

Pigeon River Country Association Newsletter – Summer 2011

Editor's Notes: This summer issue of our newsletter is slightly late (as usual) and nearly two pages longer than usual for a very good reason — the whole series of delays regarding the removal of the Song of the Morning dam across the Pigeon River. Accordingly, after a short account of our annual open meeting, you will find a long updated report on that same issue as presented and summarized by Joe Jarecki at the same meeting, This will be followed by the court's response to the issue raised at the end of Joe's account, and in turn by a final word on the issue from Ray Hoobler, our PRCA President. Then follows the Advisory Council report and a special report on the unusual weather event of June 8th.



Grass Lake on Aug. 11, 2011 — R.W. Kropf photo

PRCA Annual Meeting:

This year's meeting was held on July 24th, beginning with free lunch shared by everyone present. Because much of the meeting was taken up with a review of the same matters discussed at length below, we have decided to post the minutes of the annual meeting, along with the Treasurer's Report, all of which can be found on the PRCA Website.

(See www.pigeonrivercountryforest.org).

The meeting also included a report by Scott Witcomb, the PRCSF Manager on various matters, including the unfortunate early retirement of one of his right-hand men for health reasons, as well as temporary campground closings, and Scott's doing double duty as temporary manager of the Atlanta State Forest as well as the PRCSF. (Recently, the selection of a new Atlanta State Forest Manager has been announced, so Scott will now be able to manage the PRC and its adjunct properties full-time. The PRCA-sponsored summer intern, Matt Kahn, gave a power-point presentation of his maintenance work, largely single-handed, on the High Country and Shingle Mill Pathways. PRCA member Stewart Smith, from Lake City, MI offered to serve on the PRCA board. His offer was gratefully accepted.

Golden Lotus, Inc. — Song of the Morning Dam Removal:

As was discussed at last year's Annual meeting, the Pigeon River Country Association joined the Michigan Council of Trout Unlimited (MITU) and the Michigan DNR & DEQ in a lawsuit against Golden Lotus resulting from the June 22, 2008, sediment release from the Song of the Morning dam that caused a major fish kill. The Association and Trout Unlimited are both represented on a pro bono basis by Peter Gustafson and share in reimbursing Mr. Gustafson's costs associated with the case (printing and mailing court documents, lodging and meals, etc.).

The parties reached a mediated agreement and on April 5, 2010, Otsego County 46th Circuit Court Judge Dennis F. Murphy issued an Interim Order which provides in part that:

“Golden Lotus shall remove the private dam it owns and maintains on its property creating the impoundment on the Pigeon River known as Lansing Club Pond, Corwith Township, Otsego County. The dam removal project will require DNRE permits pursuant to Parts 301, 303, 315, the floodplain portion of Part 31, and Part 305, of the Natural Resources Environmental Protection Act (NREPA) and the rules and regulations promulgated under the NREPA.

The DNRE agrees that upon removal of the dam structure, Golden Lotus will be allowed the continued use of the existing bridge or, if in the opinion of a Golden Lotus engineer, due to structural concerns with the existing bridge structure, a replacement bridge crossing.”

The Interim Order also provides that a Pre-Application Meeting “to discuss the information necessary to submit a complete permit application for dam removal and any other issues relevant to the dam removal project contemplated by this Interim Order” will be held. The Board of Directors chose me to represent the PRCA at the Pre-Application Meeting. There were two meetings, one on October 22, 2010 and a second on December 15th.

In preparation for the meeting(s), Golden Lotus and their consultants, Golder Associates, worked to collect the information about the dam and the river that was needed to develop the plan for how to best remove the dam. The DNR/DEQ Review Team and MITU Executive Director Bryan Burroughs helped to inform and guide the initial data collection process and requested both additional data and further options for consideration for use at the October and December meetings.

Golden Lotus submitted an application for a permit to draw down the pond and remove the gates and turbine hardware on February 2, 2011. DNRE Water Resources Division staff who manage the permit process requested

Pigeon River Country Association Newsletter – Summer 2011

additional information which was submitted and the permit application was accepted for consideration on March 18th. A public hearing to gather public input about the permit application was held on April 14th.

Drawing down the impoundment requires the release of large quantities of fine sediment that is stored behind the dam – the same sediments that resulted in the fish kills in the past. Unless great care and precision are used in the timing of this drawdown, more fish kills are likely to occur. In addition, about 7,500 cubic yards of sand will be moved downstream. The Interim Order states that Golden Lotus can be required to operate sand traps for as long as necessary to avoid the negative impacts of the sand inundating the river downstream of the dam. The Permit Application proposed to remove only 2,000 of the 7,500 cubic yards of sand. Leaving 5,500 cubic yards of sand in the river is enough to cover about 12 miles of the Pigeon River with one inch of sand!

Despite these serious concerns, we were offered no dialogue in correcting them. The Association and MITU, with help from Cardno-Entrix Consulting, submitted lengthy and detailed technical comments on the permit application through the required public comment process. I also presented the Association's comments at the Public Hearing which was held on April 14th and have been placed on our website www.prca.org. We have not received communications from the DEQ regarding these concerns. To date, the DEQ has not issued a permit.

The permit application proposes to draw down the pond and to remove only the dam gates and turbine hardware while leaving the bottom of the spillway in place. The PRCA and MITU believe the wording of the Interim Order provides for removing the bottom of the dam, and objected to leaving the concrete bottom of the dam in place because it would limit the natural slope of the river for up to ¼ mile upstream of the dam, would block fish and other aquatic organism passage due to extremely high water velocities flowing over the concrete bottom of the dam, and would be dangerous for watercraft and wading anglers to navigate. Golden Lotus asserts that the bottom of the dam cannot be removed without jeopardizing the structural integrity of the bridge over the top of the dam and that the Interim Order does not require them to remove it if it jeopardizes the bridge. Instead, they propose that the rest of the dam removal can be figured out and completed voluntarily later, with the help of other non-profits and grant money from federal, state or private sources. Golden Lotus has said that it will not pay for any further work and that funds to remove the remainder of the dam and rebuild the bridge will need to come from other sources. The State sided with Golden Lotus and said that it would accept the plan for incomplete dam removal as satisfying the Interim Order.

The PRCA and MITU were unable to negotiate a modification of the Golden Lotus and State position about

partial dam removal, so we filed a Motion with the Court to have the Interim Order clarified and enforced. After we raised concerns about the partial dam removal proposal, the required involvement of MITU Executive Director Bryan Burroughs in the dam removal planning process ceased and the Association and MITU were excluded from communications with the State and Golden Lotus about the plan they were working on. Therefore, the PRCA and MITU filed a second motion with the Court requesting that we be included in all of these aspects, as required by the Interim Order.

On May 25, 2011, a hearing on the motions was held before Judge Murphy in the Otsego County Circuit Court. Peter Gustafson, attorney for the Association and MITU, argued our case that the project proposed by Golden Lotus is not dam removal as is required, and that we should be involved in all aspects of the planning and implementation process as is required. Golden Lotus argued that "dam removal" is open to interpretation and their project should be satisfactory, and that they shouldn't be required to do anything that would jeopardize their bridge. The State said that "dam removal" should really be defined as "dam modification" and that the Golden Lotus proposal is acceptable. Both Golden Lotus and the State said that they are willing to include us in the rest of the process as required by the Interim Order. The State's position, which we agree with, is that our involvement should be advisory and not in a decision making capacity.

During the May 25th hearing, Golden Lotus submitted three affidavits from its members that had not been entered previously. We reserved the right to reply to the new affidavits and filed a reply affidavit on May 31, 2011. Golden Lotus filed a motion to strike our reply affidavit and a hearing was held on July 5th to consider the motion. Golden Lotus agreed to drop their motion to strike if reply affidavits that they had recently submitted could be included and we agreed. This opens the way for Judge Murphy to rule on our motions to clarify what the *Interim* Order means by "dam removal" and to include us in all aspects of planning and implementation as required by the Interim Order. His decision is expected soon...

(From July 24, 2011 report by Joe Jarecki, special PRCA representative on the Dam Removal Implementation Committee)

Further Updates Regarding the Dam Removal:

On July 25th, Judge Murphy issued his decision regarding the July 5th hearing. After summarizing the arguments that had been presented, the court document concluded with the following statement.

Conclusion & Order

All parties have submitted well-written briefs in support of their respective positions. The Court

Pigeon River Country Association Newsletter – Summer 2011

recognizes the importance of this matter to all parties and especially the cost differences to Defendant. Clearly, removal of the Pigeon River Dam will be more costly than removal of the impoundment. However, it is equally clear that the terms of doe Interim Order require nothing less than 'dam removal' and dam removal means a complete removal of the Pigeon River Dam. It bears noting that if the parties intended the phrase 'dam removal' to have a meaning distinct from the statutory language to which the Order refers, then the parties could have simply provided their own special definition within the text of the order. As presented to the Court, the Interim Order clearly states that dam removal must take place pursuant to specific sections of the NREPA. Since those sections clearly define the terms 'dam' and 'removal', this Court is bound to interpret the Interim Order in accordance with those statutes and the definitions within the statutes. Accordingly, it is ordered that Intervening Plaintiffs Motion to Clarify the Interim Order is granted with respect to the meaning of 'dam removal'. Defendant must revise its conceptual plan for dam removal such that it conforms to the provisions of this Opinion and Order.

Judge Dennis F. Muphy (P31907)
46th Circuit Court, Otsego County

A Final Update from the President:

Well, it's been more of the same! After Judge Murphy ruled that dam removal meant fully removing the dam to allow the Pigeon River to flow freely through the Song of the Morning Ranch, their lawyer, Bill Schlecte, filed a motion for rehearing on the grounds that the Association had misrepresented its position! He claimed that Joe Jarecki's October newsletter report and a sketch outlining a possible way to allow fish passage that Joe produced at a March compromise meeting just before we filed our motion were proof that we had actively misrepresented our position to the court. The worst thing was that Schlecte had insisted in an email prior to the March meeting that "these are to be considered as "compromise negotiations" not admissible in subsequent proceedings" and then proceeded to use Joe's sketch as evidence for his motion!

I believe that the Golden Lotus board did not carefully read Schlecte's motion beforehand, for if they had, I believe they would have objected. Judge Murphy ruled the motion both procedurally out of order and without merit at a hearing on August 25th.

We also found out that a dam removal permit was tentatively issued but not accepted within the 30 day time limit because of Judge Murphy's ruling on our motion. Consequently the application process for a dam removal permit, including public hearings, must begin again. Judge Murphy has now ruled against all efforts by Golden Lotus to rehear the case, and so we expect that there will be

another opportunity, hopefully soon, to meet and address the real issue of dam removal.

On another front we are introducing a 'Photo of the Month' feature. Soon you will be able to go to our website and enter a digital photo taken during the month in the PRCSF along with a caption and the general location where the photo was taken. We will select a representative picture each month, put it on our website, and print an 8" by 10" copy and place it in one of the outside display boxes that were put up in honor of Jerry Myers. This way you can share your favorite pictures with other lovers of the Pigeon River Country! Check out the notice on page 6, as well as our website for more details and look for photos at DNR Forest Headquarters soon.

(Ray Hoobler, PRCA President)



Doe and Fawn in the Black River, early July 2011 — R W Kropf Telephoto

Advisory Council Report:

The regular quarterly meeting of the Pigeon River Country Advisory Council was held on Friday, July 22nd at the PRCSF Headquarters, at 6:30PM.

Public Comments: PRCA President Ray Hoobler addressed the Council with his concerns over access to Dog Lake Flooding, adding that "It is almost to the point that 4WD is needed to gain access." Others mentioned a similar issue with the Cornwall Day use area.

Larry Klienhart stated that he and his wife recently rode their horses on the, Le Grand Ranch and had an enjoyable experience. He would encourage others to, hike, bike ride or otherwise take advantage of this area of state land.

Oil & Gas: Mark Olson and George Marx of Enbridge Energy Company gave a presentation on the pipeline their company operates which runs through the Pigeon River Country State Forest. The focus was pipeline safety and their commitment to protecting the environment against spills, (Enbridge operates the pipeline that caused a major spill near Kalamazoo and the Kalamazoo River in the

Pigeon River Country Association Newsletter – Summer 2011

summer of 2010.) Enbridge has made changes and is currently inspecting the pipeline and installing remotely controlled valves to allow faster isolation of any section that might develop a leak. The Council Members expressed specific concerns where the pipeline crosses waterways and is in or near wetlands. Enbridge regularly conducts emergency response drills with several local units and was receptive to working with local emergency response agencies in the area of the Pigeon River Country State Forest. Enbridge is also willing to work with the MDNR to block access to closed areas to help prevent damage by unauthorized personnel, both to the Resource and the pipeline.

Elk Study: Rique Campa, MSU Representative to the Advisory Council, reported on a research project he is planning, which will study the impacts of recreational uses (specifically horseback and mountain bike use) on elk behavior. Members asked if other use groups such as hikers might be included. Rique stated that any use could be included but with each additional use being studied the cost of the project goes "UP". Rique is currently seeking funding sources for the project, he has submitted requests to the MDNR and the Rocky Mountain Elk Foundation. It was suggested that similar studies have probably already been done in other states, however Rique said that do to the unique situation with Michigan's Elk Herd and it's accessibility, findings of studies in other states would not likely hold true in Michigan.

Standards & Limitations Committee Report: Committee Chair Paul Rose reported on three motions that came out of the committee's May 18th meeting. Motion #1: recommended banning all commercial Use in the PRCSF particularly commercial guiding. Motion #2: recommended examination of uses that might be viewed as "incidental" and therefore not fall under the recommended ban. Incidental uses could include such things as someone who takes a friend or neighbor fishing, who in turn buys the gas or a lunch. Under the State Land Use Rules, this would be defined as commercial use. The committee believes there are situations similar to that above that are very much in keeping with the spirit and intent of the Pigeon River Country and would not intend that they be banned. Motion # 3: recommended that the Council request MDNR include the PRCSF Unit Manager in issuance of all permits within the PRCSF. Currently permits are issued which the Unit Manager's input is not requested and in some cases the Unit Manager is unaware that they have been issued! Committee Motions #1 & #2 were referred back to Committee for further discussions. Motion # 3 was passed by the Council.

The Standards & Limitations Committee discussed horseback issues on a joint meeting with the Access Committee on July 13th. Discussions were held concerning a

proposal to restructure the Elk Hill Campground to allow for additional sites and sites that would accommodate larger trailer/camper units. In discussions it was brought up that over half the sites at Elk Hill will accommodate the rigs that complainants referred to. The Committee's also discussed a revised reservation system where campers could be assured that they would have a site upon arrival and eliminate the frustration of a long trip only to find nowhere to camp. As there were several issues, the Committee felt it needed additional information on, the Committee made no recommendation on this issue.

Access Committee Report: Committee Chair Jim Supina reported that at the July 13th joint meeting with S&L a proposal was made by Unit manager Scott Whitcomb to, revise trails where horse use would be allowed and add three offsite camps. The purpose of the additional trails was to allow more "loop riding opportunities" The proposal would add 9-miles of trails open to horseback use. Whitcomb reported that they had recently received a "Trip Report" from the U.S. Fish & Wildlife Service, (USFW). Who regularly review use of State owned lands purchased with Game & Fish Fund Dollars. If found in violation of rules governing lands purchased in this manner the State could possibly loose future monies from USFW Game & Fish Fund. He stated that there were concerns over horse use on some of these lands within the PRCSF. A motion was passed by the committee to support the proposal as presented and the Advisory Council also passed the motion of support, with one dissenting vote—"MINE". I quite simply cannot see supporting such expansion until we have had time to review the concerns in the USFW trip report and determine how this expansion might address these concerns either positively or negatively.

Law division Report: Nick Torsky Officer with the Law division MDNR reported that high water levels kept fishing pressure low this spring. Equestrian Use violations were about the same this year as in the past. Heavy illegal ORV activity was reported over the July 4th Holiday weekend. Green Timbers, Fisherman's Trail and several other areas in the PRCSF sustained considerable damage. Enforcement issues stem from the fact that the recent State Law allowing use on County Roads calls for enforcement by the Local Sheriff's Departments but lacks any funding to pay for the necessary patrols. Most of the illegal activity was in Cheboygan County or Otsego County near the Cheboygan County Line. It is believed that this is because Otsego County banned their use on roads within the PRCSF.

Unit Manager's Update: Scott Whitcomb reported that the State has recently closed on the following Land purchases in or near the PRCSF. 95-Acres southeast of DUBY Lake near Clute Road and Swartz Trail. The parcel has an old camper trailer on it that will be disposed of. A

Pigeon River Country Association Newsletter – Summer 2011

second purchase of 40-Acres off Sawdust Pile Road, includes frontage on Tubb's Creek. The site has a cabin that is in good shape and has been offered to Parks & Recreation for possible relocation to a State Park site. This cabin will be removed from its present location. Another 40-Acre parcel off Sawdust Pile Road was also purchased. Additionally the State is nearing closing on 80-Acres off Sparr Road with Black River frontage and 40-acres off Chandler Dam Road with the Black River flowing through it. These are all great additions to the PRCSF. Scott also reported that the permits for demolition of the buildings on the Kronlund Parcel have been applied for.

Matt Kahn is an MSU Student intern that is being funded by the Pigeon River Country Association. Matt's main focus has been trail maintenance. Since the DNR has no funds for this work, the assistance it greatly appreciated. Matt also worked on filling the presentation boxes purchased by the Association with funds donated in memory of Jerry Myers.

DNR Forestry Open House to be held September 14th 2011 3:00PM-7:00PM at the PRCSF Headquarters and DNR Compartment Review on October 4th 2011, 10:00AM at the PRCSF Headquarters

Wildlife Report: Brian Mastenbrook – Wildlife Biologist, There are going to be NO antlerless deer permits in Cheboygan or Otsego Counties this year. Brian reports a good fawn crop this year but wants to see the survival rate before making changes.

Elk: There will be 90-Elk permits for a September 2011 Season, No October Season is planned. The main focus is outside the core area, a herd has been seen in the southern Otsego/northern Crawford County area south of old State Road.

Planting and mowing of wildlife planting areas is ongoing.

Feral swine is a statewide issue: the Department's position is that their presence in commercial hunting preserves should be made illegal. Too many have escaped to cause great damage to both state and private lands.

Next Advisory Council Meeting: Next regular meeting is scheduled for Friday October 21st 2011 at 6:30PM. There will also be a special Advisory Council meeting called to discuss the Commercial Use Issue, date yet to be set.

(Report by Michael Brown, PRCA representative to the PRC Advisory Council)

Odd Weather Event Strikes Pigeon River Country

On the afternoon of June 8, 2011, approximately between 2-2:30PM, a rather peculiar weather event struck the PRCSF and its environs. Many individual trees were toppled at widespread locations blocking many roads here and there in the Forest, but especially in the eastern portion and even beyond, where narrow swaths or corridors of trees, some of them a quarter of a mile or so apart and a similar distance in length, were either uprooted or snapped off, all more or less pointing, unlike when a tornado is responsible, in the same direction.

Some believe that this peculiar pattern, looking all the world as if a huge hand with outreached, but widely separated, fingers, was the result of a so-called "micro-burst". If so, then there should have been a center-point of the violent down-draft with the 'fingers' radiating out in different directions. Some of the trees I saw that afternoon farther west in the PRCSF had fallen across the roads in a N to NE direction, while all those felled along the eastern border of the PRCSF, where I live, were knocked down or uprooted so that their tops all pointed to the SE. Pictured below is a clump of uprooted trees (mostly aspen) about a quarter mile SE of where Hardwood Creek empties into the Black River. At higher elevations, many big oaks as well as red maple and aspen, were toppled.



On the 270 some acres where I live, at least sixty trees were either uprooted, snapped off part-way up their trunks, or otherwise severely damaged. Salvage operations have already begun, with probably enough oak and maple tops left over to provide firewood for the rest of my lifetime.

(Report and photo by Richard Kropf)