

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH _____

SAWYER COUNTY

ROUND LAKE PROPERTY OWNER'S ASS'N,
INC.,
P.O. Box 1070
Hayward, WI 54843,

Case No. 10-CV-_____

Plaintiff,

Case Code: 30704

v.

Other Injunction or Restraining Order

SAWYER COUNTY,
10610 Main Street,
Hayward, WI 54843,
Defendant.

AFFIDAVIT OF TOM P. AARTILA

STATE OF WISCONSIN)
) ss.
PRICE COUNTY)

Tom P. Aartila, being first duly sworn, on oath deposes and states as follows:

1. I am employed by the Wisconsin Department of Natural Resources ("WDNR"), Division of Water, as the Basin Supervisor for the Upper Chippewa Basin in the Northern Region of Wisconsin. This Affidavit is made in support of Plaintiff's Motion for a Temporary Restraining Order in the above-captioned case. I have personal knowledge of the facts stated herein.

2. I have been employed by WDNR for ___ years, and was transferred to the Upper Chippewa Basin, which includes Sawyer County, in 2001. Since 2004, I have been personally involved in discussions, meetings and correspondence with representatives of both the Round Lake Property Owner's Ass'n, Inc. and Sawyer County with regard to water levels on Round Lake and the culverts currently in place where County Highway NN crosses Osprey Creek.

3. I have reviewed file documents that WDNR keeps in the normal course of business relating to the flow of water through Round Lake, including various control structures located upstream and downstream of Round Lake.

4. The water from Round Lake flows into Little Round Lake and from there into Osprey Lake. The water flows from Osprey Lake down Osprey Creek then continues to Lac Courte Oreilles Lake. County Highway NN crosses Osprey Creek between Osprey Lake and Lac Courte Oreilles Lake.

5. On September 29, 1941 the Public Service Commission of Wisconsin issued an Order requiring Sawyer County to operate its water control structures to maintain normal water elevation on Round Lake at 77.0 feet and to prevent the water levels from rising above the elevation of 77.25 feet during freshets and heavy runoffs.

6. In 1999, Sawyer County replaced the culverts at County Highway NN without obtaining WDNR approval.

7. The culverts Sawyer County installed at County Highway NN in 1999 are elevated approximately sixteen to eighteen inches above the natural stream channel and during a 100-year flood event will act as a dam, resulting in elevated water levels in Round Lake.

8. On or about June 2, 2004, Sawyer County sent a letter to the Secretary of WDNR, which Sawyer County styled as a Petition to Review and Clarify Certain Orders Relating to Round Lake.

9. On or about June 2004, Sawyer County also filed with WDNR an application for an after-the-fact permit for the 1999 installation of the culverts at County Highway NN. On or about July 9, 2004, WDNR notified Sawyer County that its application for an after-the-fact

permit was incomplete. WDNR has not issued approved Sawyer County's request for an after-the-fact permit.

10. In response to Sawyer County's petition and after-the-fact permit application, WDNR organized a Round Lake Work Group, comprised of representatives of Sawyer County, the Association, WDNR and others, for the purpose of working together to develop a process and an approach to address Sawyer County's requests. I participated in the Round Lake Work Group.

11. As a result of the work of the Round Lake Work Group, Sawyer County sought authorization under Wis. Admin. Code TRANS 207 to replace the culverts at County Highway NN pursuant to revised plans and specifications prepared by SEH and submitted to WDNR on or about March 18, 2008.

12. On or about April 23, 2008, WDNR notified Sawyer County that WDNR had reviewed the SEH plans and specifications pursuant to TRANS 207 and WDNR granted Sawyer County, subject to conditions, Section 401 Water Quality Certification for the culvert replacement project.

13. One of the conditions WDNR imposed on its Section 401 Water Quality Certification stated that the culvert replacement project at County Highway NN shall be constructed in accordance the plan and specifications Sawyer County provided WDNR, including the revised plans and specifications sent by SEH on March 18, 2008.

14. Sawyer County has not replaced the culverts at County Highway NN pursuant to the WDNR conditional approval issued pursuant to TRANS 207, or otherwise implemented the culvert replacement project designed by SEH in 2008.

15. On or about May 7, 2010, WDNR notified Sawyer County that the unauthorized

1999 culvert installation remains an enforcement issue for WDNR and identified two options available to Sawyer County – either i) follow through with modifying the culverts per the TRANS 207 approval or ii) make an application to WDNR to have the existing culverts permitted as a dam.

16. Sawyer County has not taken any action since May 7, 2010 to either modify the existing culverts under County Highway NN or make application to WDNR to have the culverts permitted as a dam.

17. I am aware that Sawyer County and the Lac Courte Oreilles Band of Lake Superior Indians (“LCO”) have been discussing a jurisdictional transfer from Sawyer County to LCO of 300 feet of County Highway NN, including that section of County Highway NN under which the culverts are installed.

18. LCO has indicated that it intends to keep the culverts under County Highway NN in the current configuration.

19. The culverts at County Highway NN, as currently installed, constitute a dam that is regulated by WDNR under Wis. Stat. ch. 31. WDNR has never approved the culverts at County Highway NN in the current configuration.

Executed this ____ day of July, 2010.

Tom P. Aartila

Subscribed and sworn to before me
this ____ day of July, 2010.

Notary Public, State of Wisconsin

My commission expires _____.