

JOSH STEIN
ATTORNEY GENERAL



received
5/16/18 MK

REPLY TO: BONISHA R. CLARK
ENVIRONMENTAL DIVISION
TEL: (919)716-6970
FAX: (919)716-6766

2018 MAY 16 11:53

MOORE (May 7, 2018)

BY [Signature]

Michelle Ritter, Judicial Assistant
Superior Court of Moore County
Post Office Box 1957
Carthage, NC 28327

[Signature]
5/16/18

RE: NC DEQ, DEMLR v. Woodlake CC Corp., 18 CVS 497

Dear Ms. Ritter:

Enclosed please find the Consent Judgment in the above-captioned matter. Please forward it to Judge Webb. If the proposed Consent Judgment is granted, please return two file-stamped copies to me in the enclosed self-addressed, prepaid envelope.

If you have any questions or concerns, please contact me at (919)716-6970. Thank you for your assistance in this matter.

Sincerely,

Bonisha R. Clark

Bonisha R. Clark
NC Certified Paralegal

Enclosures

STATE OF NORTH CAROLINA
COUNTY OF MOORE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 497

2018 OCT 16 P 12:33

STATE OF NORTH CAROLINA, *ex rel.*,
MICHAEL REGAN, SECRETARY, NORTH
CAROLINA DEPARTMENT OF
ENVIRONMENTAL QUALITY, DIVISION
OF ENERGY, MINERAL & LAND
RESOURCES

Plaintiff,

v.

WOODLAKE CC CORP.,

Defendant

MOORE CO., C.S.C.

BY

CONSENT JUDGMENT

The North Carolina Department of Environmental Quality and Woodlake CC Corp. (“Parties”) hereby agree to the entry of this Consent Judgment in order to resolve the matter in controversy between the Parties.

The Court finds, with consent of the Parties, and makes the following:

FINDINGS OF FACT

1. The Plaintiff is the sovereign State of North Carolina. This action is being brought on the relation of Michael Regan, Secretary of the North Carolina Department of Environmental Quality (“DEQ” or “Plaintiff”), the State agency established pursuant to N.C. Gen. Stat. § 143B-279.1, *et seq.*, and vested with the statutory authority to enforce the State’s environmental laws, including the Dam Safety Law of 1967, N.C. Gen. Stat. § 143-215.23, *et seq.* (“Act”). The Division of Energy, Mineral and Land Resources (“DEMLR”) is a division within DEQ and all

actions taken by DEMLR are necessarily actions of the Plaintiff. The Environmental Management Commission (“EMC”) is an agency of the State established pursuant to the provisions of N.C. Gen. Stat. § 143B-282, *et seq.*

2. Defendant, Woodlake CC Corp. (“Defendant”) is a corporation registered in the State of North Carolina doing business in Moore County.

3. The Dam Safety Act of 1967 authorizes the EMC to “take such measures as may be essential to provide emergency protection to life and property” in dangerous situations. N.C. Gen. Stat. § 143-215.32. Pursuant to N.C. Admin. Code tit. 15A, r. 2K.0221, this authority has been delegated by the EMC to the Director of DEMLR. N.C. Admin. Code tit. 15A, r. 2K.0302(c) authorizes the Director of the DEMLR to take emergency measures when the condition of a dam threatens life or property and to recover the costs of such measures from the owners of the dam. The Act also provides that the EMC “may recover the costs of such measures from the owner or owners by appropriate legal action.” N.C. Gen. Stat. § 143-215.32(c).

4. The purpose of the Dam Safety Act of 1967 is to “provide for the certification and inspection of dams in the interest of public health, safety, and welfare, in order to reduce the risk of failure of dams; to prevent injuries to persons, damage to downstream property and loss of reservoir storage; and to ensure maintenance of minimum stream flows of adequate quantity and quality below dams.” N.C. Gen. Stat. § 143-215.24.

5. Defendant owns Woodlake Dam (“Dam”) in Moore County, North Carolina, located approximately 2,450 feet northwest of the intersection of Lobelia Road (SR 690) and McGill Road (SR 2017) in Moore County. The Dam is approximately twenty-three (23) feet high and has an impoundment capacity of approximately 10,000 acre-feet at the top of the Dam.

According to the Moore County Register of Deeds, the deed to the properties on which the Dam is located can be found in Deed Book 4496, Page 287, identified as the Woodlake County Club, also known as the “BHF Collateral”.

6. The Dam is classified as “high hazard” because failure of the Dam could pose a threat to human life and property downstream. A breach of the Dam will likely cause serious damage to downstream single-family residences at 3862 Lobelia Road and 1484, 1492, and 1494 McGill Road, as well as State Road 690 (Lobelia Road) and State Road 2017 (McGill Road). State Road 690 is a public roadway with a traffic count of approximately 4,000 vehicles per day. State Road 2017 is a public roadway with a traffic count of approximately 330 vehicles per day.

7. The Dam has a long history of regulatory enforcement actions.

8. On January 27, 2017, the State initiated an action for injunctive relief in Moore County Superior Court (File No. 17 CVS 82). The Parties agreed to a Consent Judgment entered March 15, 2017, before the Honorable James *M*, Webb, Superior Court Judge, that ordered Defendant to repair the dam.

9. Defendant failed to comply with all of the terms of the Consent Judgment. The construction to repair the dam began but ceased due to non-payment to the engineer of record by Defendant.

10. On June 9, 2017, DEMLR notified Defendant that in order to provide emergency protection to life and property downstream of the Dam, it would take measures which included but were not limited to temporarily fully breaching the Dam.

11. Pursuant to N.C. Gen. Stat. § 143-215.32(c), the State initiated this action by filing a verified Complaint with exhibits attached thereto in Moore County Superior Court, seeking

reimbursement of the total expenditures allocated in the amount of one million one hundred forty-one thousand two hundred twenty-five dollars and fifty-six cents (\$1,141,225.56) to breach the dam owned by Defendant.

STIPULATIONS

12. The Parties agree that this Consent Judgment may be signed out-of-court, out-of-term, out-of-county and out-of-district.

13. The parties agree that this Consent Judgment is entered into knowingly and voluntarily upon execution by the undersigned, who represent and warrant that they are authorized to execute this Consent Judgment on behalf of the parties hereto.

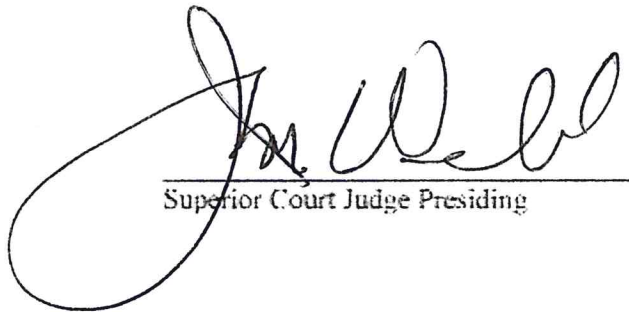
CONCLUSIONS OF LAW

NOW THEREFORE, upon the consent of the Parties, it is hereby ORDERED, ADJUDGED AND DECREED that:

- A. This Court has personal jurisdiction over the Parties and subject matter jurisdiction over the controversy. The Complaint states a claim upon which relief can be granted. Defendant is the owner of the Dam.
- B. Defendant is indebted to Plaintiff in the amount of one million one hundred forty-one thousand two hundred twenty-five dollars and fifty-six cents (\$1,141,225.56), and any other additional costs which may be associated with the emergency breach of the Dam, plus interest at the legal rate from the date of the complaint, without setoff or counterclaim, and court costs.
- C. This Consent Judgment is due and payable immediately, and may be enforced by Plaintiff pursuant to any applicable law.

- D. This Consent Judgment shall have the same effect as other judgments, and the contempt provisions of Article 2, Chapter 5A of the North Carolina General Statutes shall be available to enforce this Consent Judgment.
- E. Grant such other and further relief as this Court deems just and proper.

Entered this the 16th day of MAY, 2018.

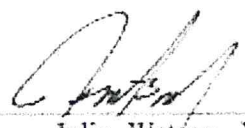


Superior Court Judge Presiding

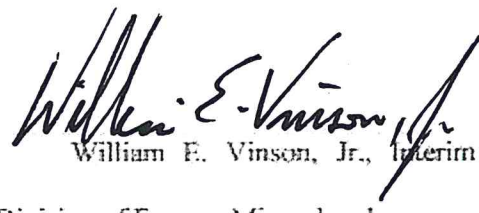
WE CONSENT:

WOODLAKE CC CORP.

NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY

By: 

Julie Watson, Vice President
Director
Woodlake CC Corp.

By: 

William E. Vinson, Jr., Interim
Division of Energy, Mineral and
Land Resources.