

BOARD OF HARBOR AND LAND COMMISSIONERS

State House

Boston, April 24, 1908.

To the Honorable, The Secretary of War,
Washington, D.C.

Sir:

The Board of Harbor and Land Commissioners having been authorized by the General Court to construct a dam, with sluiceways therein, at the mouth of Herring river in the town of Wellfleet, for the purpose of excluding the tide-water from said river and draining the marshes on the banks of the same, submits herewith for your approval plans for building said dike.

Three blueprints of the plan are forwarded herewith.

For the Board

HENRY J. SKEFFINGTON

Commissioner.

Received Apr. 27, 1908. M. & R. Div., War Dept. C. O. F. E.

2d indorsement
War Department
Office of the Chief of Engineers
Washington

April 30, 1908.

Respectfully referred to Lieut. Col. Edward Burr, Corps of Engineers, for report.

By command of Brig. Gen. Mackenzie:

Smith S. Leach

Lieut. Col., Corps of Engineers.

55052/5
Inclo. 6 accomp.

337-1791

3rd indorsement,
U. S. ENGINEER OFFICE
Boston, Mass.

May 11, 1908.

1. Respectfully returned to the Chief of Engineers.

2. Herring River is a small tributary entering at its extreme northern end Wellfleet Harbor, which is a shallow bay on the inside or bay side of Cape Cod. The locality is shown on U.S. Coast & Geodetic Survey charts 840 and 110.

3. The within application is for authority to construct a dike across Herring River at its mouth, the dike to be constructed by the State Board of Harbor and Land Commissioners, at the joint expense of the State of Massachusetts and the town of Wellfleet. The State authority for the construction of this dike is contained in legislative acts approved May 21, 1906, June 13, 1907, and March 6, 1908, of which copies are herewith. The second of these acts provides for the construction of the dike subject to proviso that no expenditure shall be made thereon until the owners of the property on which the dike is to be built or which would be injured by its construction or maintenance, had, without expense to the State, executed a satisfactory release of all claims for damages resulting therefrom. In the last annual report of the State Harbor and Land Commission it was stated that certain owners of Marsh lands affected by the construction of the dike had declined to execute such releases, and the last of

337 1792

the three acts provides that all damages to lands or any interests therein resulting from the construction of the dike shall be paid by the town of Wellfleet, thereby permitting the construction of the dike without the unanimous action of the land holders affected to release the State from claims to damages.

4. Herring River is practically but a tide slough with little or no depth at low water and probably with no navigation of consequence, although data regarding navigation upon the stream are not now available. In view of the possible navigation interests involved, and of the apparent fact that there exists objection at least on the part of some land owners to the construction of the dike, it is recommended that public hearing be held in this matter before action is taken thereon by the War Department. In this connection, as indicating the desirability—if not the necessity—of having such a hearing, attention is invited to a similar case arising subsequent to the construction of a dike in Green Harbor, Mass., which was the subject of an investigation by this office in 1905 (E.D. 28256).

5. If the foregoing recommendation be approved, an allotment of \$50 from such funds as may be applicable thereto, is respectfully requested, to defray necessary expenses connected with the investigation of the subject.

EDW. BURR

Lieut. Col., Corps of Engineers

43/7 Misc.

Dic.-HAS.

Incl. 8, 12-14 accomp.

337 1793

4th indorsement
War Department
Office of the Chief of Engineers
Washington

May 19, 1908

Respectfully returned to Colonel Burr, who is authorized to hold a public hearing as recommended in paragraph 4 of preceding indorsement/ and to defray the expense connected therewith the sum of \$50 is hereby allotted for the purpose from the appropriation for examinations, surveys, and contingencies of rivers and harbors.

By command of Brig.Gen.Mackenzie:

Smith S. Leach

Lieut.Col.,Corps of Engineers.

56062/5
Inclos.6 & 9 accomp.

337 : 1794

5th indorsement,
U. S. ENGINEER OFFICE
Boston, Mass.

June 22, 1908.

1. Respectfully returned to the
Chief of Engineers.

2. In accordance with authority con-
tained in the precoding indorsement,
public hearing was held at Wellfleet, Mass.
on June 10, 1908, at which all parties
present were given an opportunity to be
heard upon the subject matter of the
within request for authority to build a
dike in Herring River. But one objector
appeared at the hearing, which had been
duly advertised in the local newspapers.

3. From an examination of charts and
from facts brought out at the hearing,
it appears that Herring River is a tide
slough through which the tide ebbs and
flows in filling and emptying the channel
and the adjacent salt marshes. The
stream is crooked and narrow being not
more than 25 feet wide at places. The
nearest soundings shown upon the Coast
and Geodetic Survey chart No. 340, of Well-
fleet Harbor, is but 2 feet at a point
outside the mouth of the river and $1\frac{1}{4}$
miles below the location of the proposed
dike. In the river or slough, there is
at low water only such depth as is due
to the running out of the last of the
discharge, variously stated to be from a
few inches to a foot or more. The mean
range of tide in the harbor is about 11
feet. Attention is invited to the fact
that the hydrography of Wellfleet Harbor
as shown on Coast Survey Chart 340, was
executed in 1850. No later data, however,
are available.

337 | 795

4. From statements made at hearing it appears that 40 years ago or more, small sailing vessels entered the river or wintered there, and that for many years there has been practically no navigation. The last vessel which entered the stream some years ago, having been abandoned within it. The only navigation existing for many years appears to be an occasional cat-boat carrying a pleasure party, the last of which occurred two or three years ago. There are no wharves or landings, and no commerce on the river. With the deforestation of the hills about its basin, the stream is stated to have deteriorated through increased wash of the sandy soil and there is also stated to have been an increase in hummocks in the channel.

5. From the above facts it appears that while Herring River may be navigated by small vessels at high tide with great difficulty, there has not been for 40 years or more and there is not now any navigation in fact or any commercial interest involved. The stream does not appear to be used even for small boat navigation for the convenience of the people owning the abutting lands. So far, therefore, as concerns the interests of navigation on Herring River, itself, there appears to be no reasonable objection to authorizing the construction of the dike.

6. Herring River constitutes a portion of the tidal basin of Wellfleet Harbor. Its absolute value as a tidal basin, and its value relative to the entire tidal flow of the harbor can only be accurately determined by a survey. Concisely described, the Herring River basin consists of a narrow, tortuous, tidal slough with several tributaries and its adjacent salt marshes covered only at the higher stages

337-1796

of the tide. Its value can only be gauged from the fact that tidal currents are insufficient to scour the channel below low water or to maintain any depth in the channel below the plane of low water.

7. Whillfleet Harbor, as shown on U.S. Coast & Geodetic Survey chart No. 341, is a shallow basin in width from $1\frac{1}{2}$ to 3 miles. The depths in the channel for two miles below Billingsgate Island are less than 18 feet, and have a minimum of 14 feet. Above Billingsgate Island is a deeper pocket, two miles long, in which the upper end of the 18 and 12 foot contours, are respectively 2 miles and 1 mile from the town wharves. The sounding nearest to the mouth of the Herring River channel shows a depth of 2 feet and the distance from the 6 ft. contour to the mouth of the river is $\frac{1}{2}$ mile. A careful study of the physical characteristics of the upper harbor, as found upon the chart, fails to show any evident or appreciable effect resulting from the Herring River tidal flow. In fact, physical conditions appear to be much the same as if the Herring River did not exist. The construction of the proposed dike will of course reduce to some extent the tidal flow of the harbor, but as the Herring River basin has not been sufficient to maintain any appreciable channel at the mouth of the river or produce any apparent physical effect upon the upper harbor, it is believed that its loss will not be felt in the maintenance of existing harbor channels and will be offset by shutting off from the harbor the Herring River contribution of silt and sand which, if the evidence at the

337 1797

hearing is to be accepted, has been in-
creasing for years as the result of the
deforestation of the hills within its
drainage area.

8. In view of the foregoing facts
there does not appear to be, from the
point of view of the interests of navi-
gation, any material objection to the
authorization of the construction of the
dike as requested within by the State
Board of Harbor and Land Commissioners.

EDW. BURR

Lieut. Col., Corps of Engineers.
43/7 Misc. Dic.-HAE.
Incls. 8, 12-14, 18-21 accomp.

337 1798

MEMORANDUM ON HERRING RIVER MATTER:

File with 43/ MWC
RP

May 23, 1908.

The Harbor & Land Commission has no list of persons affected by the proposed dam. The Commission has held no hearings, and does not know the name of objectors. The surveys made by the Com. do not show names of owners of property. The Com. has a copy of some records of a town meeting in March or April, showing acceptance of the act of Legislature by a vote of 188 in favor, and 40 opposed.

The Committee on Harbors and Public Lands, Mass. Legislature, advertised a hearing on the bill, and held it in Boston. Representative Burns, clerk of committee showed me a minute of the hearing and recommendation of the bill, but the record does not show who appeared either for or against the bill. He thought there was opposition. But Mr. Pattison, member from Barnstable, could not recall that there was opposition at this hearing.

The Harbor & Land Com. advertised for bids some weeks ago, and accepted a bid for doing the work. The contract has been signed by the bidder, but the Com. has withheld its signature for W.D. action. Nevertheless the contractor on his own responsibility has started the work and it is in progress.

From Bates, Nay & Abbot, attorneys in Tremont Bldg., who last year represented the objectors in a petition for injunction, I learned that the matter had passed out of their hands to S. W. McCaslin, attorney at law, Wellfleet, Mass., who would represent the objectors, if there are objectors to the present plan.

The project was first proposed and is being pushed by Mr. Lorenzo D. Baker, Jr., (member of legislature last year) Treasurer, Cape Cod S.S.Co. resident at Wellfleet. Original purpose, he states, was to rid the town of mosquito pest. He states that not all the riparian owners have consented, one (a large milk-producer) complaining that his supply of fodder from salt marshes would be ruined. Others he thinks may object on account of unfriendliness in previous political contests. But none, he claims, on account of interference with navigation, of which he states there is none. The only yacht is owned by himself. The depth just above site for dike, is 8 ft. at highwater.

Slater

337 . 1799

N^o 76 H. Lubman
" " Merchant. #

Captain Darius Newcomb.
junior

Captain Fredrick Snow. =#

Samuel Snow
E. P. Cook -

Captain E. Y. Oliver. =

Captain Anthony Freeman *

Captain Parker Wickman *

Mr. Elnor Rich -

Mr. Smith -

Reuben Williams #

W. H. Baker

James Curran.

Richard Newcomb,

A. N. Davis

S. L. Harding

W. H. Rider

George Young.

L. A. Coull.

Captain Thomas Mook.

337

WAR DEPARTMENT
UNITED STATES ENGINEER OFFICE
ROOM 1015 BARRISTERS HALL, 25 PEMBERTON SQUARE
BOSTON, MASS.

43 MAY 29 1908
MHC
U.S. ENGINEER OFFICE
BOSTON, MASS.

May 21, 1908.

Chairman,
Board of Selectmen,
Wellfleet, Mass.

Sir:

3 3 7 1 8 0 2
It is proposed to hold a hearing at Wellfleet about the 10th of June, in the matter of whether or not a permit should be granted by the Secretary of War under the provisions of section 10 of the Act of Congress approved Mar. 3, 1899, for the construction of dike across Herring River in the town of Wellfleet by the Board of Harbor and Land Commissioners of the State of Massachusetts pursuant to the provisions of an act of the Massachusetts Legislature approved Mar. 6, 1908.

3 3 7
Will you please advise me whether for the purpose of holding this hearing the use of the town hall may be obtained on, say, June 10th, beginning at 11.30 A. M. for such time as may be necessary to conclude the hearing.

The favor of an early reply is requested.

Very respectfully,

Truman Bond

Lieut. Col., Corps of Engineers.

43/7 Misc.
Dic. TFJ-HAE.

In reply to the above would say, there will be no trouble about securing the hall for the proposed meeting. Please excuse delay in replying as the Chairman has been very sick.
Respectfully, N. H. Payne, Chairman
Board of Selectmen per N.

WAR DEPARTMENT,
UNITED STATES ENGINEER OFFICE,
ROOM 1012 BARRISTERS HALL, 25 PEMBERTON SQUARE,
BOSTON, MASS.

May 5, 1908.

43/7 Misc

Chairman,

Board of Harbor & Land Commissioners,
State House, Boston, Mass.

Sir:

Referring to your application to the Secretary of War, under date of April 24, 1908, submitting for approval plans for building the dike at the mouth of the Herring River in the town of Wellfleet, as authorized and directed by chapter 511, Massachusetts Acts of 1907, I have to say that by the said chapter it is provided that no part of the sum provided for the construction of said dike

"shall be expended until the owners of the property on which the dike is to be built or which would be injured by its construction or maintenance, have, without expense to the Commonwealth, executed and delivered to the board of harbor and land commissioners satisfactory releases of all claims against the Commonwealth or the town of Wellfleet for damages occasioned or to be occasioned, by or in consequence of the construction and maintenance of the dike, or the doing of any other thing authorized in connection therewith."

It is noted on page 77 of the report of your Board for 1907 that at the time of the submission of the said report "certain owners of marsh land had declined to execute the necessary releases of all claims against the Commonwealth or the town of Wellfleet, as required by the act of 1907". Will you kindly advise me at your early convenience as to whether this condition still exists or as to whether the owners of all lands affected by the proposed dike have executed said releases, given their consent, or withdrawn their objections to the construction of the dike.

Very respectfully,

Lieut. Col., Corps of Engineers.

43/7 Misc.
Dic.-HAE.

537 1005



Commonwealth of Massachusetts

Board of Harbor and Land Commissioners,
State House,

Boston, May 8, 1908.

RECEIVED
MAY 10 1908
STATE HOUSE
BOSTON MASS.

Lieut. Col. Edward Burr,
Corps of Engineers, U. S. A.,
Barristers Hall, Boston.

Sir:

Your favor of the 5th inst. as to the proposed dike at Wellfleet was received.

Chapter 183 of the Acts of 1908, Mass. Legislature, has in the opinion of this Board removed the objections which are mentioned in the act and report quoted in your letter.

Chapter 183, last part of section 1, (a copy of which is enclosed) provides for the payment of damages to dissenting land owners.

The Town of Wellfleet has duly accepted the act and paid the ten thousand dollars into the treasury.

Respectfully yours,

Geo. E. Smith
Chairman.

33701804

U.S. ENGINEERS OFFICE
43 MAY 9 1908
BOSTON, MASS.

ACTS OF 1908.

further amended by inserting after the word "destroyed", in the fifteenth line, the words: — except that in cities of twenty-five thousand inhabitants, or more, they shall be paid the same wages per diem during the term of their employment which the regular police officers of such cities receive; — so as to read as follows:—*Section 143.* The mayor of each city and the chairman of the selectmen of each town shall annually, within ten days after the first day of July, issue a warrant to one or more police officers or constables, who shall hold office for one year or until his or their successor or successors are appointed and qualified, directing them forthwith to kill or cause to be killed all dogs within such city or town which are not licensed and collared according to the provisions of this chapter, and to enter complaint against the owners or keepers thereof; and any person may, and every police officer and constable shall, kill or cause to be killed all such dogs whenever or wherever found. Such officers, other than those employed under regular pay, shall receive from the treasurers of their respective counties one dollar for each dog so destroyed; except that in cities of twenty-five thousand inhabitants, or more, they shall be paid the same wages per diem during the term of their employment which the regular police officers of such cities receive; but in the county of Suffolk, they shall receive it from the treasurers of their respective cities or towns. Bills for such services shall be approved by the mayor of the city or chairman of the selectmen of the town in which said dogs are destroyed, and shall be paid from moneys received under the provisions of this chapter relating to dogs. [Approved March 6, 1908.]

337 1805

[CHAP. 183.]

AN ACT RELATIVE TO THE CONSTRUCTION OF THE DIKE ACROSS HERRING RIVER IN THE TOWN OF WELLFLEET.

Be it enacted, etc., as follows:

SECTION 1. Chapter five hundred and eleven of the acts of the year nineteen hundred and seven is hereby amended by striking out section two and inserting in place thereof the following:—*Section 2.* The board of harbor and land commissioners may expend for the construction of said dike and fishway, the sum of ten thousand dollars from the treasury of the commonwealth, in addition to the sum of ten thousand dollars to be contributed toward said construction by the town of Wellfleet, if this act is accepted by said town in the manner hereinafter provided: provided, however, that no work shall be done and no money shall be spent under the provisions of this act by the board of harbor and land commissioners until said sum of ten thousand dollars has been paid by said town into the treasury of the commonwealth. Said sum may be borrowed by said town outside its statutory limit of indebtedness; and for this purpose the town may issue notes or bonds to the said amount. Such notes or bonds shall be signed by the treasurer and countersigned by the selectmen of the town; shall bear interest, payable semi-annually, at a rate not exceeding five per cent per annum, and shall be payable in such annual proportionate payments as will extinguish the same with interest in not more than twenty years after the date or dates of issue. All dam-

ages to land or any interest therein, sustained by any person or corporation by the building of said dike under this act shall be paid by the town of Wellfleet, and such person or corporation may have such damages assessed by a jury of the superior court in the manner provided by law with respect to damages sustained by the laying out of ways. The vote thereon shall be taken by written or printed ballot, and the check list shall be used.

SECTION 2. The provisions in regard to ditches and structures incident to the building of said dike, contained in section one of said chapter five hundred and eleven, shall include the right to dig such ditches or to erect such structures wherever they may be deemed necessary by the harbor and land commissioners, along the course of said Herring river or any tributary thereof, and the provisions of this act relative to compensation shall also apply to property damages thereby occasioned.

SECTION 3. Chapter four hundred of the acts of the year nineteen hundred and six, so far as it may be inconsistent herewith, and all other acts and parts of acts inconsistent herewith, are hereby repealed.

SECTION 4. This act shall take effect upon its acceptance by two thirds of the voters of the town voting thereon at a special meeting called for the purpose. The article in the warrant of said special meeting shall read as follows:—To see if the town will vote to accept the provisions of chapter five hundred and eleven of the acts of the year nineteen hundred and seven, as amended by chapter _____ of the acts of the year nineteen hundred and eight, authorizing the town to raise money for the construction of the dike across Herring river. [Approved March 6, 1908.]

[CHAP. 184.]

AN ACT RELATIVE TO INDEBTEDNESS FOR SCHOOL PURPOSES INCURRED BY THE CITY OF NEW BEDFORD.

Be it enacted, etc., as follows:

SECTION 1. Section one of chapter one hundred and eighty-five of the acts of the year nineteen hundred and seven is hereby amended by striking out the words "two hundred and twenty-five", in the sixth and seventh lines, and inserting in place thereof the words:—three hundred and five,—and by inserting after the word "four", in the eleventh line, the words:—and one half,—so as to read as follows:—Section 1. The city of New Bedford, for the purpose of constructing and furnishing three new school buildings and for purchasing the necessary land therefor, and for the purpose of erecting an addition to the school building at Lund's Corner, may incur indebtedness beyond the limit fixed by law to an amount not exceeding three hundred and five thousand dollars, and may issue bonds, notes or scrip therefor. Such bonds, notes or scrip shall be payable within such periods, not exceeding twenty years from the dates of issue, and shall bear such rate of interest, not exceeding four and one-half per cent per annum, payable semi-annually, as the city council shall determine. Except as otherwise provided herein the provisions of chapter twenty-seven of the Revised Laws shall, so far as they may be

337 1806

ACTS AND RESOLVES, MASSACHUSETTS, 1906.

U.S. DEPT. OF COMMERCE
1211
43
12
BOSTON, MASS.
W. M. Mearns

"Chap. 400 AN ACT TO AUTHORIZE THE CONSTRUCTION OF A DIKE ACROSS
HERRING RIVER IN THE TOWN OF WELLFLEET.

Be it enacted, etc., as follows:

Section 1. The town of Wellfleet is hereby authorized, subject to the provisions of chapter ninety-six of the Revised Laws, to construct a dike across Herring river in said town, at or near the mouth of the river, provided that the dike shall contain a proper fishway which shall be approved in writing by the commissioners on fisheries and game. For the above purpose the said town is hereby authorized to appropriate such sums as may be necessary, to an amount not exceeding twenty thousand dollars, and to borrow money therefor outside the statutory limit of indebtedness of the town to an amount not exceeding ten thousand dollars, and to issue notes, bonds or scrip therefor.

Section 2. Such notes, bonds or scrip shall be signed by the treasurer and countersigned by the selectmen of the town, shall bear interest, payable semi-annually, at a rate of not more than four per cent per annum, and shall be payable in such annual proportionate payments as will extinguish the same, with interest, in not more than twenty years from the date or dates of issue. Such annual proportion shall, without further vote, be assessed and collected under the provisions of section thirty-seven of chapter twelve of the Revised Laws, until the debt, including interest, is extinguished. The town may reserve the right to redeem such notes, bonds or scrip at par

337 1807

on any interest-paying day at any time after ten years from their respective dates of issue: provided, that this right of redemption is expressed in the notes or bonds themselves; and provided, also, that three months before such redemption is to take effect, public notice thereof shall be given by the treasurer of the town; and, upon the expiration of the said three months, interest on such notes or bonds so to be redeemed shall cease.

Section 3. This act shall take effect upon its acceptance by two thirds of the voters of the town voting thereon at a special meeting called for the purpose. The article in the warrant for said special meeting shall read as follows:- "To see if the town will vote to accept the act of nineteen hundred and six authorizing the town of Wellfleet to build a dike across Herring river at an expense not exceeding twenty thousand dollars, and to borrow money therefor within and without the debt limit." The vote thereon shall be by written or printed ballot "Yes", or "No", and the check list shall be used.

Approved May 21, 1906."

337
1009

ACTS AND RESOLVES, MASSACHUSETTS, 1907.

13 MAY 1908
BOSTON, MASS.
SENATE OFFICE

"Chap. 511 AN ACT TO PROVIDE FOR THE CONSTRUCTION OF A DIKE ACROSS THE MOUTH OF HERRING RIVER IN THE TOWN OF WELLFLEET.

Be it enacted, etc., as follows:

Section 1. The board of harbor and land commissioners is hereby authorized and directed to construct a dike with the ditches and structures incident thereto at or near the mouth of Herring river in the town of Wellfleet in the location described by chapter four hundred of the acts of the year nineteen hundred and six, said dike to have a proper fish-way therein constructed in such a manner as may be approved in writing by the commissioners on fisheries and game.

Section 2. The board of harbor and land commissioners may expend for the construction of said dike and fish-way a sum not exceeding ten thousand dollars from the treasury of the Commonwealth, in addition to the sum of ten thousand dollars to be provided by the town of Wellfleet under the provisions of said chapter four hundred, and to be paid into the treasury of the Commonwealth before the work is begun: provided, however, that no part of either of said sums shall be expended until the owners of the property on which the dike is to be built or which would be injured by its construction or maintenance, have, without expense to the Commonwealth, executed and delivered to the board of harbor and land commissioners satisfactory releases of all claims against the Commonwealth or the town of

3 2 7 1 8 0 9

Wellfleet for damages occasioned or to be occasioned by or in consequence of the construction and maintenance of the dike, or the doing of any other thing authorized in connection therewith.

Section 3. Upon the completion of said dike the town of Wellfleet is hereby authorized to maintain and operate the dike and fish-way, subject to the approval and direction of the board of harbor and land commissioners.

Section 4. This act shall take effect upon its passage.

Approved June 13, 1907."

337-1810

ACTS AND RESOLVES, MASSACHUSETTS, 1908.

BOSTON, MASS.

43 MAY 11 1908
Wue

"Chap. 183. AN ACT RELATIVE TO THE CONSTRUCTION OF THE DIKE ACROSS HERRING RIVER IN THE TOWN OF WELLFLEET.

Be it enacted, etc., as follows:

Section 1. Chapter five hundred and eleven of the acts of the year nineteen hundred and seven is hereby amended by striking out section two and inserting in place thereof the following:- Section 2. The board of harbor and land commissioners may expend for the construction of said dike and fishway, the sum of ten thousand dollars from the treasury of the commonwealth, in addition to the sum of ten thousand dollars to be contributed toward said construction by the town of Wellfleet, if this act is accepted by said town in the manner hereinafter provided: provided, however, that no work shall be done and no money shall be spent under the provisions of this act by the board of harbor and land commissioners until said sum of ten thousand dollars has been paid by said town into the treasury of the commonwealth. Said sum may be borrowed by said town outside its statutory limit of indebtedness; and for this purpose the town may issue notes or bonds to the said amount. Such notes or bonds shall be signed by the treasurer and countersigned by the selectmen of the town; shall bear interest, payable semi-annually, at a rate not exceeding five per cent per annum, and shall be payable in such annual proportionate payments as will extinguish the same with interest in not more than twenty years after the date or dates of issue. All damages to land or any interest therein, sustained by any person or corporation by the building of said dike under this

1
1
8
1
7
3
3

act shall be paid by the town of Wellfleet, and such person or corporation may have such damages assessed by a jury of the superior court in the manner provided by law with respect to damages sustained by the laying out of ways. The vote thereon shall be taken by written or printed ballot, and the check list shall be used.

Section 2. The provisions in regard to ditches and structures incident to the building of said dike, contained in section one of said chapter five hundred and eleven, shall include the right to dig such ditches or to erect such structures wherever they may be deemed necessary by the harbor and land commissioners, along the course of said Herring river or any tributary thereof, and the provisions of this act relative to compensation shall also apply to property damages thereby occasioned.

Section 3. Chapter four hundred of the acts of the year nineteen hundred and six, so far as it may be inconsistent herewith, and all other acts and parts of acts inconsistent herewith, are hereby repealed.

Section 4. This act shall take effect upon its acceptance by two thirds of the voters of the town voting thereon at a special meeting called for the purpose. The article in the warrant of said special meeting shall read as follows:- To see if the town will vote to accept the provisions of chapter five hundred and eleven of the acts of the year nineteen hundred and seven, as amended by chapter
of the acts of the year nineteen hundred and eight, author-

337 1812

izing the town to raise money for the construction of the dike
across Herring river. (Approved March 6, 1908.)

3 3 7 : 1 8 1 3

WAR DEPARTMENT,
UNITED STATES ENGINEER OFFICE,
ROOM 1016 BARRISTERS HALL, 26 PEMBERTON SQUARE,
BOSTON, MASS.

June 1, 1908.

43
15
Misc

Mr. N. H. Payne,
Chairman, Board of Selectmen,
Wellfleet, Mass.

Sir:

I have to acknowledge receipt of your note (in reply to my letter of the 21st ultimo) granting permission to use the town hall on June 10th, beginning at 11.30 A.M., for the purpose of holding a public hearing in the matter of whether or not a permit should be granted by the Secretary of War for the construction of a dike across Herring River.

I thank you very much for the use of the hall, and inclose herewith a copy of the notice of hearing with request that you have it posted in a conspicuous place on the town hall bulletin. I shall also be obliged for any further publicity you may be able to give the hearing.

Very respectfully,

Edw. Burr

Lieut. Col., Corps of Engineers.

Dic. TEJ/JW
43/8
Misc.

1 inclo.

1814
7
3
13

WAR DEPARTMENT,
UNITED STATES ENGINEER OFFICE,

ROOM 1015 BARRISTERS HALL, 25 PEMBERTON SQUARE,
BOSTON, MASS.

43
16
June

June 1, 1908.

Notice is hereby given that a hearing will be held before the undersigned in the Town Hall at Wellfleet, Mass., at 11:30 A. M., June 10, 1908, in the matter of whether or not a permit should be granted by the Secretary of War under the provisions of section 10 of the Act of Congress approved March 3, 1899, for the construction of dike across Herring River in the town of Wellfleet by the Board of Harbor and Land Commissioners of the State of Massachusetts pursuant to the provisions of an act of the Massachusetts Legislature approved March 6, 1908.

1915

As all the papers will be laid before the Secretary of War for his decision it is desired that all parties submit in writing whatever they may wish to present.

337

By authority of the Secretary of War:



EDW. BURR
Lieut. Col., Corps of Engineers.

43
19 June

Notice posted: (June 2)

P. O. Boston,
P. O. Provincetown,
P.O. Wellfleet,
P.O. Truro,
Town Hall, Wellfleet,

Advertised in:

Boston Herald.
Provincetown Beacon,
Yarmouth Register.

Mailed to: (June 2)

Chmn. Harbor & Land Com.,

— Lorenzo D. Baker, Jr. 31 Broad St.

Isaac M. Snow, (3d Barnstable Rep.) State House,

Eben S. Keith, (Capde Dist. Senator) State House,

Hon. W. C. Lovering, M. C. Taunton,

S. W. McCaslin, Atty at law, Wellfleet,

Collector of Customs, Provincetown,

" Barstable

SELECTMEN (with letter June 1)

337 1816

+3
18 Misc

The second objector referred to by Mr. McCaslin is undoubtedly O.H. Linnell, who was his principal client in the suit for injunction in 1907.

Mr. Linnell called at this office June 12, regretting his absence on the 10th, and desiring to offer information as to the detriment which it would be to the community (from a standpoint of health) to permit the dikes.

He also has a smattering knowledge of sec. 10, 1899 act, and is sure no permit ~~has~~ will be granted because as he says the Chief of Engineers has not made a survey of the locality, which he believes to be required by that section.

I have enlightened him as to the scope of the War Department's authority, (quoting Col. Burr's opening statement at the hearing) and also as to its custom.

He declares he has only the public interest at heart, but from the nature of his inquiries and remarks as to Mr. Baker and his associates, one might readily believe his motive to be vindictive and spiteful.

H.A.E.

337-1817

Copy of 43/18 Misc.

Office:
Room 601 Bryte Building

Phone:
Sunset Oak 26

S. W. McCASLIN
Attorney-at-Law. Sacramento, Cal.

Wellfleet June 11th 1908

Col. Edw. Burr
Boston.

Dear Sir:

In matter Herring River Dike I was unavoidably absent from the hearing yesterday.

I was counsel with Bates, Nay & Abbott in the suit to cancel the bonds under the old act. I know of no objection, valid objection, to the dike under the present act. The suit referred to had relation solely to the legality of the bonds.

Personally I am most decidedly in favor of the Dike as a very important public enterprise and benefit. Every prominent business man and tax payer in the town so far as I know are in favor of the Dike save two. One of those Mr. Levi Higgins told me personally he would withdraw his objections if Capt. Baker would pay him \$500.00 an acre for his land as damages he to retain the land, an amount five times greater I think than he would willingly sell for, and ten times greater perhaps than its actual value.

The other objector, which is I have discovered the real source of objection, was defeated for the Legislature by Mr. L. D. Baker Jr. and feels very sore over it. The stream in which the Dike is to be constructed, sometimes dignified as "river" in public prints and reference, would scarcely float a good sized wash tub.

I sincerely believe the public benefit demands the building of the Dike.

Very respectfully yours

S. W. McCaslin.

Copy
43
19 Misc

PUBLIC HEARING

ON PETITION BY BOARD OF HARBOR AND LAND COMMISSIONERS OF
MASSACHUSETTS FOR PERMISSION OF THE SECRETARY OF WAR
TO BUILD A DIKE ACROSS HERRING RIVER, WELLFLEET, MASS.

Before LIEUT. COL. EDWARD BURR
Corps of Engineers, U. S. Army
United States Engineer, Boston, Mass. District.

Town Hall, Wellfleet, Mass.

June 10, 1908.

11.30 A. M.

The Notice of this hearing was read in full, together
with the application by the Board of Harbor and Land Commis-
sioners, as follows:

BOARD OF HARBOR AND LAND COMMISSIONERS

State House

Boston, April 24, 1908.

To the Honorable, The Secretary of War,
Washington, D. C.

Sir:

The Board of Harbor and Land Commissioners having been
authorized by the General Court to construct a dam, with sluice-

337 1819

ways therein, at the mouth of Herring river in the town of Wellfleet, for the purpose of excluding the tide-water from said river and draining the marshes on the banks of the same, submits herewith for your approval plans for building said dike.

Three blueprints of the plan are forwarded herewith.

For the Board

HENRY J. SKEFFINGTON

Commissioner.

337-1820

COL.BJRR: The construction of this dike will be undertaken by the State Board of Harbor and Land Commissioners if the approval of the plans is given by the Secretary of War, under the authority contained in certain acts of the General Court of the State, the last of which was approved March 6, 1908, being Chapter 183 of the Acts of 1908, entitled: "An Act relative to the construction of the Dike across Herring River in the Town of Wellfleet." It does not appear necessary to read this act of the General Court. Any person present who has anything to say as to whether, or not this dike should be permitted will be given an opportunity at this time to state any facts bearing upon the case. The interest of the United States as represented by the War Department in this connection relates entirely to matters of navigation. Herring River is to a certain extent navigable and is to that extent a navigable water of the United States. The interest of the United States in the matter relates entirely to its character as a navigable stream. If the gentlemen present who wish to be heard will limit their statements to facts bearing upon navigation, it will bring the matter to a somewhat shorter conclusion as other facts have no

bearing whatever in the consideration which the War Department will give to the matter.

STATEMENT OF ARTHUR G. WADLEIGH, ATTORNEY AT LAW,
REPRESENTING MR. LORENZO D. BAKER AND OTHER
CITIZENS OF WELFLEET INTERESTED IN BUILDING
THIS DIKE.

3 3 7 1 9 2 1
I think I might say, briefly, this: That the Board of Harbor and Land Commissioners of Massachusetts are concerned in this matter only in an administrative capacity. The act to which you have referred is mandatory upon that Commission, so it is only fair to say that for this reason they are not here and do not consider themselves petitioners. They are petitioners because they are obliged to be under the law, but I think this project has also their tacit approval. I should like to ask to be permitted to call upon the citizens of Wellfleet who propose to speak about this matter and to address to them certain questions.

COL. BURR: That method will be satisfactory.

Mr. Wadleigh: I will ask Mr. Howard, engineer, of Boston, who has made a study of the location here, if he will be heard first. Whether from what you have observed in the conditions here and from what you know by the studies you have made, - whether the building of this dike will interfere with any use which has been made during the past few years, is made at present, or is likely to be made for purposes of navigation;

or, in other words, whether there is any use made of the stream by navigation so far as you have been able to observe?

STATEMENT OF MR. CHANNING HOWARD, C.E.

3 3 7 | 9 2 2
I can answer your question because you limit it. So far as I have been able to observe, and I have been over the ground three times and once was here several days -- but I do not think my testimony as to the use of the stream would be what you or the parties conducting this hearing ought to have because I live in Boston or near by it. I never saw a boat in the river except the one I went up in.

Mr. Wadleigh: This report which I have embodied in this brief is the one you made when employed by the people of Wellfleet, is it not? (Exhibits printed "Report of Messrs. Whitman and Howard", attached to petitioners' brief.)

Mr. Howard: Yes, sir.

COL. BURR: Mr. Howard, what depth is there in Herring River?

Mr. Howard: About 8 feet at mean high tide. A little less if anything, but about 8 feet.

COL. BURR: And the range of tide is about what?

Mr. Howard: Ten and seven-tenths feet is the Government's statement.

COL. BURR: So there is no water in the stream at low water?

Mr. Howard: None, except that which is coming down from above.

Because it don't got time to run out. Perhaps it is a foot deep at low water. It is a very long stream or river and the water doesn't have time to get out, so there is always water there in the way that I mean, but not dead water.

COL.BURR: Did you go further up the stream than the location for the dike?

Mr. Howard: I surveyed the whole length.

COL.BURR: Did you observe any landings or wharves?

3 3 7 1 0 2 3
Mr. Howard: There is a place where they take herring and the like of that. A place where they drive down to get herring, etc., but it is for land purposes rather than boat purposes, but I can imagine a rowboat or small boat could go up to it, although I judge it is not used for navigation.

Mr. Wadleigh: Mr. Lorenzo D. Baker is a man who has lived in Wellfleet all his life and is I think thoroughly acquainted with local conditions. I will call upon him for a moment.

STATEMENT OF MR. LORENZO D. BAKER, ESQ.

I have been acquainted with the river for something over 30 years, and I have never seen anything that could be called navigation on that river. Our yacht is the only one that has been as far as the dike, so that I am quite sure there is nothing in the way of yachting there. And I know of nothing in the form of navigation that that river is used for.

Mr. Wadleigh: Do you see any possible detriment to the inter-

ests of anybody who wants to build or use boats, in the building of this dike?

Mr. Baker: I do not.

Mr. Wadleigh: You will observe that a number of the citizens whom I will call upon have the prefix of "captain" to their names, and they have earned that title as practical navigators. They are therefore, it seems to me, especially well qualified to testify in this matter.

STATEMENT OF CAPTAIN DARIUS NEWCOMB.

Mr. Wadleigh: Now, Captain, won't you tell us what you can as to the navigation on this river and the possible injury which might be caused by the building of the proposed dike?

Captain Newcomb: I don't think there is any navigation there. The time was once when a vessel could go up there. Of late years, for 20 years, I don't know of anything that could go up. The last one that went up is up there still.

COL.BURR: Has the river changed so that they cannot get up there?

Capt.Newcomb: Hummocks have drifted in and the river has grown up. This proposed dike could not injure navigation in any way. I think two years ago there were 2 boats up there. I was up there in a catboat 5 or 6 years ago.

COL.BURR: What kind of vessels were they that used to go up the river?

3 3 7 1 8 2 4

Capt. Newcomb: Sixty years ago vessels of 40 tons used to go just above where the dike is, and later they wintered down lower than where the dike is to be; that is, a few vessels. But of course nothing goes that way now and it would be unsafe for any wise man to undertake it.

(Captain Frederick Snow was called to testify, but did not respond.)

Mr. Wadleigh: I should like to call on Dr. Field, Chairman of the Massachusetts Fish and Game Commission. I don't know that he can give much enlightenment on the subject of navigation, but he has made a special study of the fish question.

STATEMENT OF HONORABLE GEORGE W. FIELD.

So far as we are concerned officially as commissioners of fish and game, we believe very strongly that the projected improvement of the Herring River will be of great benefit to the town as a place for growing shell fish. I do not feel competent to speak on the navigability of the river.

COL. BURR: How do you expect that this benefit will be brought about?

Mr. Field: It is known definitely that nitrification takes place more rapidly on fresh land than on brackish land, and the transformation of 1,500 acres from brackish land into fresh land will greatly increase the nitrification and increase the amount of

3 3 7 1 9 2 6

shell-fish food in the harbor. And in this way great benefit will ensue. Doubtless, from your experience you know that the great sources of supply for shell fish are at the mouth of fresh rivers, such as Chesapeake Bay and Narragansett Bay. The growth is where the fresh material washes from the land; and we know that this process of making shell-fish food goes on very much more rapidly in fresh than in brackish water, therefore, for this purpose the drainage from fresh meadows is much more valuable than from brackish meadows.

STATEMENT OF CAPTAIN ANTHONY FREEMAN.

Mr. Wadleigh: What do you say, Captain, as to this dike project having any effect on navigation?

Capt. Freeman: I don't think it would affect navigation much. There's about 8 feet of water there. Small boats go up there. I go up there sometimes in small boats.

Mr. Wadleigh: Would you feel that your business or pleasure was injuriously affected by the presence of this dike?

Capt. Freeman: I don't think I would.

COL. BURR: Just to get it on the record, I will ask you what is your business?

Capt. Freeman: Just to walk around the streets.

COL. BURR: What was it took you up there?

Capt. Freeman: I owned a boat at that time and sometimes took up a party of ladies.

COL.BURR: It was not a question of carrying freight up there?

Capt.Freeman: No, I never sailed any schooners that I could get up there. I don't think anybody else here has. I think about 60 years ago it was used for navigation. Now an eel has hard work to get up there sometimes. But so far as navigation is concerned, there is none.

STATEMENT OF CAPTAIN E. Y. OLIVER.

Mr. Wadleigh: Will you state to the representative of the War Office what you know about Herring River as a navigable stream, and whether the building of this dike can interfere with its use?

Capt.Oliver: To tell the truth, I never have been up there but very little, but so far as affecting navigation is concerned, I don't think there is any trouble about it.

Mr. Wadleigh: Is there any navigation there to be affected?

Capt.Oliver: No, sir; I never knew of a vessel being there. I knew of one that went up there and laid her bones there. I wouldn't undertake to go up there in a dory. In regard to the mosquitoes, I think that is the principal thing here in building this dike in Wellfleet, to keep the salt water out. Some say mosquitoes won't blow from one place to another. I've come up the Jersey coast; when the wind was blowing right I've had the cabin filled nearly full of flies and mosquitoes. I should say that mosquitoes would blow

337-1827

from down here. I live near a piece of meadow, about 100 acres. If this dike goes across and the meadow is drained it looks to me as though it would be a valuable piece of property, which I offered to give to Captain Baker if he would take it and make use of it.

STATEMENT OF MR. REUBEN WILLIAMS.

Mr. Wadleigh: Will you state to the representative of the War Department what you know about this?

Mr. Williams: I happen to be a man that has lived on the stream all my days. I have worked on the stream for 30 years. I own a catboat, and as regards navigation, I claim to-day we haven't any. In my grandfather's time there was water enough in the river to carry up a very small vessel. I undertook 3 years ago to carry my catboat up there to winter her. Now, I claim to know the river as well as any man living. I got her up there, but when we came out in the spring we got on a sage bunch. We got her off, but I think there has never been a boat there since. Nature has done what man can't do. There are places in the stream not over 5 feet wide, and it is literally filled with sage bunches, and where there are none it is filling rapidly with sand. As regards navigation, there is none. We have no use for it. Our boats draw from 18 to 24 inches of water and it would be impossible to-day for any man in this town to take a boat drawing 20 inches of

337 1828

water up that stream safely. We have no use for it. It is not used at all. It has not been used for 30 years I think.

COL.BURR: Was it used before that to any extent?

Mr. Williams: In my grandfather's day, for small boats, 50 or 60 years ago I think, they used to use it to carry up provisions. I have heard him tell that much. But not in my day has the stream been used for any such purpose. There is no landing anywhere.

3 3 7 1 8 2 9
Mr. Wadleigh: I think I might say one word in regard to your question as to the changes in the character of the stream. I have made from time to time careful inquiries into the history of the locality and I gather that there has been a very considerable change. The hills have been deforested so that the material from the hills has been washed down, filling the river, and if the stream was ever fitted for navigation, it is rapidly becoming less so.

STATEMENT OF CAPTAIN PARKER HICKMAN.

Mr. Wadleigh: What do you say as to the effect of this dike on the Herring River and as to the possibility of its being detrimental to navigation?

Capt.Hickman: I have been around here about 70 years. Sixty of it I have been acquainted up there. I have been there in a boat. I have a large catboat and have taken parties up there, usually Captain Baker's family.

Mr. Wadleigh: So that about the only persons who have used the river for boats are the petitioners in this case?

Capt. Hickman: They are.

STATEMENT OF WILLIAM H. TUBMAN.

Mr. Wadleigh: Will you state your attitude on this matter?

Mr. Tubman: I don't know much about the river. It is not a navigable stream, but all I know is what I hear. There are no boats go up there that I know of.

Mr. Wadleigh: You would be likely to know it if boats went up there to any extent?

Mr. Tubman: I think so.

(Mr. E. P. Cook was called to testify but did not respond.)

STATEMENT OF MR. WILLIAM SMITH.

Mr. Smith: I would say that I can verify all has been said here to-day, and I never heard of the stream being navigable since my recollection. I don't think that any one whomsoever objected to the dike on account of interference with navigation, but that the objections have been wholly in reference to expense. I think it is all right, and that this dike cannot be a menace to navigation.

337 1830

STATEMENT OF CAPTAIN FREEMAN SNOW.

Capt. Snow: This is not the Kennebec. This is not the Mississippi; nor is it the Amazon where you can navigate a thousand miles inland. It is a creek, that is all it is. Every spring they have to dig out to let the herring up to headwaters. It is not navigable. I have been about here 30 to 40 years and I've taken parties up the river, but it is no more than a creek. It is hard up and hard down. With a party on board it would be some fun to let the main boom swing across -- tell 'em all to duck their heads every few minutes. That is what Herring River is to-day and has been since I knew it. This dike is being built for the extermination of the mosquitoes. They are what is called a public nuisance. I have known parties to come here to Wellfleet and they say: "What are you going to do with these mosquitoes?", The next day they pack their trunks and go. That is what these enterprising men of Wellfleet are trying to do to-day, to exterminate the mosquitoes. If they can stop the salt water from going over these meadows and these places that are filled with mosquitoes, why they are doing a great thing for the town. There's no navigation whatever up there and would not be in a hundred years; and even if there wanted to be, sappers and miners would blow that dike to smithereens in a few minutes. What does it amount to? Exterminate the mosquitoes, that is what is wanted. That

3 3 7 1 9 3 1

is what the Legislature has appropriated \$10,000 for and the town of Wellfleet has voted to raise ten thousand more. That's \$20,000 in all; and I pray that they will have the privilege of putting the dike up there.

STATEMENT OF CAPTAIN THOMAS MOORE.

I have been navigating this harbor for 50 years or more and the hummocks have been coming up the stream every year and have been filling up the stream steadily. Some 50 years ago there used to be a wharf called "Island Wharf" just this side of the Baker place. They used to beat up there, but there's no vantage-way for any large vessel to get up there. It's completely closed. (In response to a question by someone on the floor, the speaker stated that the wharf to which he referred he believed had been below the site of the proposed dike.)

(Mr. Holbrook of the Board of Selectmen was called for, but did not respond.)

Mr. Wadleigh: Now, the testimony which I am offering here is largely cumulative. I do not know whether you wish to have me call very many more witnesses of this kind, although there are a number of gentlemen here who will speak upon the subject, perhaps it will meet your view if I call for a show of hands to express the opinion of the gentlemen present.

337 1832

COL.BURR: I do not think it is necessary to submit any more cumulative testimony.

Mr. Wadleigh: I will ask those present who believe this dike will serve a useful purpose and will not injure any possible or probable navigation, to stand up. (Fifty-seven persons were counted standing, 9 remaining seated*)

Mr. Wadleigh: That is all, except such remarks as I shall have to make in closing.

COL.BURR: If there are other persons who desire to be heard in this matter, I shall be glad to have them speak now.

(STATEMENT OF MR. LEVI L. HIGGINS PRESENTED IN WRITING AND MARKED "EXHIBIT A."):

Wellfleet, Mass.
June 10, 1908.

To the Secretary of War,
Washington, D. C.

Dear Sir:-

I hereby make my solemn protest against the construction of a dike across Herring River, Wellfleet, Mass., for these reasons.

First, it will stop large quantities of salt water from flowing up the river and back again, by so causing the ebb to be very feeble, it will cause sand bars to be thrown up by heavy westerly winds thereby eventually closing up the mouth of the harbor.

Second, large quantities of seaweed and drift of various kinds will accumulate near the dike, and being covered by drifting sands will fast fill up the lower harbor. Such was the case of the harbor in Truro the adjoining town. Whereas vessels drawing ten feet of water came in safely, now at the end of forty years only boats of the lightest draft can enter. This was caused by a dike similar to this one on a smaller scale.

* It was stated after the hearing, that some of those who did not rise, had remained seated because they were non-residents.

Also in my opinion it will ruin one thousand acres of salt meadow which the farmers of this town and of Truro depend upon for their hay. The meadow foundation is of mud, soft bottom, by cutting off the salt water, it will sink and become useless marsh, as it is now called by parties in favor of the dike. But in reality it is the source of livelihood to many farmers.

This is the opinion of a mariner for thirty five years, also a farmer in this locality for fifteen years more.

Yours respectfully,

Levi L. Higgins.

Wellfleet, Mass.

3 3 7 1 0 3 4
Mr. Wadleigh: Do you know of this river being used for navigation?

Mr. Higgins: For boats only.

Mr. Wadleigh: For what kind of boats?

Mr. Higgins: Rowboats.

Mr. Wadleigh: Do vessels loaded with wood go down?

Mr. Higgins: They can, at high tide.

Mr. Wadleigh: I am asking you whether they do?

Mr. Higgins: I saw one coming down 3 years ago.

Mr. Wadleigh: Have you seen any since?

Mr. Higgins: No, not any since.

Mr. Wadleigh: How many 3 years ago?

Mr. Higgins: One boat went several times.

Mr. Wadleigh: The wood is pretty well cut off, isn't it?

Mr. Higgins: The lower part of it is, but in the vicinity where I live, 4 miles from the dike, there is considerable wood.

Mr. Wadleigh: How far is it from the creek?

Mr. Higgins: Some places 40, some 500 feet.

Mr. Wadleigh: How much water is there at high tide in the creek?

Mr. Higgins: In winter time from 8 to 10 feet.

Mr. Wadleigh: And the dike is 4 or 5 miles below that place?

Mr. Higgins: Yes; and the creek is anywhere from 20 to 100 feet wide.

Mr. Wadleigh: Are you familiar, Mr. Higgins, with the official United States chart of Wellfleet harbor?

Mr. Higgins: I have seen it several times.

Mr. Wadleigh: Do you know, as a matter of fact, that there are any soundings of Herring River given on that chart?

Mr. Higgins: I never saw any in the upper river.

Mr. Wadleigh: Is there any sounding given at all of the river?

Mr. Higgins: I am not familiar with the latest Government chart.

Mr. Wadleigh: You have never seen any Government chart in which there was given a sounding on Herring River, have you?

Mr. Higgins: Yes, in the lower harbor.

Mr. Wadleigh: I mean in Herring River itself?

Mr. Higgins: I never did.

337 1835

Mr. Wadleigh: Mr. Higgins, do you use a boat yourself for navigation?

Mr. Higgins: I have a boat in which I go up and down the river.

Mr. Wadleigh: Do you use it at present?

Mr. Higgins: I have got the boat on the river now.

Mr. Wadleigh: What sort of a boat is it?

Mr. Higgins: It is a flat-bottomed boat about 15 feet long.

Mr. Wadleigh: A rowboat?

Mr. Higgins: Yes, a rowboat.

Mr. Wadleigh: What is your occupation?

Mr. Higgins: A farmer. I used to be a navigator and was 35 years on the river.

COL.BURR: Do you use the river for bringing supplies in at all?

Mr. Higgins: Not from the outside, but I do for about a quarter of a mile in the upper part of the stream.

COL.BURR: How far above the dike?

Mr. Higgins: Four miles I should say. You will understand that it varies in width, and in some places you will find it a good deal wider than you will below, but the average width is 25 feet 2 miles from the contemplated dike. But in no place do I know of its being narrower than 20 feet, and from

337 1856

that to a hundred feet. Two miles above the dike there is 3 or 4 feet at high water. On the high course of tides in the winter time there is from 3 to 5 feet above the meadow.

Mr. Wadleigh: Is it a fact that in the river as far down as the dike is to be built, there is as little as 2 feet at an average low tide?

Mr. Higgins: Probably there is 2 feet of water there at a common low tide. Of course, on a high course of tides there is a far greater flow and ebb, but what I was going to say is that this dike is going to stop a large flow of sea water which comes up, and going down, takes out a large amount of debris, but if the dike is there the debris is going to be landed near the dike and covered with sand, and in 20 years it will so fill that you will have no drain whatever from the fresh water above into the harbor. You will have to go to the beach direct to drain the water coming down.

Mr. Wadleigh: You don't believe as an engineering scheme the dike is a good one?

Mr. Higgins: I do not.

Mr. Wadleigh: You don't agree with the engineers or the State authorities, and you do not agree with the officials of the State or Department of Agriculture? You think they're all wrong?

Mr. Higgins: I think they know absolutely nothing about it.

337
| 837

STATEMENT (SECOND) OF MR. REUBEN WILLIAMS.

3 3 7 1 8 3 8
With your permission I should like to add something to what I have said. There has been some statement made here with regard to water in this river. Where this proposed dike is going, at low water there's just 4 inches of water, and I can take you down and show you there's just 4 inches of water where it is proposed to put this dike. This water is practically still for 3 hours. It's low water for 3 hours. I have been working there for 30 years and I have been working there for the last 2 weeks. I know just what I'm talking about, and that is the fact. It will be possible to go perhaps 100 feet below or above; and you might hunt up a little small hole dug in the sand where you could get a foot of water or 18 inches of water.

Mr. Higgins: Have you ever measured it?

Mr. Williams: Yes, I have, and I will take you down tomorrow and prove it.

CLOSING STATEMENT OF MR. WADLEIGH.

The vote at the Town meeting in favor of accepting the act of the Legislature authorizing the building of this dike is as follows: The whole number of votes cast was 228; votes in favor of accepting the act were 188. Those opposed were 40. The vote in favor of appropriating \$10,000 on the part of the Town of Wellfleet was as follows: Whole number of votes cast, 199; number of votes in favor, 182. Number of those opposed, 17.

I will say simply this on the question of this general proposition; it has been approved by three separate legislative enactments of the General Court of Massachusetts: The last one not only approved the general scheme to build this dike, but it appropriated from the money of the Commonwealth \$10,000 toward its construction. At the hearing before the Committee on Harbors and Public Lands, by which this was considered, not a single representative of the Town of Wellfleet, or any other community, appeared in remonstrance, while others were there to favor it, and the Committee without leaving their seats reported favorably upon the project and upon the appropriation of \$10,000. I say that because the State of Massachusetts, which has always been jealous of its water highways, has emphatically favored this project as one for the best in-

3 3 7 1 9 3 9

337 1840

terests of the citizens. The citizens of Wellfleet have passed twice on the matter of legislative enactments, and twice on the matter of appropriating money; and I think I need not go further than to show that public sentiment in Wellfleet and in Massachusetts very heartily favors the adoption of the project. (Submits brief, marked "Exhibit B".) If you will read the brief which I have submitted, which is brief in fact as well as in name, you will observe that officials connected with the Department of Agriculture have made a study of the matter and have emphatically approved it, as do the citizens of Wellfleet. Bearing in mind the statement that you made, that the function of the War Department relates entirely to matters of navigation, I believe I need not go further except to say that the citizens who are here to-day and who have addressed you on this matter, are fairly representative citizens of Wellfleet. They are business men, workingmen, fishermen, and retired sea captains, and know thoroughly what they are talking about. They have no selfish axe to grind. They are concerned in the best interests of the community. I may add that this work is being delayed because we have not yet received the federal sanction. The contractor has erected barracks and is ready to proceed with his

work. If federal sanction is obtained promptly, the contractor hopes to complete his work early this season and make Wellfleet what it deserves to be, a paradise for summer travelers.

As no other persons desired to be heard, the hearing was declared closed at 12.40 M.

337-1841

Copied
43
51 *9 mos*

In Re Herring River Dike.

STATEMENT OF CASE.

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

Permission is desired to construct a dike across the mouth of Herring River in the Town of Wellfleet. The annexed plan shows profile and cross section of proposed construction and its location with relation to adjacent and surrounding territory. The dike if built, will be constructed by the Commonwealth of Massachusetts acting by and through its Board of Harbor and Land Commissioners, the Town of Wellfleet contributing ten thousand (10,000) dollars, and the Commonwealth an equal amount. These several sums have been respectively appropriated by the Town and Commonwealth and if federal sanction is obtained, the actual work of construction will be commenced within a week from the time a license is granted and will be completed before fall of the present year.

PURPOSES AND OBJECTS OF THE PROPOSED DIKE.

Herring River is a shallow stream flowing into Wellfleet Harbor. It is not navigable in any practical sense of the word, and the official United States chart of Wellfleet Harbor shows no soundings taken within the limits of the river. Its total water-shed is approximately five thousand eight hundred (5800) acres and its principle sources are a number of small ponds shown on the plan. The course of the stream and its tributaries is principally through bog and marsh (shaded brown on plan). The elevation of the bed of the stream at its mouth is

about two feet above harbor level at mean low tide and the mean tidal ebb and flow in Wellfleet Harbor is ten and seven tenths feet. Although the depth of the stream at low tide is less than two feet in the deepest part of its channel it is never wholly free from salt water, for the reason that the fresh water coming down from the ponds and watershed has not time to discharge before it is met by the incoming tide. The consequence is that the stream instead of affording real drainage for the marshes serves only to keep them water soaked. As the surface of a great part of the marsh is about level with high tide it follows that extremely high tides or severe storms flood the marshes and leave pools and shallow ponds which stand and stagnate until distributed by the slow process of evaporation. The proposed dike will serve to keep the tide out, will reduce the level of water in the main stream and tributaries to an extent that will permit the natural drainage of the marshes, and this added to the straightening and ditching that will accompany the diking, will allow the reclamation of the bog lands and the use for agricultural purposes of an area exceeding one thousand and one hundred (1100) acres. The engineers' report hereto subjoined shows the method of handling both fresh water and tidal flow by means of automatic gates or valves in the dike and gives in conjunction with the other documents that are made a part of this brief, a complete survey of the whole situation.

The present conditions are objectionable:-

(a) Because a large amount of land otherwise valuable for agriculture is now water soaked, worthless, unimproved and uninhabited.

337 1943

(b) Because the mosquito nuisance thus created damages to an extent that with difficulty can be estimated or realized, the comfort, health, and prosperity of a region many times greater in area than the marshes from whence the nuisance originates.

POINTS AND AUTHORITIES.

The principle income producing industries in this part of the Cape Cod region so called, are three, to wit, fisheries, agriculture (principally cranberry growing) and the business of caring for summer guests and tourists. The construction of the proposed dike will be a pronounced benefit to all three of these as follows:

337 1844
(1) The reclamation of the marshes will in the opinion of no less an authority than the chairman of the Massachusetts Fish and Game Commission, have an affect markedly beneficial on the fisheries, for the reason that the drainage from cultivated lands will afford much more in the way of food products for shell-fish in Wellfleet Harbor than does the drainage from the present area of swamps and bogs. It will also attract the smaller fish on which the food species exist. See letter of Dr. G. W. Field, Chairman of the Massachusetts Fish and game Commission hereto annexed.

(2) The land thus reclaimed will be of great value for agricultural purposes, being when drained especially fitted for cranberry growing. The Cape Cod cranberry is admittedly the finest grown and the areas available for its cultivation in all parts of the cape are being rapidly taken and utilized. The substantial increase in the

out-put that would be effected by the improvement herein advocated would benefit not only the farmers, traders, and laborers of Wellfleet and vicinity, but the consuming public as well. The bed of the marshes to a depth of several feet is composed almost wholly of muck, that is to say, of the products of vegetable decomposition, and is extremely fertile when once drained and freshened. The fruit farming on dike lands in Nova Scotia has shown the possibilities in this direction, as by reason of natural advantages the work of reclamation in this instance offers comparatively few difficulties. See reports of Engineers Howard and Whitman hereto appended.

(3) While the mosquito question is herein treated largely through its relation to the matter of summer visitors it is obvious that it is of importance wholly aside from that as it affects the comfort and to some extent the health and prosperity of all the permanent inhabitants of Wellfleet.

The condition of the marshes above described including the formation and retention of stagnant pools, affords opportunity unexampled for breeding mosquitoes that in numbers, size, and voracity equal anything experienced in New Jersey, the tundras of Alaska, or other places on this continent that have been inflicted with the pest. In the particular vicinity in question, that is to say within practically the whole limits of the Town of Wellfleet, these insects are throughout the summer an intolerable nuisance and curse to all and sundry who have occasion to visit, live, work, or play within the radius of their accustomed activities. At certain stages of the wind they arise

1845
1837

5 3 7 | 8 4 6
from their breeding places and swoop down in clouds upon the adjacent farms and villages. Promising hotel sites are rendered valueless and boarding houses and cottages are made tenantless by the nuisance thus created, and the great natural advantages which this section of Cape Cod offers to the vacationist have been off-set and practically nullified by the presence of this pest. Unfortunately for Wellfleet this is not a speculation of what might happen in this particular, but a statement of what has happened. The ponds above referred to in which Herring River has its source are attractive sheets of water well stocked with fish. Under decent conditions they would afford revenue to the native and recreation to the visitor, but the trail of the mosquito is over them all to an extent that effectually bans fishing in the mosquito season.

The work of mosquito extermination is of such importance that it has been taken up by state and national authorities, and the method now universally recommended and adopted by the scientists having the matter in charge is the destruction of the breeding places by drainage or filling. In the case in point the method proposed, that is the draining of the marshes by means of the building of the dike, has been approved by Mr. Henry Clay Weeks of New York, Economic Engineer and Secretary of the American Mosquito Extermination Society and an eminent authority on the subject who made a special study of the locus and whose report to the authorities of Wellfleet is hereto annexed. It has received also the endorsement of Mr. J. O. Wright, Supervising Drainage Engineer of the United States Department of Agriculture,

Washington, D. C., who states in a letter under date of October 1, 1907, as follows: "I have received a number of communications from Mr. Weeks dealing with the reclamation of salt marshes or more particularly that feature which will eliminate mosquitoes.-----It is only through constant agitation of this matter in all its phases that we can hope to reclaim the vast extent of salt marshes along the Atlantic coast." Mr. Wright also writes under date of December 2, 1907, "We are ready and willing at all times to assist you in any way that we can and I do hope that you may be successful in getting permission to construct this dike so as to show the people the great benefits that will result from this improvement."

3 3 7 1 8 4 7
The Commonwealth of Massachusetts has by its representatives in general Court assembled, in three successive legislative enactments (Chapter 400, Acts of 1906, Chapter 511, Acts of 1907 and Act of 1908 in amendment thereto) set the seal of its official approval upon this project for the construction of the Herring River dike. The acts in question as finally amended by that passed in nineteen hundred and eight not only authorized the construction of this dike, but appropriated the sum of ten thousand (10,000) dollars in part payment thereof. At the hearing before the legislative committee on Harbors and Lands for nineteen hundred and eight not a single person from the Town of Wellfleet or elsewhere appeared to remonstrate against the legislation. The adoption of the act was made contingent upon its acceptance by two thirds of the voters of Wellfleet present at a town meeting especially called for that purpose. The town

meeting in question was largely attended. The act was accepted by a majority considerably larger than that required and the appropriation for the town's part of the expenditure in building the proposed dike was adopted by an even larger vote. The Board of Harbor and Land Commissioners of the Commonwealth of Massachusetts are ready to have the work started within a few hours or at ^{the} most days, of the granting of the federal permission.

3 3 7 1 9 4 9
The petitioners for the dike desire to emphasize the fact that Herring River has not in the past been used for purposes of navigation by either fishermen, sportsmen, or anyone else. There is and can be no pretense that it affords any avenue for water borne transportation. The Commonwealth of Massachusetts has invariably been zealous and jealous in guarding against any infringement or interference with the real water-ways of the state. It has not departed from its usual policy in this instance, but has maintained its consistent attitude of favoring by legislation and financial aid a project which makes for the improvement of a large section of fertile territory now worthless and for the material betterment and comfort of all the people contiguous to that territory.

In conclusion it may be added that Dr. Mead, Chief of Irrigation and Drainage Investigations for the United States Department of Agriculture, has stamped the project with his hearty approval for reasons that he has carefully enumerated in his report hereto annexed.

Wellfleet, Mass., June 10, 1908. Levi L. Higgins, to S. of W. Protests against the construction of a dike across Herring River at Wellfleet, Mass., for reasons stated.

(This letter is a dupl. of written protest filed by Mr. Higgins at pub. hearing June 10, 1908 of which an extended copy is embraced in Proceedings, inclo. 19).

Received Jun 13, 1908 M. & R. Div. War Dept. C OF E.

2nd indorsement,
War Department
Office of the Chief of Engineers
Washington

June 17, 1908.

Respectfully referred to Lieut. Col. Edward Burr, Corps of Engineers, in connection with previous papers on this subject sent him June 1, 1908.

By order of the Acting Chief of Engineers:

J. B. Cavanaugh

Major, Corps of Engineers.

56062/13

3d indorsement,
U. S. ENGINEER OFFICE
Boston, Mass.

June 22, 1908.

1. Respectfully returned to the Chief of Engineers, inviting attention to my report of this date upon the application of the State Harbor and Land Commissioners for permit to build at Wellfleet, Mass., the dike within mentioned. A duplicate of the within protest was filed by the signer thereof at the public hearing on June 10, 1908.

EDW BURR

Lieut. Col. Corps of Engineers.

43/22 Misc.

J. B. HAE.

337 1849

WAR DEPARTMENT,
OFFICE OF THE CHIEF OF ENGINEERS,
WASHINGTON.

July 13, 1908.

Lieut. Col. Edward Burr,
Corps of Engineers,
Boston, Mass.

Colonel:

1. There is sent herewith a copy of an instrument, dated the 6th instant, expressing the approval of the War Department of plans for a dam proposed to be built by the Board of Harbor and Land Commissioners of the Commonwealth of Massachusetts, across Herring River at Wellfleet, Mass,

2. Your attention is invited to the condition upon which this approval is given, and you will supervise the work of construction, so far as may be necessary, in order that the dam may be built in accordance with the approved plans, reporting to this office at the proper time whether it has been so constructed.

By command of the Chief of Engineers:

Very respectfully,

J. B. Kavanaugh

Major, Corps of Engineers.

56062

5

Inclo. 8 attached to copy of 19 accomp'g.

ENGINEER OFFICE
43 JUL
23 15
1508
BOSTON, MASS.

W. D. ...
T. T. ...

3371850

WAR DEPARTMENT,
UNITED STATES ENGINEER OFFICE,
ROOM 1815 BARRISTERS HALL, 25 PEMBERTON SQUARE,
BOSTON, MASS.

43
26 Misc

July 15, 1908.

Board of Harbor and Land Commissioners,
State House, Boston, Mass.

Sirs:

The Chief of Engineers has furnished this office a copy of the instrument executed by the Assistant Secretary of War July 6, 1908, authorizing your Board to build a dam across Herring River at Wollfleet, Mass., in accordance with plan thereto attached.

LN Referring to condition 1 upon which the approval is granted,
CO will you please notify this office of the commencement, and also of
the completion, of the work therein permitted.

For, and in the absence of, Lieut. Col. Edw. Burr, Corps of
Engineers:

Very respectfully,

U S GRANT 3rd

1st Lieut., Corps of Engineers.

43/23 Misc.
THP.



Commonwealth of Massachusetts

Board of Harbor and Land Commissioners,
State House,

Boston, July 16, 1908.

Lieut. Col. Edward Burr,
Corps of Engineers U.S.A.,
Barristers Hall, Boston.

Mr. Starnes
T. T. H. H.

U.S. ENGINEER OFFICE
43 JUL
27 1908
Misc
BOSTON, MASS.

Sir:-

Under the plans approved by the Secretary of War for the construction of a dike in Herring river, Wellfleet, the Contractor has notified the Board that he will begin work there next week.

Very truly,

Frank W. Volz
Chief Engineer.

337 1852



Commonwealth of Massachusetts

Board of Harbor and Land Commissioners,
State House,
Boston.

U.S. ENGINEER OFFICE
MAY 14 1910
BOSTON, MASS.

May 13, 1910.

Lieutenant Colonel Edward Burr,
Corps of Engineers U. S. A.,
Barristers Hall,
Boston, Mass.

Sir:

The work of building a dike in Herring River, Wellfleet, under permit of the Secretary of War, dated July 6, 1908, has been substantially completed, the only work remaining to be done being the stopping of a small leak which developed after the completion of the main work.

Very truly yours,

Frank M. Wolcott
Chief Engineer.

337-1853

WAR DEPARTMENT,
UNITED STATES ENGINEER OFFICE,
ROOM 1015 BARBISTERS HALL, 25 PEMBERTON SQUARE,
BOSTON, MASS.

43
29.1.15

May 17, 1910.

The Chief of Engineers,
United States Army,
Washington, D. C.

Sir:

4
5
6
1
7
8
9

1. Under date of July 6, 1908, a permit was granted by the Assistant Secretary of War to the Board of Harbor and Land Commissioners of the Commonwealth of Massachusetts, to construct a dam across Herring River, at Wollfleet, Mass. (R.D. 56052/19) and the duty of supervising the construction of this dam was assigned to me by letter dated July 13, 1908 (56052/5.)

2. The work authorized is the construction of a solid dam across Herring River near its mouth, with no provision for the passage of vessels into the river, which is practically only a tide slough with little or no depth at low water. The chief engineer of the Board of Harbor and Land Commissioners advised this office, under date of May 13, that the building of the dike has been substantially completed, the only work remaining to be done being the stopping of a small leak which developed after completion of the main work. Wollfleet is situated at a remote point on Cape Cod, and no funds in hand are available to pay the expenses of inspecting the work to ascertain whether it has been completed in accordance with the permit.

3. In view of the fact that this work has been done under special act of the Legislature by the Board of Harbor and Land Commissioners of the Commonwealth, and also that the dam is a solid structure containing no provision for navigation, the question of inspection becomes one of location only, which, in this instance, is of little or no importance. I therefore recommend that the statement by the chief engineer of the Board of Harbor and Land Commissioners herewith be accepted as suffi-

cient evidence that the work has been completed in accordance with the terms of the permit, and that I be authorized to drop the duty from my personal report. If, however, the action recommended does not meet with the approval of the Chief of Engineers, an allotment of \$6. is requested from the appropriation for Examinations, Surveys & Contingencies of Rivers & Harbors, to cover the necessary cost of making an inspection.

Very respectfully,

Your obedient servant,

HENRY BURR

Lieut. Col., Corps of Engineers.

Dis. TEJ/HWT

43 Misc.

Copy of inclo. 28 accomp.

5

5

0

1

7

3

3

1st indorsement.
War Department,
Office of the Chief of Engineers,
Washington.

May 21, 1910.

Respectfully returned to Lieut. Col. Burr, who is authorized to drop this duty from his personal report as recommended in paragraph 3 within; a personal inspection being considered unnecessary.

By command of the Chief of Engineers:

J.B. Cavanaugh

Major, Corps of Engineers.

56062/22

Inclo. 25 accomp.

3 3 7 1 8 5 6

20 Indorsement.

U. S. ARMY OFFICE,
Boston, Mass.,
May 24, 1910.

Respectfully returned to
the Chief of Engineers.

EDW. BURR

Lieut. Col., Corps of Engineers.

43/29 Misc.
Incl. 30. no. 30.

337 | 857

END

OF

FILE

337 1858