

12-19-80

IN THE COURT OF COMMON PLEAS

ASHTABULA COUNTY, OHIO

WAYNE S. NICHOLS, CHIEF OF)	CASE NO. 69325
THE DIVISION OF WATER)	
DEPARTMENT OF NATURAL RESOURCES)	(Judge Mallone)
Fountain Square, Building E)	
Columbus, Ohio 43224,)	
)	
PLAINTIFF,)	
)	
vs.)	
)	
DEVELOPMENT SERVICES, INC.)	<u>SETTLEMENT DECREE</u>
c/o STATUTORY AGENT)	
Charles F. Hartsock)	
1700 Carew Tower)	
Cincinnati, Ohio 45202)	
)	
and)	
)	
DEVELOPMENT SERVICES, (AJ), INC.,)	
355 Prospect Road)	
Ashtabula, Ohio 44004)	
)	
DEFENDANTS.)	

The Complaint having been filed herein on November 16, 1978, and the parties hereto, by their respective attorneys having consented to the entry of the Settlement Decree, now therefore, before the taking of any testimony and upon the pleadings, it is ORDERED, ADJUDGED, AND DECREED that:

I.

This Court has jurisdiction of the subject matter herein and of the parties consenting hereto. The Complaint states a claim upon which relief can be granted against the defendants.

II.

The provisions of this Settlement Decree shall apply and be binding upon the parties to this action, their officers, directors, stockholders, agents, servants, employees, and successors; in addition, the provisions of this Settlement Decree shall apply to all persons,

LAW OFFICES
DIAMOND & DUBSKY
CHARLES M. DIAMOND CO.
L. P. A.
CARDINAL FEDERAL
SAVINGS & LOAN BLDG.
4200 PARK AVENUE,
SUITE 350
ASHTABULA, OHIO 44004

firms, corporations and other entities having notice of this Settlement Decree and who are, or will be, acting in concert and privity with the defendants in this action or their officers, directors, stockholders, agents, servants, employees and successors. Lakeside Utilities Corporation does, hereby, make a general appearance in this lawsuit and, as an agreed party hereto, does agree to be bound as a party defendant in this action and by all provisions of this consent decree.

III.

Defendants agree and are hereby ordered to perform certain work on the dam described in paragraph four of the Complaint herein, such work to be completed no later than June 31, 1982. The work to be performed is set forth on Exhibit A, which is attached hereto and incorporated herein by reference.

IV.

It is the understanding of the parties that the Department of Insurance of the State of New York has taken possession of the property of the Summit Insurance Company of New York ("Summit") and is liquidating its business, that among the assets of Summit is a certificate of deposit in the amount of FIFTY THOUSAND DOLLARS, (\$50,000.00), plus the interest that has accumulated thereon, which amount (less the \$4,750.00 of expenses incurred by the Department of Insurance and its consultants) the Department of Insurance would release to Farmer's National Bank and Trust Company of Ashtabula, Ohio, known as Escrow Agent. It is the intent of all parties to establish an escrow account with the Escrow Agent, into which the money represented by the certificate of deposit plus the interest thereon less \$4,750.00 will be deposited (hereinafter referred to as the "money"). The terms of the escrow agreement shall be as set forth in Exhibit B attached hereto. All parties agree and are hereby ordered to take all actions reasonably necessary to obtain the transfer of the money into the escrow account.

V.

Upon completion of the work described in Exhibit A to the satisfaction of Plaintiff, Plaintiff shall and hereby agrees to

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- (1) dismiss the Complaint in this matter with prejudice and
- (2) dismiss all of his claims in Case No. 65881, which is currently pending before this Court and is entitled The Koski Construction Company v. Development Services, Inc., et al.

VI.

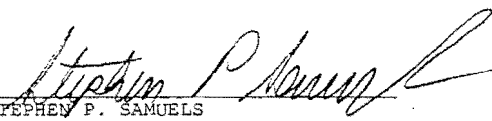
Defendant to pay costs.

Joseph P. Mallone

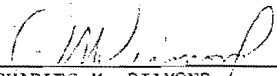
JOSEPH P. MALLONE, JUDGE

APPROVED:

WILLIAM J. BROWN
ATTORNEY GENERAL OF OHIO


STEPHEN P. SAMUELS
Assistant Attorney General
Environmental Law Section
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
(614) 466-2766

ATTORNEY FOR PLAINTIFF


CHARLES M. DIAMOND
Charles M. Diamond Co., L.P.A.
4200 Park Avenue, Suite 350
Ashtabula, Ohio 44004

ATTORNEY FOR DEFENDANTS
Development Services, Inc.
Development Services (AJ), Inc.
Lakeside Utilities

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The State of Ohio,
Ashtabula County, ss.
I, County Clerk, do hereby certify that the foregoing is
a true and correct copy of the instrument on file in
this office.

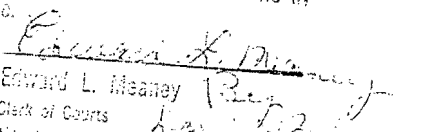

Edward L. Meaney
Clerk of Courts
Ashtabula County, Ohio

EXHIBIT A

SCOPE OF WORK

The plans and specifications prepared by Hedrick-Cox Associates, Inc., for the Roaming Rock Shores Dam and Spillway Improvements which were approved by the Division of Water on February 22, 1974, shall be applicable to all aspects of the work described herein unless specifically otherwise indicated.

ITEMS PERTAINING TO THE
AUXILIARY SPILLWAY

1. Install the first section of spillway slab from Station 1+65 to Station 1+88, and which is more particularly described on Sheets 9, 11, and 12 of the plans, subject to the following conditions:
 - a. Rock anchors may be omitted.
 - b. The nine inch (9") sand base depicted on Sheet 11 shall be included.
 - c. Provisions for underdrainage, as described in item 5, shall be included.
2. Install a reinforced concrete curb along the North side of the above-mentioned section of spillway slab, such curb to be identical to that described in 9" Wall Section G-G on Sheet 8 of the plans, except that it shall be one foot (1') high instead of the variable five to eight (5' to 8') feet high.
3. Install a four inch (4") interim concrete slab and a nine inch (9") interim wall immediately upstream from Station 1+65, and which are more particularly described on Sheets 9 and 11 (particularly in detail section (W-W)) of the plans, together with all items shown in said detail section, including specifically a six inch (6") perforated drain behind the interim wall with an outlet downstream.
4. Repair existing asphalt and add new asphalt such that the asphalt surface extends upstream from Station 1+65 to the existing concrete structure located at approximately Station

0+28, and meets the grade of the existing asphalt in the auxiliary spillway. The completed asphalt surface shall be as described on Sheets 9 and 11 of the plans.

5. Install ten (10) six inch (6") round PVC pipe sleeves (described on Sheets 9, 11, and 12 of the plans) in the cutoff wall, the upstream end of which shall be located at the bottom of the sand base at Station 1+88, the downstream end of which shall discharge downstream of the cutoff wall. The upstream ends of the sleeves shall be covered with Mirafi filter cloth (or equivalent material).

6. Install a cutoff wall at Station 1+88, such wall to extend the entire width of the spillway at that point. Such wall shall be the same as the cutoff wall described on Sheet 11 of the plans at Station 2+70, except that the depth of the wall shall be four feet (4') instead of four feet four inches (4'4").

7. Install South Upper Wingwall and South Training Wall, as described on Sheets 9, 10, 11, and 12 of the plans, from Station 1+65 to Station 1+88, such walls to be connected to the existing lake drain outlet structure and the spillway slab.

MAIN SPILLWAY

8. Complete installation of the twelve inch (12") half-round pipe open gutter drain on the east side of the spillway, which gutter is described on Sheets 3 and 8 of the plans.

DAM

9. Grading and seeding of the dam shall be performed in accordance with the plans and specifications.

The Chief of the Division of Water, in his sole discretion, may authorize a reduction in the amount of reinforcing steel to be used or other deviations from the approved plans and specifications.

EXHIBIT B

Escrow instructions to Farmer's National Bank & Trust Company of
Ashtabula, Ohio.

Escrow Number _____ Date _____, 1980

1. You are hereby handed a Certificate of Deposit in the amount of \$50,000 plus cash in the amount of \$ _____, which you shall handle in the following manner.
2. The Certificate of Deposit and cash are to be held by you in an escrow account where it shall bear interest at the rate payable on such account.
3. You will disburse funds from the escrow account to the Koski Construction Company (known as "Koski"), on the last date of each month after Koski has commenced work upon the project as set forth in the Settlement Decree (Exhibit A "Scope of Work" in Case No. 69325 Ashtabula Common Pleas Court) provided you have received signed authorization to make each of such payments from Hedrick, Cox, Associates, Inc., upon forms and documents satisfactory to you, and provided further that the Chief of the Division of Water, Department of Natural Resources has certified in writing that the completed work during the month is satisfactory and that the amount of each payment reasonably represents the percentage of work completed during the month to the total amount of work to be performed.
4. You shall be permitted to charge normal and usual fees for undertaking this escrow, which fees shall be paid from the escrow account.

Authorized Representative of the
Department of Insurance, State of
New York

APPROVED AND AGREED TO:

ROBERT W. GERLACH
President, Lakeside Utilities Corporation

JOHN H. COUSINS
Chief, Division of Water

Authorized Representative of
Farmer's National Bank & Trust Company