

## **Golden Lotus, Inc. Song of the Morning Dam Removal Update**

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

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 14<sup>th</sup>. (See our website [www.pigeonrivercountryforest.org](http://www.pigeonrivercountryforest.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 PRC Association 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 PRC Association 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 Association 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 25<sup>th</sup> 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 5<sup>th</sup> 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.

Due to concerns with wildlife impacts (fish spawning, amphibian hibernation, etc.), it is getting late to begin the drawdown process this year. However, I believe it is possible that Judge Murphy will make his ruling, the DEQ will issue a permit that incorporates our concerns about the drawdown process and sand removal, and the drawdown process could yet begin this year. While it is too slow, progress toward drawing down the pond and restoring the Pigeon River is being made.

Joe Jarecki, Treasurer  
Pigeon River Country Association