

Room 569, Fifth Floor,
Mowat Block, Queen's Park,
Toronto, Ontario. M7A 1A2

IN THE MATTER OF

The Lakes and Rivers Improvement Act;

AND IN THE MATTER OF

An application by Rudolph Adam for approval under The Lakes and Rivers Improvement Act of the location of a dam on an unnamed tributary of the Pine River on the west half of Lot 20, in Concession I of the Township of Tosorontio in the County of Simcoe.

REPORT TO THE MINISTER OF NATURAL RESOURCES

Pursuant to an appointment made by the Honourable Frank S. Miller, Minister of Natural Resources, on the 8th day of August, 1977 the undersigned has conducted an inquiry under The Lakes and Rivers Improvement Act in the above matter.

Mr. V. L. Freiden of the Ministry of the Attorney General appeared as counsel for the Ministry of Natural Resources. The landowner, Rudolph Adam, appeared in person.

The appointment indicated that the subject matter of the inquiry was the proposed refusal of the approval of the location of a proposed dam and the reasons given in the notice related to the construction of a bypass pond or an instream dam. It appeared during the hearing that the proposal of the landowner had changed and that he currently proposes merely to divert the river and to construct what could be referred to as a "dug pond" at the site of the originally proposed instream dam.

By reason of the nonrecognition or the misunderstanding of the change a great deal of the evidence related to the problems associated with the construction of either a bypass pond or an instream dam. This evidence will not be referred to as it appears to be irrelevant in view of the abandonment of the original proposal and submission of a request for approval of a diversion.

The applicant owns a ten-acre parcel of land consisting of a 400 foot strip extending 1,102 feet southerly from the 20th Side Road

in the Township of Tosorontio. He has owned this parcel approximately four years. He purchased the parcel as a site for a retirement home and has through his own labour constructed a house on the northerly part of the property at a location approximately 150 feet south of the road.

Approximately 50 feet south of the house there is a slope of six or eight feet that forms a bank of the floodplain of a tributary of the Pine River. This tributary flows in an easterly direction across the property in a location approximately 60 or 65 feet south of the slope.

While there were no adequate plans of the proposed route of the diversion the evidence indicated that shortly after the river enters the applicant's land, it curves toward the north for some distance and then curves toward the east continuing in a general easterly direction. The proposal of the applicant is to continue the bed of the river in the same direction that it enters his property allowing it to return to its original channel at a location approximately 100 feet westerly of the easterly boundary of the property. The diversion would be contained wholly within the boundaries of the applicant's property and by moving the bed of the river to a more southerly location the applicant will be able to excavate a pond measuring approximately 80 feet by 100 feet by 12 feet between the new bed and the slope. It was proposed that this pond would not be connected with the bed of the river and would be fed by surface drainage and water from the water table, which was said by the applicant to come to one foot of the surface of the ground at this location.

The site is situate within the Huronia Administrative District of the Ministry of Natural Resources. Richard Toth, the Fish and Wildlife Management Officer for the Ministry who has been employed in the area since 1961 on fish and wildlife matters gave evidence respecting the concerns of the ministry. These concerns arose from the principle that the construction of a dam could be detrimental to the fish population which in this river is primarily brook trout. He indicated that the waterway is relatively small, is between one and two feet in width and has a depth of approximately two to four inches. While the major part of his evidence related to problems of temperature

and obstructions and loss of water resulting from a bypass pond the witness indicated that there is a possibility of the destruction of spawning beds during construction as the tributary is fairly short, measuring approximately six miles, and the subject lands are approximately one mile or one and a half miles from the source. The number of spawning beds in the stream are limited and those that do exist can be destroyed by siltation resulting from construction. The soil in the floodplain is of an organic sand mix and accordingly was in the witness's view sufficiently unstable to create siltation problems on spawning beds downstream of the applicant's land.

It was brought out in cross-examination that there is a pond on the northerly side of the road dividing the townships of Tosorontio and Mulmur where the river crosses this road. This pond appears to be on the property immediately upstream from the applicant's property but on the opposite side of the road. The applicant suggested that in many summers and even in August, 1977 when there was heavy rainfall the river dried up above the existing pond and that any flow below this pond was dependent on the existence of the pond. The applicant raised some doubts as to whether there are any fish on his property as he had never seen a fisherman thereon during his period of ownership. The witness indicated that his checking of fishermen had occurred approximately one half mile downstream. Upon my questioning it appeared that there are no dams in the tributary immediately below the applicant's land.

The second witness for the ministry was Charles Lauer, a graduate biologist, who filed a report of his investigation of the river. As his investigation appears to have been based on the assumption that the proposal was for a bypass pond he took during his investigation soil samples at two locations on the subject lands but unfortunately these locations were on the existing bed and are not on the proposed new channel. At a site (No.3) on the existing channel at which it was understood the pond would be constructed, the witness found that the bottom is a soft mixture of sand and clay with no vegetation or algae growing on the bottom.

At a site (No.4) on the existing channel near the east boundary of the applicant's land and being in the vicinity of the place

where the proposed diversion may rejoin the existing channel, the witness reported that the bottom is sandy with some grass growing on the bottom. He found no algae at this location. It is noted that at this site he did not report on the presence of clay but otherwise his report was similar and included a finding that there is good cover of the stream with logs, grasses, weeds and cattails and trees.

With reference to fish populations in the tributary of the river the report indicates that two species of minnows were found but it did not confirm the existence of a brook trout population. However, there does not appear to be any reason why such a species would not inhabit the portion of the river owned by the applicant.

It appeared at the inquiry that the major concerns relating to temperature and loss of water quality were not at issue in this matter. The only concern is the matter of siltation which could result from the digging of a new channel which could create a risk of light soils such as clay and organic matter being carried downstream. There is some evidence of this being a reasonable possibility in that the location of the proposed site is in a floodplain which may have accumulated decomposed vegetation and that in some areas there is clay soil but there was no evidence to show that with appropriate plans and specifications these problems could not be evaded. I see no reason why the construction of the diversion could not be staged and stabilizing measures taken prior to the connection of the river to the diversion. With a diversion there may be a need not only for stabilization measures but also for erosion prevention measures particularly where the river rejoins the channel. However, these are matters of specifications and as the issue that was referred for inquiry was an approval under clause a of section 10 of The Lakes and Rivers Improvement Act rather than under clause b of that section I ought to direct my consideration to the question of whether the proposed location was in conflict with the achievement of the purposes of the Act. I was given no evidence that convinced me that it was improbable such purposes could not be achieved with the imposition of reasonable specifications. Accordingly, I recommend that the location of the proposed diversion be approved. Inherent in this recommendation is the

understanding that it will be necessary for the applicant to produce and have approved plans and specifications that are sufficient to ensure that the purposes of The Lakes and Rivers Improvement Act are provided for and nothing herein is intended to reflect on the extent of such specifications which should include a more precise definition of the site of the diversion as well as the steps to be taken in stabilization of the new channel and the installation of erosion prevention devices if necessary and appropriate shrubs or vegetation to support and protect the fish population.

In passing it was noted that the applicant professed to be interested in preserving the natural parts of the area and the fish and wildlife populations and he may even be interested in providing artificial spawning grounds. It is noted in the extract from 'Freshwater Fishes of Canada' which was filed as Exhibit 5 that brook trout spawn on gravel beds and the applicant may have some interest in creating gravel beds in the course of the completion of the diversion of the channel. It may also be interesting to note that while Mr. Toth in his evidence indicated that brook trout normally did not move more than one to one half miles in migration it was said in Exhibit 5 that "Mature fish may travel many miles upstream to reach the spawning grounds." Needless to say this would tend to strengthen the witness's evidence that the part of the river in question is important in perpetuating the fish resources of the river. However, there was nothing to indicate, that there are at the present time any spawning beds on the applicant's land of the nature referred to by the authors. There was evidence to show that the existing channel and its cover provide good habitat and steps by way of specifications, could be taken to preserve or recreate such habitat.

One also might note gratuitously that the lands fall within the jurisdiction of the Nottawasaga Valley Conservation Authority and that an approval of that authority to a diversion is required under the regulations administered by that authority. The concerns in connection with such an approval may not be coincidental with the concerns under The Lakes and Rivers Improvement Act. It may also be noted that I have not dealt with problems of "dug ponds". I am not aware that such a

pond comes within the purview of The Lakes and Rivers Improvement Act and the applicant may have to deal with other administrative bodies in connection with these problems such as the control of pollution, permits for the application of herbicides, etcetera.

DATED this 24th day of October, 1977.

Original signed by G.H. Ferguson

G. H. Ferguson.