

## HIGH WATER BLUES

For the past approximately two years, both the Great Lakes and many inland lakes throughout Michigan have been at record high water levels. Virtually every body of water has surpassed the prior 100-year water level record from the fall of 1986. And unfortunately, it appears that water levels will only rise more during the upcoming summer months.

Is there anything that a riparian property owner can do to help lower water levels or mitigate the damage caused by high water levels? There are some things that can be done, but not many.

With regard to the Great Lakes, apart from simply relying on historical cycles, which will almost undoubtedly lower the levels of the Great Lakes at some time, there is little that governments or individuals can do to lower the lake levels. Unfortunately, no one knows whether we are at the “peak” of the current high water level cycle for the Great Lakes or if the extraordinarily high water levels will continue to occur for a few more years before receding. A little bit can be done by the United States Army Corps of Engineers (“Army Corps”), the Canadian government, and others to regulate the flow of Lake Superior water through the St. Mary’s River, the Soo Locks, and the Chicago River, and also by monitoring several other points of drainage for the Great Lakes.

If your Great Lakes cottage or house is threatened with flooding or destruction, both the Army Corps and the Michigan Department of the Environment, Great Lakes and Energy (“EGLE”) have expedited the permitting process for new or additional riprap (i.e., rocks), sea walls, groins, etc. Regrettably, there is little if any government money available to assist Great Lakes riparians with mitigation efforts. It is possible that a city, village, or township could impose an assessment district with special assessments on properties along segments of the Great Lakes to pay for riprap, sea walls, etc., for the private properties on the waterfront, but those

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assessments would likely be very expensive and could benefit certain property owners more than others.

For inland lakes, there are potentially more ways available to mitigate high water problems than for the Great Lakes:

First, a similar special assessment could occur for sea walls, riprap, etc.

Second, existing dams, outlets, and similar apparatus for lowering the water level on an inland lake could be constructed, improved, cleaned out, or otherwise updated by setting a formal lake level through proceedings in the local circuit court pursuant to the Michigan Lake Level Act, being MCL 324.30701, et seq. For more information regarding that process, please see my earlier article entitled *Who Pulled the Plug on My Lake* in the Summer 2000 issue of this magazine.

Third, recently, Michigan Governor Gretchen Whitmer signed into law Public Act No. 70 of 2020 (House Bill 5401) and Public Act No. 71 of 2020 (House Bill 5402). Effective April 2, 2020, Public Act Nos. 70 and 71 permit the County Sheriff, the Michigan Department of Natural Resources, or the County Emergency Management Coordinator to establish temporary reduced watercraft speed limits upon the request of a local municipality in order to protect life and property during emergency conditions. The temporary speed limits are limited to a maximum duration of 14 days. Violation of a temporary speed limit is a civil infraction. Generally, temporary speed limits can only be issued once per calendar year; however, they may be issued twice if the municipality is seeking to implement the speed limit restrictions under a temporary ordinance.

Fourth, also effective April 2, 2020, Public Act No. 72 of 2020 (House Bill 5463) permits municipalities to request Michigan Department of Natural Resources authorization to implement temporary ordinances regulating the use of watercraft. A temporary ordinance is limited to a maximum duration of six months and may be extended or renewed only if the municipality is seeking to implement the restrictions as a permanent special local rule under MCL 324.80110.

Fifth, municipalities may regulate some inland lake uses and activities under their general police powers. For more information regarding the nuances associated with police power regulation

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of inland lakes, please see my article entitled, *On-Lake Regulations* in *The Michigan Riparian* magazine, at page 11 (Fall, 2015).

What else can local municipalities do about high water levels? Unfortunately, municipal options are limited and will generally involve triage or mitigation rather than preventative measures. The following are several courses of action that a lakefront municipality can take to help minimize negative high water level impacts on the community:

1. Impose a moratorium on building in high water and flooded areas until the appropriate ordinances can be enacted.
2. Increase the setback requirements for lake, river, stream and wetlands areas for zoning and building purposes.
3. For municipalities that have Lake Michigan or Lake Huron frontage, enact an ordinance requiring that all dwellings, fixtures and structures that are likely to fall into the lake soon must either be moved back or removed (in order to prevent debris from ending up in the lake).
4. Apply for state and federal emergency grants and funds.
5. Urge both the Michigan Department of Environment, Great Lakes and Energy and the Army Corps to declare high water emergencies and take action along the shores of Lakes Michigan and Huron and also inland rivers and lakes.
6. Work cooperatively with the adjoining municipalities.
7. Adopt resolutions urging the Michigan Governor and the United States President to declare high water emergency areas in Michigan and provide emergency funding to affected Michigan communities.
8. Streamline and simplify the procedure for obtaining local permits and approvals for seawalls, break walls, rip rap, etc.

Does the current high water level change riparian boundary lines? In general, no. Even where a part of the lakeside yard of a riparian property is temporarily submerged, it does not normally change the legal or ordinary high water mark or the riparian boundary lines locations under the lake. Of course, if high water levels in Michigan persist for many years hereafter, it is possible that the legal ordinary high water mark may be adjusted somewhat inland, but that still should not affect the original riparian property lines. 