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STATE OF MICHIGAN
IN THE INGHAM COUNTY CIRCUIT COURT

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

Plaintiffs,

v

Case No. 86-57122-CE

HON. JOYCE DRAGANCHUK

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.

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CONSENT ORDER SUPPLEMENTAL
TO CONSENT JUDGMENT DATED MARCH 10, 2000

At a session of court held in the Ingham County Circuit
Court, State of Michigan this 12 day of Nov, 2010.

PRESENT: HON. JOYCE DRAGANCHUK
Circuit Court Judge

This matter is before the Court on the Verified Motion of Plaintiffs, from which it appears that Defendants are not in compliance with the Consent Judgment dated March 10, 2000 (the "Consent Judgment") and have violated its terms and this Court's Order to Show Cause in response. The parties have now reached an agreement concerning these matters and now propose to the Court a Settlement Agreement for Consent Order Supplemental to Consent Judgment dated March 10, 2000 (the "Settlement Agreement") regarding the disputed issues and this Consent Order Supplemental to Consent Judgment dated March 10, 2000 ("the Consent Order") for the Court's consideration.

The Court now considers and adopts the entirety of the Settlement Agreement of the parties attached hereto and made a part hereof and incorporated by reference.

Accordingly, the Court finds, and the Michigan Department of Natural Resources and Environment acknowledges, that its operation of Platte River Fish Hatchery has violated the terms and provisions of the Consent Judgment dated March 10, 2000 as set forth in paragraph one of the Settlement Agreement.

Except as specifically modified by this Consent Order and the Settlement Agreement, which this Consent Order incorporates, each and every provision of the Consent Judgment dated March 10, 2000, shall remain in full force and effect and the parties acknowledge and the Court agrees that the Court shall retain jurisdiction for the purposes of enforcing the terms and conditions of the Consent Judgment, the Settlement Agreement attached to this Order and this Consent Order.

WE CONSENT TO THE ENTRY OF THIS ORDER:

Dated: 11/8, 2010

RHOADES McKEE
Attorneys for Platte Lake Improvement
Association

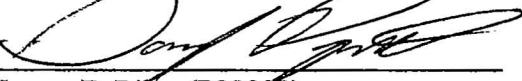
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Dated: 11/01, 2010

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IT IS SO ORDERED.

JOYCE DRAGANCHUK

HON. JOYCE DRAGANCHUK
Circuit Court Judge P-39417

ATTESTED: A TRUE COPY

 SUSAN M. BARKLEY
Deputy Clerk

**SETTLEMENT AGREEMENT FOR CONSENT ORDER SUPPLEMENTAL
TO CONSENT JUDGMENT DATED MARCH 10, 2000**

Plaintiff, Platte Lake Improvement Association ("PLIA") filed its Verified Motion for an Order to Show Cause for failure to comply with the Consent Judgment dated March 10, 2000 against the MDNRE. The Court issued its Order to Show Cause For Failure to Comply With the Consent Judgment dated March 10, 2000 on June 11, 2010. The parties have now reached an agreement concerning these matters and now enter into this Settlement Agreement and the attached Consent Order Supplemental to Consent Judgment dated March 10, 2000.

1. **Platte River State Fish Hatchery Violation.** The MDNRE acknowledges that its operation of the Platte River State Fish Hatchery has violated the terms and provisions of the Consent Judgment dated March 10, 2000 (hereinafter "Consent Judgment") on several occasions during 2009. The violations of discharge effluent limits are, but not by way of limitation, as follows:

- a. March 2009: 61.31 lb P vs a 55 lb P 3 month limit – 6 lb P violation.
- b. April 2009: 60.76 lb P vs a 55 lb P 3 month limit – 5 lb P violation.
- c. September 2009: 68.52 lb P vs a 55 lb P 3 month limit – 13 lb P violation.
- d. October 2009: 110.07 lb P vs a 55 lb P 3 month limit – 55 lb P violation.
- e. November 2009: 110.7 lb P vs a 55 lb P 3 month limit – 55 lb P violation
- f. December 2009: 88.15 lb P vs a 55 lb P 3 month limit – 33 lb P violation
- g. YTD 2009: 244.59 lb P vs a 175 lb P yearly limit – 69 lb P violation.

These discharges constitute violations of Paragraphs 3.C.v and 9.D.i, which violations are acknowledged by MDNRE.

2. **Compliance with the Consent Judgment.** To bring the facility back into compliance with the Consent Judgment, the MDNRE or its successor(s) will implement the recommendations of the Settlement Agreement Implementation Coordinator ("Implementation Coordinator") agreed upon by the parties in a timely manner and will prevent any future violations. These recommendations presently include, but are not limited to:

- a. the full development of the March 14, 2010 hatchery planning model; modifications to effluent treatment; modifications to hatchery operation; and changes in production and feeding schedules.
- b. modifications to the treatment system.
- c. modifications to hatchery operation.
- d. changes in production and feeding schedules.
- e. changes to the water quality monitoring regimen.
- f. a restart of the 5-year compliance period required by Paragraph 4.D.2.

3. **Remedial Measures Already Taken.** The following key effluent reduction measures have been undertaken recently by MDNRE in response to the violations which occurred in 2009:

- a. In December 2009, a review of the effluent management system at Platte River State Fish Hatchery was completed with the assistance of DNRE sewerage treatment facility experts. This review identified areas in which all parties agreed that improvement should be made in the existing effluent system to reduce the risk of any future violations.
- b. In December 2009, the clarifier pumping schedule was modified to minimize the flow to, and maximize the settling efficiency of, the sludge storage tank.
- c. In January 2010, the rate of disc filter drum rotation below each raceway was changed to reduce flows to and improve the solids settling efficiency in the clarifier.
- d. In January 2010, we initiated the addition of ferric chloride to the effluent stream at mutually agreed upon location(s) to reduce soluble phosphorus and to precipitate phosphorus in the clarifier and sludge tank. Additional refinements were completed in June 2010.
- e. In March 2010, phosphorus monitoring of sludge tank and clarifier overflow streams was improved by installing an automated sampler to collect seventy-two hour samples of clarifier overflow water along with an automated sampler to sample combined backwash flows from all three disc filters. These monitors allow for better accuracy in mass balance modeling and provide data on efficacy of ferric chloride application.

- f. In March 2010, the filter mesh size in C-filter building was reduced and the evaluation of the effects of smaller mesh panels on filter efficiency is in progress at this time (August 2010).
- g. In March 2010, water recycling piping from the sludge tank to the clarifier was installed to allow for additional treatment of high concentrations of phosphorus in the sludge tank water.

4. **Additional Effluent Reduction Measures to be Undertaken.** The following key effluent reduction measures shall be undertaken by MDNRE going forward at the direction of the Implementation Coordinator, but not by way of limitation:

- a. In 2010, dredge sufficient captured solids from the effluent finishing pond to ensure its continued viability as a waste management system using a plan agreed upon by all parties.
- b. In the fall of 2010, the sludge storage tank will be emptied with water from the sludge tank used for lawn irrigation on site and all solids will be removed and disposed of outside of the watershed.
- c. In August 2010 and after relevant training is completed, DNRE will conduct real time phosphorus analysis at the PRSFH to determine screen and water treatment effectiveness and to allow for rapid adjustments of the ferric chloride operation. In June 2010, the purchase of the agreed upon new equipment and reconditioning of existing analytical equipment along with the necessary supplies was complete and training in their operation began.
- d. By December 2010, a plan to decant water from the sludge storage tank and remove it from the waste stream will be investigated with possible development and implementation in 2011.
- e. In 2010 and beyond, the DNRE, with the assistance of the Implementation Coordinator, will develop improved effluent loading early warning measures concerning phosphorus concentrations, to include:
 - i. improvements to the mass-balance model for the hatchery;
 - ii. development of appropriate statistical relationships between easily measured variables and phosphorus concentrations;
 - iii. improvements to the bioenergetics model component of the mass-balance model.

This includes improving the understanding of feed metabolism and salmon bioenergetics by collecting detailed fish rearing data under both normal rearing conditions and experimental conditions. These data will be used to improve the efficiency of feeding schedules with the goal of reducing phosphorus discharges. The resulting hatchery operation model will be used by the DNRE in lieu of previous models.

5. **Watershed Monitoring and Judgment Compliance Audits.** As a result of these violations, the DNRE will restart the five year monitoring period for the watershed lake and river monitoring program as required in the Consent Judgment, Paragraph 4.D.ii and continue to conduct water quality monitoring in the Platte River Watershed for an additional five years from the date of this agreement. Likewise, the Judgment Compliance Audits referenced by Paragraph 5 of the Consent Judgment shall continue for an additional five years from the date of the most recent violation.

6. **Compliance with the Settlement Agreement.** The parties expect that in addition to the measures described and mandated in paragraphs 4 and 5 above, the Implementation Coordinator will continue to provide evidenced-based recommendations on what practices should be employed by the MDNRE or its successor(s) to ensure compliance with this Settlement Agreement, the Consent Order Supplemental to Consent Judgment and the Consent Judgment. The MDNRE or its successor(s) will implement those recommendations after approval by both parties. Where no agreement between the parties can be reached with respect to the adoption and execution of the Implementation Coordinator's recommendations, the parties agree to refer to the Consent Judgment dispute resolution process (Paragraph 8) before proceeding to Court.

7. **Penalty Funds.** As a consequence of its acknowledged violations set forth in Paragraph 1 above, and in accordance with the Consent Judgment provisions contained in Paragraph 9, the DNRE will pay the sum of \$118,000 in penalty funds to the PLIA Watershed

Improvement Account no later than January 1, 2011. The parties agree that a portion of these funds, once deposited, will be voluntarily contributed by PLIA to help defer some of the costs of the dredging of the Platte River State Fish Hatchery effluent finishing pond as well as for other key watershed enhancement projects. For these purposes, the PLIA agrees to voluntarily provide \$90,000 from the Watershed Improvement Account to help fund pond dredging. This is a voluntary contribution by PLIA and in no way establishes a precedent for future use or application of penalty funds contributed by MDNRE to the PLIA Watershed Improvement Account. In consideration of this voluntary contribution, MDNRE agrees to modify Consent Judgment Paragraph 4.D.ii to grant the PLIA the option to use penalty funds deposited into the Watershed Improvement Account to defray the PLIA's 2% contributions to the lake and watershed monitoring costs for a period of five years beginning with calendar year 2010 charges.

8. **Attorney Fees and Other Fees.** The DNRE agrees to reimburse to PLIA its attorney and other fees associated with PLIA's efforts in connection with the Motion for Order to Show Cause, issuance of the Order to Show Cause and the resolution which has resulted in this Settlement Agreement and its execution. Any dispute concerning the reasonableness and necessity of these attorney fees and costs will be resolved by the Court and, if disputed, the Court may also award actual attorney fees in connection with seeking and obtaining the attorney fees required by this provision.

9. **Best Efforts to Reduce Watershed Phosphorous Discharges.** The DNRE or its successor(s) further agrees to redouble its efforts per Paragraph 3.F.ii. of the Consent Judgment, to include, but not be limited to, direct, timely and proactive input into the Federal, State and local permitting process for all proposed point and non-point source surface and/or ground water discharges within the Platte River watershed in order to minimize the potential adverse impacts

of such discharges on the achievement and maintenance of the Platte Lake Phosphorus concentration standards mandated by the Consent Judgment.

10. **Effect of this Agreement.** It is the parties' intent and that the effect of this Settlement Agreement that as except as specifically modified herein, each and every provision of the Consent Judgment dated March 10, 2000 shall remain in full force and effect and reassert that the Court shall retain jurisdiction for the purposes of enforcing the terms and conditions of the Consent Judgment, this Settlement Agreement and any Order entered pursuant the Settlement Agreement.

PLATTE LAKE IMPROVEMENT
ASSOCIATION

By: 

Wilfred J. Swiecki
Its: President

Dated: 1/29, 2010

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Telephone: (616) 235-3500

MDNRE

By: 

Rebecca A. Humphries

Its: Director

MDNRE

By: _____

Its: _____

Dated: 11/01, 2010

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