

On December 31, 1972 - his last day of office - Judge Charles L. Brown filed his decision on the Monroe Creek case in favor of the developer. The decision was better than fifty pages in length, the longest the judge ever wrote. In it, he basically adopted the developer's position that the damming of Monroe Creek would not have a significant adverse effect upon the waters of Monroe Creek and Lake Charlevoix. We had taken the opposite position on this and many other points during the trial. The decision provided that the court would retain jurisdiction over the entire project, to assure that any damage that does occur is corrected -- to the extent that correction is possible after the fact.

The judge also included many opinions that could have proved very damaging to Michigan's new Environmental Protection Act, under which this suit was brought. This point weighed heavily on the discussions about a possible appeal which took place between the undersigned and the three attorneys who worked on our side of the case. One of our goals in bringing the suit was to help implement the Act - not undermine it. A Circuit Court decision does not serve as precedent for any other court, whereas an Appeals Court of higher decision does. Hence, a lost appeal could have been very detrimental. In addition, to succeed on appeal, one must have more to go on than a distaste for the decision; significant legal error must be found. An appeal was finally decided against, because it was felt that the chances for success were too small, and the risks to the Environmental Protection Act too great.

In spite of having lost the courtroom portion of this battle, the final court judgment entered on January 18 was remarkably favorable. It provides for full court supervision of the project, with plans to be cleared by the court and the plaintiffs before construction proceeds. Of personal interest, the developer's counterclaim of \$470,000 against me was also dropped, as a trade for not going ahead with an appeal - which we'd decided against anyway. The developer must also comply with the South Arm Township Greenbelt Zoning Ordinance.

This is a very significant point, as this ordinance regulates the cutting of trees within fifty feet of Monroe Creek. These trees must be cut for the project to proceed. There are some legal questions involved, but it appears that if the township zoning authorities and the township board do not allow the trees to be cut, the project cannot proceed. South Arm Township residents and tax payers who may wish to express themselves on this point may wish to write to township clerk Lawrence Addis; Ellsworth Road; East Jordan, Michigan 49727.

You may wish to ask for notification of any hearings on the subject, so that you can present your views in person.

An equally significant point involves the Charlevoix County Road Commission, for the impoundment will flood a portion of Flagg Road. In order for this to happen, the Commission must vacate the affected portion of the road. This requires a public hearing, and the vacation is entirely optional with the Commission. No vacation; no impoundment. Last spring, petitions containing several hundred names were filed with the Commission requesting notification of any such hearing. Those who wish to express their opinions on this point, or who wish to be put on the notification list for a hearing may write to Oral Sutliff, Secretary; Charlevoix County Road Commission; Boyne City, Michigan 49712.

So these two significant opportunities remain for those who wish to influence the final outcome of this matter. Both of these opportunities were discovered as part of the preparation for the trial.

With the courtroom portion of this issue behind us, it is worth asking if it has

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all been worthwhile. My answer is an unqualified yes! We entered the case with full knowledge that it would not be an easy one to win. It was felt that a great deal could be accomplished, even in defeat, and time has born out this belief. The people of the Charlevoix area have had an opportunity to look into the future and see what large scale development would do to their area. Hopefully, they are looking for the changes needed in local zoning and land use control ordinances that will enable them to control their future - suits will necessarily be used only rarely. Beyond the local area, the case has added fuel to the statewide discussion of land use. It has had an impact on the whole process of approval of dam permits: in the future they will be looked at in an entirely different light. We are currently working on needed changes in the Dam Act.

Of long-range significance, we have helped to develop the Michigan Environmental Protection Foundation into a functioning entity. This was the first suit funded through the Foundation. There have since been a number of others. These suits have demonstrated that the public will support this type of action financially.... and your support has been both generous and substantial. The developers of the state have been put on notice that the people have the means and will to go to court, if necessary, to challenge their plans. Several lawyers and expert witnesses have been added to the roster of those with experience in working with the Environmental Protection Act....this will stand us in good stead for future battles. And not insignificantly, we have met the issue of the countersuit tactic head on, and demonstrated that it is not to be unduly feared: the counterclaim was dismissed in this case. If such countersuits were to prove successful, they would obviously destroy the effectiveness of the EPA. So while we have lost this particular battle, we may yet win the war, since the township and Road Commission hearings still remain.

A number of contributors have asked for a detailed report on how the donated money has been spent, and this is enclosed, broken down into general categories. If anyone would like greater detail, I'll be glad to try and obtain it for you. As the figures show, we still need to raise \$2,642 to break even. I have hopes of raising perhaps \$1,000 beyond that, so that we will be able to keep this effort active and capable of responding to needs and opportunities as they arise, such as sending out additional newsletters, or bringing on a motion in the court. I am hopeful that you will all help in cleaning up these bills.

As always, contributions to the Foundation are tax deductible for income tax purposes. In addition, the IRS has ruled the Foundation to be a public one, which means that it can receive contributions from private foundations. Several have been received in connection with other suits. Copies of both of these rulings are available on request - write or call me.

My only regret is that I have been unable to personally acknowledge each contribution, but with over 300, it has simply been impossible. I hope for your understanding of this. The support has been truly gratifying, and has been the thing that has kept us plugging away. I thank you for it.

Cordially,

John H. Tanton, M.D.

Route 4, Box 272

Petoskey, Michigan 49770

Telephones: 616-347-4511 (Home)
616-347-7000 (Office)

MONROE CREEK FUND

FROM INCEPTION THROUGH DEC. 31, 1972

<u>CONTRIBUTIONS RECEIVED</u>	\$12,499.08	
<u>LEGAL FEES</u>		
Mr. Peter Steketee - fees & expenses	7,800.69	(1.)
<u>CONSULTANTS & WITNESSES</u>		
Dale Gleason - biologist	1,104.40	
W. A. Keck & Sons - hydrologist	1,384.70	(2.)
<u>OTHER EXPENSES</u>		
Jean Ingram, Stenographer (Depositions)	1,512.51	
Administrative Fee to Foundation	115.08	(3.)
Misc. Expenses (Court costs, etc.)	230.50	
<u>TOTAL DISBURSEMENTS</u>	<u>12,147.88</u>	
<u>CASH ON HAND</u>	<u>\$351.20</u>	
<u>ACCOUNTS PAYABLE</u>		
Mr. Peter Steketee	1,973.53	
John Tanton - phone, postage, xerox, etc.	636.07	
Foundation Administrative Fee	20.00	
Costs to State of Michigan	250.00	(4.)
Copy Trial Transcript	83.20	
This Newsletter	30.00	
	<u>2,992.80</u>	
<u>LESS CASH ON HAND</u>	<u>351.20</u>	
<u>TOTAL TO BE RAISED</u>	<u>\$2,641.60</u>	(5.)

(See the reverse side for explanation of the footnotes)

Contributions are tax deductible. Earmark them for "Monroe Creek Fund" and send to: Michigan Environmental Protection Foundation
822 Cherry Street, S. E.
Grand Rapids, Michigan 49506

NOTES:

- (1.) This item is for the services of Mr. Peter Stoketee, who carried the burden of preparing the initial complaint, locating witnesses, briefing, etc. Mr. George Snyder, an old college friend, represented the intervening plaintiff East Michigan Environmental Action Council. He donated his services. We have not yet paid his travel and other out-of-pocket expenses, which I would like to. Mr. Joseph Wilcox represented the intervening plaintiff Trout Unlimited, and was paid by that organization.
- (2.) Additional witnesses who donated their services: William Wilde, chemist at North Central Michigan College, who did necessary chemical testing; Dean Mikulski, chief environmentalist, District 3 Health Department, who testified on Health Department regulations; and Richard Bidstrup, registered civil engineer and land surveyor, who testified on stream flows.
- (3.) This is approximately 1 per cent of the total proceeds and covers postage and other small expenses.
- (4.) The final judgment awarded \$250 in costs to the state, which we are to pay.
- (5.) There may still be a few small outstanding bills, but this is very close to outstanding debts.

The Significance of the Monroe Creek Suit

The Department of Natural Resources has issued a permit to build a dam on Monroe Creek in Charlevoix County, Michigan, to facilitate a 1500 acre, 1300 homesite residential development. This was done after an extended review and debate on this issue, conducted within the Department, before its Commission and in the press. As the principal antagonist of this action, I have filed suit in the Ingham County circuit court, seeking a judicial ruling on the propriety of the proceedings.

The extensive debate cannot be summarized in a few words, but is available to those who wish to dig into the issue. The court case turns on a clearly defined point of law, contending that the requirements of the Dam Act, under which the Department issues these permits, were not met. Professor Sax of the University of Michigan Law School feels the case is a very good one.

The significance of the case, however, goes far beyond the conservation of the bottomlands, the excellent fishery and deer yard of Monroe Creek, which is the main objective of the suit. These additional aspects may be summarized as follows:

Land Use Goals. A central point is that many good tools for controlling land use now exist, if we will only use them. This is particularly true for wetlands. By denying dam, and dredge and fill permits, the DNR can stop the destruction of these lands until a state-wide survey indicates which are expendable, and which should be conserved. We presently have no policy on this point and proceed on an individual case basis. The nature of Michigan's land use problems will be highlighted by the suit at a time when the Governor's Special Commission on Land Use is issuing its final report. The way in which a developer puts together such a project as this one, the financing, expected profits and the special tax laws which encourage this activity will be exposed for public discussion. Education of the public is an important goal, and seems assured to some degree from the interest that the press has shown in this case. It is also to be hoped that the proceedings will have some effect on the DNR's and its Commission's attitudes towards development, and the role that the exchange of state lands plays in development.

The Environmental Impact Statement is an important new feature on the resource management scene. It was used in this case; one of the first ones to come to the Commission with such study. The action recommended by the DNR and followed by the Commission by a 3-2 vote in granting the dam permit is the opposite recommended by the impact statement. It is vital that we get off on the right foot with these environmental studies, and insist that conclusions follow from them. This will have wide-reaching effects in many other resource management areas, as Governor Milliken has just issued an executive order requiring environmental impact studies on all "major" state activities.

The Commission also approved the exchange of an easement along the Creek for a 40 acre tract nearby. This was the last property right that the developer had to acquire for the project, but the Department specifically stated that this fact was not taken into account in setting the price. At the same meeting at which the Commission approved this exchange, they paid an exorbitant price for the last parcel of land that it needed for a state project, stating that since it was the last parcel, this justified the price. The suit also seeks a fairer price for the state property right, in line with its true value to the developer. A favorable judgment here could also have far-ranging effects on DNR land policy.

Support of this suit and these goals will be welcome from anyone concerned about the future of the land in Michigan. The total costs will likely be in the \$3-5000 range. Contributions of any size will be welcome and are tax-deductible if sent to the Michigan Environmental Protection Foundation, 822 Cherry Street, S. E., Grand

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Rapids, Michigan 49506. This Foundation has been established specifically to enable the funding of environmental law suits with tax-deductible dollars and has agreed to act as the funding agent for this case. Checks should be designated for the "Monroe Creek Fund".

Please call or write if you have questions or suggestions.

John H. Tanton, M.D.
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Petoskey, Michigan 49770

16 December 1971