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May 22, 2007

TO: Boardman River Dams Committee

Re: Review of Riparian Rights
Parcel No. 28-05-034-008-00

Ladies and Gentlemen:

At the request of the Boardman River Dams Committee we have reviewed an abstract of title on a parcel of property on Boardman Pond as set forth below.

1. Premises

Parcel No. 28-05-034-008-00

Property Address: Keystone Road North
Traverse City, Michigan 49686

An irregular shaped parcel lying on the east side of Boardman Pond, bordered on the east by the east line of the southwest quarter of the northeast quarter and Keystone Road, on the south by Keystone Drive, on the west by Boardman Pond, and on the north by the point at which Boardman Pond intersects with the parcel on which the power substation on the east side of Boardman Pond is located, described as:

A part of the East 1/2 of the Southwest 1/4 of the Northeast 1/4, except Keystone Subdivision and Keystone Subdivision #2. Also commencing at the Southwest 1/4 of the Northeast 1/4; thence North along East 1/8 line 474.1 feet to the Point of Beginning; thence North 44°58'13" West 115.33 feet to the shoreline of Keystone Pond (Boardman River); thence northerly along the shoreline to the East 1/8 line; thence South along the East 1/8 line to the Point of Beginning. Also the North 1/2 of the Southeast 1/4 North and West of the railroad right-of-way, except Keystone Subdivision and Keystone Subdivision #2. Except commencing at the Southwest corner; thence North 1°19' West 50.39 feet; thence North 36°58' East 139.99 feet; thence South 86°49' East 151.2 feet; thence North 24°41' East 50.00 feet; thence South 58°39' East 273.76 feet; thence Southwest 290.43 feet; thence South 46°27' East 71.29 feet; thence West 250.00 feet to the Point of Beginning, except for road right-of-ways in Section 34, T27N, R11W, Garfield Township, Grand Traverse County, Michigan (the "**Premises**").

2. Title Search

Our review of title to the Premises is based upon an abstract of title prepared by Petroleum Abstract & Title Service, Inc. of Traverse City, Michigan. It includes a search of title documents from December 1866 to October 5, 2006, but states that it does not include any mortgages, liens, minerals and leasehold matters or associated documents on file at the register of deeds office.

3. Map of the Premises

See attached map.

4. Fee Title Owner of the Premises

Jane Easling Elhart and the Marian J. Hubbell Trust, each an undivided 1/2 interest.

5. Assessment Status per Township Records

We contacted the Garfield Township Assessor's office and understand that the information shown on the Assessor's records reflects that little or no added value is attributed to the Premises for its water frontage. All of the maps which we received of the Premises show this property touching the water's edge of Boardman Pond, with water frontage along the Premises' western property line from the northern most part of the property down to the point at which the Keystone Subdivision begins where Lot 1 touches the water's edge.

6. Title History

The title history of the Premises which we received runs from December 1866 through October 5, 2006. The title history shows the northern portion of the Premises to border the waterfront of Boardman Pond. Title to the Boardman Pond bottomlands adjacent to the Premises is shown to be in Grand Traverse County.

7. Riparian Rights Appurtenant to the Premises

The Premises does not appear to be a riparian parcel of property. The title to the impounded bottomlands was conveyed to a predecessor electric company in two segments, one in 1930 and the other by conveyance made in 1895, and that title is now held by Grand Traverse County. A further review of the riparian aspects of the title history is set forth below.

(a) History of Title of Impounded Bottomlands

The sequence of events which leads to the title of the Boardman Pond impounded bottomlands being held by Grand Traverse County is generally as follows:

1. The early maps we have of Boardman River from the late 1800's and the written entries show the river in Section 34 to be surrounded by wetlands on both sides of the river and a certificate filed in 1880 lists 320 acres of this property as "swamp lands."

2. It appears that the original Boardman Pond dam was constructed in 1893 and 1894 by the Boardman River Electric Light & Power Company. This is the dam that created Boardman Pond. It appears that a second dam was built in 1906 which created Sabin Pond. A series of affidavits were prepared by employees of the Boardman River Electric Light & Power Company referencing the early history of the dams on the Boardman River in 1928. They reference the history of the dams back to the 1890's. The affidavits were not recorded until 1952.
3. In 1925 Boardman River Electric Light & Power Company conveyed its interests in the dams, and the property interests associated with the dams, to Northern Michigan Public Service Company.
4. In 1928 the Northern Michigan Public Service Company conveyed the dams, and the property interests associated with the dams, to Michigan Public Service Company.
5. In 1930 Michigan Public Service Company had a series of transactions with the owners of the Premises by the name of Emerson, in which the Michigan Public Service Company conveyed any interest it had in the upland of the Premises to the Emersons, and the Emersons conveyed all of their interest in the submerged real property of Boardman Pond bordering the upland of the Premises, to the Michigan Public Service Company.
6. In 1950 Michigan Public Service Company conveyed its interest in the dams, and the property interests associated with the dams, to Consumers Power Company.
7. In 1969 Consumers Power Company conveyed its interest in the dams, and the real property interests associated with the dams, to the County of Grand Traverse. The recital in the quit claim deed which makes the conveyance states that the age of the dams no longer justify their operation. In addition, it states that the County ". . . has an interest in the maintenance of said Dams and the preservation of said Dams and Reservoir Property for public recreational purposes, and for such public recreational purposes it desires that First Party convey to it said Dam and Reservoir Property." The property interests were conveyed ". . . in consideration of the proposed use of said Dam and Reservoir Property for public recreational purposes . . ." for \$1.
8. On July 22, 1980, Grand Traverse County granted an easement for light and power purposes to the Light & Power Board in the name of the City of Traverse City. The interest terminates upon the abandonment of the generating use by the Light & Power Board. As of that date, all of the easement rights and title conveyed by Grand Traverse County will revert to the County.

As a result of the conveyances in the 1930's between Michigan Public Service Company and the Emersons, it appears that title to the uplands and the submerged real property of Boardman Pond were separated. That separation places the title to the bottomlands that are currently under the impoundment in the name of Grand Traverse County, subject to the Light and Power Board use. The bottomlands, prior to the impoundment, ran to the water's edge of the Boardman River and therefore, under the common law, was riparian property. The electric company was granted the right to overflow the

Premises. Thereafter the Emersons conveyed away the title to the bottomland. Therefore, the owner of the Premises has no right to now claim title to the bottomland.

(b) **Potential Water Rights Claims of the Owner of the Premises**

The current owner of the Premises may claim the Emersons did not convey the Premises' riparian rights. The property still borders on the water's edge and, to our knowledge, has had unrestricted access to the water since the conveyances in 1930. Therefore, it is possible that the Emersons and subsequent owners of the Premises understood, expected and asserted riparian rights and intend to continue to do so with regard to Boardman Pond and, if the Pond were reduced to the natural watercourse of the river, along the river. The conveyance documents simply show a warranty deed conveying title without any statement of the conveyance's affect on riparian rights.

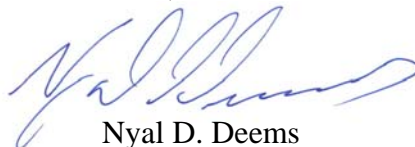
It may be that the 1930 conveyance will be found not to have terminated the Premises riparian rights, but that the title of the County is subject to riparian use by the Premises which cannot unreasonably interfere with the County's use of the bottomlands. In that event, the access to the water from the Premises will have to be over a limited easement right across the newly exposed upland owned by the County.

(c) **Obligation to Maintain Dams and Recreations Use**

A question may arise from the conveyance by Consumers Power Company to Grand Traverse County for the purpose of maintaining the dams and reservoir property for public recreational purposes. There is no indication that the County does not intend to maintain the property which it received in the 1969 conveyance for recreational purposes. However, it is doubtful that the receipt of a deed in this fashion mandates that the County keep the dams in place longer than the County believes is economically justified. It is also doubtful that the County is obligated to maintain the dams on the property for recreational purposes.

Sincerely,

VARNUM, RIDDERING, SCHMIDT & HOWLETT LLP



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