

STATE OF WISCONSIN

CIRCUIT COURT

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.

MOTION FOR TEMPORARY RESTRAINING ORDER

Plaintiff Round Lake Property Owner's Ass'n, Inc. (the "Association"), by its attorneys Michael Best & Friedrich LLP, hereby moves pursuant to Wis. Stat. § 813.08, for a temporary restraining order enjoining and restraining Defendant Sawyer County from transferring jurisdiction of a certain 300-foot segment of County Highway NN to the the Lac Courte Oreilles Band of Lake Superior Indians ("LCO") until such time as the Court may consider a motion for temporary injunction seeking the same relief during the pendency of this action.

It is clear that Sawyer County intends to transfer this portion of County Highway NN to LCO solely for the purpose of avoiding its legal obligation to reconstruct culverts located under this portion of the highway that, as described further in the Association's Complaint and as set forth below, have and will cause substantial harm to the Association member's property upstream on Round Lake. It is the Association's understanding that this jurisdictional transfer to LCO of 300 feet of County Highway NN is imminent and if the transfer takes place, the Association's claim against Sawyer County may be rendered moot. Thus, immediate action by

the Court is needed to put a stop to this ruse and preserve the status quo by enjoining Sawyer County from completing this transfer.

In support of this Motion, the Association states as follows:

1. This is an action for injunctive relief. The Association has filed this action seeking injunctive relief associated with Sawyer County's refusal to reconstruct two culverts Sawyer County improperly installed underneath County Highway NN in 1999 without first obtaining Wisconsin Department of Natural Resources ("WDNR") approval. Sawyer County's refusal to correct and reconstruct the culverts to WDNR standards has created a serious impediment to the general flow of surface water or stream water in Osprey Creek, resulting in an unreasonable accumulation of waters flooding or water soaking upland on Association members' various Round Lake properties. The grounds for this action are set forth more fully in the Association's Complaint. Immediate relief in the form of a Temporary Restraining Order is needed in order to prevent imminent harm to the Association members' interests.

2. The Plaintiff, Round Lake Property Owner's Ass'n, Inc., is a Wisconsin nonstock corporation, which was formed to generally promote, encourage and foster the quality of Round Lake. Numerous members of the Association own property on Round Lake in Sawyer County, Wisconsin.

3. Association members own property and homes located on Round Lake in Sawyer County, Wisconsin.

4. The Defendant, Sawyer County, is a Wisconsin body corporate that can sue and be sued which is located at 10610 Main Street in Hayward, Wisconsin. Sawyer County constructed, owns, maintains, and operates several control structures that regulate the water level

on Round Lake, as well as the culverts under County Highway NN that are an outlet for water from Round Lake.

5. Round Lake is a large, navigable lake in Sawyer County that is about four miles long and three miles wide that covers approximately five square miles. Round Lake is well developed and currently has about 650 homes around the lake.

6. 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.

7. On November 30, 1940 Sawyer County petitioned the Public Service Commission of Wisconsin (“PSCW”) in Docket No. 2-WP-513 to establish the normal Round Lake water level at elevation 79 feet and to determine how the Round Lake water level was to be maintained. Certain property owners objected to Sawyer County’s request to set the normal level at elevation 79 feet because that higher lake level would result in further damage to their Round Lake property.

8. On September 29, 1941 PSCW issued an Order (the “1941 Order”) concluding, *inter alia*, that the normal elevation of Round and Little Round Lake was elevation 77.0 feet and ordered 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 runoffs to prevent the water levels from rising above the elevation of 77.25 feet.

9. A copy of the 1941 PSCW Order is attached to the Complaint as Exhibit A.

10. In 1999, Sawyer County replaced the culverts at County Highway NN without conducting any hydrologic analysis as to the culverts' impacts on the Round Lake water levels and on the floodplain of the Round Lake chain. Sawyer County did not obtain the required permit from the State of Wisconsin prior to installing the culverts at NN in 1999.

11. The culverts Sawyer County installed at County Highway NN in 1999 are elevated approximately sixteen to eighteen inches above the natural stream channel of Osprey Creek and during periods of high water flow act as a dam, resulting in elevated water levels in Round Lake.

12. In 2002, the culverts at County Highway NN restricted water flow during a period of peak water flow, resulting in excessively high water levels on Round Lake that caused significant property damage and erosion of property around Round Lake. Association members complained to Sawyer County, *inter alia*, that property had flooded, roadways had been flooded, sand beaches had been washed away and shoreline eroded.

13. On or about June 2, 2004, Sawyer County sent a letter to the Secretary of the Wisconsin Department of Natural Resources ("WDNR"), which Sawyer County styled as a Petition to Review and Clarify Certain Orders Relating to Round Lake.

14. Around the same time it filed its Petition with WDNR, Sawyer County filed an application for an after-the-fact permit from WDNR 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.

15. 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. Association members participated in the Round Lake Work Group.

16. As a result of the work of the Round Lake Work Group, Sawyer County sought authorization 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.

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

18. 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.

19. 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.

20. 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.

21. 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.

22. On July 15, 2010, the Sawyer County Board of Supervisors adopted Resolution #11-2010 authorizing the jurisdictional transfer of 300 feet of County Highway NN, which is the section of County Highway NN under which the culverts are installed, to LCO. It is apparent that Sawyer County's sole purpose in pursuing a jurisdictional transfer of this isolated segment of County Highway NN is to avoid its responsibility to properly install the culverts that lie beneath that section of County Highway NN.

23. Based on statements made at the July 15, 2010 County Board meeting, the Association understands that Sawyer County will attempt to finalize the jurisdictional transfer as early as Monday, August 2, 2010.

24. On information and belief, Sawyer County does not intend to alter the culverts under County Highway NN prior to the jurisdictional transfer to LCO.

25. On information and belief, Sawyer County does not intend to require LCO to alter the culverts under County Highway NN, or otherwise provide for resolution to the issues created by Sawyer County's unauthorized 1999 culvert installation, as a condition of the jurisdictional transfer LCO.

26. On information and belief, LCO intends to keep the culverts under County Highway NN in the current configuration.

27. On information and belief, LCO does not intend to subject itself to the jurisdiction of WDNR or this Court.

28. Sawyer County's 1999 unauthorized installation of the culverts has resulted in a revision to the floodplain boundary around Round Lake. Numerous Association members have had their property determined to be in the floodplain solely due to the 1999 culvert installation and Sawyer County's refusal to replace the culverts pursuant to WDNR's 2008 culvert replacement project approval.

29. Numerous Association members purchased and developed their properties in reliance on the 1941 Public Service Commission Order that requires Sawyer County to operate control structures to limit the Round Lake water elevations during periods of high water flow.

30. Association members will continue to be subject to harm during peak rain events unless Sawyer County replaces the culverts at County Highway NN pursuant to the 2008 SEH plans and specifications and related WDNR approval.

31. Sawyer County will be unable to maintain Round Lake water levels in compliance with the 1941 PSCW Order if the culverts under County Highway NN remain in the current configuration.

32. Members of the Association will be harmed if Sawyer County finalizes a jurisdictional transfer of that section of County Highway NN that crosses Osprey Creek, which harm may be irreparable given that the Association's claims against the County may be rendered moot and LCO is not subject to the jurisdiction of this Court.

33. An injunction is necessary to prevent further damage to members' property because the Association lacks an adequate remedy of law.

34. A temporary injunction will cause no harm to Sawyer County.

35. Sawyer County's 1999 installation and continued maintenance of the culverts at County Highway NN violates the 1941 PSCW Order, Wis. Stat. ch. 31, Wis. Stat. § 88.87 and Wis.

Admin. Code ch. TRANS 207. Furthermore, the proposed jurisdictional transfer to LCO of 300 feet of County Highway NN violates Wis. Stat. § 86.257. Thus, the Association has a strong likelihood of success on the merits of its claims.

WHEREFORE, based on the foregoing, Plaintiff, Round Lake Property Owner's Ass'n, Inc., hereby requests a temporary order restraining the Defendant, Sawyer County, from transferring jurisdiction to any entity of that section of County Highway NN from the intersection of World's End Road to a point 300 feet Northwest.

Dated this _____ day of July, 2010.

MICHAEL BEST & FRIEDRICH LLP

By: _____
Eric M. McLeod, SBN 1021730
Michael P. Srenock, SBN 1055271
One South Pinckney Street, Suite 700
P.O. Box 1806
Madison, WI 53701-1806
Phone: (608)257-3501
Fax: (608)283-2275

Attorneys for Plaintiff,
Round Lake Property Owner's Ass'n, Inc.