

DRAFT MEETING NOTES

MDEQ CONSULTATION MEETING
February 29, 2016, 9:00AM
MDEQ Southeast Michigan District Office

Attendance:

Dale Stuart, Oakland Township Manager
Mike Bailey, Oakland Township Trustee
Marty Boote, ECT
Andy Hartz, MDEQ
Pat Durack, MDEQ
Karyn Green, MDEQ

Andy Lebaron (MDEQ) was a planned participant via teleconference, but Marty and Andy forgot to connect him.

The purpose of the meeting was to discuss Oakland Township's current understanding of undesirable and unintended outcomes associated with the Paint Creek dam removal project completed in 2011, and to discuss a potential resolution. In the process, the Township clearly expressed the value placed on the millrace and mill by its citizens as a historical resource and center of commerce and community.

At the Township's request, the MDEQ provided copies of the following documents:

- A property owner authorization letter prepared by the Township's previous Manager, James Creech, and submitted to MDEQ by the dam removal project applicant, the Clinton River Watershed Council (CRWC). The Township's letter dated July 8, 2011 was a cover letter carrying an attached letter prepared by the Township on January 10, 2010 (MDEQ did not have that letter at our meeting). The letter was a required component of the Joint Permit Application submitted by the dam removal project applicant (CRWC) to allow the applicant to conduct work on property owned by the Township, including the former Paint Creek dam.
- A permit modification letter dated October 7, 2011 allowing placement of 750 cubic yards of fill excavated from the earthen portion of the dam in the mill race (or head-race) upstream of the headgates, across the Nightingale property. According to the MDEQ, the modification was issued based on the finding that filling the millrace did not result in unacceptable impacts.
- A summary of engineer's calculations of potential flow in the millrace resulting from diversion of water from Paint Creek via the 18-inch RCP. The calculations were conducted with a hydraulic model for the existing conditions and proposed

conditions. However, the proposed conditions were based on lowering the millrace by three feet, which was not a permitted or funded project component.

Discussion centered around the above documents, resulted in the following feedback from MDEQ:

- 1) Based on extensive case law, millraces do not have associated riparian rights.
- 2) MDEQ did not know if Part 301 (Inland Lakes and Stream Protection) applied to the millrace.
- 3) MDEQ did not know if the millrace had associated water rights. In other words, did riparian owners have the right to reasonable use of the water in the millrace prior to dam removal?

MDEQ confirmed it understood at the time of permit issuance for the dam removal project that it understood the purpose of the 18-inch RCP, and that that purpose was to maintain flow in the millrace. Furthermore, MDEQ understood flow would be maintained in the millrace, but only if the millrace was lowered at least three feet.

MDEQ confirmed that it understood, based on information presented by the Township, that flow was not currently occurring in the millrace and that the only way for flow to occur in the millrace, as the dam removal project was permitted, was to excavate the mill race by at least three feet. In addition, MDEQ understood that lowering the millrace by at least three feet was not a permitted or funded component of the project, meaning flow could not be maintained in the millrace as the project was permitted.

MDEQ confirmed that it understood that the property owner's authorization letter submitted by the Township, for property owned by the Township, clearly provided authorization based on the condition/stipulation that the dam be removed in a manner that, "...will preserve the functioning historic millrace and its flow as it exists today or better, and it will be done so at no cost to the Township or its residents."

Based on these understandings held in common between the MDEQ and Township during this meeting, MDEQ further confirmed that it understood that the actual outcomes of the project with regard to preservation of the millrace and flow in the millrace were inconsistent with the Township's desired and stipulated outcomes for the project.

MDEQ agreed to look for information in the file pertaining to the depths of accumulated sediment in the millrace and basis for the estimated historical bottom of the millrace as shown on design drawings for the dam removal project, and provide that information to the Township.

MDEQ did not provide a basis for the maximum 10% flow split, but stated that is was used to protect Paint Creek. MDEQ did not address the Township's comment questioning the basis for MDEQ's authority to impose a flow restriction on the millrace as an existing facility with assumed water rights that was not a proposed project component, and that the Township had expressly conveyed it wanted to maintain as it existed, including flow.

The Township shared a photograph of the downstream end of the penstock under Gallagher Road at the water wheel to confirm with MDEQ that water in the millrace could have still flowed to the water wheel at the time of dam removal.

MDEQ requested to have the Township send MDEQ millrace profile data, to which the Township agreed to do.

MDEQ questioned whether altering previous dam removal project work funded by GLRI would be allowed or how it might affect restoration of flow in the millrace.

The remainder of the discussion centered around some hypothetical design examples shared by the Township, that portrayed a combination of lowering the mill race and raising the water surface profile of Paint Creek by altering riffle structures in Paint Creek.

With respect to those hypothetical designs, the Township expressed its understanding that MDEQ would have to permit the project like any other project, considering potential impacts on the associated regulated natural resources. However, the Township also pointed out that restoration of flow in the millrace by altering Paint Creek would actually be moving the condition back toward conditions prior to dam removal, which would lesson impacts to some natural resources like wetlands.

MDEQ suggested that additional meetings with MDNR Fisheries and others might be required. The Township acknowledged such.

The Township expressed its desire to restore flow in the millrace while maintaining the fish passage and Paint Creek habitat improvements that were positive outcomes of the dam removal project.

The MDEQ offered to respond to the Township in writing with feedback on the potential for permitting a project that could restore flow to the millrace within certain parameters or constraints.