THE PALIMPSEST

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The Clear Lake Outlet Feud

For half a century the settlers around Clear Lake argued and fought over what should be the proper level of the lake. Some wanted the water level high in order to make their lakeshore properties desirable, while others protested against the flooding of their lowland meadows. The existence of a natural outlet on the east side of the lake, consisting of a narrow and easily altered embankment, was the center of the controversy.

Almost from the time the earliest pioneers settled in the vicinity in 1853, the outlet had been tampered with until no one knew what its original level was. While the feud for the most part was confined to disputation, there were times when it threatened and even partook of violence. In the early days some settlers were accused of taking rock out of the outlet for the foundation of their cabins. At one time in the pioneer period a storm tore out the embankment and precipitated one of the most exciting episodes of the community's his-

tory. Those who rebuilt the shore somehow never were able to agree on the amount of embankment that should be raised to return the outlet to its original, prehistoric, undisturbed level. This question of the height of the water was not settled until the Supreme Court of Iowa stepped in on March 9, 1910, and like a reincarnated King Canute said to the waters "so high you shall go, but no higher."

The fight between those who wanted the lake preserved in its pristine beauty and those who wished to make use of the flooded lowlands reached such a state of commotion at the turn of the century that in 1903 the county supervisors, A. A. Crosley, B. A. Brown, and W. V. Crapser, built a concrete sluiceway at the outlet, by which they hoped to set a permanent water level and stop the warfare. But instead of settling the difficulty this act was like a red flag to both factions. That the board was justified in taking some action there was no doubt among those of the county who maintained a neutral attitude, for there was ample evidence that the outlet was being tampered with continually. But singularly enough both sides objected to the permanent sluiceway. The farmers with water in their pastures argued that it was too high, while vacationers and cottage owners contended that it was not high enough.

In the spring of 1905 low-water advocates tried to blow up the south end of the concrete barrier, but inflicted little damage. When the summer vacation season opened, an injunction was filed against the Clear Lake board of supervisors on June 7, 1905, by twenty-two cottage owners and two companies. They claimed that the board had unlawfully constructed an outlet from "18 to 24 inches below the natural level of Clear Lake." The owners of the cottages finally persuaded the supervisors to add two heavy planks on to the sluiceway which raised the water approximately twenty-six inches above the concrete base.

In the early morning hours of October 25, 1905, an explosion rent the air, awakening Clear Lake residents who had been peacefully sleeping. Noise of the blast had come from the outlet, not far from town. Upon investigation it was discovered that "the cement banking and board apron of the outlet were ripped to pieces." Because the dynamite had been poorly placed, the retaining wall was not completely destroyed.

Though there was little evidence to show who had attempted to blow up the outlet, the board of supervisors immediately began a search for the culprit. It was rumored that the board knew who had wrecked the sluiceway but had insufficient evidence to bring the guilty person to court.

An action was later filed asking that the board be enjoined from interfering in any way with the outlet or the flow of water through it. A demurrer to the petition was sustained, but plaintiffs were permitted to bring in other parties as defendants. The State of Iowa filed a petition of intervention, alleging the ownership of the bed of the lake and asking that it be authorized to erect and maintain a permanent embankment, bulkhead, headgates and sluiceways for the purpose of retaining the lake at a high-water level. The supervisors forthwith stepped out of the case. An answer was filed, praying that all obstructions be removed from the outlet and that it be safeguarded in its original condition.

By the time the trial got under way the case of H. A. Merrill *et al. vs.* the board of supervisors *et al.*, with the State of Iowa as intervenor, had in it on one side or the other all the landowners about the lake, seeking either to raise or lower the level of the water. In their claims concerning the level of the water these two opposing groups were four feet apart, one side contending the water should be thirty inches above and the other a foot below the concrete sluiceway. The law firms of Cliggitt, Rule, Keeler, and Smith and Blythe, Markley, Rule, and Smith of Mason City represented the plaintiffs, while Glass and McConlogue, Robert

Witwer, and Ira W. Jones represented the defendants. H. W. Byers, Attorney General of Iowa; Charles W. Lyon, Assistant Attorney General, and J. E. E. Markley of Mason City represented the State, the intervenor.

This trial did a number of things besides fixing the water level of Clear Lake. One of the outstanding achievements was to put on record the entire history of Clear Lake, including the rise and fall of the waters and the occasional efforts of the settlers to regulate this. Men who were among the first to see the lake lying like a mirror in the midst of endless prairies and who later came to know all its moods and caprices, who saw it when it was kind and friendly and when it was cruel and relentless, took part in the trial. They were outdoor men who knew all of the lake's shallows and depressions, its bars and adjoining swamp lands, and who constantly watched the rocks and other marks which told the story of its swells and the periods of depression. The trial showed further that there grew up between these old timers and the clear, sparkling lake a bond of affection that came to a test when there was danger that what they considered grasping mankind was meddling with the outlet that controlled its level.

The testimony of these men showed the lake had regular cycles of high and low water. From

1857 to the time of the trial there were three periods during which high levels were recorded. The first of these began in 1857 and reached the highest point about 1860. The second period reached the high point in 1878 and 1879. The third began to manifest itself in 1903, reaching its maximum level in 1906, when the trial started. Between these high water periods there were corresponding intervals of lower levels, one of the worst of which caused Oscar Stevens to abandon his gristmill at the outlet in 1887.

Testimony in the case was started in 1906 and all the old settlers about the lake put in their appearance, most of them testifying in behalf of the plaintiff in contending the lake level should be raised. The evidence was full of discrepancies, for who can remember accurately a thing that happened a half century ago? Attorneys for the two sides used these inconsistencies in constructing formidable arguments in support of their respective theories.

The general question sought to be settled in the trial was: at what level was the outlet in 1853 before man disturbed the lake banks? And because this was the question, considerable weight was given to the notes of the men who surveyed the lake in 1853. These notes indicated that the water was six inches below the outlet at that time. Then

the problem was to establish whether the lake was at high or low water at that time and at what level the outlet was originally compared with later periods when the bank was tampered with.

One of the storm centers of the fight was a fish trap established by James Sirrine in 1858 about three hundred feet north of the outlet. Practically all the old pioneers testified that when the water ran out at the outlet to a depth of about eight inches it was about two or three inches deep at the trap, indicating the trap was from five to six inches higher. The plaintiffs then presented testimony to show that the sluiceway established by the supervisors would have to be covered by thirty inches of water before it would run through the fish trap, which trap, they argued, was at the same level now as fifty years before, having a large stone base which had not been altered by man or the elements.

The defense, however, contended that the reason water did not go out of the fish trap at the time of the trial was that the trap had been filled in. The argument of the defense on this point to the Supreme Court was to a large extent an elaborate fortification of figures based chiefly on the level given by the surveyor of the fish trap. In rebutting this the plaintiff admitted the surveyor must have been wrong on this one point.

One of the contentions of the plaintiff was that the natural bank of the lake at the outlet had been tampered with. Old settlers testified that the pioneers took rock out of this place for use as foundations for their houses, a practice which tended to lower the bank. In 1860 the lake tore out part of the embankment and a millrace. The fear that the entire lake would pour through the embankment down Willow Creek and flood Mason City, ten miles down the stream, led the entire male population of the community to rush to Clear Lake to aid in rebuilding the bank. The evidence in the trial was that the bank was "put back where it was". In 1891 R. S. Young, then mayor of Clear Lake, strengthened the bank at the outlet. This caused considerable criticism and led to more tampering with the embankment.

The history of an old camp meeting association at Clear Lake also entered into the trial. The ground for this project was platted in 1867 and two pools called Siloam and Bethsaida included. Witnesses testified that at the time of this religious development one could row from the lake into these pools. Plaintiff witnesses testified that since 1900 there had never been a time when a boat could be rowed into these pools. Hence, they contended, the water level should be raised.

There was also evidence presented that the

Charles Grimm slough, south of the lake, was covered with water in the early days so that it was possible for sail boats to go in. During the sixties a ditch was dug through a hill to what was called Crovell's slough, draining the water into the lake when the lake was low and thus keeping Grimm's land dry. When the lake rose again, however, in its periodic swells, the ditch caused the water to spread over this lowland. Consequently, Grimm and others similarly situated were interested in a low outlet.

Much confusion and apparent inconsistencies occurred in the testimony because of the constantly recurring water level cycles. Oscar Stevens, the gristmill operator, was the chief witness on the water cycles. "Every fourteen years the lake goes up and comes down without any variation," was the way he put it. Stevens had come to Clear Lake in 1855 and his testimony had much bearing on the case. He testified that he operated a sawmill at the outlet in 1856 and a gristmill from 1870 to 1887. After 1887 he ran a line of boats on the lake. It was his opinion, he told the court, that the then existing outlet was not as high as the original one. This also was the testimony of Fred Sirrine, son of James Sirrine who was one of the original settlers at Clear Lake. James Sirrine came to Clear Lake in 1853 and lived within a few

rods of the outlet. It was he who operated the much-discussed fish trap.

Then there was Edwin Nichols, who came to the lake in 1856. He said the water was higher in 1857, before men tampered with the lake banks, than he had seen it since. L. E. Crowell, who had lived at the lake since 1857, said the lake at the time of the trial was twelve inches below the high-water mark. Harrison Hayden, who came in 1861, thought there was six inches difference.

Dwight Palmeter, who first saw the lake in 1863, told the court he had seen it from four to six inches higher. Dr. J. B. Charlton, who came in 1861, admitted he too had seen it higher. A. H. Green, who started in the boat business at Clear Lake in 1874, testified the sluiceway was put in two feet below the original level.

John C. Sherwin, a Supreme Court justice, was also a witness in the trial. He said he came to Mason City in 1876 and that he had been at the lake a large part of the time since. He maintained that part of the embankment in front of the sluiceway had been taken away. William Gilmore, who contended he knew all of the depths and shallows, shores and bars, said the water was not as high as it was formerly, judging from the level register at Dodge's Point, which was opposite from the town of Clear Lake.

W. S. Colby, county surveyor, testified that the spillway was three feet below the old bank. John Gilmore, who came to Clear Lake in 1860, corroborated the testimony of the other witnesses in maintaining that there had been a lowering of the water level. The water in the upper part of the lake, he said, did not reach as far as in the old days.

Witnesses for the defense consisted chiefly of farmers from this upper-lake section, where the water was shallow, who owned the land that was submerged in high-water periods. These almost invariably contended the lands they used for pasture in the old days had in later years become flooded. How these observations could be harmonized with the contentions of the plaintiff witnesses was one of the mysteries of the trial. Among the defense witnesses were Edwin Green, who came in 1876 and had a dock at the camp grounds, and H. Hathron, who came in 1874 and who testified at the trial that the lake in 1906 was the highest he had ever seen it.

D. H. Campbell, who at that time was superintendent of schools, stated that the water had become so high in later years that the ice had pushed out trees and even sidewalks. Jeno Frandson, who lived on a farm in Hancock County, on the west end of the lake, said his land was under

water, adding that "the land has never been under water before that I know of." He had owned the farm twelve years, he said. E. J. Scherf, of Ventura, also owned a farm at the head of the lake, which, he said, was covered with water at the time of the trial while it was dry at the time he bought it in 1873. Chauncy Thomas told the judge he thought the lake was four feet higher than when he came there in 1871. J. B. Wood, resident at the lake since 1855, said the lake was a foot higher than he had ever seen it before. Michael Callanan came to the lake in 1853 and was certain the lake was higher than in the old days.

Shortly after the conclusion of the trial, Judge J. F. Clyde announced his decision, holding that the level of the county supervisors' sluiceway was the correct one. An appeal to the Supreme Court was taken and, after a hearing, the high tribunal of the State in 1910 handed down the decision ordering the outlet raised a foot.

"An examination of the record leaves no doubt but that the ground surface of the outlet as it formerly existed was considerably above the elevation decreed by the court," was the opinion of the Supreme Court in which the decision of Judge Clyde was modified and affirmed.

The high court held that witnesses who testified concerning the height of the water at the outlet,

nearly all of whom were for the plaintiff, had the decided advantage over the defense witnesses, most of whom testified concerning water flooding their lower pastures, due to the fact that they had an opportunity to compare the height of the water "with other objects".

"A separate examination of the record has convinced us that the elevation of the outlet as compared with the datum bench mark at the southeast corner of Clear Lake park should have been fixed at 190.23 instead of 189.23, and as so modified the decree will be affirmed", the Supreme Court judges continued. The statement was added that Judge Sherwin of Mason City, who was one of the witnesses in the action, took no part in the Supreme Court proceedings.

Almost immediately after this decision the supervisors built a new sluiceway twelve inches above the old one. For over thirty years now the water level has stood where the Supreme Court ordained it. No one has tried to dynamite the new outlet which the high tribunal ordered to be constructed. The disgruntled farmer has tilled what he could and fished on the remainder of his land. But the cycles of high and low water continue.

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