: April 12, 2017

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By: Frederick D. Dilley *by RPR per consent (P31878)*
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Date: April 12, 2017

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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. JOYCE DRAGANCHUK

MICHIGAN DEPARTMENT OF
NATURAL RESOURCES, an agency of
the State of Michigan; KEITH CREAGH,
Director of the Michigan Department of
Natural Resources (originally Gordon Guyer);
JIM DEXTER, Chief of the Fisheries Division,
Michigan Department of Natural Resources (originally
John A. Scott,

Defendants.

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**CONSENT ORDER REGARDING HATCHERY OPERATIONS,
COMPLIANCE MONITORING, JUDGMENT COMPLIANCE AND
IMPLEMENTATION AND OTHER MATTERS SUPPLEMENTAL TO
CONSENT JUDGMENT DATED MARCH 10, 2000**

At a session of said Court, held in the Courthouse for the County of Ingham, State of Michigan, this ____ day of _____, 2017.

PRESENT: HON. JOYCE DRAGANCHUK
Circuit Court Judge

This matter is before the Court on a joint motion by the Parties for amendments to the Consent Judgment dated March 10, 2000 (the "Consent Judgment") pursuant to Section 7 of the Consent Judgment, which provides that the terms and conditions of Consent Judgment may be modified by mutual agreement of the Parties and approval of the Court. The Consent Judgment has previously been amended and supplemented by the following orders: (1) the November 6, 2001 Stipulated Order to Amend the Consent Decree of March 10, 2000; (2) the November 12, 2010 Consent Order Supplemental to Consent Judgment dated March 10, 2000; and the May 2, 2011 Consent Order Regarding the Disposal of Phosphorous Supplemental to the Consent Judgment dated March 10, 2000.

The Parties have reached an agreement to further amend various provisions of the Consent Judgment, as previously amended and supplemented by the orders listed above, concerning the sections dealing with Operations of the Hatchery, Compliance Monitoring, Judgment Compliance, and Judgment Implementation and other matters supplemental to the Consent Judgment. The Parties now propose to the Court the following provisions of the Consent Judgment be modified and supplemented as specified below:

1. Section 3. OPERATION OF THE HATCHERY, Paragraph A. Discharge Volume, Sub paragraph ii. shall be changed to read as follows:

- ii. MDNR or its successor(s) shall discharge no more than 15 million gallons of water per day into the Platte River watershed. The MDNR may exceed this limit if required to maintain a viable product due to a facility upset for a period of no more than two weeks unless a longer period is agreed to by the PLIA and the MDNR or its successor(s). 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 per agreed upon and documented Standard Operation Procedures (SOPs) and calibration schedules maintained by the MDNR and available for review by the PLIA both electronically and by "hard copy."

2. Section 3. OPERATION OF THE HATCHERY, Paragraph C. Hatchery Effluent Limit, Sub paragraphs v. and vii. shall be changed to read as follows:

- 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. Effective and after January 1, 2015 the discharge limit is reduced to 150 lb. of total phosphorus per year with a maximum three consecutive month discharge of total of total phosphorus not to exceed 55 lb.
- 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 and any of the subsequent amendments, it will propose reductions to the PLIA and the Court in a timely fashion.

3. Section 3. OPERATION OF THE HATCHERY, Paragraph D. Lower Weir Operation, Sub paragraph iv. shall be changed to read as follows:

- iv. The MDNR shall notify the PLIA President and his designated alternate at least 48 hours 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.

4. Section 3. OPERATION OF THE HATCHERY, Paragraph F. Platte Lake Phosphorus Limit, Sub paragraph ii. shall be changed to read as follows:

- 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 8.0 micro-gram/liter or less 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)(0) 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.

Effective January 1, 2015, Lake and watershed sampling will be performed per MDNR SOP Manual: Platte Lake Sampling by the PLIA and or its contractors or designees. These procedures will be used until superseded by an updated procedure agreed upon by the MDNR or its successors(s) and the PLIA. Compliance with the 8.0 micro-gram/liter standard will be determined by the agreed upon documented methodology of Dr. Canale at the end of his tenure as implementation coordinator effective December 31, 2014 unless superseded by an updated methodology agreed upon by the MDNR or its successors(s) and the PLIA.

5. Section 4. COMPLIANCE MONITORING, Paragraph A. Effluent Sampling, Subparagraphs i. and ii. shall be changed to read as follows:

- i. The objective of this provision is to ensure accurate identification and quantification of all Hatchery phosphorus discharges on a regular, consistent and systematic basis as well as monitoring of Hatchery operational parameters to ensure compliance with this agreement.

The MDNR or its successors(s) shall maintain a hard copy and electronic files of all Standard Operating Procedures. The present Manual is titled, "STANDARD OPERATING PROCEDURES FOR WATER QUALITY SAMPLE COLLECTION, PROCESSING AND DATA MANAGEMENT AT THE PLATTE RIVER STATE FISH HATCHERY" (Referred to as the SOP Manual). The SOP Manual will be maintained by the MDNR or its successors(s) and any and all new entries and or revisions shall indicate the author(s) and date of revision or new procedure.

All additions or revisions to the SOPs shall be agreed upon by the MDNR or its successor(s) and designated PLIA representatives before implementation.

The MDNR will perform Hatchery sampling per the sampling criteria established by Dr. Canale at the end of his tenure as the Implementation coordinator effective December 31, 2014, unless superseded by an updated methodology agreed upon by the PLIA and the MDNR or its successor(s).

- ii. The MDNR, or its successor(s), shall monitor all Hatchery inflows and outfalls (Site 11 Brundage Spring, Site 12 Brundage Creek and Site 15 Upper Discharge for total phosphorus, temperature, and flow to calculate the Hatchery discharge a minimum of twice per week with triplicate sampling of the 72 hour composite samplers operated and analyzed per the established and agreed upon Standard Operating Procedures. Additional Hatchery sampling of Site 28 Clarifier overflow, Site 39 (Backwash main line ISCO Sampler) and Site 14 (After filters to Pond 72 hour composite sampler) for Phosphorus, temperature, suspended solids and flow per agreed upon SOP Manual Procedures.

The MDNR or its successors will afford the opportunity to the PLIA to have water samples collected from the Platte River watershed and or Platte Lake (collected by the PLIA and or its contractors) analyzed at the MDNR Platte River State Fish Hatchery Laboratory. This will

maintain continuity with the same analysis procedures, quality control procedures and equipment used to analyze Platte River State Fish Hatchery water samples used for determining compliance with the discharge criteria in this Consent Judgment and other determinations related to the operation of the hatchery. The number of samples to be analyzed on a yearly basis will be agreed upon by the PLIA and the MDNR and or its successors(s).

The MDNR or its successor(s) will bill the PLIA a reasonable and agreed upon per sample fee for their analysis and reporting. This per sample billing will be reconfirmed on an annual basis by the MDNR or its successors and the PLIA.

6. Section 4. COMPLIANCE MONITORING, Paragraph B. Effluent Phosphorus Determination, Subparagraphs ii a., b., and c. shall be changed to read as follows:

- ii. In order to accurately define the Hatchery phosphorus discharge the following procedures will be used.
 - a. The MDNR or its successor(s) shall measure water flow rates using the agreed upon documented methodology specified by Dr. Canale upon the expiration of his term of service December 31, 2014. Phosphorus sampling methodology and related flow measure determination, calibration methodology and all calculation methodology including Hatchery phosphorus discharge calculation and flow "mass balances" shall be those specified by Dr. Canale in the SOP Manual upon the expiration of his term December 31, 2014 unless other agreed upon by the MDNR or its successor(s) and the PLIA. For the purposes of this agreement, the MDNR and or its successor(s) will be afforded the opportunity to include measured "negative" discharge in the three month and yearly discharge calculation as opposed to using "zero" for the dates of measured negative discharge as required by the US EPA in NPDES reporting.

- b. The MDNR shall calculate the discharge based on 72 hour composite (or some other mutually agreed upon composite sampling methodology) sample analysis utilizing the discharge calculation methodology as documented in the SOP Manual.
- c. For purposes of this Consent Judgment, the Hatchery phosphorus discharge shall be calculated per Dr. Canale's calculation methodology outlined in the SOP Manual and shall allow for the inclusion of negative discharges for those periods where the discharge is lower than the sum of the inlets from surface water inputs. Any groundwater that is used in the fish rearing process will be treated as having background phosphorus concentration of zero. All phosphorus data collected from the hatchery, including but not be limited to data required for discharge calculations, shall be analyzed and reported within two weeks of collection to the designated PLIA representatives along with Hatchery data base calculation updates made per the SOP Manual.

7. Section 4. COMPLIANCE MONITORING, Paragraph C. Discharge Monitoring, Subparagraph ii. shall be changed to read as follows:

- ii. All intake and outfall flow measurements shall be calibrated per the SOP Manual procedures for each specific site and shall follow the SOP Manual calibration schedule for frequency.

8. Section 4. COMPLIANCE MONITORING, Paragraph D. Watershed Monitoring, Subparagraphs ii. and iii. shall be changed to read as follows:

- 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. The requirements of this Subparagraph were satisfied on December 31, 2014.

- 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. The requirements of this Subparagraph were satisfied on December 31, 2014.

9. Section 4. COMPLIANCE MONITORING, Paragraph D. Watershed Monitoring, shall be changed by adding a new Subparagraph iv. to read as follows:

- iv. The PLIA or its contractors will continue lake and watershed sampling and monitoring effective January 1, 2015. The data collected will be used to determine compliance with the 95% attainment criteria of the 8.0 ug/l in-lake phosphorus standard as well as identification of potential sources of phosphorus reduction and monitoring of existing phosphorus sources for changes. Lake sample collection, analysis and attainment determination will be per the agreed upon methodology using three depth composites beginning January 1, 2015 and beyond and as described in the SOP Manual. Any and all changes and or revisions to the SOP Manual procedures must be agreed upon by the MDNR and or its successors and the PLIA.

10. Section 4. COMPLIANCE MONITORING, Paragraph E. Antibiotics, Antiseptics and Other Effluent Sampling, Subparagraphs ii. and iii. shall be changed to read as follows:

- ii. When the use of chemical therapeutants, including but not limited to Chloramine-T, formalin and antibiotics, is necessary, MDNR shall conduct suitable and timely analyses of the hatchery discharge, as required by and in full accordance with the hatchery NPDES permit and investigatory new animal drug (INAD)

protocols established by the United States Food and Drug Administration or its successor agency. The results of all such testing shall be provided to the PLIA within 30 days of receipt of results.

- iii. Additional testing for the above items and other compounds or substances may be requested in writing by the PLIA whereupon such testing shall be conducted by the MDNR using an independent laboratory.

11. Section 5. JUDGMENT COMPLIANCE, Paragraph A. Compliance Audits, Subparagraphs ii. and iii. shall be changed to read as follows:

- 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. The requirements of this paragraph were satisfied on December 31, 2014.

Additionally, the MDNR and or its successor(s) upon mutual agreement in writing with the PLIA may commission Dr. Canale or other technical experts to prepare annual audits/reports of the Hatchery and related facility operations compliance with this consent Judgment and or Platte River watershed evaluations and Platte Lake's attainment with the 8.0 ug/l volume weight phosphorus standards and related recommendations for future actions for each. The cost of such studies will be apportioned based on an agreed upon percentage of Hatchery versus Lake and River watershed effort.

- 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 and maintenance.

12. Section 5. JUDGMENT COMPLIANCE, Paragraph B. Hatchery Monitoring and Reporting, Subparagraph i. shall be changed to read as follows:

- 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 specific types of reports to be provided shall be agreed upon by all Parties. The list of specific reports to be provided the PLIA will be maintained by the Hatchery manager and kept within the SOP Manual.

13. Section 6. JUDGMENT IMPLEMENTATION, Paragraph A. Judgment Implementation Meetings, Subparagraph ii. shall be changed to read as follows:

- ii. The Parties agree to meet-on an annual basis or more often as the Parties agree to review compliance with this Judgment. The meeting shall include a review of the previous year's Hatchery operation and performance. 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.

14. Section 6. JUDGMENT IMPLEMENTATION, Paragraph B. Communications Between Parties, Subparagraphs ii. and iii. shall be changed to read as follows:

- ii. All communications between MDNR and PLIA concerning the Platte River State Fish Hatchery and its facility related operations shall be copied to the following, or their successors, at the addresses set forth below, or such other address as may from time-to-time be designated in writing to the Parties:

- a. Fish Production Program Manager, Northern Lower Peninsula Area Hatchery Manager, Natural Resource Manager 1 (PRSFH Hatchery Biologist)

Platte River State Fish Hatchery
15210 US Hwy 31
Beulah, MI 49617

- b. PLIA President, Vice President and Secretary.
P.O. Box 272
Honor, Michigan 49640

- iii. All required formal notices pursuant to this Judgment shall be in writing and mailed, first class postage prepaid, to the other Party at the addresses set forth below, or such other address as may from time-to-time be designated in writing to the Parties:
 - a. President PLIA
P.O. Box 272
Honor, Michigan 49640

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

Pursuant to the Joint Motion and Consent of the Parties, the Court now considers, approves, and incorporates the changes set forth herein into the Consent Judgment dated March 10, 2000, as previously amended and supplemented in orders entered by the Court. Except as amended and supplemented herein, in all respects, the Consent Judgment dated March 10, 2000; the November 2, 2001 Stipulated Order to Amend the Consent Decree of March 10, 2000; the November 12, 2010 Consent Order Supplemental to Consent Judgment dated March 10, 2000; and the May 5, 2011 Consent Order Regarding the Disposal of Phosphorous Supplemental to the Consent Judgment dated March 10, 2000 all remain in full force and effect.

WE CONSENT TO THE ENTRY OF THIS ORDER.

Date: April 4, 2017

FOSTER, SWIFT, COLLINS & SMITH, PC
Attorneys for Platte Lake Improvement
Association

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Date: April 11, 2017

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IT IS SO ORDERED.

HON. JOYCE DRAGANCHUK
Circuit Court Judge

ATTEST: A TRUE COPY

Deputy Clerk