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It's "BUG TIME"

DEQ sues county drain commissioner for \$11 billion

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(MLive File Photo)

By **Michael Kransz**
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GLADWIN COUNTY, MI -- The state is suing a Mid-Michigan county drain commissioner for nearly \$11 billion on allegations he repeatedly flouted environmental regulations over the past six years.

In a civil suit filed last month, the Michigan Department of Environmental Quality accuses Gladwin County Drain Commissioner Robert Evans of not obtaining proper permits and oversight for work on six drains and one creek and failing to prevent soil erosion and sedimentation.

Evans has served as drain commissioner since 2010 and all of the accusations stem from his actions while in office.

Since January 2012, the DEQ has cited Evans at least 29 times for violations but never once received a response from him, according to the lawsuit filed April 13 in Ingham County Circuit Court.

Not including attorney and surveillance costs, the state is seeking an estimated \$10.71 billion from Evans and a court order for him to remedy the violations.

The DEQ and Michigan Attorney General's Office declined to comment on the lawsuit.

Evans did not respond to calls left at his office.

All of the allegations against Evans pertain to "construction activity" and "earth changes" in the past six years at Nestor Drain, Venison Creek Drain, Bear Creek Drain, Longstreth Drain, Burlson Drain, Davidson Creek and Quillet Drain in Gladwin County.

The DEQ alleges Evans:

- Didn't obtain stormwater discharge permits;
- Didn't obtain soil erosion and sedimentation control permits;
- Didn't renew soil erosion and sedimentation control permits;
- Didn't submit complete plans for soil erosion and sedimentation control;
- Didn't enlist a certified stormwater operator to inspect and correct construction work;
- Didn't install adequate soil erosion and sedimentation control; and
- Didn't complete earth changes in a manner that reduced accelerated soil erosion and sedimentation.

Increased sedimentation has negative impacts on water quality and ecological health, according to Steven C. Kohl, chair of law firm Warner Norcross + Judd's Resources, Energy and Environment group.

"The drains go places, into streams and ultimately the Great Lakes," Kohl said. "Excess sedimentation doesn't necessarily create public health risk, but imagine it silting over spawning beds for trout."

"We are a state with a lot of natural resources," he continued. "Excessive sediment is an impairment of the ecosystem."

At this time, it's not clear if Gladwin County is on the hook for whatever amount of money a judge decides is appropriate, according to Tara Hovey, the county's attorney.

On April 24, the Gladwin County Board of Commissioners approved a resolution asking Gov. Rick Snyder to remove Evans from his

elected position, citing dereliction of duty and increasing costs associated with his failures.

"The cost and expense of rectifying the damage done to drain system of Gladwin County by the action or non-action of County Drain Commissioner continue to accrue," the affidavit for the resolution stated.

The board found out the extent of DEQ violations when Evans' only employee retired in December 2017.

"The violation notices never formally presented to the board," Hovey said. "They were aware of issues. They were not aware of how bad the issues were."

Since the employee's retirement, bills haven't been turned in, work has gone unpaid for and the office has been vacant with stacks of mail piling up, according to the resolution affidavit.

The affidavit states bills for electricity and maintenance staff at county dams have neither been turned in nor paid for since December 2017.

"There was nobody there to keep it together," Hovey said. "The office has been basically empty since December."

Adding it up

The potential wallop of a billion-dollar-plus bill to either Evans, the county or both comes from two separate and repeated alleged violations of the Natural Resources and Environmental Protection Act.

The DEQ alleges Evans violated the act's water resources protection and soil erosion and sedimentation control subsections.

Transgressions of the water resources protection subsection incur fines up to "\$25,000 per day of violation." Offenses under the soil erosion and sedimentation control subsection incur fines up to "\$10,000 per day per knowing violation."

The DEQ issued 14 water violations and 15 soil violations against Evans, according to the lawsuit. The first of the 29 was issued in January 2012.

In theory, Kohl said, the per-day monetary penalty could continue to compile as additional violations are issued until the violation is remedied.

Such an amount would likely not be ordered, as neither the county nor the commissioner could afford that upper-limit penalty amount, he said.

In federal and state environmental violation cases, getting the offender to comply with regulations is usually the priority of the suit, not scoring gargantuan monetary sums, Kohl said.

It's not clear why the Michigan Attorney General's Office and the DEQ decided to file a civil lawsuit against Evans after six years of continued, alleged violations.

Kohl speculated it's because some interpret the statute of limitations on the violations to be six years.

In his 35 years of practicing environmental law, Kohl said he can only recall one other

case where the state of Michigan sued a county drain commissioner.

"Based on the allegations, it would appear the drain commissioner has ignored for six years the DEQ and requirements that might apply to the activities that were being undertaken with regard to maintenance and construction of drains," he said.

"From the standpoint of maintaining regulations, you can't tolerate that."

2018-2019 Chapter Officers

Josh Jenkins – President

Steve Wilkowski – Vice President

Brad Befus – Secretary

John Winchester – Treasurer

George Killat – Membership Secretary

Banquet

The Chapter's 2018 banquet netted just over \$4,000. Attendance has been steadily dropping over the last few years (66 attended in 2018).

The BOD is considering changes and needs input from our members. Some ideas discussed are: 1. Drop the banquet, 2. Change the date back to Tuesday's, 3. Have a summer event such as a barbeque or other similar event. 4. Etc.

Think it over and if you have any ideas or thoughts contact a BOD Member.

This event is our only fund raising event and without the income from the event we are unable to fund chapter and TU projects in Michigan.

Adam's Fly Print

We have some prints of the Adam's Fly by Beth Ward Donahue that celebrate TU's 50th Anniversary. Costs are \$120.00 and \$160.00 (remarked). Contact Ross Rosenbrock 989-662-6533, rrosenbrock@live.com. Check out our website.

Lane Property Update

This summer the Chapter is going to clear downed trees from the river to allow MITU & the MIDNR to conduct shocking to inventory the fish population in the Lane Property.

A date has not been selected and when a date is selected we will need about 10 volunteers to assist on the project.

If you are willing to help, contact Steve Wilkowski 989-495-7151 - swilkowski2000@yahoo.com or John VanDalen 989-631-6873 jvdfish@gmail.com

State Council www.michigantu.org

Executive Director Bryan Burroughs - bryanburroughs@michigantu.org

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Secretary - Mike Lagowski

Treasurer - Rob Smith - rsmith@michigantu.org

National Council Rep - Rob Smith - rsmith@michigantu.org

L. P. Martuch BOD Meetings

September 4, 2018 at Scientific Anglers 5:30 PM

L.P. Martuch - Board of Directors

Brad Befus (2021) 866-587-6747 - befusb@scientificanglers.com - Secretary

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Harley Holsinger (2019) (989-667-0581) - harleyo@live.com - BOD

Josh Jenkins (2021) 989-495-7151 - jenkinsj@scientificanglers.com - President

George Killat (2018) (989-835-3793) - tugeorgek@charter.net - Membership

Thomas Monto (2019) 989-430-8327 - t8monto@aol.com

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John Winchester (2018) 989-631-0122 jgwinch@att.net - Treasurer/Hatch Book

Steve Wilkowski (2019) 989-495-7151 - swilkowski2000@yahoo.com - Vice-President / SIC



Committee Chairmen

Bill Holler 989-284-6566 fwholler@chartermi.net – Projects/Property

John Van Dalen 989-631-6873 jvdfish@gmail.com – Special Events

Interesting web sites

<http://www.martuchtu.org/Pages/default.aspx> Leon P Martuch Website

<http://h2o.usgs.gov> Hydrology data for all rivers in the US

<http://www.totalflyfishing.com> Fly Fishing Website

www.flyangleronline.com Fly patterns, articles, and general information.

<http://info.abrfc.noaa.gov/rfc-wfo.html> National Weather Service river forecasts

www.tu.org Home page Trout Unlimited.

www.steelheadsites.com Steelhead information

www.fedflyfishers.org Federation of Flyfishers Home Page.

Disclaimer Statement:

<http://www.michigantu.org/> Michigan Council of Trout Unlimited Home Page

www.fffglc.org Federation of Fly Fishers

www.lssu.edu Lake Superior State University. Fish cam at the power plant at the Soo

www.trailstotrout.com Website for trout fishing

On Line Fishing Log mydailyfishinglog.com

Guide to fly fishing waters of the US – www.kyndoutdoors.com

American Museum of Fly Fishing www.amff.com

Anglers of the AuSable www.AuSableAnglers.org

On AOL Look under Interest, Hobbies, and Fishing

We will publish more sites, as they become known. If you know of interesting sites let me know at t8monto@aol.com

Membership

Trout Unlimited has a membership program going. Our Chapter can greatly benefit by having you sign up a new member. Log onto www.tu.org/intro and you can get a special introductory rate of \$17.50. Be sure to enter code 250 so our Chapter will receive credit for the membership. This would make a great gift for your fishing buddy.

For membership problems, contact George Kill

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