

THE MICHIGAN RIPARIAN

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DEVOTED TO THE MANAGEMENT AND WISE USE OF MICHIGAN'S LAKES AND STREAMS

Published Quarterly – February, May, August and November

RIPARIAN (r-'per-EE-n) *adj.* Relating to or living or located on the bank of a natural watercourse, such as a river, or of a lake or a tidewater.



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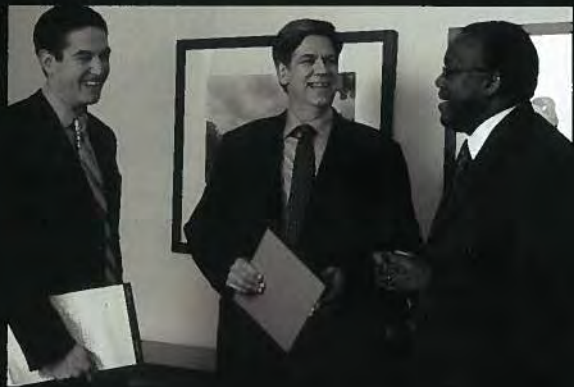
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FROM THE PUBLISHER

Change is the word for 2009

It appears that the operative word for 2009 is "change." That is certainly true at the national and state level – and it is also true at *The Michigan Riparian* and at Michigan Lake & Stream Associations, Inc (MLSA). After many years as the publisher of the *Riparian*, Don Winne is stepping down and I will be taking over the publishing responsibilities for the magazine.

Don't worry, Don is going to stay involved as Publisher Emeritus and will be contributing input and articles to the magazine on a regular basis. Fortunately, access to his vast knowledge and insights will still be available to assist us.



Don Winne

As part of the overall restructuring of MLSA and its operations to better serve its members in the future, MLSA is closing the Three Rivers office effective immediately and moving *The Michigan Riparian* and the Michigan Lakes & Streams Foundation's operations to a more centralized location in Stanton, Michigan.

In the near future, we will also begin consolidating the MLSA operations now housed in Long Lake at this new location. We believe that this consolidation at a centralized location will allow MLSA to more effectively meet the needs of its members as we move

into the future.

Personally, I look forward to these changes and the challenges they bring. If you have suggestions or thoughts on how MLSA, the *Riparian* and/or the Foundation can better respond to the concerns and needs of you – our members – let us know.

And, oh yes, don't forget the Annual Conference in April at Houghton Lake (see this issue for more information). It is shaping up to be the best and most informative ever.

– Publisher Franz Mogdis

SAVE THE DATE

Plan now for Michigan Lake & Stream Associations, Inc.,'s 48th Annual Conference, scheduled for April 24-27, 2009, at Houghton Lake. See pages 17 and 18 of this issue for agenda and registration information.

Volunteers keeping an eye on lakes

Citizen volunteers throughout Michigan are quietly keeping watch over the quality of their inland lakes. They donate their time and energy to collecting water quality samples and making measurements that help the state track the health of their lake. They have joined volunteers from hundreds of lakes in a monitoring program that has been working in Michigan for more than 30 years.

The Cooperative Lakes Monitoring Program (CLMP), a core program of Governor Granholm's Michigan Clean Water Corps (MiCorps) initiative, began as the "Self-Help Program" in 1974. This program was originally designed as a way for lake property owners to monitor the clarity of their lakes using a simple device called a Secchi disk.

Today's CLMP volunteers continue to measure lake clarity with Secchi disks, but also monitor several other indicators: temperature, dissolved oxygen, phosphorus (the main nutrient responsible for algae and plant growth in lakes), and chlorophyll (a pigment produced by algae in the

water column). These more sophisticated measurements are made possible through cooperation with the Department of Environmental Quality, which provides equipment and laboratory analysis. Michigan Lake and Stream Associations, Inc., (MLSA) has helped lake associations and individuals get involved in the CLMP, providing logistical support, promoting volunteer monitoring, and hosting training at their annual conferences since 1993.

Training and support is also available for volunteers who want to monitor the aquatic plants found in their lakes. They can learn to identify native and foreign (exotic) aquatic invasive plants, as well as map their distribution in the lake.

Learning to identify and detect foreign invasive aquatic plants before they spread could save you and your riparian neighbors hundreds of thousands of dollars. Enroll in the MiCorps CLMP Exotic Plant monitoring program today ... The inland lake you save from the ravages of Eurasian watermilfoil could be your own!

Volunteers who participate in the CLMP receive technical training and support from MiCorps program staff, learning first-hand about their lake's ecosystem and water-quality parameters. CLMP training allows volunteers to take a more informed, active role in managing and protecting their favorite inland lake.

Long-term monitoring data generated by volunteers is available online at the MiCorps website (www.micorps.net). This data provides the public and the state with information about trends in overall lake quality that are crucial to lake management decisions.

The volunteer time commitment depends on the indicators measured, and varies from an hour or two, twice a year, to once a week during the summer. To learn more, contact Paul Steen (psteen@hrwc.org; 734-769-5123 x-14), MLSA (pbonnell@mlswa.org; 989-257-3583) or visit the MiCorps website at www.micorps.net or MLSA website (www.mlswa.org).

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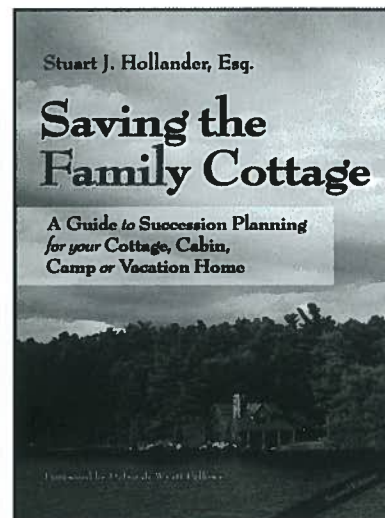
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MLSA and the Michigan Waterfront Alliance are working for you

The Michigan Lake & Stream Associations, Inc. (ML&SA) and the Michigan Waterfront Alliance have teamed up on a number of occasions to file amicus curiae briefs with various Michigan appellate courts in support of the rights of riparian property owners.

What is an amicus curiae brief? Literally translated, amicus curiae means "friend of the court" and refers to someone who volunteers to offer information on a point of law or some other aspect of a case to assist the court in deciding the case.

An amicus curiae brief urges an appellate court to adopt (or not adopt) a particular legal position or theory. Amicus curiae briefs are filed by a person or organization who is not a party to a lawsuit, but who has a strong interest in the subject matter of the case and believes that the court's decision may affect its interest.

ML&SA and/or the Michigan Waterfront Alliance have filed amicus curiae briefs in the following cases:

- *Little v Kin*, 486 Mich 699 (2003)
- The Nestlé/Ice Mountain litigation
- *Tomecek v Bavas* (Michigan Supreme Court)
- *Dyball v Lennox*, 260 Mich App 698 (2003)

The appellate court decisions in these cases have all been very important regarding their impact on riparian rights throughout Michigan. In three of the four above-mentioned cases, the appellate courts ultimately adopted the legal position advocated by ML&SA and/or the Michigan Waterfront Alliance.

Just shortly before this issue of *The Michigan Riparian* went to print, the Michigan Supreme Court issued its landmark decision in *Tomecek v Bavas*. In *Tomecek*, the Michigan Court of Appeals had held that the Michigan Land Division

Act could be utilized (through a county circuit court lawsuit) to alter substantive property rights. This case was discussed in more detail in the May 2008 issue of *The Michigan Riparian*. In December 2008, the Michigan Supreme Court reversed the Court of Appeals decision. The ML&SA and the Michigan Waterfront Alliance funded and filed an amicus curiae brief in that case in support of the legal position that the Michigan Supreme Court ultimately adopted.


Had the Michigan Supreme Court not reversed the published decision of the Michigan Court of Appeals below, it would have unleashed a torrent of litigation throughout Michigan. Specifically, property owners in plats (particularly, off-lake or backlot property owners) would have had an incentive to file plat revision or alteration lawsuits to expand the scope of usage rights to dedicated lake access devices such as public or private road ends, parks, promenades, alleys, and walkways.

In other words, even though off-lake or backlot property owners have almost universally lost their court cases seeking to expand the scope of usage rights to such dedicated properties (to allow such things as private


and permanent boat dockage, lounging, sunbathing, floating marinas, etc.), they would have attempted to alter the dedication rights via a plat revision lawsuit under the Michigan Land Division Act. Happily, the December decision of the Michigan Supreme Court prevents such shenanigans. This case demonstrates why it is so important for leading riparian or water rights organizations such as ML&SA and the Michigan Waterfront Alliance to file amicus curiae briefs in important appellate cases that may have broad implications for riparian property owners throughout Michigan.

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WHAT IS THE MICHIGAN LAKES & STREAMS FOUNDATION?

The Michigan Lakes & Streams Foundation is a 501(c)(3) nonprofit, charitable organization established in 2004 by Michigan Lake & Stream Associations, Inc. (MLSA) to provide an endowed fund) for developing a stable and permanent financing source to help support MLSA's many programs and initiatives.

WHY AN ENDOWED FUND?

An endowed fund ensures the principal from all gifts will always be there to help provide funding to MLSA. Only interest earned will be utilized. The principal will remain untouched.

WHY SUPPORT MLSA?

MLSA's membership consists of more than 300 Lakes & Streams Associations statewide, representing more than 100,000 members interested in

protecting the future of Michigan's water resources. For 45 years, Michigan Lake & Stream Associations, Inc., has labored on your behalf - most likely without you even knowing about it. On a national, regional and state level, MLSA represents its members through involvement in a variety of programs and issues involving state waters. Some of the key issues MLSA is currently dealing with include:

- Riparian rights • Lake and stream water quality • Controlling invasive species • Lake/stream watershed management • Other MLSA activities - MLSA is actively supporting numerous programs; MLSA is also your voice in Lansing, representing you.

HOW CAN I CONTRIBUTE?

There are four ways you can make a difference in the future of Michigan's lakes and streams:

FOR 45 YEARS, MLSA HAS PROVIDED ALL OF THESE BENEFITS AND RESOURCES TO ITS MEMBERS AND THE CITIZENS OF MICHIGAN ON A LIMITED BUDGET - RELYING ALMOST ENTIRELY ON VOLUNTEERS. IF WE ARE TO CONTINUE TO BE EFFECTIVE AS THE LEADER IN THE STATE IN PROTECTING OUR WATER RESOURCES FOR FUTURE GENERATIONS AND CONTINUE TO BE YOUR VOICE IN LANSING AND CONTINUE TO DEFEND YOUR RIPARIAN RIGHTS ...

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- 4) Make a cash contribution any time.

Consult with your own attorney or accountant for further ideas on the most appropriate way to make your bequest. FOR MORE INFORMATION, contact Franz Mogdis, President of the Board of Directors of the Foundation, at 989-831-5261; or Pearl Bonnell, Treasurer of the Foundation, at 989-257-3583.



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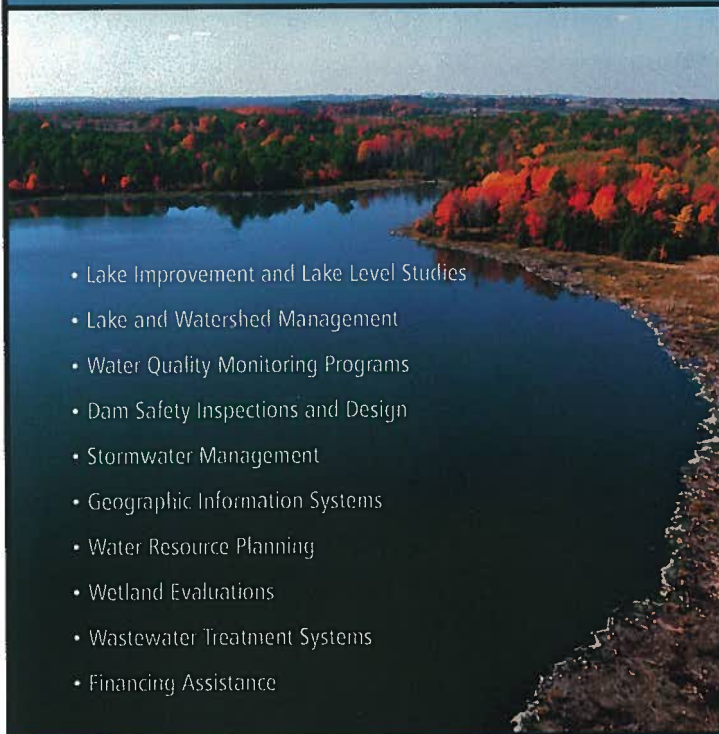
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Two more pro-riparian road-end court opinions

On December 2, 2008, the Michigan Court of Appeals rendered another lake road-end opinion which once again affirmed *Jacobs v Lyon Twp*, 199 Mich App 667 (1993), like virtually every other Michigan appellate case which has come out regarding public road ends at lakes.

Typically, the road-ends involved in these cases are in plats which are so old that the original dedicator or developer is no longer alive to testify as to the intent behind the public road-end dedications, and there is little (if any) written evidence of the developer's original intent apart from the plat itself.

However, the case decided last December 2, *Higgins Lake Shores Lakefront Property Owners v Lyon Twp* (unpublished Michigan Court of Appeals decision dated December 2, 2008; Case no. 278894), is unusual in that the trial court did have letters from one of the original plat developers which tangentially addressed

the road-end issue.

One of the developers wrote a series of letters to the Roscommon County Road Commission relating to the road-ends within the plat he helped create in the decade after the plat was created. Even though there was some language in those letters from which one could imply an intent to allow dockage, permanent boat mooring, etc., the trial court held that the overall evidence indicated that the uses of the road-end were limited to *Jacobs*-type uses and activities. Ultimately, both the trial court and the Michigan Court of Appeals held that the public road-end could be used only for access to the lake and that permanent boat mooring, sunbathing, picnicking, and lounging were prohibited uses and activities.

On December 18, 2008, the Michigan Court of Appeals also issued another important road-end case opinion in *Douglas v Harting* (unpublished decision;

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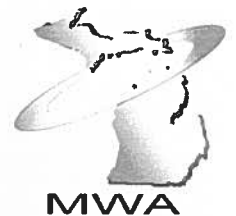
Case No. 277892). Douglas involved an alley (or small street) which terminated at Portage Lake and was dedicated in the plat "to the use of the public."

The Court of Appeals affirmed three important principles. First, the Court indicated that any platted road, street, alley, or public way that terminates at a lake is presumed to allow access only (that is, no private dock, permanent boat mooring, lounging, sunbathing, etc.). Second, the Court reiterated that to the extent that one dock is allowed for temporary boat mooring, it must be installed and maintained by a governmental unit.

Finally, the Court held that the adjoining riparian landowners had standing (i.e., a sufficient interest) to bring the lawsuit.

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2009 Leaders Summer Institute

Lake and Stream Leaders Institute Michigan Lake and Stream Associations, Inc. (MLSA) and Michigan State University (MSU), with generous support from the Paul H. Young Chapter of Trout Unlimited, are organizing the Lake and Stream Leader's Institute "Class of 2009." This will be the fourth session of this popular program, which is typically held every other year. The Institute provides an educational experience that improves participants' understanding of local water resource management planning and program implementation. Past participants have included property owners, concerned citizens, drain commissioners, organization representatives and state and local government personnel.

Institute participants learn lake and stream management by:

- Attending classroom and field sessions,
- Preparing an applied project, and
- Completing assigned homework.

The Institute is conducted in five in-depth sessions that include classroom learning and field experience and practice. The first seminar session will be held at the Ralph A. MacMullan Conference Center on Higgins Lake on Saturday, May 16, 2009. The next three sessions are held on July 30, 31, and August 1, 2009 at Kellogg Biological Station (KBS) near Kalamazoo. Meals and lodging at KBS are provided as part of the registration fee. The last session and graduation dinner will be held at the Bengel Wildlife Center in Bath, north of Lansing on Friday, October 2, 2009.

If your application is accepted, the registration fee will be \$250 (\$150 for full-time students). Participants pay their own travel costs to attend the sessions and should anticipate some expenses for their chosen applied project. The registration fee should not be sent with the application.

Application forms and the status of

remaining space available in the upcoming class may be obtained from the Institute web site (www.msue.msu.edu/waterqual/lakeleaders.html) or the MLSA web site (www.mlswa.org). Applications will be evaluated as they are received and acceptance notices mailed out within two to three weeks of submittal. Applicants will continue to be accepted until the class limit is reached. Because of the limited space available, we must restrict the number of individuals that can attend from any one organization.

If you are interested in being part of the Institute's Class of 2009, please complete an application and mail it to Michigan Lake and Stream Associations, Inc., P.O. Box 122, Stanton, MI 48888. The form may also be faxed to MLSA at 989-257-2073. Apply early, as participation is limited to a maximum of 30 individuals.

If you have questions, please contact: Jo Latimore, Ph.D.

Department of Fisheries and Wildlife
 13 Natural Resources Building
 Michigan State University
 East Lansing, MI 48824-1222
 Phone: 517-432-1491

Fax: 517-432-1699

Email: latimor1@msu.edu

Download application at www.mlswa.org

SAVE THE DATE

Plan now for Michigan Lake & Stream Associations, Inc.,'s 48th Annual Conference, scheduled for April 24-27, 2009, at Houghton Lake.

Windmills here? Companies in early stages of determining if it's worth investment

Some day there could be a line of windmills in Lake Michigan, possibly stretching for miles, their blades turning in the breeze to generate electricity.

But before then, there could be on-shore "wind farms" in Southwest Michigan. At least two companies are in the early stages of determining whether there's enough wind here to make it worth the investment.

A recent study by the Michigan State University Land Policy Institute, "Michigan's Offshore Wind Potential," says the best place to erect wind turbines is in the Great Lakes, where the wind is the strongest. A map included with the study, using data from a wind forecasting firm, classifies offshore wind energy along the entire eastern shore of Lake Michigan as "excellent" or "outstanding."

Wind turbines used for commercial generation of electricity are huge, and ones built in the Great Lakes might be even bigger. The 32 towers at Harvest Wind Farm in Michigan's Thumb region are 262 feet tall, and each of the three blades per turbine is 131 feet long.

In contrast, the home-sized turbine that Midwest Energy Cooperative has erected outside its office in Cassopolis has a 60-foot tower and three 14-foot blades, according to Terry Ruben Thaler, vice president of engineering. He said the cooperative installed the windmill and weather station, costing about \$35,000, for demonstration purposes and to provide information to members interested in erecting residential wind turbines.

WIND POWER GROWING

The American Wind Energy Association says wind power accounted for almost 30 percent of all new electricity generating capacity installed in 2007, compared with less than 1 percent in 2002.

Wind turbines installed last year generate enough electricity for more than 1.5 million homes. The number is likely to grow,

driven by increasing interest in generating electricity from nonpolluting sources. "During the campaign, President-elect Obama spoke of moving America toward a new energy future by facilitating investments in clean energy and revitalizing our economy in the process by creating new, green-collar jobs," Randall Swisher, AWEA executive director, said in a news release. "Despite adverse economic conditions nationwide, investors view wind as a sound strategic investment, and prospects for long-term growth in the wind energy industry continue to be bright."

Many states, including Michigan, have passed standards requiring an increasing percentage of electricity to come from so-called renewable sources. Michigan's Clean, Renewable and Efficient Energy Act, passed this year, sets a goal of 10 percent of the state's electricity to come from renewable sources by 2015. The current figure is between 3 and 4 percent, according to the Michigan Public Service Commission.

AWEA says the only offshore wind turbines in operation worldwide are in six countries in Europe. Some offshore projects are in the early stages in the United States, none of them in Michigan.

The Land Policy Institute study says that if wind towers could be erected at all depths in the Great Lakes surrounding Michigan, the state could generate 321,936 megawatts of electricity. Closer to shore, there's less wind, but even if towers only were installed up to a depth of 30 meters, the potential is 55,250 megawatts – more than three times the potential if windmills only were installed on land in the state. (One megawatt can power 500 to 1,000 homes. The Cook Nuclear Plant near Bridgman generates 2,160 megawatts.) But the study contains a major "however": "These projections do not account for potential areas of concern such as shipping lanes, sensitive aquatic habitat, historic sites such as shipwrecks and others, recreational fishing needs, commercial fishing needs, transportation corridors, migratory bird

By **MICHAEL ELIASOHN**
H-P Correspondent

routes, and potential areas subject to tribal and other treaty concerns and other natural resource management concerns."

Despite the "green" aspect of the wind towers, there's likely to be strong opposition from some conservation and environmental organizations. Then there are the engineering challenges of erecting and maintaining huge windmills in deep water, possible ice build-up in winter and getting the electricity generated to electric grids on shore.

"Advances in floating platform technology in (the) future will allow placement in almost all depths," the study says. "Currently this is largely untested in practical applications."

The study says that in addition to more wind, another advantage of building wind farms offshore is: "Much of the Great Lakes bottomland that is within the jurisdiction of Michigan is essentially owned and operated by the state, in trust for the public."

In contrast, on-shore wind farms present challenges of acquiring land in terms of cost. Also, getting the land needed "through leases and purchases with individual land owners is cumbersome at best."

"Not in my backyard" complaints may be overcome, the study suggests, by erecting wind turbines far from shore.

CASS COUNTY BEING STUDIED

Two companies want to put up towers in the northwest part of Cass County to measure wind speeds, said David Grabmeyer, Silver Creek Township Planning Commission chairman, who has attended presentations by both firms.

One of the companies is Heritage Sustainable Energy of Traverse City, whose project manager, Rick Wilson, said it also has

talked with land owners in two or three townships, including ones in Berrien County.

He said Heritage wants to erect one, two or three almost 200-foot towers in this area, with instruments to measure wind speed, consistency, direction and turbulence.

That data will have to be gathered for at least one year, maybe two, plus Heritage also has to look at such things as transmission lines and local land use regulations before deciding whether it's practical to build a wind farm in this area.

Meanwhile, Heritage wants to sign lease agreements with land owners to secure enough property to build a wind farm, if it builds one. Upon signing a lease, Wilson said, owners get an initial payment, then would receive royalty payments if a wind turbine or turbines are erected on their land.

Bill Saunders and Frank Butts, supervisors of Cass County's Silver Creek and Wayne townships, respectively, said their governments are working on ordinances regulating windmills.

Kurt Schindler, Michigan State University Extension's expert on the subject, said some local governments are choosing to regulate home-sized turbines the same as accessory buildings, such as sheds.

But the issues are more complex for wind farms with multiple and much larger wind turbines. In part because a wind farm could go up in more than one township, the state has a model ordinance aimed at standardizing regulation. Schindler said the model suggests treating wind farm size turbines as a special use.

Utilities

The two major utilities providing electricity in Southwest Michigan are just getting started when it comes to wind energy.

Mike Brian, American Electric Power state corporate communications manager, said Indiana Michigan Power by the end of this month will be buying 100 megawatts of electricity from a wind farm in Benton County, northwest of Lafayette in west-central Indiana. Another AEP subsidiary, Appalachian Power, also will be buying 100 megawatts from there.

Brian said AEP has committed to buying 1,000 mega-watts by 2011 from various renewable sources, including solar, hydro-electric and biomass, "but wind seems to be the most economical."

Consumers Energy gets about 5 percent of its electricity from renewable sources, spokesman Dan Bishop said. That will go up to about 6 percent next year when it starts buying all of the output of Michigan Wind I near Uby when its 46 turbines start generating electricity.

In addition, Consumers has three new meteorological towers in Tuscola County, east of Saginaw, and six towers in Mason County near Ludington collecting wind data over two years to determine if those sites will be suitable for building wind farms.

ON THE NET:

American Wind Energy Association: www.awea.org. For a contrary view: www.cohoctonwindwatch.org

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Other upcoming regional conferences

INTRODUCING MICHIGAN'S NEW WATER WITHDRAWAL REGULATIONS - WORKSHOP

February 13, 2009

Cost: \$35 per person (includes hand-outs, lunch and beverage breaks)

Michigan's new water withdrawal legislation and how it will affect large quantity users of water will be one of the topics of discussion at a series of workshops being sponsored by Michigan State University. Whether you are an irrigator, water supply representative, government official, or an interested citizen, you are invited to attend a workshop that will focus on why Michigan is regulating water withdrawals, what constitutes an "adverse resource impact" to a local stream, local groundwater and surface water resources, and an overview and hands-on demonstration of the new on-line Water Withdrawal Assessment Tool.

University of Michigan Flint Campus
William S. White Building - Room 3153, Flint, MI

For conference information, contact:
Dr. Paul Seelbach

For registration, contact: Stephanie Smith: 517-353-3826

Registration: You can register for any of the meetings by mail or on the web. If you are mailing in your registration, please register online then print and mail the online form with payment. Walk-ins are welcome however lunch cannot be guaranteed without notification five days prior to the deadline date. Conference Information and Registration Forms are available online at www.mlswa.org.

"THE GREAT LAKES: ADAPTING TO A WAVE OF CHANGE"

March 10, 2009

Free and open to the public. Advance registration is requested.

The 19th annual Great Lakes conference, co-sponsored by Michigan State University's Department of Fisheries and Wildlife, Michigan Sea Grant, the Institute of Water Research, and the MDEQ Office of the Great Lakes, will be held on Tuesday March 10, 2009, from 9am-3:30 pm, at the Kellogg Center on Lansing's MSU campus.

The conference will explore ecosystem changes that have occurred in the Great Lakes due to exotic species introduction and human impacts. It will also address the Great Lakes compact and revitalizing the economy of the Great Lakes region.

Topics, speakers, and registration information can be found online at: www.hydra.iwr.msu.edu/registrations/GreatLakes/index.asp

FISH IN PERIL

Warning: Study paints bleak picture

About four out of 10 freshwater fish species in North America are in peril, according to a major study by U.S., Canadian and Mexican scientists.

And the number of subspecies of fish populations in trouble has nearly doubled since 1989, the report says.

One biologist called it "silent extinctions" because few people notice the dramatic dwindlings of certain populations deep in American lakes, rivers and streams. While they are unaware, people are the chief cause of the problem by polluting and damming freshwater habitats, experts said.

In the first massive study of freshwater fish on the continent in 19 years, an international team of dozens of scientists looked not just at species, but at subspecies - physically distinct populations restricted to certain geographic areas. The decline is even

more notable among these smaller groups. The scientists found that 700 smaller but individual fish populations are vulnerable, threatened or endangered. That's up from 364 subspecies nearly two decades ago.

And 457 entire species are in trouble or already extinct, the study found. Another 86 species are OK as a whole, but have subspecies in trouble.

The study, led by U.S. Geological Survey researchers, is published in the current issue of the journal *Fisheries*. Researchers looked at thousands of distinct populations of fish that either live in lakes, streams and rivers or those that live in saltwater but which migrate to freshwater at times, such as salmon that return to spawn.

Some vulnerable fish are staples of recreational fishing and the dinner plate. Striped bass that live in the Gulf of Mexico,

Bay of Fundy and southern Gulf of St. Lawrence are new to the imperiled list. So are snail bullhead, flat bullhead and spotted bullhead catfish. Sockeye, Chinook, coho, chum and Atlantic salmon populations are also called threatened or endangered in the study. More than two dozen trout populations are considered in trouble.

About six percent of fish populations that were in peril in 1989, including the Bonneville cutthroat trout, have made a comeback, said lead author Howard Jelks of the U.S. Geological Survey. But one-third of the fish that were in trouble in 1989 are worse off now, said the Gainesville, Fla., biologist.

Jelks said the number of species in trouble was what he expected and that means people should be "considerably worried."

- reprinted from the Associated Press

MICHIGAN LAKE & STREAM ASSOCIATIONS, INC.

MLSA NEWSLETTER



MLSA Newsletter Notes

Increasing costs for production and mailing have contributed to a big change for the Michigan Lake & Stream Associations Newsletter, which has been published quarterly for more than two decades. The newsletter now appears as a special section, which you see here, in *The Michigan Riparian Magazine*.

Many articles are taken from the newsletters of individual lake associations. If you would like articles from your newsletter to be considered for publication, please send a copy of your newsletter to the MLSA Editor, 5660 Woodland Ave., Watervliet, MI 49098. If possible, please e-mail it to delavan1122@comcast.net.

– Delavan Sipes, Editor
MLSA Newsletter

What We Did Wrong

When we were few on earth, our imprint was not more than the footprint of a deer, the feces of the bison, the den of the fox, or the wild animal trails overland. It was the demand of existence that we search for daily sustenance to sustain ourselves.

The lakes, streams, prairies, mountains, forests, jungles were pristine; nature does not tolerate that which poisons itself. As hunters and gatherers, we took only our needs. In farming and husbandry we raised only our needs, and we recycled all that we produced. We created villages to cooperate and sustain ourselves. It was, perhaps, the only Eden that ever existed, for some long-forgotten leader conceived the weapon of power and stole from the neighboring village.

We built walls around our villages for our protection, and concentrated the location of our garbage, trash and sewage. We built on rivers and streams for the fresh water. Then we began to think we could outwit nature. We threw our raw sewage in the moving water and it went away; but downstream, sickness and pestilence prevailed. Meanwhile, nature worked on restoration of the waters.

We built cities, which compounded the pollution. To build the cities, we cut down forests for lumber to construct the buildings. The creatures of the forested land moved on, or died. Their habitat, their home, was no more.

Rain fell on the barren ground where the forest was once bountiful. Water ran from the treeless soil, first in rivulets, then in gullies. Soil ran to the rivers to join the sewage. The aquatic creatures of the once pristine

waters died, and so became more garbage in the water.

Our technology created sewage treatment plants to clean up the pollution, and garbage disposal units for the home, which increased the pollution in our waters. Our sewers carry feces and urine, which are contaminated with unprocessed prescription drugs, and these do not get removed in the sewage treatment plant, so we have new pollution – a new environment. This new environment is known to have caused changes in fish. In some cases, even their sex is altered.

Some concentrated animal feeding operations (CAFOs) use growth hormones, antibiotics and other drugs to improve production and get their livestock to market earlier. Dairy cows in CAFOs are treated the same way, and these unnatural growth hormones and antibiotics may get into milk, and our children may be affected in undesirable ways.

Nature will continue to counter the deleterious effects that we have on her balance. New species may be generated to modify the conditions. Old species may not survive the new balance, because balance may be achieved with entirely different ingredients, and we may not be on the scale. We do not accommodate weeds, which are simply plants that grow where we do not want them. Could we become the weeds of nature?

Isn't it time we took cognizance of what pollution is doing to our waters? Isn't it time we learned what those pollutants are? Isn't it time to find a way to remove all of them from our water? Shouldn't we choose to stop putting these pollutants, which to nature are specialized nutrients that have undesirable effects on us and wildlife, into our life giving water supply? Isn't it time the government provided the health and welfare protection of which we were assured? Isn't it time to stop using our fresh water supply for a toxic dump? For answers to these questions, write to your congressman.

– Delavan Sipes, Editor
MLSA Newsletter

Ponemaw, Squaw, Tupper Lakes Taking Action

Home owners on the Ponemaw, Squaw and Tupper chain of lakes in Fenton, Michigan in Genesee County elected a new lake association board on September



MICHIGAN LAKE & STREAM ASSOCIATIONS, INC.

MLSA NEWSLETTER



17, 2008. The goal of the Board is to resuscitate and reenergize the lake community. The top priority for the PST Lake Association is to have at least 50% of the homeowners as members in the first two years. Currently, 5% of the homeowners are members. There are more than 500 lakefront homes on the lakes and their connecting waters.

New Board members are President Tony Spezia, Vice President Ken Laetz, Secretary Emily Anthony, Treasurer Dustin Ondvocsik, and Trustees Joe Ceresia, John Wittum, Pam Elder, and Tom Sunday. Social Chair is Heather Crandall. Collectively, they offer more than 60 years of lakefront living.

The Board's first newsletter, mailed on December 5th, introduced the new PST Board members, listed PST meeting dates, Social Events, Fun Facts to entertain family and friends, Advertising, and the Membership Form, along with a coloring contest.

An Ugly Christmas Sweater Party at Tee-Bonez on the water was the first social event. Prizes were awarded by Lake Ponemah Arena. A great time was had.

On June 20th, 2009, there will be a Meet and Greet at the Sandbar, and on August 15th is the Ponetian Nights Festival. An eye-catching website for the PST Lake Association can be found at: www.mlswa.org.lakeponemah562. Send your e-mail with inquiries or interest to: pstlakeassociation@hotmail.com – *Kate Spezia*

Tapeworms Found in Walleye

Asian tapeworms are showing up in Lake Huron walleye, prompting a call to avoid sushi from Great Lakes fish. Michigan officials said it is safe to eat fish that have tapeworms, provided the fish are thoroughly cooked, smoked or pickled using normal food preparation techniques.

David Marcogliese, a research scientist at Environment Canada's research station in Montreal, reported the discovery of Asian tapeworms in Lake Huron walleye in the most recent issue of the Journal of Great Lakes Research. The foreign tapeworm, the 186th invasive species documented in the Great Lakes, likely was imported to the region with infected bait fish. "This parasite is known to cause weight loss, anemia and mortality in young fishes," Marcogliese said.

Anglers began reporting finding tapeworms in walleye caught in Lake Huron and Saginaw Bay, according to

a Michigan Department of Natural Resources memo.

Also, fish from some inland Michigan lakes also were infected with tapeworms, according to a DNR memo.

There are species of tapeworms which are native to the Great Lakes. The discovery and proliferation of Asian fish tapeworms is a recent phenomenon that could harm walleye and other fish species, according to DNR officials and Marcogliese's research.

Researchers indicated the Asian fish tapeworm, one of the world's most pernicious invaders, will likely spread across the Great Lakes region. According to Marcogliese, the Asian tapeworm can grow to one-foot-long in large fish.

"We do not recommend making sushi from any species of freshwater fish as the risk to humans is not known," according to the DNR memo. "It is a very bad idea to eat any freshwater fish raw or poorly cooked as fish parasites use fish-eating mammals and birds as hosts and it is not known if humans can also be hosts."

Asian fish tapeworms were carried into the U.S. in the 1960s by federal officials who imported Asian carp to control algae in Arkansas fish ponds. The invader has since spread to lakes and rivers across much of North America, according to federal records.

The cycle of infestation begins when zooplankton ingest the creatures and become hosts for the parasite. The tapeworms move up the food chain as zooplankton are eaten by small fish; the pests mature and produce eggs once in the intestinal tracts of walleye and other fish species. Fish excrete tapeworm eggs in their feces. The eggs settle on lake bottoms, where zooplankton eat them and give rise to a new generation of the pests. The mere sight of tapeworms can tarnish a fishing trip – the creatures are known to slither out of the mouths and gills of dead fish. To avoid finding a tapeworm in your fish cooler, DNR officials recommend gutting fish immediately after catching them and disposing of the entrails after returning to land. It is illegal to discard fish guts in Michigan waters.

Source: Muskegon Chronicle, 22 Dec. 2008; Jeff Alexander

Persistence Pays

Persistence in the pursuit of justice is not always as rewarding as it is in the case of John A. Rapano's defiance of the



MICHIGAN LAKE & STREAM ASSOCIATIONS, INC.

MLSA NEWSLETTER



Clean Water Act. Rapanos and related defendants have agreed to pay a civil penalty and recreate approximately 100 acres of wetlands and buffer areas to resolve violations of the Clean Water Act at three sites in Midland and Bay Counties, Michigan, according to the Justice Department and U.S. Environmental Protection Agency.

and will spend an estimated \$750,000 to mitigate 54 acres of wetlands that were filled without authorization under the Clean Water Act. He also agreed to preserve an additional 134 acres of wetlands that were unaffected by the unauthorized activity. Under the agreement, the preservation of these areas will be enforced via a conservation easement held by the State of Michigan.

Rapanos has agreed to pay a \$150,000 civil penalty

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Michigan Lake & Stream Associations, Inc.

48th ANNUAL CONFERENCE

(see page 18 for
conference agenda)

✓ checked in

April 24-25 2009

Registration Form for Conference ONLY



Name _____ email _____

Only one name per registration (Spouses please use separate forms)

Address _____ City _____ State _____ Zip _____ Phone _____

County _____

Lake Association, School, or Company Name you may be associated with _____

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Friday, April 24th

Saturday, April 25th

REGISTERED STUDENT- Full Conference (per person)

\$10.00

\$15.00

\$ _____

Meals are NOT included in these registration fees

Cancellation Policy: Cancellation must be made 7 days prior to event

in order to receive refund of deposit, less a \$10.00 administrative fee.

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MICHIGAN LAKE & STREAM ASSOCIATIONS, INC. MLSA NEWSLETTER



MICHIGAN LAKE AND STREAM ASSOCIATIONS, Inc.



48th ANNUAL CONFERENCE AGENDA

April 24 & 25, 2009

**Comfort Suites Lakeside, Houghton Lake, Michigan
989-422-4000**

4:00 P.M. - 8:00 P.M.	<u>Thursday, April 23, 2009</u> General Conference Registration
8:00 A.M. - 1:00 P.M.	<u>Friday, April 24, 2009</u> General Conference Registration
8:45 A.M.- 10:00 A.M.	MiCorps: CLMP Registration/Equipment Disbursal
9:00 A.M. - 5:00 P.M.	MiCorps: CLMP Training Sessions
10:00 A.M.-12:00 P.M.	<u>General Conference Plenary Session</u>
12:00 P.M. - 1:30 P.M.	Luncheon
1:00 P.M. – 1:30 P.M.	<u>Michigan Lake and Stream Associations, Inc.</u> Annual Corporate Meeting
2:00 P.M. – 3:15 P.M.	General Topic Breakout Sessions
4:00 P.M. – 5:15 P.M.	
5:00 P.M. - 5:30 P.M.	<u>Michigan Waterfront Alliance</u> Annual Election / Corporate Meeting
6:30 P.M. - 7:30 P.M.	48th Annual Conference Banquet
8:00 P.M. – 9:00 P.M.	Open Forum: Riparian Rights and Law
6:30 A.M. - 8:30 A.M.	<u>Saturday, April 25, 2009</u> Buffet Breakfast
7:30 A.M.- 10:00 A.M.	Conference Registration
9:00 A.M.– 12:00 P.M.	MiCorps: Aquatic Plant Identification Workshop
9:00 A.M. - 4:30 P.M.	Computer Center – Web Site Training Workshop
9:00 A.M. - 10:15 P.M.	<u>General Breakout Sessions</u>
10:45 A.M. - 12:00 P.M.	
12:00 P.M.- 1:30 P.M.	Luncheon
1:45 P.M – 3:00 P.M.	General Topic Breakout Sessions
3:15 P.M.- 4:30 P.M.	
4:30 P.M.	48th Annual Conference Adjourns



Enforcement!

By Clifford H. Bloom, Esq.
Law, Weathers & Richardson, P.C.
800 Bridgewater Pl • 333 Bridge St NW
Grand Rapids, Michigan 49504-5320



Many municipalities have wonderful local ordinance provisions that assist riparian property owners in protecting their riparian rights.

Whether found in the local zoning ordinance or separate police power ordinances, local ordinance provisions can regulate a variety of waterfront topics such as lakefront development, docks, road ends, building setbacks from the water, and environmental matters. Such ordinances do little good, however, if they are not enforced. Unfortunately, some municipalities use literally every excuse in the book to avoid enforcing ordinance provisions that help riparians.

Prior to 1994, local municipalities (cities, villages, and townships) could only enforce their ordinances by means of criminal misdemeanor prosecutions. While traffic offenses could be pursued as municipal civil infraction proceedings (i.e., through the utilization of civil infraction tickets), local ordinance violations had to be treated as criminal misdemeanors. The mechanics of a municipal criminal misdemeanor prosecution can be expensive and time-consuming.

For example, a criminal defendant has the right to a jury trial on every offense, the municipality has to prove guilt beyond a reasonable doubt (as well as proving every element of the ordinance violation beyond a reasonable doubt), courts and juries are often reluctant to give someone a permanent criminal record based on a simple local ordinance violation, and the municipality's attorney has to be involved one way or the other in all prosecution cases.

Effective in 1994, Michigan law was changed to allow a municipality to designate a violation of some or all of its ordinances as a municipal civil infraction offense. While it is optional for a

municipality to adopt civil infraction proceedings, the overwhelming majority of municipalities in Michigan have changed the penalty provisions for some or all of their ordinances to municipal civil infraction violations.

Where the penalty provision of a local ordinance specifies that a violation of the ordinance constitutes a municipal civil infraction offense, a designated municipal official (or officials) can write tickets or citations to a violator.

A municipal civil infraction proceeding for the violation of a local municipal ordinance follows essentially the same procedure as has been utilized for nearly a half century for traffic offenses. The defendant can either admit or deny responsibility. Typically, if the defendant denies responsibility, an informal hearing is held before the local district court's magistrate. A defendant who is found responsible at an informal hearing is subject to a fine. The losing party at the informal hearing stage (whether it be the defendant or the municipality) has the option of appealing the case to a formal hearing before the local district court judge.

Upon a finding of responsibility by the district court judge at a formal hearing, the judge has the option of not only imposing a fine on the defendant, but also ordering the defendant to do or not to do something (for instance, remove an illegal dock and not replace the same) and to also reimburse the municipality for some or all of its costs and attorney fees incurred in pursuing the municipal civil infraction proceeding.

At both an informal hearing and a formal hearing, the municipality need only prove its case (and all elements of the offense) by a "preponderance of the evidence" standard (i.e., the magistrate

or court must be convinced by just over fifty percent that the defendant violated the ordinance provision involved).

If a municipality uses municipal civil infraction proceedings properly, it can be a cost effective and efficient way to enforce local ordinances. The availability of municipal civil infraction proceedings greatly undercuts some of the excuses that municipalities use as to why ordinance provisions are not typically enforced (i.e., the expense and burden of prosecution).

If your local municipality has not yet changed the penalty provision for its local ordinances from a criminal misdemeanor to a municipal civil infraction offense, you should urge the municipality to do so, particularly with regard to the zoning ordinance and any other ordinances that might affect the lakes or rivers in your township, city, or village.

Recently, the Michigan Townships Association (MTA) released a publication I authored entitled "Michigan Civil Infractions—the Process." The publication can be ordered by contacting MTA at (517) 321 6467.

To find out more about municipal civil infraction proceedings in general, please go to www.lwr.com, and follow the links Attorneys, Clifford Bloom, and See Cliff Bloom's Publications. Finally, select the article under the "Municipal Articles" heading entitled "Michigan Civil Infractions—MTA News Article."

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LOVE MY LAKE ...

In each issue of *The Michigan Riparian*, we invite subscribers and readers to tell us why they love their lake and to share one or two photographs. If you'd like to feature your lake in a future issue, please just answer the questions you see below and submit them via e-mail to jchurchill14@yahoo.com or via "snail mail" to: Love My Lake c/o Jennifer Churchill, P.O. Box 44, Carson City, MI 48811. Please e-mail a large-format (300 dpi) jpg photo of your lake, or snail mail a regular photo. Photos will not be returned, so please mail us a copy.

What is your name and MLSA affiliation (association you belong to)?

What is the name of your lake and where is it located (county and general region of Michigan)?

How long have you lived on lakes? How long have you lived on this particular lake?

How would you describe your lake? Very rural?

Developed? A village or town feeling, or isolated?

What do you love most about living on a lake? What do you love most about this particular lake that you now live on?

What types of activities do you and family members do on your lake?

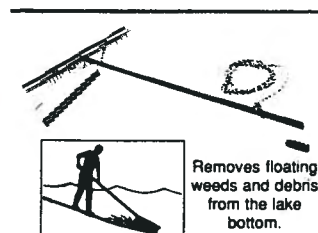
What (if any) special challenges do you encounter living on a lake? Any advice to other riparians that you've acquired over the years?

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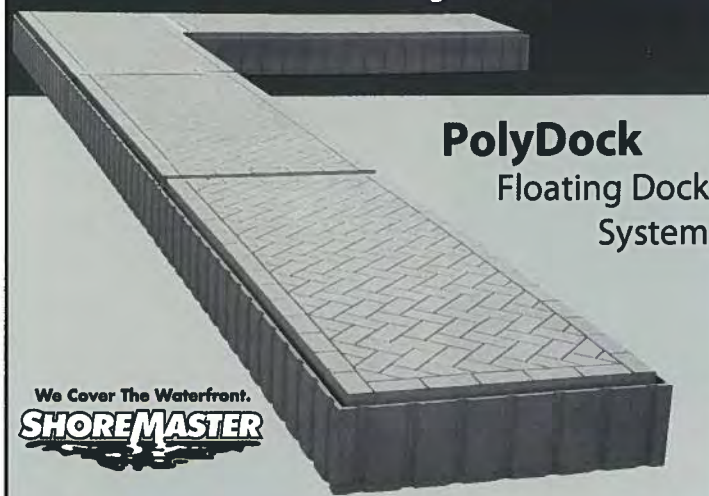


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