

COMMONWEALTH OF KENTUCKY
HOPKINS CIRCUIT COURT, DIV. 1
MADISONVILLE, KENTUCKY 42431
CIVIL ACTION NO. _____

Electronically Filed

ENERGY AND ENVIRONMENT CABINET

PETITIONER

vs.

COMPLAINT

OTTER LAKE PROPERTY OWNERS ASSOCIATION,

HOPKINS COUNTY FISCAL COURT,

CHRISTOPHER PEERS, and

ZZZ'S ANESTHESIA, LLC

RESPONDENTS

SERVE VIA
CERTIFIED MAIL: Otter Lake Property Owners Association
c/o Ronald J. Segebarth, Registered Agent
1185 Otter Lake Loop
Hanson, KY 42413

Hopkins County Fiscal Court
Hon. Jack Whitfield, Jr., Judge Executive
56 North Main Street
Madisonville, KY 42431

Mr. Christopher Peers
23 Avenida Fiori
Henderson, NV 89011

ZZZ's Anesthesia, LLC
Ms. Tina Woodcock, Registered Agent
9804 Brownsville Rd.
Morgantown, KY 42261

Comes the Petitioner, the Energy and Environment Cabinet of the Commonwealth of Kentucky (the "Cabinet"), by counsel, and alleges as follows for its cause of action and request for formal hearing:

BACKGROUND

This case concerns a high hazard dam located in the Otter Lake Estates subdivision in Hanson, Hopkins County, KY. In the 1980's, Corum & Company developed a neighborhood known as Otter Lake Estates around the dam's reservoir. Since that time, no one has taken responsibility for maintaining or repairing the dam. Dam Safety inspectors have assessed the Dam to be in poor condition for many years, causing significant concern about its stability and integrity and the threat it poses to people living downstream. By bringing this matter to Hopkins Circuit Court, the Cabinet seeks to finally settle all disputes about ownership of the dam and compel the owner(s) to bring the dam into compliance with Kentucky's Dam Safety statute in KRS Chapter 151. Pending resolution of this case, the Cabinet is seeking an injunction requiring the reservoir to be drawn down to reduce the risk of failure and, in the event of failure, alleviate the hazard posed to the citizens of Hopkins County living in the dam's inundation zone.

PARTIES

1. The Cabinet is charged with the duty of protecting public health and the environment pursuant to KRS Chapter 151 and the regulations promulgated pursuant thereto.
2. **Otter Lake Dam** (Dam ID. KY0858) is a high hazard dam situated in the Otter Lake Estates Subdivision (the "Subdivision") in Hanson, Hopkins County, Kentucky (the "Dam"). Constructed in 1959, the Dam is an earth embankment dam, twenty-eight (28) feet high from the natural bed of the watercourse and impounding approximately six hundred ninety-five (695) acre-feet of water. The primary purpose of the Dam is recreation. A copy of a satellite image showing the Dam's approximate boundaries in red is attached hereto as **Exhibit 1**.
3. The Dam is classified as high hazard because its failure may cause loss of life or serious damage to houses, industrial or commercial buildings, important public utilities, main

highways, or major railroads. Approximately nine residences, several county roads, and Interstate 69 are in the Dam's inundation zone. A true and accurate copy of the most recent Inundation map for the Dam is attached hereto as **Exhibit 2**.¹ A true and accurate copy of a map of parcels surrounding the Dam labeled with owners' names is attached hereto as **Exhibit 3**.

4. The Subdivision began developing in the mid- to late-1970's when Corum and Company, Inc. divided the property into parcels and subjected those parcels to a restrictive covenant (the "Restrictions") as they were sold to individuals. The Restrictions is attached hereto as **Exhibit 4**.

5. Paragraph 13 of the Restrictions established an association of property owners "whose membership shall consist of all persons owning lots sold by Corum and Company, Inc. from the tract of land conveyed by Otto and Martha Corum by deed dated October 1, 1975." This paragraph also required each landowner to pay an annual fee of \$10 "or such other assessment" as set by a 2/3 majority of the owners, and delegated to the association the authority to assess fees against the property owners "for the purpose of maintaining, repairing and rebuilding the lake and lake area..." See Exhibit 4.

6. The Respondent, **Otter Lake Property Owners Association** (the "POA"), is the property owners association established pursuant to Paragraph 13 of the Restrictions. The POA is a Kentucky nonprofit corporation incorporated in 1984 by Ronald J. Segebarth ("Segebarth"), for the purpose of "organiz[ing] the residents of Otter Lake so that the residents can take *whatever action is necessary* to...increase the *use, control* and enjoyment of Otter Lake." Emphasis added. A true and accurate copy of the POA's Certificate of Incorporation with Articles of Incorporation is attached hereto as **Exhibit 5**.

¹ The red dots on Exhibit 2 show the placement of buildings within the inundation zone, which is outlined and cross-hatched in blue.

7. According to the Secretary of State's website, the address for service of process upon the POA is 1185 Otter Lake Loop, Hanson, KY 42413. A true and accurate copy of the Business Organizations listing for the POA showing the address for service of process upon the POA's registered agent is attached hereto as **Exhibit 6**.

8. According to the Hopkins County Property Valuation Administrator, the POA owns Parcel Number OTTR-1-3-51 (See Exhibit 3), which is located at the north end of Otter Lake Dam, and the Lake itself. The POA's parcel includes part of the Dam. The Deed for this Parcel is attached hereto as **Exhibit 7**.

9. On February 20, 2019, Segebarth filed Articles of Voluntary Dissolution for the POA. The POA is currently inactive and in good standing with the Secretary of State. The POA's Articles of Voluntary Dissolution are attached hereto as **Exhibit 8**.

10. Under KRS 273.302, the dissolution of a corporation does not transfer title to the corporation's property, prevent the commencement of a proceeding against it, nor terminate the authority of the registered agent of the corporation.

11. The Respondent, **Hopkins County Fiscal Court** ("Hopkins County"), is the fiscal court responsible for approving the budget and voting on all fiscal matters in Hopkins County, including maintenance of county roads. The address for Hopkins County is 56 N. Main St., Madisonville, KY 42431. As of the date of filing of this Complaint, the Judge Executive for Hopkins County is Jack Whitfield, Jr.

12. Otter Lake Loop is a county-owned road off Stagecoach Road in Madisonville, KY that crosses over the crest of the dam and circles the reservoir.

13. The Respondent, **Christopher Peers** ("Peers"), is a Nevada resident whose address is 23 Avenida Fiori, Henderson, Nevada.

14. Mr. Peers owns Parcel Number MAP-76-30G-2-1 (See Exhibit 3), located on the east side of Otter Lake Loop across from the lake and encompassing the downstream slope of the Dam. The Deed for the Property owned by Mr. Peers is attached hereto as **Exhibit 9**.

15. The Respondent, **ZZZ's Anesthesia, LLC** ("ZZZs"), is a single-member Kentucky Limited Liability Company established in 2014 whose principal business address is 9908 Brownsville Road, Morgantown, KY 42261. The sole member, manager, and registered agent for ZZZ's is Tina Woodcock ("Ms. Woodcock"). The address for service of process for ZZZ's is 9804 Brownsville Road, Morgantown, KY 42261. A true and accurate copy of the Business Organizations listing for ZZZ's is attached hereto as **Exhibit 10**.

16. ZZZ's is the owner of record of Parcel Number MAP-76-30G-2 (See Exhibit 3), which encompasses the principal spillway for the Dam. The Deed for the parcel owned by ZZZ's is attached hereto as **Exhibit 11**.

17. KRS 151.100(19) defines the owner of a dam as "any person who owns an interest in, controls, or operates a dam." A "dam," for the purposes of KRS Chapter 151, is "any artificial barrier, including appurtenant works, which does or can impound or divert water, and which either" is 25' high from the natural bed at the downstream toe or has an impounding capacity of 50 acre-feet or more. KRS 151.100(12).

18. The Defendants named in this action have disputed their ownership of the Dam for over twenty (20) years and have not made any discernible progress in resolving the dispute or in complying with the conditions placed on the Certificates of Inspection for the Dam.

19. Because the Dam is located within Hopkins County, jurisdiction is vested in the Hopkins Circuit Court by KRS 151.186.

DAM INSPECTIONS AND VIOLATIONS

20. The Cabinet's records relating to the Dam date back as far as On March 5, 2018, authorized personnel from the Cabinet's Dam Safety Section ("Dam Safety") conducted an inspection of the Dam and noted a "[s]lide at right end of dam ... 20 feet wide and 30 inches deep at the top." In addition, the inspectors noted seepage at the toe of the Dam between the drawdown vault and the embankment and determined that the Dam was hydraulically insufficient.² The overall condition of the Dam was noted to be POOR due to maintenance and hydraulic deficiencies.³ A true and accurate copy of the March 5, 2018 Certificate of Inspection ("COI") is attached hereto as **Exhibit 12**.

21. At the time, Dam Safety had limited information about ownership of the Dam, so the March 5, 2018 COI was issued to Defendants Peers and Hopkins County on April 17, 2018. The cover letter included instructions to perform the following remedial actions:

- a. Repair the downstream slope failure as designed and supervised by a registered professional engineer familiar with dams and approved by the Division of Water by May 31, 2018;
- b. By June 30, 2018, submit a proposal and schedule to upgrade the Dam to meet the minimum hydraulic requirements;

² A hydraulically deficient high hazard dam is one that fails to meet the requirement, as established in 401 KAR 4:030 Section 3, of safely passing or storing the runoff from a 6 hour Probable Maximum Precipitation rainfall event. In Hopkins County, this means high hazard dams must be capable of storing or safely passing 28.6 inches of rainfall in 6 hours. If a dam is incapable of meeting this requirement, the water will overtop the embankment of the dam, causing it to erode and likely breach. Otter Lake Dam #1 is only capable of safely passing or storing runoff from 17 inches of rainfall in 6 hours.

³ The primary threats to a dam's stability and integrity are overtopping and seeping, both of which cause accelerating and unstoppable erosion resulting in dam failure.

- c. Evaluate and remediate the seepage at the toe under the supervision of a registered professional engineer, including removing all stumps and filling the resulting voids;
- d. Clear all debris from the principal spillway; and
- e. Remove all brush and trees from the downstream slope and establish a good grass cover.

A true and accurate copy of the cover letter sent to Hopkins County is attached hereto as **Exhibit 13**. An identical letter was sent to Peers.

22. On May 25, 2018, C. Frank Williams, Professional Engineer, of Ronald Johnson & Associates, P.S.C. ("RJA"), sent a letter on behalf of Hopkins County to Glen Alexander, Dam Safety Section Supervising Engineer ("Alexander"), indicating:

- a. the repairs to the downstream slope would be completed by June 30 (the March 5, 2018 COI required completion by May 31, 2018; see Para. 23a. above);
- b. a proposal for addressing the hydraulic deficiency of the Dam would be submitted to the Cabinet by June 30, 2018;
- c. a plan and schedule for monitoring and remediating the seepage would be submitted by June 30, 2018; and
- d. a plan for removing all remaining tree stumps from the embankment would be submitted by June 30, 2018.

A true and accurate copy of the May 25, 2018 RJA Letter is attached hereto as **Exhibit 14**.

25. On June 22, 2018, RJA requested by email a 30-day extension to submit a plan of repair for the Dam because "due to the cost of repairs," the County would be reaching out to the

POA to see if they could work out “a possible cost share solution.” The Cabinet granted the extension to July 31, 2022. A true and accurate copy of this extension request email chain is attached hereto as **Exhibit 15**.

26. On July 18, 2018, an attorney for Hopkins County requested an extension to August 31, 2018 because “the ownership of the dam is in issue with the county and the Otter Lake Home Owners Association” (sic) and the County need to “ascertain ownership and whether the county has any legal ownership of the dam.” A true and accurate copy of the July 18, 2018 email is attached hereto as **Exhibit 16**.

27. On July 23, 2018, the Cabinet received a letter from the registered agent for the POA, Ronald Segebarth (“Segebarth”), dated July 17, 2018, acknowledging the deed restrictions for the Subdivision’s property owners “do include a provision for the maintenance of the lake and the dam” and requesting another 30-day extension for the repairs due to “the problem of identifying the ownership for the responsibility of” repairs to the Dam. A true and accurate copy of the July 17, 2018 Segebarth Letter is attached hereto as **Exhibit 17**.

28. The extension was granted with a warning that “this is the second extension and as such the [August 31, 2018] deadline is final.” See Alexander’s email reply dated July 24, 2018 in Exhibit 16.

29. On September 4, 2018, the Cabinet received a letter dated August 29, 2018 from counsel for the POA, Joe A. Evans, III, denying the POA’s ownership of the Dam or its reservoir. Mr. Evans indicated Hopkins County had requested an Opinion of the Attorney General “as to whether public funds may be utilized to repair the dam pursuant to the county’s inherent police power authorizing it to take steps to protect the public.” A true and accurate copy of the Aug. 29, 2018 POA Letter is attached hereto as **Exhibit 18**.

30. On October 5, 2018, the Attorney General issued Opinion Letter OAG 18-014 (the "Opinion") in response to the Hopkins County inquiry of September 4, 2018, finding that "[t]he Fiscal Court must repair the dam to the extent the damage is in its right-of-way and is a hazard to traffic, and the Fiscal Court may also repair the dam in other circumstances using public funds pursuant to KRS 67.080 and 67.083." The Opinion did not make any determination as to the ownership of the Dam, relying instead on facts presented by Hopkins County in its request. A true and accurate copy of the Opinion is attached hereto as **Exhibit 19**.

31. On October 11, 2018, Dam Safety inspectors conducted a follow-up inspection of the Dam and noted that no work had been done to correct the deficiencies identified in the March 5, 2018 COI that were initially required to be remediated by June 30, 2018, then extended to July 31, 2018, then extended to August 31, 2018. The seepage at the toe of the Dam remained, as did the brush, trees, and stumps previously noted. A true and accurate copy of the October 11, 2018 COI and accompanying photos are attached hereto as **Exhibit 20**.

32. On December 20, 2018, the Cabinet received a letter from the POA dated December 14, 2018, informing the Cabinet the POA held a special meeting on December 11, 2018 to discuss the issues with the Dam and indicating an additional meeting would be held in January 2019 "to address the dam repair issues." A true and accurate copy of the Dec. 14, 2019 POA Letter is attached hereto as **Exhibit 21**.

33. Without informing the Cabinet, on February 20, 2019, Segebarth filed Articles of Voluntary Dissolution for the POA. *See* Exhibit 8.

34. On April 9, 2019, more than seven (7) months after the second and final extended compliance deadline of August 31, 2018, on behalf of the County licensed professional engineer

C. F. Williams submitted drawings to repair the slide on the downstream slope of the Dam. The repair plan was approved by the Cabinet.

35. On July 18, 2019, Dam Safety personnel conducted a follow-up inspection of the Dam and noted the slide had been repaired and the area properly seeded, almost ten (10) months past the second extended deadline. However, the rest of the slope remained overgrown with tall weeds, briars, and saplings, with trees encroaching on the toe and several tree stumps remaining. The seep at the toe between the drawdown vault and the embankment also remained and the Dam remained hydraulically insufficient. The overall condition of the Dam was still POOR. A true and accurate copy of the July 18, 2019 COI is attached hereto as **Exhibit 22**.

36. The July 18, 2019 COI was sent to Defendant Peers, owner of the downstream slope of the Dam, on July 29, 2019, directing him to perform the following remedial actions by October 31, 2019:

- a. Submit a proposal and schedule to upgrade the Dam to meet the minimum hydraulic requirements;
- b. Evaluate and remediate the seepage at the toe under the supervision of a registered professional engineer, including removing all stumps and filling the resulting voids;
- c. Remove all brush and trees from the downstream slope and establish a good grass cover.

A true and accurate copy of the July 29, 2019 cover letter to Peers is attached hereto as **Exhibit 23**.

37. On June 25, 2020, Dam Safety personnel conducted an annual inspection of the Dam. Inspectors visually observed small and medium animal burrows on the upstream slope of

the Dam, medium animal burrows and trees and overgrown vegetation on the downstream slope, a dam of debris in the spillway inlet, and overgrown vegetation around the drawdown valve. Inspectors again noted the Dam fails to meet the minimum hydraulic requirements for high hazard dams in Hopkins County. A true and accurate copy of the June 25, 2020 COI is attached hereto as **Exhibit 24**.

38. The June 25, 2020 COI was issued to all four Defendants on October 2, 2020, directing them to submit a Corrective Action Plan (“CAP”) no later than June 30, 2021 (i.e., within nine months) to address the hydraulic deficiency of the Dam and including an Emergency Action Plan (“EAP”). Defendants were also directed to perform the following remedial repair and maintenance actions by December 31, 2020:

- a. Fill and compact all animal burrows;
- b. Trim overgrown vegetation and trees on the downstream slope and around the drawdown system;
- c. Inspect the drawdown valve for operation prior to testing and then test it; and
- d. Remove the beaver dam in the spillway inlet channel.

A true and accurate copy of the October 22, 2020 cover letter is attached hereto as **Exhibit 25**.

A letter with identical directions was sent to each of the Defendants.

39. On November 24, 2020, the Assistant Hopkins County Attorney sent a letter to the Director of the Division of Water requesting an extension of the December 31, 2020 deadline given the “complicated history in regards to the true owner of the property and its structural integrity,” the COVID 19 pandemic, and winter weather. A true and accurate copy of the November 24, 2020, Extension Request from the County is attached hereto as **Exhibit 26**.

40. Although the ownership dispute had been used for more than twenty years as an excuse to delay work on the dam, because of the unusual circumstance of the pandemic the Cabinet granted an extension for completion of all remedial measures to June 30, 2021. A true and accurate copy of the December 15, 2021 letter from Dam Safety Section Supervising Engineer Glen Alexander granting the extension is attached hereto as **Exhibit 27**.

41. On May 13, 2021, authorized personnel conducted an annual inspection of the Dam. The inspectors visually observed bare patches where the slide on the downstream slope had been repaired; remnants of old stumps, wave action erosion, and a small slip or rut on the upstream slope of the Dam; trees growing across the downstream slope, a saturated area at the toe left of the drawdown valve, and erosion in the left groin. Inspectors again noted the Dam fails to meet the minimum hydraulic requirements for high hazard dams in Hopkins County. The county road across the crest of the Dam visually appeared to be in good condition. A true and accurate copy of the May 13, 2021 COI is attached hereto as **Exhibit 28**.

42. The May 13, 2021 COI was sent to all four Defendants on June 8, 2021, with instructions to:

- a. Upgrade the Dam to meet the minimum design requirements for high hazard dams, specified in 401 KAR 4:030;
- b. Remove all trees from the downstream slope of the Dam, under the supervision of a registered Professional Engineer if any tree is larger than six inches in diameter;
- c. Have a licenses professional engineer conduct a complete Geotechnical and Stability Analysis of the Dam, as required under 401 KAR 4:030 Section 10 and pursuant to the guidelines in 401 KAR 4:200 Section 2;

- d. Reseed bare areas as needed to maintain a good grass cover;
- e. Repair all erosion damage;
- f. Remove debris from the principal spillway inlet channel; and
- g. Inspect and operate the drawdown system, repairing or replacing the drawdown valve if necessary.

The accompanying cover letter notified the Defendants that due to the serious and recurring nature of the violations, in conjunction with the persistence and types of deficiencies in the Dam “causing significant concerns with the safety and stability of the dam,” the matter was being referred to the Division of Enforcement and Compliance Assistance (“DECA”)⁴ for a Notice of Violation (“NOV”) and formal enforcement action. A true and accurate copy of the June 8, 2021 cover letter sent to each of the four Defendants with the May 13, 2021 COI is attached hereto as **Exhibit 29**.

43. In spite of having been given a full year to produce them, the Defendants failed to submit either a Corrective Action Plan or an Emergency Action Plan for the Dam by the extended deadline of June 30, 2021. *See* Para. 28 herein.

44. On July 6, 2021, the Cabinet received an email message from Hopkins County Judge Executive, Jack Whitfield, indicating the Fiscal Court’s reluctance to “do any work not on our right of way” for fear doing so would set a precedent for holding the County responsible not only for KY00858 but “other privately owned lakes in the county.” Mr. Whitfield indicated progress was being made but acknowledged it was very slow. A true and accurate copy of Mr. Whitfield’s July 6, 2021 email message is attached hereto as **Exhibit 30**.

⁴ Prior to 2022, this division’s name was Division of Enforcement.

45. On August 4, 2021, DECA issued an NOV to all Defendants, citing the following violations:

- a. KRS 151.297(1) for failing to comply with the Cabinet directives in the Certificates of Inspection issued on March 5, 2018; July 29, 2019; September 25, 2020; and June 8, 2021 [4 counts]; and
- b. 401 KAR 4:030 Section 3 for failing to bring the dam into compliance with minimum hydraulic requirements for a high hazard dam in Hopkins County.

A true and accurate copy of the August 5, 2021 NOV is attached hereto as **Exhibit 31**.

46. The August 5, 2021 NOV directed the Defendants to submit a Corrective Action Plan no later than November 30, 2021, including the following remedial measures:

- a. Bringing the dam into hydraulic compliance;
- b. Performing a geotechnical and stability analysis;
- c. Inspecting and testing the drawdown system;
- d. Removing trees on the Dam;
- e. Establishing a good grass cover after the above remedial measures are complete.

The NOV also directed Defendants to perform all other remedial measures for all other deficiencies identified on the COIs.

47. On August 27, 2021, Ms. Woodcock sent a letter to the Cabinet denying Defendant ZZZ's ownership of any part of the Dam. A true and accurate copy of the August 27, 2021 Woodcock Letter is attached hereto as **Exhibit 32**.

48. Also on August 27, 2021, Defendant Peers responded to the August 4, 2021 NOV by e-mail to Marlon Bascombe in DECA. Peers indicated he had received the NOV and had been in communication with the other Defendants. He indicated he appreciated being involved in communications with the Cabinet but did not provide any assurance that progress would be or was being made to bring the Dam into compliance with dam safety regulations. A true and accurate copy of the e-mail message from Mr. Peers is attached hereto as **Exhibit 33**.

49. On December 2, 2021, at the request of DECA, senior Dam Safety inspector Marilyn Thomas inspected the Dam to determine whether the remedial measures to be completed by November 30, 2021 pursuant to the August 4, 2021 NOV had been performed. They had not. The inspector noted that trees remained on or near the toe and left abutment of the Dam; stumps had not been removed from previous cutting; the slope was overgrown with a dense cover of tall weeds and briars; bushes and saplings remained on the slope; the erosion gully along the left abutment had not been repaired; saplings and weeds remained around the drawdown pit; and there was no evidence that the drawdown had been repaired or operated. The inspector also noted that although debris had been removed from the principal spillway, sediment continued to accumulate in the channel, narrowing the spillway and encouraging the growth of weeds. A true and accurate copy of the December 2, 2021 Inspection Report and accompanying photos is attached hereto as **Exhibit 34**.

50. No CAP or EAP was submitted to the Cabinet by any of the Defendants by the November 30, 2021 deadline.

51. On December 15, 2021, Frank Williams ("Mr. Williams") with the engineering firm Ronald Johnson & Associates, P.S.C. ("RJA") sent a letter to Dam Safety Section

Supervising Engineer, Glen Alexander, on behalf of Hopkins County. The letter indicated the following remedial actions would be or had been taken:

- a. All animal burrows would be filled and compacted by May 1, 202[1].⁵
- b. Overgrown vegetation and trees on the downstream slope and drawdown system had been trimmed.
- c. The beaver dam in the spillway inlet channel had been removed.
- d. The drawdown valve was inspected and RJA determined that “if opened, it would not be able to close completely.” The letter indicated the intention to replace the valve but did not propose a completion date.
- e. A hydraulic analysis was completed and RJA proposed to address the hydraulic deficiency of the Dam by replacing the corrugated metal culvert principal spillway with two concrete box culverts. No completion date was proposed.

RJA requested an extension to June 30, 2022 to submit a CAP. A true and accurate copy of the December 16, 2021 RJA Letter is attached hereto as **Exhibit 35**.

52. On December 21, 2021, Glen Alexander notified Mr. Williams and the Hopkins County Judge Executive by email that the matter had been referred to DECA and indicated that any timeline for compliance would have to be established with DECA. No extension of compliance deadlines was granted. A true and accurate copy of the email exchange between the Hopkins County representatives and Alexander is attached hereto as **Exhibit 36**.

⁵ The letter, dated December 2, 2021, contained what the Cabinet believes was a typographical error indicating the animal burrows would be filled and compacted by May 1, 2020 instead of 2021.

53. On June 28, 2022, DECA issued a letter to the four Defendants scheduling a telephonic Administrative Conference with DECA and all four Defendants on July 18, 2022 for the purpose of attempting to resolve the issues with the Dam.

54. In attendance on the July 18, 2022 conference call were Hopkins County Judge Executive Jack Whitfield, Hopkins County Magistrate Ronnie Noel, Tina Woodcock for ZZZ's, and Ronald Segebarth for the POA. Defendant Christopher Peers did not participate in the conference call. Parties on the call contested ownership of the Dam and no progress was made toward compliance. As a result, DECA referred the case for further legal action by the Cabinet's Office of Legal Services.

55. On September 12, 2022, Dam Safety Section engineers attempted to inspect the Dam. In the inspection report they noted the upstream slope was too overgrown to properly inspect and a vehicle had been used to drag dead tree onto the left abutment, leaving deep tracks in the dam's surface. Similarly, the downstream slope could not be inspected due to "a dense cover of tall weeds, briars, and brush." The principal spillway was likewise overgrown with weeds and tree saplings. And the drawdown system could not be evaluated because of the persistent overgrowth of vegetation. In short, no part of the Dam could be properly inspected as a result of persistent neglect. In addition, the Dam remains hydraulically deficient for a high hazard dam. A copy of the COI and an identical cover letter was sent to each of the four Defendants. A true and accurate copy of the September 12, 2022 COI is attached hereto as **Exhibit 37**. A copy of the cover letter accompanying the Sept. 12, 2022 COI is attached hereto as **Exhibit 38**.

56. An NOV was issued to the Defendants on November 22, 2022, citing the following violations:

- a. KRS 151.297(1) for failing to comply with the conditions in Certificate of Inspection issued on July 31, 2013; March 5, 2018; June 18, 2019; June 25, 2020; May 13, 2021; June 30, 2021; December 2, 2021; and September 12, 2022;
- b. 401 KAR 4:030 Section 3 for failing to comply with the standards for high hazard dams as set forth in Division of Water Engineering Memorandum No. 5; and
- c. 401 KAR 4:030 Section 10 for failing to complete subsurface investigation and soil analysis and allowing signs of instability in the form of slides and slumps.

The November 22, 2022 NOV gave the Defendants to December 31, 2022 to comply with the conditions in the identified COIs and to submit an Emergency Action Plan to provide critical guidance in the event of an emergency at the dam, and until January 31, 2023 to submit a corrective action plan for bringing the dam into compliance. A true and accurate copy of the November 22, 2022 NOV is attached hereto as **Exhibit 39**. A copy of the cover letter accompanying the November 22, 2022 NOV is attached hereto as **Exhibit 40**. An identical letter was sent to each of the four Defendants.

57. As of the date of this Complaint, none of the Defendants has submitted either a Corrective Action Plan or an Emergency Action Plan. The Dam remains in POOR condition and continues to deteriorate due to a lack of maintenance and repair. It does not meet the hydraulic capacity requirements for high hazard dams. The combination of neglect and hydraulic insufficiency makes Otter Lake Dam #1 a significant risk to the lives and property of Hopkins County residents.

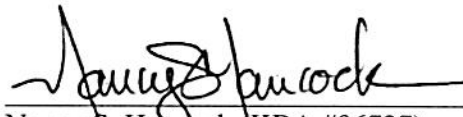
58. Pursuant to KRS 151.990(1), each failure to comply with a Certificate of Inspection is subject to a civil penalty of up to one thousand dollars (\$1,000) per day while the violation continues. The Defendants have failed to comply with Certificates of Inspection by failing to bring the Dam into hydraulic compliance: Hopkins County and Peers have failed to comply since April 17, 2018; all four Defendants have failed to comply since June 25, 2020.

WHEREFORE, the Cabinet respectfully requests that it be granted the following relief against the Defendants, Otter Lake Property Owners Association, Hopkins County Fiscal Court, Christopher Peers, and ZZZ's Anesthesia, LLC:

1. Hopkins County, Christopher Peers, and the Otter Lake Property Owners Association be adjudged to be in violation of:
 - a. KRS 151.297(1) for failing to comply with the Cabinet directives in the Certificates of Inspection issued on March 5, 2018; July 29, 2019; September 25, 2020; June 8, 2021; December 2, 2021; and September 12, 2022;
 - b. 401 KAR 4:030 Section 3 for failing to bring the dam into compliance with minimum hydraulic requirements for a high hazard dam in Hopkins County; and
 - c. 401 KAR 4:030 Section 10 for failing to conduct a complete subsurface investigation and soil analysis.
2. ZZZ's Anesthesia, LLC be adjudged to be in violation of:
 - a. KRS 151.297(1) for failing to comply with the Cabinet directives in the Certificates of Inspection issued on June 8, 2021; December 2, 2021; and September 12, 2022;

- b. 401 KAR 4:030 Section 3 for failing to bring the dam into compliance with minimum hydraulic requirements for a high hazard dam in Hopkins County; and
 - c. 401 KAR 4:030 Section 10 for failing to conduct a complete subsurface investigation and soil analysis.
- 3. The Defendants be ordered to immediately begin emptying the reservoir at a rate not to exceed six (6) inches per day and continuing until the reservoir is empty;
- 4. The Defendants be ordered to, within thirty (30) days of judgment in this case:
 - a. Provide slope protection on the upstream slope to prevent erosion;
 - b. Repair joints and cracks in the spillway channel;
 - c. Remove burrowing animals from the structure and fill in holes and dens; and
 - d. Submit a Corrective Action for bringing the Dam into compliance with KRS Chapter 151 and the regulations promulgated pursuant thereto.
- 5. The Defendants be ordered, jointly and severally, to pay a civil penalty of one thousand dollars (\$1,000) per day per violation, pursuant to KRS 151.990(1).
- 6. the Cabinet be awarded all other relief to which it is entitled.

Respectfully submitted,
ENERGY AND ENVIRONMENT CABINET



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