

Plaintiffs

-VS-

Martin R. Hoffman, et al.,

No. 5-76-80

Civil  
~~Criminal~~

Clerk's Notice Under  
F.R.C.P. Rule 77d

Defendants

You are hereby notified that in the above entitled cause,  
on the 13th day of May, 1980, we filed Judge Miles W. Lord's  
Order dismissing this action and am enclosing a copy of said order herewith.

ROBERT E. HESS, Clerk

By: Catherine M. Ptacek  
Catherine M. Ptacek, Deputy Clerk

To: Grant Merritt  
Nielsen, Blackburn & Merritt  
415 Peavey Building  
Minneapolis, MN. 55402

Attorney for \_\_\_\_\_

Bronson C. LaFollette, Attorney General for the State of Wisconsin  
By: Richard Boyd, Asst. Attorney General  
114 East State Capitol  
Madison, Wisconsin 53702

Attorney for \_\_\_\_\_

Thomas K. Berg, U. S. Attorney  
by: John Lee, Assistant U. S. Attorney  
234 U. S. Courthouse  
Minneapolis, MN. 55401

Attorney for \_\_\_\_\_

Attorney for \_\_\_\_\_

Attorney for \_\_\_\_\_

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Plaintiffs,

v.

Martin R. Hoffman, et al.,  
Defendants.

ORDER

-----  
Nielsen, Blackburn & Merritt, by Grant Merritt, 415  
Peavey Building, Minneapolis, MN 55402.  
Bronson, C. LaFollette, Attorney General, by Richard  
Boyd, Assistant Attorney General, 114 East State Capi-  
tol, Madison, Wisconsin 53702.


Thomas K. Berg, U.S. Attorney, by John Lee, Assistant  
U.S. Attorney, 234 U.S. Courthouse, Minneapolis, MN  
55401.

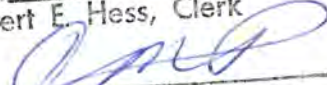
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It appearing from the files and records that this case  
has been settled, or otherwise disposed of,

Now, therefore, Sua Sponte, this case is DISMISSED.

PROVIDED that, the Court will retain jurisdiction for  
ten days from the date hereof to afford counsel the oppor-  
tunity, upon good cause alleged, to move to vacate this  
Order of Dismissal. -

Dated: May 9, 1980

  
\_\_\_\_\_  
Miles W. Lord  
United States District Judge

Filed MAY 13 1980  
Robert E. Hess, Clerk  
By   
Deputy

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RECORDED

# UNITED STATES MAGISTRATE

Chambers of  
Hon. Patrick J. McNulty

United States District Court  
United States Court House  
Duluth, Minnesota 55802

Phone: Area Code 218  
727-6692

December 13, 1979

To Counsel:

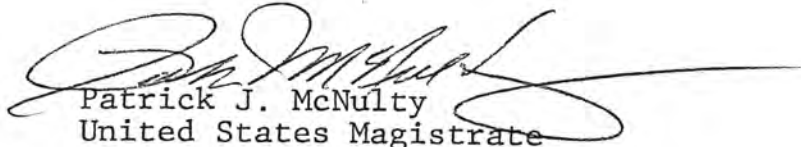
Difficulties with the trial calendar in this Division partially caused by laxity in observing the pre-trial rules of the Court, coupled with recent developments internally, now mandate a literal application of the rules and adherence to the calendar structured by the clerk.

Therefore:

Settings for pre-trial conferences are considered certain, subject to change only for conflict with other settings within this Court, or comparable cause.

Counsel will be expected to conform with instructions included in the Order for Pre-Trial Conferences.

Counsel will be expected to be familiar with the Standing Orders of the District Judge to whom the case is assigned.

  
Patrick J. McNulty  
United States Magistrate

PJM:crh  
Enclosure

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Defendant(s).

IT IS ORDERED that a pretrial conference be held before Honorable Patrick J. McNulty, United States Magistrate, on December 26, 1979, at 11:00 o'clock a. m., in Courtroom No. 3, United States Courthouse, Duluth, Minnesota.

PRIOR TO PRETRIAL

1. Counsel are directed to complete the physical numbering of all papers and objects expected to be introduced as exhibits, and shall prepare, serve, and file a list of such exhibits. Documents expected to be used solely for rebuttal purposes and as such have not been furnished to adverse counsel, need not be so numbered or listed until identified at trial. Failure to list an exhibit required by this order to be listed or to disclose such exhibit to adverse counsel, will result, except upon a showing of good cause, in the non-admissibility of the exhibit into evidence at the trial.

2. Counsel shall prepare, serve, and file a list of all witnesses whom they expect to call to testify, except those who may be called for rebuttal purposes only. Except upon a showing of good cause, no witnesses whose name and address is not so listed shall be permitted to testify over objection for any purpose except rebuttal.

3. Counsel shall designate, in writing, all depositions, answers to written interrogatories, and requests for admissions or portions thereof which are expect to be offered in evidence.

4. At such pretrial conference, the court will consider the simplification of the issues, the separation of issues, the limitation on the number of expert witnesses, the prospects of settlement, and such other matters as may aid in the trial or other disposition of the action.

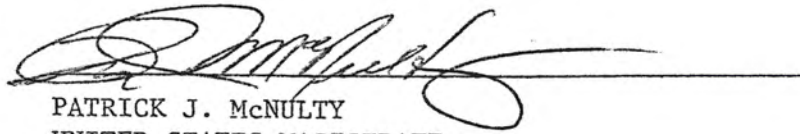
Filed DEC 13 1979 19  
Harry A. Sieben, Clerk

*Catherine M. Place*  
Deputy

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be certified by the undersigned as "Ready for Trial."

DATED: December 13, 1979

A handwritten signature in cursive script, appearing to read "Patrick J. McNulty", is written over a horizontal line.

PATRICK J. McNULTY  
UNITED STATES MAGISTRATE

Plaintiff

-VS-

MARTIN R. HOFFMAN, Individually and  
as Secretary of the Army; et al

No. 5-76-80

Civil  
~~Criminal~~

Clerk's Notice Under  
F.R.C.P. Rule 77d

Defendant s

You are hereby notified that in the above entitled cause,  
on the 5th day of December, 1978, we filed Judge Miles W. Lord's  
Order dated November 30, 1978 re: the Stipulation between the Minnesota Conservation  
Federation, Inc., Plaintiff, and the Defts. U. S. Army Corps of Engineers  
and the Environmental Protection Agency and the other officers, agents and employees  
of the United States and the United States Government, and am enclosing a copy  
of said Order herewith.

HARRY A. SIEBEN, CLERK

By: Catherine M. Ptacek  
Catherine M. Ptacek, Deputy Clerk

To: Mr. Grant J. Merritt  
c/o Thompson, Nielsen, Klaverkamp & James  
415 Peavey Building  
Minneapolis, MN. 55402  
Attorney for \_\_\_\_\_

Mr. Bronson C. LaFollette, Atty. General for State of Wisconsin  
Attn: Richard J. Boyd, Asst. Attorney General, and Theodore L. Priebe  
114 East State Capitol  
Madison, Wisconsin 53702  
Attorney for \_\_\_\_\_

Andrew W. Danielson, U. S. Attorney  
Attn: John Lee, Asst. U. S. Attorney  
596 U. S. Courthouse  
Minneapolis, Minnesota 55401  
Attorney for \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Attorney for \_\_\_\_\_

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\_\_\_\_\_  
Attorney for \_\_\_\_\_

v.

O R D E R

MARTIN R. HOFFMAN,  
 individually and as  
 Secretary of the Army;  
 and Department of the Army;  
 and Lieutenant General  
 John W. Morris, individually  
 and as Chief of the Army  
 Corps of Engineers; and  
 Corps of Engineers of the  
 United States Army; and  
 Brigadier General Robert L.  
 Moore, individually and as  
 Division Engineer, North  
 Central Division of the  
 United States Army Corps of  
 Engineers; and Colonel  
 Forrest T. Gay, III,  
 individually and as District  
 Engineer, Army Corps of  
 Engineers; and Russell Train,  
 individually, and as Admini-  
 strator of the Environmental  
 Protection Agency; and The  
 Environmental Protection  
 Agency; and George Alexander,  
 individually, and as Regional  
 Administrator, Environmental  
 Protection Agency; and the  
 United States of America,  
 Defendants.

Filed DEC 5 1978 19  
 Harry A. Sieben, Clerk  
 By Catherine M. Placek  
 Deputy,

The following Order is entered pursuant to a Stipulation between the Minnesota Conservation Federation, Inc., Plaintiff, who is represented by Thompson, Nielsen, Klaverkamp & James, formerly Nielsen, Blackburn & Merritt, Ltd., and the State of Wisconsin, intervening party Plaintiff, which is represented by its Attorney General, Bronson C. LaFollette and Theodore L. Priebe, and the Defendants, United States Army Corps of Engineers and the Environmental Protection Agency and the other officers, agents, and employees of the United States and the United States Government represented by John M. Lee, Assistant United States Attorney.

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7 in and around the Duluth-Superior harbor. The results of the  
8 environmental assessment, whether they be a negative declaration or  
9 an environmental impact statement or supplement to an existing  
10 environmental impact statement, shall be made available to the  
11 Plaintiffs herein, within thirty (30) days from Plaintiff's request  
12 for the same.

13 2. The United States Army Corps of Engineers shall, in con-  
14 nection with its future annual reviews of operation and maintenance  
15 dredging activities in and near the Duluth-Superior harbor, give  
16 good faith and reasonable consideration to the feasibility of  
17 on-land dredge material disposal areas in addition to other existing  
18 disposal alternatives. The Corps of Engineers shall make good  
19 faith efforts to locate, keep and maintain a current file of on-land  
20 disposal sites and alternate on-land dredge material uses for its  
21 future reviews. The feasibility of on-land disposal sites for  
22 dredged material and alternative on-land uses for the same shall  
23 be addressed by the Corps of Engineers in its annual public notices  
24 and reviews of its future operation and maintenance dredging activ-  
25 ities in the Duluth-Superior harbor area. In undertaking good  
26 faith and reasonable consideration of on-land disposal and alterna-  
27 tive on-land uses of dredged material, required by this paragraph,  
28 the monetary expense of such alternatives is a factor which may  
29 be considered along with other relevant factors, such as enviro-  
30 nmental impact, availability of sites and engineering considera-  
31 tions.

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7 material disposal, including the impact of contaminants contained  
8 therein, upon the ecosystem. The completed results of any studies  
9 or reports which from time to time shall be undertaken during the  
10 course of this evaluation shall be made available to the plaintiffs  
11 not later than one month after they are submitted to the Environ-  
12 mental Protection Agency. An example of the type of report which  
13 shall be made available to the plaintiff is the pending study  
14 being undertaken by the University of Wisconsin at Superior  
15 entitled, "Development of Bioassay Procedures for Defining Pollution  
16 of Lake Harbor Sediments", scheduled to be completed January 1,  
17 1979. The evaluation made pursuant to this paragraph shall be  
18 completed by January 1, 1980.

19 4. The Environmental Protection Agency, in exercising its  
20 authority pursuant to Section 404(c) of the Clean Water Act as  
21 amended through 1977, Title 33, United States Code, Section 1344,  
22 will consult the responsible state agency for the State of Wisconsin  
23 or Minnesota concerning the design of the dredge material sampling  
24 programs to be conducted within that State and will make a good  
25 faith effort to reach a mutually acceptable sampling program with  
26 the responsible State Pollution Control Agency. Furthermore, in  
27 the conduct of the agreed upon sampling program, representatives  
28 of the appropriate State Pollution Control Agency shall be per-  
29 mitted to accompany the Environmental Protection Agency representa-  
30 tives during the taking of samples.

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*Miles W. Lord*

MILES W. LORD, Judge  
United States District Court

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S T I P U L A T I O N

v.

7 )  
8 ) MARTIN R. HOFFMAN,  
9 ) individually and as  
10 ) Secretary of the Army;  
11 ) and Department of the Army;  
12 ) and Lieutenant General  
13 ) John W. Morris, individually  
14 ) and as Chief of the Army  
15 ) Corps of Engineers; and  
16 ) Corps of Engineers, of the  
17 ) United States Army; and  
18 ) Brigadier General Robert L.  
19 ) Moore, individually and as  
20 ) Division of the United States  
21 ) Army Corps of Engineers;  
22 ) and Colonel Forrest T.  
23 ) Gay, III, individually and  
24 ) as District Engineer, Army  
25 ) Corps of Engineers; and  
26 ) Russell Train, individually,  
27 ) and Administrator of the  
28 ) Environmental Protection  
29 ) Agency; and The Environmental  
30 ) Protection; and George  
31 ) Alexander, individually, and  
32 ) as Regional Administrator,  
Environmental Protection  
Agency; and the United States  
of America,  
Defendants.

WHEREAS, the parties to the above-captioned matter have agreed that it is in their mutual interests to settle amicably the differences which gave rise to this litigation.

NOW, THEREFORE, the following is agreed and stipulated to between the parties to this action:

1. That the United States Army Corps of Engineers shall in good faith conduct an Environmental Assessment, pursuant to Title 33, Code of Federal Regulations, Section 209.145, of all methods of dredge material disposal which it may reasonably

Filed NOV 29 1978 19

Harry A. Sieben, Clerk

By *Robert M. Stank*

Deputy

DOJ

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7 days from plaintiff's request for the same.

8 2. The United States Army Corps of Engineers shall, in  
9 connection with its future annual reviews of operation and  
10 maintenance dredging activities in and near the Duluth-Superior  
11 harbor, give good faith and reasonable consideration to the  
12 feasibility of on-land dredge material disposal areas in addition  
13 to other existing disposal alternatives. The Corps of  
14 Engineers shall make good faith efforts to locate, keep and  
15 maintain a current file of on-land disposal sites and alternate  
16 on-land dredge material uses for its future reviews. The feasi-  
17 bility of on-land disposal sites for dredged material and alter-  
18 native on-land uses for the same shall be addressed by the Corps  
19 of Engineers in its annual public notices and reviews of its  
20 future operation and maintenance dredging activities in the  
21 Duluth-Superior harbor area. In undertaking good faith and  
22 reasonable consideration of on-land disposal and alternative on-  
23 land uses of dredged material, required by this paragraph, the  
24 monetary expense of such alternatives is a factor which may be  
25 considered along with other relevant factors, such as environ-  
26 mental impact, availability of sites and engineering considera-  
27 tions.

28 3. The Environmental Protection Agency shall continue to  
29 make good faith and reasonable efforts to supplement or replace  
30 its present interim guidelines for the evaluation of Great Lakes  
31 sediments with bioassay and other tests (such as, but not limited  
32 to, fine fraction analysis, bulk sediment and elutriate testing)

7 mitted to the Environmental Protection Agency. An example of the  
8 type of report which shall be made available to the plaintiff is  
9 the pending study being undertaken by the University of Wisconsin  
10 at Superior entitled, "Development of Bioassay Procedures for  
11 Defining Pollution of Lake Harbor Sediments," scheduled to be  
12 completed January 1, 1979. The evaluation made pursuant to  
13 this paragraph shall be completed by January 1, 1980.

14 4. The Environmental Protection Agency, in exercising its  
15 authority pursuant to Section 404(c) of the Clean Water Act  
16 as amended through 1977, Title 33, United States Code, Section  
17 1344, will consult the responsible state agency for the State of  
18 Wisconsin or Minnesota concerning the design of the dredged  
19 material sampling programs to be conducted within that state and  
20 will make a good faith effort to reach a mutually acceptable  
21 sampling program with the responsible state pollution control  
22 agency. Furthermore, in the conduct of the agreed upon sampling  
23 program, representatives of the appropriate state pollution  
24 control agency shall be permitted to accompany the Environ-  
25 mental Protection Agency representatives during the taking of  
26 samples.

27 5. Nothing contained in this Stipulation shall be  
28 construed to imply approval, by the plaintiff or the intervenor,  
29 of the disposal of dredged material into public waters.

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BY: *Gordon A. Meyer*  
GORDON MEYER  
President

BY: *John M. Lee*  
JOHN M. LEE  
Assistant United States Attorney

STATE OF WISCONSIN  
Intervenor

NIELSEN, BLACKBURN & MERRITT, LTD.

BY: *B. C. L. Felt*  
ATTORNEY GENERAL

BY: *Howard S. Myers III*  
*Grant J. Merritt*  
HOWARD S. (SAM) MYERS, III, and  
GRANT J. MERRITT  
Attorneys for Plaintiff  
4444 IDS Center  
Minneapolis, Minnesota 55402

BY: *Theodore J. Orwick*  
ASSISTANT ATTORNEY GENERAL