

**STATE OF MICHIGAN
IN THE COURT OF APPEALS**

STEVE RICKETTS, ERIC OSTERGREN,
and CITIZENS FOR HIGGINS LAKE
LEGAL LEVELS, INC,
Plaintiffs/Appellants,

Court of Appeals Case No.: 377928
Court of Claims Case No.: 24-000110-MZ

v.

MICHIGAN DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND
ENERGY,
Defendant/Appellee

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APPELLANTS' BRIEF ON APPEAL

**** ORAL ARGUMENT REQUESTED ****

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STATEMENT OF JURISDICTION

This Court has jurisdiction to hear and adjudicate this appeal pursuant to MCR 7.203(A)(1).

STATEMENT OF QUESTION(S) PRESENTED

- I. Do riparians of Higgins Lake and an advocacy organization based upon the same have standing?
- II. Is Part 307 of the *Natural Resources and Environmental Protection Act* unconstitutional to the extent it is mis-delegation of authority contrary to Article VII, Section 12 of the 1963 Constitution?

Appellants answer “yes” to both questions.

INTRODUCTION

This case is about a Michigan inland lake that is supposed to be at a certain height, a court order that says so, and local property owners who are living with the consequences because it is not. When the water drops, docks sit on mud, boats stay tied up, shorelines erode, and property owners feel it every day. Plaintiffs are not bystanders complaining about how government works in the abstract. They are the people who use Higgins Lake and whose land touches the water and whose rights rise and fall with it.

The Court of Claims never questioned any of that. Instead, it dismissed this case on the theory that Plaintiffs lack “standing” because they do not own the dam, did not file a permit application, and are not the county itself. In other words, the people harmed by the problem are told they cannot ask a court to decide who has the lawful authority to fix it. That is not how standing works in Michigan, and it is not how courts resolve real disputes.

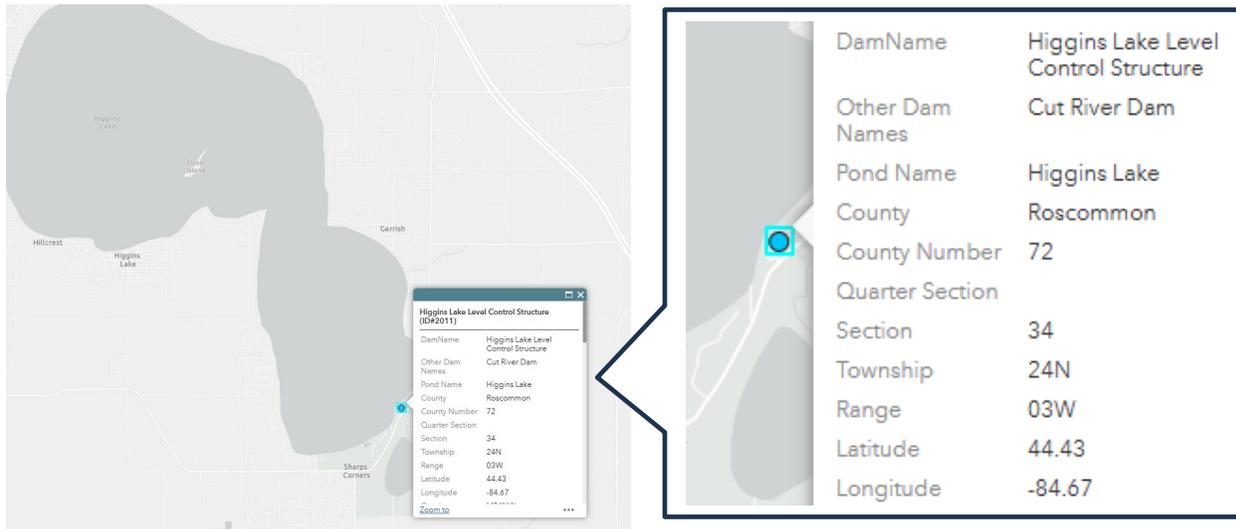
At bottom, this appeal asks a simple question with an equally simple answer: when a state agency asserts and proclaims to have authority that allegedly exceeds the Constitution and that assertion helps keep a lake below its legally required level, do the riparian property owners and citizens affected by that decision get to be heard? Michigan law under *Lansing* says they do. The Court of Claims said they do not. That ruling was error, and it should be reversed.

FACTS

Plaintiff Ostergren has riparian rights in Higgins Lake as a Roscommon County property owner and also served at the time of filing as the Roscommon County District 2 Commissioner (which is where Higgins Lake is located). **Appendix #1 (¶2)**. Plaintiff Steve

Ricketts is a Higgins Lake riparian who regularly accesses and uses Higgins Lake and is affected by the ongoing water levels of Higgins Lake which is controlled by or failed to be controlled by the dam at the Cut River. **Appendix #1 (¶3)**. Plaintiff Citizens for Higgins Lake Legal Levels, Inc is a domestic nonprofit corporation whose purpose and existence are to promote and defend the legal lake levels on Higgins Lake. *Citizens for Higgins Lake Legal Levels v Roscommon Cnty Bd of Comm’rs*, 341 Mich App 161, 165; 988 NW2d 841 (2022) *lv denied* 511 Mich 885; 985 NW2d 830 (2023) (*CHiLLL*); **Appendix #1 (¶1)**; see also **Appendix #78**.

This case comes to this Court premised on Higgins Lake’s “Level Control Structure” - a fancy name for the “Cut River Dam.” **Appendix #12**. It is located at the mouth of the Cut River where it meets Higgins Lake –



Water empties into “The Cut,” as it is known, and meanders approximately 10 miles in Roscommon County until reaching Houghton Lake. See **Appendix #10**. Decades ago, this “river” was dredged to allow for lumber transport during the late-1800s, although no remnants of these activities remain present today. The Cut River Dam “regulates” the

“flow” of lake water “leaving Higgins Lake to the Cut River.” *CHiLLL*, 341 Mich App at 167.

It looks like this -



In Plaintiffs’ view, the dam has functionally failed. *Testimony of Delegated Authority*, https://youtu.be/-3S9_W6KXCw (starting at approx 20:00); see also **Appendix #16** (“the level of Higgins Lake has averaged below the court established legal lake level during the summer months in typical years.”). It needs to be replaced. **Appendix #2 (¶13)**. However, the bureaucracy to be navigated to get what is believed as ‘needed approval’ for the same is difficult, time-consuming, costly, and just flat-out hard because a usurping state agency, Defendant Department of Environment, Great Lakes, and Energy (EGLE), is believed by some in local government to have the authority over and responsibility in granting permission (i.e. permits) and setting conditions for the construction of new and replacement of old dams on navigable streams in Michigan. See MCL 324.30718; MCL 324.30719. But that belief of its authority is misplaced because those powers are constitutionally delegated to the various county boards of “supervisors” (now commissioners¹) and not the State itself or her executive-branch agencies.

¹ The Board of Supervisors is “established in each organized county consisting of one member from each organized township and such representation from cities as provided by law.” Const 1963, art VII, § 7. Despite its older name, county supervisors are what is today known as county commissioners. MCL 46.416 (a “county boards of commissioners shall be the county board of supervisors referred to in article 7 of the state constitution.”).

Background

On February 24, 1982, the Roscommon County Circuit Court established the legal lake levels for Higgins Lake via what is now codified as Part 307 (Inland Lake Levels) of the *Natural Resources and Environmental Protection Act*, Public Act 451 of 1994. **Appendix #81.** Circuit judges set the level. MCL 324.30707(5). Roscommon County Circuit Court Judge Carl L. Horn memorialized a written final judgment, dated February 24, 1982 (hereafter “1982 Legal Lake Level Order”), which decreed that the legal lake level of Higgins Lake is “established at 1154.11 feet above mean sea level.” **Appendix #82-83.** The Roscommon County Circuit Court also provided and set a lower “winter” level be mandated at no lower than 1153.61 feet above mean sea level (i.e. a six inch reduction) from on or about November 1st of each year and running until April 14th (or after “ice-out”) for the following year. *Id.* Now under a decision of the Michigan Court of Appeals and a declaratory judgment of the Circuit Court, Roscommon County, by its Board of Commissioners, has the responsibility to maintain that legal level which is accomplish through its appointed “delegated authority.” **Appendix #81**; *CHiLLL*, 341 Mich App 161.

Higgins Lake is at an all-time low lake-water level. **Appendix #59 (¶5); Appendix #84** (then-Commissioner Ostergren’s email to constituents). And that is grossly and intentionally illegal. **Appendix #81.** For years, Roscommon County and its delegated authority have regularly and systematically failed to abide by the 1982 Legal Lake Level Order for huge percentages of the year, particularly during the summer months when Higgins Lake is used the most for various recreational pursuits. Despite a clear legal obligation by two court decisions, the main reason (or one of the main reasons) for

systematic and regular noncompliance with the legal lake level is due to the failure to properly regulate the flow and discharge of waters from Higgins Lake into the Cut River where a dam, which has largely failed, is located. **Appendix #2 (¶12).**

However, the supposed major impediment to promptly installing a new or rebuilt dam (specifically for Plaintiff Ostergren, in his role as a Roscommon County Commissioner) is the onerous, time-consuming, costly, and near impossible arbitrary permitting process that some think is required by Defendant EGLE under what some have assumed are its duties and obligations under Parts 307 and 315 of NREPA. He and his fellow Plaintiffs have challenged the constitutionality of such assertions.

As part of its motion, EGLE oddly proffered the recent Part 301 permit application Roscommon County's then-Delegated Authority filed to make some minor stop-gap changes to the current Higgins Lake Level Control Structure under Part 301 of NREPA. **Appendix #62-72.** EGLE has since refused the permit application alleging the Delegated Authority failed to supply requested supplemental materials. **Appendix #77.** While Plaintiffs believe that such a permit for minor repairs is also unconstitutionally unneeded, it is beside the point for this case. This is all about a new, replacement dam and who has the authority to permit this to happen. Plaintiffs believe a new dam is required to fix Higgins Lake's water level problems. And it is believed by some (though not unreasonably based on plain language) that Parts 307 and 315 seemingly require permits to build a new one –

*Plans and specifications for a dam constructed or maintained under this part shall be prepared by a licensed professional engineer under the direction of the delegated authority. The plans and specifications shall be approved by the department before construction begins. **The department shall review and approve or reject the plans and specifications within 30 days after they are received by the department.** If the plans and specifications are rejected, the*

department shall propose changes in the plans and specifications that would result in their approval by the department. Bids for doing the work may be advertised in the manner the delegated authority directs. The contract shall be let to the lowest responsible bidder giving adequate security for the performance of the contract, but the delegated authority may reserve the right to reject any and all bids. The county may erect and maintain a dam as a work relief project in accordance with the law applicable to a work relief project.

MCL 324.30718.

The department may require that a new dam that is proposed to be constructed be equipped with an underspill device for the release of cold bottom waters for the protection of downstream fish habitats.

MCL 324.30719(1)

So these three plaintiffs – one a riparian and then serving county commissioner, the other being a Higgins Lake riparian, and the third a Higgins Lake advocacy group – brought suit in this Court to challenge the notion that NREPA’s Parts 307 and 315 are valid and constitutional but only to the extent that EGLE asserts permits under such are required. For Part 315, counsel were able to work out stipulated order. **Appendix #7-8** (“declar[ing] that the Higgins Lake Level Control Structure and any impoundment at The Cut River and Higgins Lake in Roscommon County are not regulated under Part 315 of the *Natural Resources and Environmental Protection Act*.”). No similar agreement was reached for Part 307.

Below, EGLE moved for summary disposition, arguing that Plaintiffs lacked standing because they did not own the dam, were not the permit applicant, and were not authorized to sue on behalf of Roscommon County. Plaintiffs, on the other hand, sought entry of a declaratory judgment pursuant to MCR 2.605(A). The Court of Claims accepted EGLE’s framing and dismissed the case solely for lack of standing, concluding that Plaintiffs were attempting to challenge “someone else’s permit application” and therefore

lacked a sufficient interest to invoke judicial review. It did not reach the full merits. This appeal follows.

STANDARD OF REVIEW

“A conflict between the constitution and the statute is clearly a legal question which only a court can decide.” *Regents of the Univ of Mich v Employment Relations Comm’n*, 389 Mich 96, 103; 204 NW2d 218 (1973). This Court reviews constitutional questions de novo. *Hinojosa v Dep’t of Natural Resources*, 263 Mich App 537, 541; 688 NW2d 550 (2004). Whether a plaintiff has standing also presents a question of law reviewed de novo. *Mich Ass’n of Home Builders v City of Troy*, 504 Mich 204, 212; 934 NW2d 713 (2019). Michigan appellate courts conduct a de novo review regarding a trial court’s decision on a motion for summary disposition. *Id.* at 211.

ARGUMENT

Under the First Amended Complaint, the remaining challenge to the constitutionality of Part 307 seeks a judgment declaring the relevant portions of Part 307 of the *Natural Resources and Environmental Protection Act*, Public Act 451 of 1994 is unconstitutional pursuant to Article VII, Section 12 of the 1963 Constitution. **Appendix #4** (relief requested section). The Declaratory Judgment Rule provides that “in a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.” MCR 2.605(A). “Declaratory relief is designed to give litigants access to courts to *preliminarily* determine their rights.” *Detroit v Michigan*, 262 Mich App 542, 550-551; 686 NW2d 514 (2004). An “actual controversy” under MCR 2.605(A)(1) exists “when a declaratory judgment is necessary to guide a

plaintiff's future conduct in order to preserve legal rights.” *Int'l Union, United Auto, Aerospace & Agricultural Implement Workers of America v Central Mich Univ Trustees*, 295 Mich App 486, 495; 815 NW2d 132 (2012).

Plaintiffs have secured the right to have the lake levels be actually, strictly, and faithfully maintained at particular levels and promptly want an appropriate dam. **Appendix #81; Appendix #2 (¶13)**. Yet Roscommon County does not act because some of its officials believe EGLE requires permits under Parts 307 and 315. **Appendix #60 (¶10)**. The major impediment to promptly installing a new or rebuilt dam “is the onerous, time-consuming, costly, and near impossible arbitrary permitting process” by EGLE under what it believes are its duties and obligations under Part 307 of the *Natural Resources and Environmental Protection Act*, Public Act 451 of 1994 (“NREPA”). **Appendix #2 (¶14)**. Thus, an actual controversy exists as to Part 307 and a declaratory judgment can and should issue to guide conduct to preserve Plaintiffs’ legal rights.

I. The Court of Claims Misapplied Michigan’s Standing Doctrine

To avoid the question, the Court of Claims found that Plaintiffs lack standing. That was in error. Standing in Michigan is not a rigid formalistic doctrine. It exists whenever a plaintiff has a legal cause of action or, where no cause of action is expressly provided by statute, when the plaintiff has suffered a special injury or possesses a substantial interest that will be detrimentally affected in a manner different from the citizenry at large. *Lansing Sch Ed Ass’n v Lansing Bd of Ed*, 487 Mich 349, 372; 792 NW2d 686 (2010). That inquiry focuses on injury and interest, not on labels or procedural posture.

Here, Plaintiffs Ostergren and Ricketts alleged injuries that are quintessentially concrete. They own property whose relationship to Higgins Lake is physical and immediate. When the lake’s water level drops below the legally mandated elevation, their

shorelines recede, docks become unusable, navigation is impaired, and the ordinary enjoyment of their property is diminished. These are not harms shared equally by all members of the public. They are experienced most acutely by those whose land abuts the lake and whose property rights depend on lawful water levels.

The Court of Claims never disputed the existence of these harms. Instead, it deemed them irrelevant because Plaintiffs were not the owners of the dam or the applicants for a permit. That conclusion misstates the law. Standing does not require ownership of the instrumentality that causes harm; it requires that the plaintiff be harmed by the challenged conduct. A homeowner need not own a factory to challenge unlawful pollution that damages his land. A riparian owner need not own a dam to challenge unlawful regulatory barriers that perpetuate illegal lake levels.

By conditioning standing on dam ownership or permit status, the Court of Claims imposed a requirement found nowhere in Michigan precedent. That approach transforms standing from a doctrine concerned with injury into one concerned with administrative formality, effectively barring judicial review by those most directly affected.

A. Plaintiffs Have Standing to Challenge an Unconstitutional Assertion of Authority That Impedes Enforcement of Existing Legal Rights.

Plaintiffs' theory of standing is straightforward. They allege that EGLE has asserted generalized approval authority under Part 307 in a manner that conflicts with Article VII, Section 12 of the Michigan Constitution. That assertion, according to the complaint, has the real and practical effect (i.e. injury) of obstructing or unnecessarily-delaying the construction of a new or replacement dam necessary to bring Higgins Lake back into compliance with the Michigan inland lake law and the effective lake level order. See **Appendix #1-4**. As a result, Plaintiffs continue to suffer ongoing property and use injuries.

Michigan courts have long recognized standing where government action materially increases harm or otherwise blocks the exercise of established legal rights. See *Saugatuck Dunes Coastal Alliance v Saugatuck Twp*, 509 Mich 561, 577; 983 NW2d 798 (2022). Plaintiffs do not allege a speculative or hypothetical injury. They allege that Higgins Lake is presently out of compliance with a binding judicial decree that interferes with their riparian rights and that EGLE's claimed authority is the primary reason that condition persists.

The fact that Roscommon County is the entity that could ultimately construct a dam does not sever the causal chain. Plaintiffs are not asserting the County's rights; they are asserting their own right to be free from unlawful interference with the enforcement of a court-ordered lake level that protects their property interests. When a state agency's interpretation of its own authority stands as a legal obstacle to that enforcement, affected individuals have standing to seek declaratory relief to clear away the unlawful obstacle.

The Court of Claims' contrary conclusion effectively treats the existence of an intermediary governmental actor as a jurisdictional shield. That was in error. Standing does not evaporate simply because the challenged conduct operates through another entity. What matters is whether the injury alleged is fairly traceable to the challenged action and capable of redress by the court. Plaintiffs have faithfully alleged both.

B. CHiLLL Has Organizational Standing Under Michigan Law.

The nonprofit plaintiff was dismissed as a mere advocacy organization without a sufficient personal stake. That characterization ignores both the allegations of the complaint and Michigan law governing organizational standing.

Plaintiff Citizens for Higgins Lake Legal Levels (CHiLLL) was formed to promote and defend compliance with the legal lake levels established by court order. **Appendix**

#78. EGLE’s false assertion of inappropriate authority under Part 307 frustrates that mission by perpetuating noncompliance and forcing the organization to expend time, effort, and resources addressing the consequences of depressed lake levels. Where government action perceptibly impairs an organization’s ability to carry out its core purposes, organizational standing exists. *Trout Unlimited, Muskegon-White River Chapter v White Cloud*, 195 Mich App 343, 348; 489 NW2d 188 (1992); *White Lake Improvement Ass’n v Whitehall*, 22 Mich App 262, 272-274; 177 NW2d 473 (1970).² Injury lies in the frustration of purpose and the diversion of resources, both of which are alleged here. The Court of Claims erred by dismissing the organization’s standing based on a cramped and outdated view of organizational injury.

II. Part 307 is Unconstitutional

A. The Court May Reverse on Standing Grounds Alone or, in the Alternative, Reach the Substantive Constitutional Question.

This appeal may be resolved on narrow grounds. Because the Court of Claims dismissed this case at the threshold for lack of standing, this Court may reverse and remand without reaching the merits, leaving the constitutional question for proper adjudication in the first instance. Michigan appellate courts routinely follow that course where standing was erroneously denied and the lower court never addressed the substance of the claims.

At the same time, this case presents a purely legal question of constitutional interpretation that is fully briefed, involves no disputed facts, and recurs in the

² Michigan courts do not require an organization to own property or be directly regulated in order to challenge government conduct that undermines its mission. *Civic Ass’n of Hammond Lake v Hammond Lake Estates No 3 Lots 126-135*, 271 Mich App 130, 135, 721 NW2d 801 (2006) (“a voluntary association whose sole purpose is to represent the interest of its members, many of whom are riparian land owners, may bring suit to effectuate that purpose, regardless of whether the association itself owns any land”).

administration of inland lake regulation across the State. Whether NREPA Part 307 may constitutionally vest a state executive agency with permitting authority over the damming of navigable streams – authority that Article VII, Section 12 assigns to county boards – is a question of law that this Court is fully empowered to decide. The record is sufficient, the issue is ripe, and further proceedings are arguably unnecessary to resolve it.

Accordingly, Appellants respectfully submit that this Court has two equally appropriate options. It may reverse the judgment below and remand for adjudication on the merits. Or, in the interest of judicial economy and to provide needed guidance to counties, agencies, and regulated parties statewide, it may reach the substantive constitutional issue now and resolve it. Either course requires reversal of the Court of Claims' standing decision; the choice between them rests comfortably within this Court's discretion.

B. Part 307 Collides with Article VII, Section 12

Under the Michigan Constitution, the power of our state government is cleaved and separated. “The language and overall structure of the Michigan Constitution” designed a scheme for “limiting specific powers and functions among” the various participants in our system of governance. *Blank v Dep’t of Corr*, 462 Mich 103, 140; 611 NW2d 530 (2000). “Deciding whether a matter has in any measure been committed by the Constitution to another branch of government, or whether the action of that branch exceeds whatever authority has been committed, is itself a delicate exercise in constitutional interpretation, and is a responsibility of [the courts] as ultimate interpreter of the Constitution.” *Taxpayers of Mich Against Casinos v State of Michigan*, 471 Mich 306, 375; 685 NW2d 221 (2004).

Often couched in verdant terms of “three coequal branches,” Const 1963, art III, § 2, such is not totally accurate. There are really four. The People, having “all political power,” Const 1963, art I, § 2, empowered and blessed a fourth branch of government - the “local governments.” Const 1963, art VII. The Constitution’s Article VII delegates certain powers and designates the duties of local governments like cities, townships, and counties. And just to be clear for later politicians, government officials, and judges called upon to interpret the same, the electorate explained that such provisions “shall be liberally construed in their favor.” Const 1963, art VII, § 34. “Powers granted to counties... by this constitution... shall [also] include those fairly implied and not prohibited by this constitution.” *Id.*

“A constitution is made for the people and by the people,” *Traverse City Sch Dist v AG*, 384 Mich 390, 405; 185 NW2d 9 (1971), and instituted for the “equal benefit, security and protection” of all. Const 1963, art I, § 1. At the same time, however, our republican constitutional form also protects the citizenry from powerful leaders and their bureaucrats who are deafened to the pleas of the governed. As such, certain structural aspects of our government are not free to simply engraft more “enlightened” or otherwise better twist our constitutional obligations differently than the actual framers of our constitution intended. *Sitz v Dep’t of State Police*, 443 Mich 744, 759; 506 NW2d 209 (1993).

For as the Constitution does not derive its force from the convention which framed, but from the people who ratified it, the intent to be arrived at is that of the people, and it is not to be supposed that they have looked for any dark or abstruse meaning in the words employed, but rather that they have accepted them in the sense most obvious to the common understanding, and ratified the instrument in the belief that that was the sense designed to be conveyed.

Traverse, 384 Mich at 405.

The notion of “separation of powers” under the Michigan Constitution is “the sum of the specific constitutional provisions assigning or limiting particular powers and functions among” the various aspects of our government. *Blank*, 462 Mich at 139. Through the Michigan Constitution of 1963, the citizens of Michigan both established the architecture of and set limitations upon their government and of those whom govern. These confines are inviolable as “no person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution.” Const 1963, art III, § 2. These allocations - or separations - of governmental power have no exceptions for convenience, claimed technical expertise, or acquiescence. Courts must instead interpret a constitutional provision to determine the text’s original meaning to the ratifiers, meaning the people of Michigan at the time of ratification, *County of Wayne v Hathcock*, 471 Mich 445, 468; 684 NW2d 765 (2004) (citing *People v Nutt*, 469 Mich 565, 573; 677 NW2d 1 (2004)), and not “water down” the provisions “through judicial ‘balancing’ of what the Constitution says and what judges think is needed for a well-ordered society.” *Garrison v Louisiana*, 379 US 64, 81-82 (1964) (DOUGLAS, J, concurring).

Simply put, Michigan has long been committed to the doctrine of separation of powers. *Bendix Safety Restraints Group v City of Troy*, 215 Mich App 289; 544 NW2d 481 (1996) (separation of powers is the heart of republican government). So no matter how desperately a state agency thinks prudent or strongly desires to announce that it regulate the permitting of dams from centralized Lansing or perhaps even how seemingly advisable and expedient it might be believed to wield such authority centrally or industrially, this is completely incompatible with our actually-enacted constitutional

system of separated responsibilities. The People, in its collective wisdom, empowered Michigan's counties to be in charge of the permitting of the damming of streams, not an executive branch agency.

Article VII, Section 12 provides that "a navigable stream shall not be... dammed without permission granted by the board of supervisors of the county as provided by law, which permission shall be subject to such reasonable compensation and other conditions as may seem best suited to safeguard the rights and interests of the county and political subdivisions therein." Const 1963, art VII, § 12. The Cut River is such a navigable stream.

Appendix #10; see also *Moore v Sanborne*, 2 Mich 519 (1853) and **Appendix #2 (¶22)**.

The argument is simple. Part 307 was enacted when the Legislature consolidated various dispersed regulatory statutes involving land and natural resources into a single chapter via the *Natural Resources and Environmental Protection Act*, which was pulled from the former *Dam Safety Act*, Public Act 300 of 1989. The Legislature has purportedly ordained Part 307 to grant EGLE the authority to issue permits, i.e. grant permission, for the construction of new dams and the alterations, enlargement, or removal of existing dams. MCL 324.30718 - .30719. In other words, the decision to issue permits was granted to a state agency rather than the local county governments. But this authority and constitutional responsibility belong to each respective county's Board of Commissioners pursuant to Article VII, § 12 of our Constitution. As such, Part 307 is unconstitutional mis-delegation of government powers to the extent it is construed to vest EGLE (a state agency) with permitting authority over the damming of navigable streams.

CONCLUSION

This case should never have been dismissed at the courthouse door. Plaintiffs alleged concrete, particularized injuries to riparian property interests and to the enforcement of a binding judicial lake-level order. Those are injuries that are ongoing, real, and directly traceable to EGLE's asserted authority under Part 307. Michigan law does not require injured property owners or affected citizens to own the dam, file a permit application, or sue in the name of a county before they may ask a court to decide whether a state agency has exceeded its constitutional bounds when it interferes with property rights.

Properly analyzed, Plaintiffs have standing to seek declaratory relief to clear away a legal obstacle that interferes with enforcement of their rights. On the merits, Article VII, Section 12 of the Michigan Constitution does not permit the State, through an executive-branch agency, to assume permitting authority over the damming of navigable streams that the Constitution assigns to county boards. The judgment below should be reversed.

RELIEF REQUESTED

WHEREFORE, Plaintiff-Appellants respectfully request that this Court reverse the judgment of the Court of Claims dismissing this action for lack of standing, and either remand for further proceedings or, in the alternative, enter appropriate declaratory relief consistent with this Court's opinion regarding NREPA's Part 307, together with such other and further relief as justice requires.

Date: January 1, 2026

RESPECTFULLY SUBMITTED:

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WORD COUNT STATEMENT

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