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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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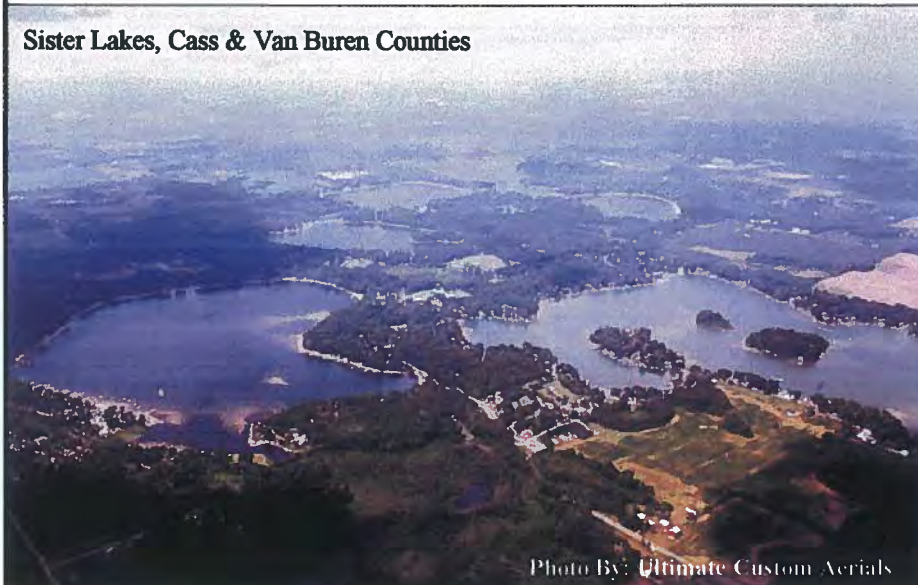


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FROM THE PUBLISHER

Michigan Attorney General's road-ends opinion



Don Winne

Despite the fact that there are dozens of strong, logical arguments against the public lake road-end bills being pushed by certain backlot groups, slightly more than one-half of the members of the Michigan House of Representatives voted to approve those bills last summer. Those ill-conceived bills are still pending in the Michigan Senate. Hopefully, a formal legal opinion issued by Michigan Attorney General Mike Cox this past January – which is critical of those public road-end bills – will dispatch them to the legislative dust heap where they belong.

In a well-reasoned legal opinion issued on January 30, 2008 (Opinion No. 7211), Attorney General Cox indicated that there is a strong likelihood that the bills, if enacted, would constitute an unconstitutional "taking" under both the Michigan and U.S. Constitutions. Since the backlotter's bills would drastically alter over a century of real property law, if the bills are enacted and private backlotter marinas occur on public road ends at lakes, it is likely that area riparian property owners would have constitutional claims for damages.

The text of the opinion can be found at the Michigan Lake & Stream Associations, Inc. website at www.mlswa.org or at the Michigan Attorney General's website at www.Michigan.gov/ag.

Some backlotter (as well as a few legislators who support them) are already attempting to downplay this Michigan Attorney General opinion. They assert that the opinion is just one attorney's belief and point out that Attorney General opinions are not binding law. What they fail to mention, however, is that issuing legal opinions or guidance is an important statutory duty of a Michigan Attorney General and those opinions often carry great weight with both legislators and the courts.

This whole matter is rich with irony. Certain backlot property owner groups desire to turn public road-ends into private marinas, primarily for their own benefit. They have enlisted some legislators to assist them with that endeavor. Their bills seek to overturn over a century of binding appellate court cases in Michigan and to alter long-standing property rights. If the backlot groups are successful and their bills are enacted into law, not only will they succeed in turning public road-ends into something akin to private marinas, but the public treasury of the state of Michigan will likely be used to pay damages claims to riparians in order to assist the backlotter to establish their road-end marinas! Not only do certain backlotter groups want to take over public road-ends for their own private use, but they also want to use everyone's tax dollars to do so! To make matters even more bizarre, any damages claims by injured area riparians or other parties might be brought not only against the state of Michigan, but also against the local government involved as well. Backlotter groups have argued (in a misleading fashion) that their legislation would enhance "local control" by permitting local governments (townships, cities, and villages) to authorize docks and boat moorings at public road-ends. If the backlotter's bills become law and a local governmental unit authorizes such a road-end marina, that local governmental unit may also be subject to paying any successful "taking" damages claim to riparians. Apparently, to some backlotter, "local control" potentially means having a local government be jointly liable for damages with the state of Michigan! Even putting aside all of the other numerous valid arguments regarding why these road-end bills should not be enacted, it seems absurd that during Michigan's financial crisis any legislator would help certain radical backlotter groups potentially fund private marinas using tax dollars!

– PUBLISHER DON WINNE

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Michigan Supreme Court agrees to review the decision in *Tomecek v Bavas*

On July 3, 2007, the Michigan Court of Appeals issued a disturbing opinion in *Tomecek v Bavas*, 276 Mich App 252 (2007). A portion of the Michigan Land Division Act allows a Michigan circuit court to vacate, correct, or revise a plat or portion thereof.

Traditionally, that provision has always been seen as a remedial or procedural power; that is, to allow a court to correct a plat error, vacate a road or other common area where everyone agrees, or order a similar noncontroversial "cleanup" matter.

In a stunning decision, the Michigan Court of Appeals held that the stat-

ute allows a trial court to drastically revise plats, including forcefully imposing new easements on some objecting property owners and granting new property rights to others. In other words, the decision would allow courts to alter substantive (and oftentimes, very important) property rights, even over the objection of those property

ML&SA and many riparians hope that the Michigan Supreme Court will ultimately reverse the decision of the Michigan Court of Appeals.

owners being adversely affected. This case has important implications for road-ends at lakes in Michigan, since if the Court of Appeals decision is allowed to stand, it would permit local

courts to alter road-end dedications to allow extensive dockage, boat mooring, floating marinas, etc.

If the decision stands, it could also allow courts to take additional property for public road rights-of-way away from adjoining property owners in plats and to expand roads without the need to exercise eminent domain.

The Michigan Lake & Stream Associations, Inc. (via an amicus brief) joined with others to ask that the Michigan Supreme Court agree to hear the *Tomecek v Bavas* case and urged the Court to reverse the erroneous decision of the Michigan Court of Appeals.

See page 6 of this issue for a clip-n-save subscription form to the Michigan Riparian.

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ON THE COVER

“Big” Portage Lake and Base Lake featured on the cover of this issue

The Portage, Base & Whitewood Owners Association (PBWOA) was incorporated in 1940 as the Big & Little Portage Lake Association. Since that time, this organization has been an influence in the four townships and two counties which encompass a chain of beautiful lakes known as the Portage Chain of Lakes – these include Little Portage, Portage, Baseline, Tamarack, Whitewood, Little Gallagher, Gallagher, Strawberry, and Zukey lakes.

This organization takes credit for many accomplishments, the two major ones being the construction of a dam in the Huron River at Portage Lake in 1964 to control the water levels in the lakes listed above, as well as getting four townships and two counties to allow a Special Assessment District to be formed in order to build a sanitary sewer system in 1984. That system not only serviced the Portage-Base Area, it also inspired the adjoining lake communities to follow suit.

The PBWOA is currently working closely with Hamburg Township on a comprehensive plan of flood control that is Hamburg Township's number-one hazard priority. With the continued growth around the lakes, the lake communities are faced with an ever-increasing amount of water being sent down the Huron River. Hamburg and the adjoining townships of Webster, Putnam and Dexter are also joining in this effort to reduce the risk of potential flooding.

The PBWOA presently has 10 board members that meet the first Monday of each month. The dedication of these board members is outstanding, according to its President – David Spielman – a board member since 1990. Other board members with years of dedicated service – such as Tom Hiller, Jay Hale and Bill Tupper – are all in the 23-year-plus club. The champion in this department is Mark Purol with 29 years. In the freshmen class are Bill Ferrington with 7 years, Paul Tryon with 5 years, Larry Simmering with 3 years, Bill Hahn with 3 years and Paul Godek with 1 year. Longevity is the strength of the PBWOA.

The current membership stands at more

than 350, which is approaching about half of the riparian owners eligible to join. As a part of our education of the membership, the PBWOA subscribes to the Riparian Magazine for the entire membership. This is in addition to its own quarterly newsletter

Recently, the PBWOA was involved in a lawsuit against a small group of backlot owners. In the association's opinion, this was a precedent-setting case because it involved an 8-foot alleyway that led down to Portage Lake. The following is a brief summary from PBWOA of the story behind the lawsuit:

This alleyway was dedicated to the use of the subdivision owners in a 1903 plat. Over the years, there had been a short dock constructed and used off and on. Sometimes a boat might be moored for a short period of time. A 1994 Washtenaw County Court decision ruled against overnight docking and mooring at this site. In recent years, the use escalated and, in 2004, the dock became more than 150 ft. long, with as many as 10 boats or more docked overnight.

This was a problem for the adjacent property owners because of the encroachment of these boats and people on their property, in addition to being in violation of the 1994 court decision. We and the adjacent neighbors asked the township put a stop to this. The township filed suit against the all of the owners of property in the subdivision. Most of the owners in the subdivision opted out of the lawsuit, since they were not using the alley for overnight docking. The remaining people – 5 owners – convinced the township to consider giving them the right to have overnight docking. The PBWOA found out that the township had reversed their direction, so we decided to ask the court to let us intervene in the case. The court did allow us to intervene, because this

was against state law and also because the original plat did not state or intend for there to be overnight docking and mooring of boats. On January 22, 2008, the judge ruled in favor of Michigan case law and said there any overnight docking and mooring at the end of this alleyway; also restoring the rights of all backlot owners indicated in the plat.



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HEADLINE IN THE NEW YORK TIMES: Last of the Great Lakes succumbs to virus

Possible? Well, I don't believe everything the New York Times says, but it is possible to see these headlines! In case you didn't know, all of the Great Lakes except Superior are infected with a fish-killing virus. Once a lake is infected, there is no way to remove the virus from that lake. At first everyone blamed the large tankers' ballast water, then came the bad news: Budd Lake in Michigan and Lake Winnebago in Wisconsin are infected with the virus. Maybe small boats are part of the problem? If we don't do something now, I can see the headlines in a few years:

MICHIGAN CLOSES ITS LAST LAKE TO
FISHING - ALL TOURISTS LEAVE

I read about the problem last June in the Wall Street Journal. Experts were blaming everything on the ocean-going tankers dumping their ballast water in the Great Lakes. The virus exists in Europe and has for years. Just like the zebra mussels, the "salties" were bringing us the virus in their ballast water - you know, the extra water they carry around as ballast

until they pick up their cargo, whether it's iron ore or water buffalos. Once they get their cargo, they don't need the ballast anymore so they dump it wherever they are: Port Huron, Cleveland or Duluth harbor. We're talking millions of gallons of water per ship.

It's called the Viral Hemorrhagic Septicemia virus - VHS for short. There have already been large fish kills in Lake Huron and Lake St. Claire. The VHS virus causes the fish to hemorrhage - they get large red splotches on them, which is not a pretty sight. And yes, it kills all species of fish that are in our lakes - Walleye, Trout, Salmon, etc.

"Not to worry," said one pompous official. "It's harmless to humans." Yeah, and they said the avian influenza virus (the bird flu) couldn't affect humans! Well it did.

Lots of agencies are "studying" the problem, but they are also trying to find the magic solution that will kill all the other "invasive species" (zebra mussels, lamprey

By Jack Hartmann
Michigan Lake & Stream Associations

eel, etc). They actually stated they should have a solution to the problem by the year 2015! For us, that's way too late.

"This has gotta stop," I grumbled. I talked to a Coast Guard buddy of mine and he admitted it was going to be hard to stop the freighters from dumping ballast water even if we made them get a permit. They just dump at night and no one can catch them. I was growling about this to an Eagle Harbor, Mich., friend of mine - Jim W. - and he came up with a novel idea. "Don't all the large freighters have to go through the Soo Locks to get into Superior?" he asked. "What if we set up a blockade at the Soo and told all the ships: No disinfect - no enter!"

"Yeah, but that would take federal legislation," explained my friend Bruce T. "Some of those ships come from international ports."

continued on page 17

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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.

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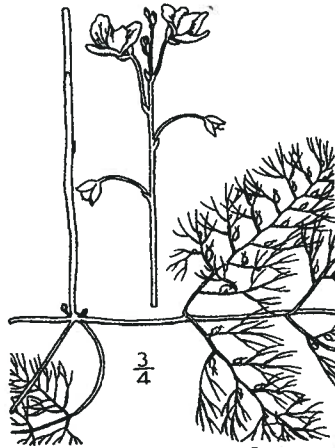
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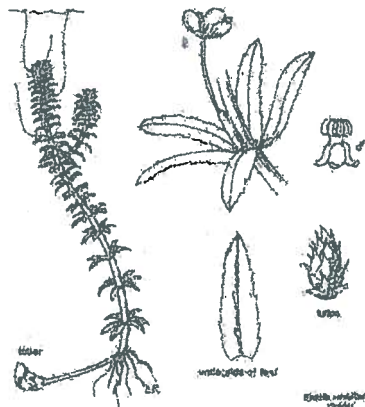
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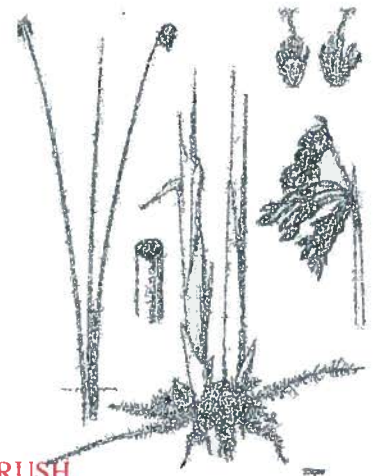
NORTHERN WATERMILFOIL

(*Myriophyllum spp.*)

This native species of milfoil has a hollow stem with whorled leaves at intervals along the entire length of the plant. Leaves are finely dissected to mid-rib and featherlike in appearance. This entire plant is submerged with the exception of a tiny stalk of flowers that may extend above the water surface.



<http://www.ecy.wa.gov/programs/wq/plants/weeds/egeria.html>



BULRUSH

(*Scirpus spp.*)

This plant has a long, tall triangular or round stem that may or may not contain leaves. This plant has a cluster of brownish flowers and seeds are located at the end of the stem. This plant will generally be found along the shoreline or in shallow waters.



HYDRILLA

(*Hydrilla verticillata*)

This extremely invasive plant has a very long stem that is branched. It contains oppositely arranged leaves at the bottom and whorls of three leaves at the upper portion of the plant and whorls of 5 in the middle. The leaf is oval shaped with toothed margins. On the underside of the leaf you will find pointed spines mid-rib. This plant is capable of reproducing from fragments, and should be removed when discovered

WATERSHIELD

(*Brasenia schreberi*)

Also known commonly as Dollar Bonnet this plants leaves are oval to elliptical with a smooth edge. The stem (petiole) is attached to the middle of the leaf. Leaves are 2-5 inches in length. Mature plants will have a slimy, gelatinous coating on the leaf underside. Produces a dull purple flower in late summer. Grows from roots.





MIDWEST AQUATIC PLANT MANAGEMENT SOCIETY, INC.

PLANT REFERENCE CHART

ELODEA

(*Elodea canadensis*)

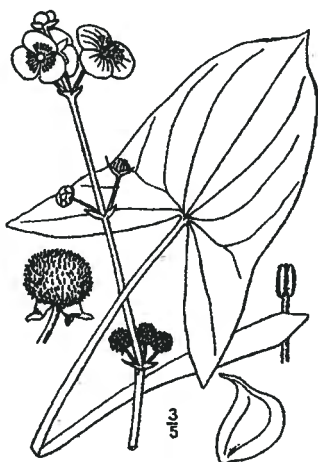
This submersed weed with broad oval leaves at first glance appears very similar to Hydrilla, however this plant contains its leaves in whorls of 3-4 around the stem usually. Whorls are compact near the growth tip with spacing between the whorls gradually increasing as you go down the stem. This plants leaves have smooth edges and lack the spine on the underside of the leaf that Hydrilla has.



ARROWHEAD

(*Sagittaria spp.*)

This plant is named for its arrow shaped leaf. This emergent plant may also have some elliptical emergent leaves and sometimes will also have ribbon, or tongue-like submersed leaves. This plant has underground rootstocks with tubers and may have tiny white flowers sometimes present.



DUCKWEED

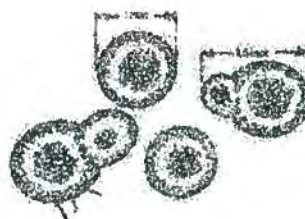
(*Lemnaceae spp.*)

Duckweed is a very small floating green plant usually smaller than your smallest fingernail. Often mistaken for algae this plant floats on the surface of the water and reproduces very rapidly. This plant may or may not have a 'root' extending from the underside, but the plant is not rooted to the soil.

WATER LILY

(*Nymphaea spp.*)

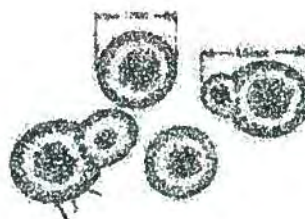
Large round pad with a cleft running almost to mid-vein. Leaves are usually 6-8 inches in diameter and the leaf veins radiate outward from the petiole. The underside of the leaf is a purplish red color and the flower is white with many rows of petals. This plant has a thick, fleshy rhizome network buried in the mud.



WATERMEAL

(*Wolffia spp.*)

This plant is extremely small, no larger than a pin head. It shows no visible roots and looks like green cornmeal. The smallest of the flowering plants it is usually very abundant when present. This plant is extremely difficult to control so act fast when it appears. It is also often mistaken for seeds floating on the surface.



Advantages and disadvantages of aquatic plant management techniques: PART ONE

PART ONE BIOLOGICAL AND CHEMICAL MANAGEMENT TECHNIQUES

As I work on aquatic plant management research projects around the United States, the most frequent statement I hear is: "I hope you can figure out some way of getting rid of these weeds." When I was younger (and more patient), I would explain many of the available options. After a few years, I realized that the major obstacles to effective management of aquatic plants were sociological rather than scientific. In most instances, a motivated resource management group (whether they are a lake association or a local, regional, state or federal agency) could use a half-dozen of the available options to manage aquatic plants in their lake. The limitations to effective management are time, patience, and funds – not the lack of an effective management tool.

All aquatic plant management techniques have positive and negative attributes. None of the techniques is without some adverse environmental impact; all have both strengths and weaknesses. In selecting management techniques, selections need to be based on economic, environmental, and technical constraints.

Management decisions should be made on a site-specific basis (Madsen 1997). Management techniques should be considered on their technical merits. A truly integrated aquatic plant management approach will vary the use of techniques both spatially and temporally. Spatial variation in technique selection should be based on site use intensity, economic, environmental and technical constraints.

Management should be tailored to the priority and goals of each site. All areas within the lake should be categorized as to use, restrictions, and priority. Based on these categories, management techniques can be selected. For instance, swimming beaches and boat launches are high-use areas, and should have a high priority. Wildlife areas (e.g., refuges) have lower

intensity use, and some restrictions to management. Based on these categories, management techniques can be selected. The high-priority, high-intensity use sites might justify high-cost management techniques such as benthic barriers or diver-operated suction harvesting. Low-intensity use areas might either remain untreated if resources are low, or would be categorized for less expensive techniques such as herbicides. Likewise, areas with higher concentrations of plants should receive more resources than areas with no plants or with acceptable levels of infestation.

As dense colonies are brought under control, maintenance management approaches can be used (Deschenes and Ludlow 1993). After a target plant species has entered a system, continuous management will be required. However, under no circumstances should management be discontinued once plant densities are low. If management techniques are very successful, management may entail only monitoring the system and hand-removing individuals that are occasionally found. Scale the control technique to the level of infestation, the priority of the site, the use, and the availability of resources.

Several useful computer programs and other useful information systems are currently available on a CD-ROM or web-based format as the Aquatic Plant Information System (APIS). Another excellent source of information on target and nontarget plants and their management is the Aquatic Plant Information Retrieval System, operated by the University of Florida's Center for Aquatic Plants. In addition to free bibliographic searches, the Center has a variety of educational materials available.

One important rule to remember is that no management technique is intrinsically superior to another, nor will one management technique (e.g., a single chemical or herbicides as a group) be sufficient for all situations in a management program. Rather, all techniques should be considered tools in the man-

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Assistant Professor
Mississippi State University



EDITOR'S NOTE: Parts two and three of this series will appear in the August 2008 and November 2008 issues, respectively.

ager's toolbox. Some are more expensive but will better control dense populations in larger areas. For small nuisance plant populations (<0.1 acres, 0.03 hectare) or new colonies, hand picking may actually be the best approach. Each site should be evaluated and management techniques selected based on the desired level of control, and environmental and economic constraints.

Biological Management Techniques. Many exotic and native organisms have been used for biological control programs (Gallagher and Haller 1990); however, current operational or research and development efforts center on a few: grass carp (or white amur, *Ctenopharyngodon idella*) and introduced insects for hydrilla, naturalized pathogens for Eurasian watermilfoil and hydrilla, and naturalized insects for Eurasian watermilfoil.

Grass carp, a popular control agent for aquatic plants especially in small ponds or isolated bodies of water, are particularly effective in controlling hydrilla.

continued on page 13

These fish have strong feeding preferences (Pine and Anderson 1991) and will selectively feed on plants in a mixed community from the most to the least preferred. If hydrilla is the target plant, this may be beneficial – at least until the hydrilla is eaten (Van Dyke et al. 1984). If Eurasian watermilfoil is the target, all other plants may be eaten first, and grass carp may in fact never completely remove Eurasian watermilfoil (Fowler and Robson 1978). In addition, there are



many concerns about using grass carp, including the length of time they remain in the system, the difficulty of controlling where and what they eat, the highly variable results for large systems (>500 acres), the escape of carp

from the managed system, the impact of their feeding on nontarget plant and animal species, and the difficulty of removing them when control is no longer needed (Bonar et al. 1993).

An initial concern regarding reproduction of grass carp (Stanley et al. 1978, Webb et al. 1994) has been addressed largely through the use of sterile triploids (Durocher 1994). The effectiveness of grass carp is strongly influenced by water temperature and seasonality, with northern ecosystems typically requiring substantially higher stocking rates than southern ones (Stewart and Boyd 1994). In addition, stocking rates can vary by an order of magnitude, depending on whether adequate results are required in 3 years as opposed to the need for more immediate results (Stewart and Boyd 1994). The problem of lag time can be moderated by combining stocking of grass carp with herbicide treatments in the first year (Eggeman 1994). However, a strong tendency for obtaining either no perceived control with understocking or complete plant elimination with overstocking remains – it has been termed the “all-or-none” dilemma (Haller 1994). If achieving an intermediate density of plants is even possible using grass carp, it is certainly very difficult and must be based on a more sophisticated understanding of interacting factors than have been considered in the past.

Insect biocontrol agents currently under research and development for hydrilla were discovered from overseas investigations of native habitats and brought in through the biocontrol “pipeline” (Cofrancesco 1994). Hydrilla biocontrol agents include the flies *Hydrellia pakistanae* and *H. balciunasi* (Buckingham and Okrah 1993) and the weevils *Bagous hydrillae* and *B. affinis* (Grodowitz et al. 1995). Although several introduced biocontrol agents feed in a complementary fashion to stress hydrilla populations, it is too early in the research and development process to predict operational-scale success. For instance, mathematical models of *H. pakistanae* growth rates suggest that even if the fly were successful in central Florida, its development rate may be too slow in the colder climate of northern Alabama to be effective (Boyd and Stewart 1994).

Although foreign surveys for biocontrol agents for Eurasian watermilfoil have been recently initiated (Buckingham 1995), most effort has been spent looking at naturalized or native insects that feed on this species (Kangasniemi 1983). In particular, laboratory, mesocosm, and field research have been vigorously pursued on the pyralid moth *Acentria nivea* (Creed and Sheldon 1994) and on the weevil, *Euhrychiopsis lecontei* (Creed and Sheldon 1993, 1994, Newman and Maher 1995). *Euhrychiopsis lecontei* looks promising in that it is capable of cutting off the flow of carbohydrates to root crowns, reducing the plant’s ability to store carbohydrates for over wintering (Newman et al. 1996) and reducing the buoyancy of the canopy (Creed et al. 1992). However, an effective strategy for large-scale applications using these naturalized insects at an operational level has yet to be verified.

Pathogens, like insects, are usually discovered by searching overseas for pathogens in the native range of the target plant. Despite overseas searches (Harvey et al. 1995), no foreign pathogen agents are currently under development. Actually, the best potential pathogen control agent for submersed aquatic plants appears to be an endemic species, *Mycrocoleptodiscus terrestris* (Mt) (Shearer 1995). Small-scale field tests indicated that Mt was an effective mycoherbicide, and acted like

a contact herbicide with little spread or drift (Shearer 1995). In addition, Mt has shown promise in the laboratory as part of an integrated management strategy in which applications of Mt combined with low dosage rates of the herbicide fluridone act synergistically (Nelson et al. 1998). However, more research and development effort must be accomplished before an effective marketable mycoherbicide is available for use.

The last type of biological management technique, native plant restoration, is an ecological approach to managing for a desired plant community. The basic idea is that restoring a native plant community should be the end goal of most aquatic plant management programs (Nichols 1991, Smart and Doyle 1995). Lakes currently lacking a native plant community can have these communities established (Smart et al. 1996a,b). Extant native plant communities should be protected from invasion by nonnative species through mechanisms detailed later. In communities that have only recently been invaded by nonnative species, a propagule bank probably exists that will restore the native community after management of the

All aquatic plant management techniques have positive and negative attributes. None of the techniques is without some adverse environmental impact; all have both strengths and weaknesses.

nonnative plant (Getsinger et al. 1997). However, in communities that have had monospecific nonnative plant dominance for a long period of time (e.g., greater than 10 years), native plants may have to be reintroduced after a successful maintenance management program has been instituted. A healthy native plant community might slow invasion or reinvasion by nonnative species and will provide the environmental and habitat needs of an aquatic littoral zone. However, even healthy, well-developed native plant communities may eventually be invaded and dominated by nonnative species (Madsen et al. 1991).

TO BE CONTINUED ... *Parts Two and Three of this series will be continued in the next two issues of The Michigan Riparian.*

NOTE: This series is a revision of a previously printed article.

Free lake weed treatment?

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



Very few lake associations in Michigan can compel lakefront property owners (or others who use the lake involved) to contribute funds to pay for aquatic weed control, whether done by chemical treatments, mechanical harvesting, or other means. A voluntary lake association simply cannot force its members (or even non-members) to contribute money for aquatic weed treatments.

The only exceptions involve "strong" lake associations created by binding deed restrictions (which give the association, implicitly or expressly, the power to levy mandatory dues or assessments for aquatic weed control) or properly created statutory summer resort associations (which are actually quite rare). Accordingly, a significant number of lake associations have lobbied their local municipality (either a township, city, or village) to impose a governmental special assessment district around the lake involved to provide funding for aquatic weed control.

Municipalities (particularly Michigan townships) have broad authority to create special assessment districts for a variety of public improvement projects, including aquatic weed control. Once a special assessment district has been properly established, the cost of the public improvement is allocated to the properties in the district that benefit from the improvement, and the costs are placed on the property tax roll. Unlike dues for aquatic weed treatment that may be imposed by lake associations (which are almost always voluntary), the payment of special assessments are mandatory.

Although there is no practical way of ascertaining how many special assessment districts have been created in Michigan for the purpose of aquatic weed control, it is likely that over one hundred townships have created such districts.

The most commonly utilized statute for creating special assessment districts in townships, for the purpose of aquatic weed control, is MCL 41.721 et seq. The special assessment process is usually initiated by interested property owners submitting a petition to the township. When presented with a petition signed by a majority of the affected property owners, most township boards will ap-

Although there is no practical way of ascertaining how many special assessment districts have been created in Michigan for the purpose of aquatic weed control, it is likely that over one hundred townships have created such districts.

prove the requested special assessment district for aquatic weed treatment. Officials in some townships, however, are reluctant to do so, citing concerns about increased paperwork, costs to the township, potential for liability, and upsetting landowners who oppose a special assessment district. Yet most of the time, these concerns are baseless.

All of the reasonable costs for setting up and administering a special assessment district, including the attorney fees and engineering fees required to set up the district initially, can be included in the assessments, which are paid by the property owners in the district. While setting up and administering a special assessment district involves a certain amount of paperwork for township officials, any additional administrative costs incurred by the township can be added to the special assessment tax roll. The township's potential for liability is minimal given that municipalities are generally protected by governmental immunity.

Finally, while some property owners may oppose the special assessment district, township officials should be mindful that the benefits of the public improvement often outweigh the cost to these

property owners and that the concerns of those opposed may not be sufficient to prevent the formation of a special assessment district, particularly where a sizeable majority of the affected property owners favor the district.

If the governing body of a municipality appears reluctant to create a special assessment district for aquatic weed control purposes (even though a majority of affected landowners support such a district), then perhaps that municipality should be reminded of MCL 41.418.

That statute authorizes a municipality to pay for aquatic weed control in public lakes out of the general fund in cases where a special assessment district is not utilized. Although the statute does not require the municipality to pay for aquatic weed control, it eliminates the excuse by some municipalities involved that they cannot utilize general taxpayer dollars for that purpose.

With this statute in mind, those who favor the creation of a special assessment district can stress to the municipality involved that they are not requesting payment from the general fund for aquatic weed control, but are willing to submit to a special assessment for that purpose.

If the municipality remains reluctant to create the special assessment district for aquatic weed control, it can be argued that the municipality should step in and spend general taxpayer funds for that purpose under MCLA 41.418.

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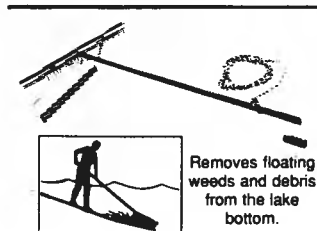
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What is your name and MLSA affiliation (association you belong to)?

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?



PHOTO BY JENNIFER CHURCHILL
Crystal Lake, Montcalm County, Michigan.



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Well, let's get started, said the kid from Eagle Harbor, Mich., to himself.

I went right to the top: Senator Carl Levin (D), Rep. Bart Stupak (D) and Rep. Jim Oberstar (D, Minn.). I also went to the DNRs of Michigan, Wisconsin, and Minnesota and the U.S. Coast Guard. Everyone was "studying" the problem, but no action was being taken.

Then I hit pay dirt! Dr. David Hand of Michigan Technological University and Phyllis Green of the National Parks Service - Isle Royale. Both have teamed together to tackle the ballast water issue. They are attempting to get some EMERGENCY legislation enacted to make treatment of ballast water MANDATORY. Dr. Hand, a water treatment expert, has a proposal that even the large ships will like. He proposes using chlorine in the ballast water to kill the virus and, after about 24 hours, the chlorine will be NEUTRALIZED before being discharged. The ballast water will be virus-free and chlorine-free. This, by the way, is the least expensive method to disinfect a large ship. We're talkin' about \$400 of materials per ship for disinfection.

The agriculture department (APHIS) is ultimately responsible for the health of fish. They won't put out an emergency rule making disinfection mandatory in order to stop the spread of the virus. They now think that small boats are the problem, but still they do nothing. I decided that I would take on the task of disinfecting all boats entering Lake Superior. In my research, I found that there is reluctance from many people to the use of chlorine. It works well in a dilute solution but for liability purposes many boat launch operators don't want gallons of bleach sitting around the dock - let alone some nitwit spraying his buddies with clorox.

Then I found it! It is a disinfectant made by Dupont called VIRKON® AQUATIC. It is approved by the EPA, kills the VHS virus in a 1% solution, and is easy to use. Virkon® Aquatic is used by fish hatcheries to stop the VHS virus. It costs about 75 cents to disinfect a 22 ft boat and the company may soon make Virkon® Aquatic in tablet form, which makes it even easier to handle. Tablets will cost more; possibly "up" the price of disinfecting to \$1. The plan I think would work is this: Each boat launch

should provide a garden sprayer, a supply of Virkon® Aquatic tablets and detailed instructions for making the disinfection solution and applying it appropriately. A simple donation box asking for a \$1 donation will keep the supply in stock. I'm sure boaters and fishermen will kick in a buck to save Lake Superior.

BOOM!! The bolt of lightning struck my little brain!! I was so focused on saving Lake Superior, I couldn't see the moose thru the trees! Just the other day, I was talking to Pearl Bonnell and Scott Brown and started telling them about Virkon® Aquatic. They asked what it would take to save Michigan's inland lakes. The clouds parted and a loud voice boomed at me ... "Virkon ... Virkon ... Virkon ... VIRKON® Aquatic!" (actually, it didn't happen like that ... but it sounds good). If MLSWA promotes the use of Virkon® Aquatic and boaters donate a buck each, then every inland lake in Michigan can be saved from the virus. Tomorrow - not in the year 2015!!

NOTE: The author has no financial interest in Dupont, the maker of Virkon® Aquatic. He is trying to save Lake Superior.

JON H. KINGSEPP, ATTORNEY

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MARINA DECISION REVERSED

The Michigan Supreme Court reverses the Sunseekers decision

A group of backlot property owners jointly own a small lakefront parcel on Higgins Lake. Even though the parcel has only 25 feet of frontage on the lake, the backlot group installed a 184-foot-long dock and moored approximately six boats at the dock. Area riparians filed a lawsuit in the Roscommon County Circuit Court to rein in the intense activities occurring on the small lake access property. The riparians raised three legal issues.

First, they claimed that the uses and activities occurring on the access lot were unreasonable and violated their riparian rights. Second, they asserted that the way the access property was being used was a violation of the local zoning regulations. Finally, the riparians argued that the backlot property owners should have obtained a marina permit from the Michigan Department of Environmental Quality ("DEQ").

The trial court held that the backlot owners' uses and activities were unreasonable, violated the riparian rights of nearby lakefront property owners, and constituted a nuisance. On appeal, the Michigan Court of Appeals reversed the decision of the trial court and held in favor of the backlot property owners. The Court of Appeals ruled that it was not enough for the riparians to prove unreasonableness and a violation of their riparian rights. According to the Court of Appeals, the riparian property owners also had to prove that the uses and activities occurring on the access property were an actual nuisance, and the Court placed a fairly high burden on the riparians to prove such a nuisance.

On March 7, 2008, the Michigan Supreme Court summarily reversed the decision of the Court of Appeals and reinstated the decision of the trial court in favor of the riparian property owners as to the unrea-

sonableness issue. The Supreme Court also remanded the case back to the trial court for a determination whether the riparians have "standing" (the ability or qualification of a party to make a particular claim in court) to challenge whether the backlot owners' uses and actions on the access lot violate the local zoning regulations and the marina permit requirements promulgated by the DEQ.

Because the decision of the Court of Appeals was an unpublished opinion, it was not technically binding on anyone other than the parties to the lawsuit.

However, by reversing the Court of Appeals decision, the Michigan Supreme Court has removed what could have been a potential obstacle to riparians and other riparian rights lawsuits.

See *Kallman v Sunseekers Property Owners Association, LLC*, ___ Mich ___ (2008).



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NEWS FROM LAKES AROUND THE STATE

Big waves coming to small lakes

**TWIN LAKES PROPERTY OWNERS' ASSOCIATION
Lewiston, Michigan**

Gregory Bator, President

Lewiston has secured Michigan's first designation as SURF CITY! Governor Granholm praised the town's foresight in re-developing itself to attract new and greater tourist revenue. "Lewiston residents should be proud of riding this wave into the future," punned Granholm. East and West Twin Lakes are scheduled to begin their natural wave system this Memorial Day. "By coupling the power of the present aeration devices with available technology, both lakes will host steady rolling waves all summer," noted Jacques Ulair, President of the Inland Lakes Surfing Association. Ulair said the project is a way to capitalize on the existing Vertex aeration system with WAVE, a renowned French water sports designer of wave pools.

Opposition to H.B.s 4463 and 4464

**CRYSTAL LAKE AND WATERSHED ASSOCIATION
Benzie County, Michigan**

Robert W. Appleford, President

Following is a condensed version of key phrases from the CLWA's resolution passed by the CLWA board of directors in September 2007: "After studying the text of House Bills 4463 and 4464, the CLWA Board of Directors has determined that the bills neither protect nor improve the water quality of Crystal Lake, but to the contrary will negatively impact the water quality and be detrimental to the lake and its watershed ... the public road-ends tend to be narrow, lack parking areas, lack public sanitation and refuse facilities, and would present traffic safety hazards at the road end and on adjacent public highways ... there is no provision in the bills regarding contamination of the lake by direct run-off into the lake of highway pollutants, and gasoline and oil spills at marina/dock sites ... the legislation would weaken the state government's role in the protection of vital resources held in trust for the people of Michigan ... therefore ... the Crystal Lake and Watershed Association urges its representatives in the Michigan Senate and Michigan House of Representatives to oppose the current version of the road end bills."

Membership update

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HOMEOWNERS' ASSOCIATION**

Fenton, Michigan

Tom Murphy, President

Current membership in our lake association stands at a record 180 households, or 53% of those eligible to join. A 2008 dues renewal notice (was sent out) in April 2008. The association's webmaster, Doug Pohlod, has developed a new web site at <http://SMLassociation.com>.

Bicycle trail possibility

**LONG LAKE PROPERTY OWNERS ASSOCIATION
Watersmeet, Michigan**

Arny Domanus, Secretary/Treasurer

I attended an organizational meeting with a group of people from Land O' Lakes and Watersmeet who are interested in creating a bicycle trail. The trail would run from Land O' Lakes to Watersmeet, then west to the north side of Sylvania and south through the Ottawa, parallel to Thousand Island Lake Road, eventually connecting with the existing trail on highway "B." I voiced my concerns that the bike trail, that I have no objection to, would develop into an "all purpose" trail. As some of you may remember, we fought this battle years ago with a proposed snowmobile trail that was proposed to use White Fish Road and our boat landing for access to the Ottawa trails. I will keep you up to date and inform you on their progress.

Lake property values

**LAKES PRESERVATION LEAGUE
Manitou Beach, Michigan**

Kathy Miller, Newsletter

According to the MLSA February newsletter, studies done in other states indicate there is a direct link between water clarity and lakeshore property values. Generally, property along lakes clogged with weeds and sediment isn't as desirable, and doesn't command as high a price as property located along lakes with excellent water quality. The League is all about maintaining and preserving our lakes for not only our use, but that of future generations. Our participation in the Cooperative Lakes Monitoring Program provides baseline information and documents trends in our water quality. This information helps us determine the health

of our lakes. The annual summary reports will likely be reviewed when the problem of invasive weeds in our lakes is addressed.

Portage Lake Dam upkeep

PORTAGE, BASE & WHITEWOOD

OWNERS ASSOCIATION

Pinckney, Michigan

David Spielman, President

Did you know that the dam is approaching the 50-year mark? The PBWOA has now actively got involved with the dam. We have had several meetings with Art Stauch and also have met with the Washtenaw County Drain Commissioner, Janice Bobrin, about the condition of the dam and its maintenance. We were given the records for the past seven years as to the amount of funds that were spent on the repairs and preventive maintenance of the dam. The funds for the maintenance come from the special assessment district that was created in 1964 when the dam was built. We still pay for the maintenance through our township taxes being assessed each year in April for the previous year's maintenance expenses. There are approximately 1,600 properties that make up the Portage/Baseline Lake Level Assessment District #8005. The average over seven years is \$13,772, or \$8.60 per home in the district. We could not imagine arguing about the benefit of the Portage Dam. It was built to stop flooding that occurred far too often. It has maintained the water levels so we have a beautiful water system. Up until the last decade, we were able to manage the water upstream fairly well but now we can't. We need to make needed repairs to bring the dam up to 100% operational.

Being proactive against milfoil

**EAST LAKE PROPERTY OWNERS ASSOCIATION
Kalkaska County, Michigan**

Dennis Hansen, President

After seeing all the surrounding lakes (all larger than ours) fall victim to E. Milfoil and the associated cost of control after several years of infection, we realized our small lake (90 acres and 15 feet deep) could not afford to wait until we became infected via the public access site, to do something to get control. With only 54 riparians, the cost to wait until we had a significant infection of E. Milfoil would

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NEWS FROM LAKES AROUND THE STATE

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have been financially very difficult for many property owners. Since the township was not interested in funding a monitoring program, in June 2006, we approached the township to set up a special assessment district. Not being interested to do it of their own accord, and after a lengthy and time-consuming process of writing a petition – along with a detailed operating plan with costs and having the advance approval of the township – we gained 89% support from the riparians, including several backlot owners, as well. After submitting the petition in the fall of 2006, this winter the township board reversed its own decision and decided to fund the lake monitoring out of township funds. We believe that Attorney Jessica Wood of Law, Weathers and Richardson was critical to that outcome. The door is still open for a future SAD once E. Milfoil is found in the lake, but at least for the time being, the township is paying the cost. Since the lake access site is very popular for swimming and boat access, we believe the township made the right decision for ALL of the residents of the township, not just the riparians. Stay tuned.

Save the turtles, frogs, clams

OSTERHOUT LAKE PEOPLES ORGANIZATION

Allegan County, Michigan

Art Ostrowski, President

Save the whales, save the polar bears ... What about Osterhout turtles, frogs, clams and salamanders? Since all of us live in the Midwest, it is pretty difficult for us to take an active role with the plight of the whales and polar bears. We do, however, have an opportunity to take a "hands on" approach to helping Lake Osterhout turtles, frogs, clams and salamanders. These creatures help Osterhout's environment, so we should also help them. Children are always quite interested in seeing for the first time any one of these live creatures. We suggest that parents take the opportunity to teach them that they can hold them and ask questions about them. After the discussion, these creatures should not be taken home to the fish bowl or bucket, where they will die. They should be returned to the environment in which they were found. In other area inland lakes, it is very difficult to find any one of these creatures. Our lake is very lucky to

still have the population that we do have. Each one of them is an important contributor to the health of the lake.

Phragmites are coming

WHITE LAKE ASSOCIATION

Montague, Michigan

Phil Dakin, President

Phragmites, pronounced frag-MY-teez, is a giant, perennial reed grass that can grow up to 15 feet tall in wetlands and along shoreline areas. Phragmites crowds out native vegetation and can quickly take over an entire area. Each plant can produce 2,000 seeds per year that spread long distances with the wind. The plants have extensive root systems that can extend 60 feet from its stalk. The root systems spawn new plants if severed. The plants have created walls of vegetation that obstruct water views in southeast Michigan and Lake St. Clair. This non-native strain of the plant was probably imported to the Great Lakes in packing materials and ballast water of European ships. Possession of the plants or their seeds for planting is prohibited in Michigan. It has appeared on the shore areas of White Lake. It can be seen from the road between Mill Pond Creek and the Eagles. It has shown up on Dowies Point and Crosby Point. If it appears on your property, it most likely will spread like crazy, unless you are aggressive in controlling it. The state recommends cutting down the plants and spraying the base with the herbicide Roundup to kill the roots. One expert says it is very persistent and hard to get rid of completely unless you are very aggressive. It is recommended to attack it when it first appears.

www.3lakes.com looks new

THREE LAKES ASSOCIATION

Bellaire, Michigan

Bob Bagley, President

The TLA web site has been revised and reorganized to make it somewhat easier to use. The new site includes a calendar on the first page that you can check for upcoming and past events. Publications and reports are in new folders. For example, all the intern reports are in a single file and the predictive nutrient-based water quality studies are grouped together. The TLA Newsletters (as before) are all online

and we will be adding the Executive Director reports given at monthly meetings. Our photo album remains intact and we welcome photos from members. We will soon have inventory of the shoreline of Torch Lake from the Watershed Center's Torch Lake Shoreline survey. With the new web site, we will be inaugurating our ListServe feature that we will call "TLA Alert." This will allow us to send you an e-mail alerting you to new issues as they occur during the year. We do not expect there to be many of these, as we do not want to fill up your inbox with junk.

Delta edges its way to surface

PENTWATER LAKE ASSOCIATION

Pentwater, Michigan

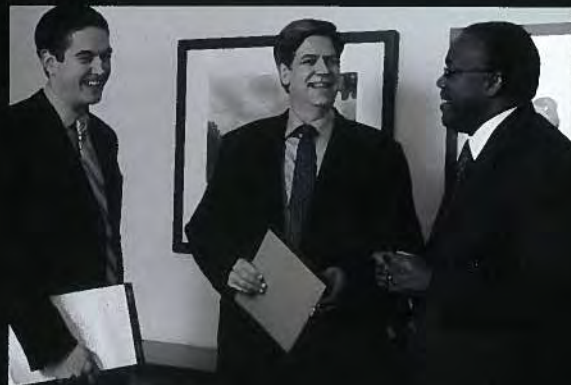
Jerry Saylor, President

Many of our members departed for warmer climates several months ago and were not around to see a truly depressing sight in November and December. The delta that formed at the east end of the lake more than a decade ago when the Hart Dam broke has steadily edged its way to the surface as the lake level has fallen. For several weeks, the delta was exposed over an area that was approximately 50 yards wide by maybe 50 yards long. No one that I talked to could remember a similar exposure. The Pentwater Lake Improvement Board held discussions and funded a preliminary study to ascertain the cost of dredging this area, but the costs were prohibitive. It is not within any organization's budget to fund such an effort. Latest reports show that Lake Michigan water levels are about 13 inches below a year ago, and predictions are for additional losses over the winter months. The causes of the steadily falling levels of Lake Michigan remain unknown, but explanations include secular declines due to global warming, cyclical declines that are just part of a long pattern that repeats over time, and the Canadian study released early this year that attributes the decline to the scouring of the St. Clair River following dredging more than 30 years ago. If the first two causes are the real culprits, there is not much that can be done to reverse these developments. Even if dredging activities are to blame, no near term fix is eminent. The U.S. will issue its finding on the dredging issue,

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but not until 2009. Perhaps a few well-placed letters could help the study along. Water activities will be badly curtailed if water levels continue to fall.

Lake augmentation update

MAGICIAN LAKE IMPROVEMENT ASSOCIATION

Dowagiac, Michigan

Charlotte Poole, President

As of December 14, 2007, the augmentation petition submitted to the DEQ by Big and Little Crooked Association has been denied. After the public hearing held in October, the DEQ had 60 days to make its ruling. After taking into consideration the comments made by several of our MLIA members, Big and Little Crooked lakes residents, the VanBuren and Cass County drain commissioners, and several officials of various Michigan environmental agencies, the DEQ has denied this petition based on "adverse impacts to the public trust, riparian rights and the environment." Feasible and prudent alternatives exist in order to alleviate the complaints and perceived problems that this petition has brought forth to the DEQ. The DEQ further states that "the groundwater drawdown impacts indicate that while the aquifer performance test determined that there will be enough water to maintain the

level in the lake system - the test did not address the potential impact on the surrounding wetlands and lakes such as Magician Lake." The Hydrological Studies Unit did look at the data provided, even though aquifer pumping tests did not include a sufficient number or location of observation wells. The HSU felt that even with this limited data, "the proposed pumping would have a detrimental effect on surrounding lakes and wetlands." The DNR Fisheries Division objected to the permit based on potential impacts to aquatic organisms and lake augmentation is not consistent with Fisheries Division policy. The augmentation project would directly affect approximately 21,000 linear feet of shoreline on Big and Little Crooked Lakes, representing hundreds of riparian property owners. Public input on this project was extremely high, with over half of those who responded expressing their objection. Feasible alternatives do exist which would lessen or eliminate the negative impacts of the project. These alternatives range from doing nothing to such options as installing longer docks, and more. The Big and Little Crooked Lakes Association does have the right to appeal this decision and they have 60 days from the date of denial (Feb. 14, 2008) to do so by filing a formal

petition for an administrative hearing on this matter. Stay informed through our web site for further developments on this issue. www.magician-lake.org.

Idea for other lake associations: publish a rental directory

WALLOON LAKE ASSOCIATION

Petoskey, Michigan

Edward Lapekas, President

Since 1989, the Walloon Lake Association has published a list of members' cottages that are available as rentals. This service for members has grown in popularity to the point which, in 2007, hundreds of copies of the Rental List were e-mailed to interested friends throughout the country. Association members choosing to have their cottages included may either e-mail their information or send it to the Walloon Lake Association with location and address of cottage, number of bedrooms and sleeping capacity, any restrictions/limitations/special amenities, monthly/weekly/daily rates, name/address/phone number of person to be contacted by prospective renters. Remember, you must be a paid member of the Walloon Lake Association to have your cottage listed. (EDITOR's NOTE: This would be a good way to get more members!).

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- Chemicals are short term, expensive, and can be detrimental to the environment. Most herbicides need to be reapplied each year.
- Mechanical cutting or harvesting produces numerous fragments, which actually causes EWM to spread more quickly.
- Dredging is extremely costly.

Milfoil weevil,
E. lecontei



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