



Attorney Writes

By Clifford H. Bloom

Law, Weathers & Richardson, P.C.
Bridgewater Place
333 Bridge Street, N.W., Suite 800
Grand Rapids, Michigan 49504-5360
E-Mail: CliffBloom@lwr.com

WHO PULLED THE PLUG ON MY LAKE?

With lake levels around the Great Lakes approaching record lows, many riparians are wondering what, if anything, can be done to get more water into their lakes. Obviously, one option is to simply wait – most inland lakes go through natural high and low cycles. On some lakes, however, the natural high and low cycles have been affected by water diversion, area development and other factors. Riparians desire to artificially maintain lake levels for a variety of different reasons. In the past, fluctuating inland lake levels was not the major problem it is today due to a lack of cottages and homes on many lakes years ago.

There are normally two means for artificially maintaining lake levels during dry conditions. First, if the lake has an outlet, the outlet can be dammed and regulated. Second, one or more deep wells can be installed to pump water from underground aquifers into the lake.

Artificially maintaining lake levels is not an area where one can exercise “self-help.” The proper legal procedures must be utilized. Anyone who attempts to dam an outlet or install a lake pump (or in the reverse situation, create an outlet or clean out or widen an outlet to increase water outflow) on their own could incur civil and even criminal penalties. Since a lake is like a common highway and the waters are owned by and held in trust for the people of the state of Michigan, no private individual can simply artificially alter lake levels. Furthermore, should an individual attempt to do so and any other riparian or property owner is damaged thereby, the person undertaking the change could potentially be liable for significant monetary damages.

The legal vehicle for setting lake levels is the Inland Lake Level Act. See MCLA 324.30701 *et seq* (“Act”). Although the procedures under the Act are somewhat cumbersome, formal and time-consuming, the Act is really the only safe and lawful way to artificially regulate lake levels. Under the Act, a formal lawsuit must be instituted in the local county circuit court. The lawsuit must be filed by the county board of commissioners or its agent. The county commission can institute a lawsuit on its own initiative, or, it must do so if it is presented with a petition signed by two-thirds of the riparian property owners fronting on the lake involved. After one or more court hearings, the circuit court judge decides whether or not to set a permanent lake level (*i.e.* normally expressed as a set number of feet above sea level), and if so, how that lake level should be maintained. The decision rests within the discretion of the circuit court judge. If the court determines that it is not in the public interest to set a lake level, no lake level will be set and artificial means of maintaining the lake level (such as damming or pumping) probably cannot be utilized thereafter. If the court decides to set a specific lake level, the court will determine the level as well as what means will be utilized to maintain the lake level. Once a lake level is set, the county has the authority to impose a special assessment district to spread the costs of maintaining the lake level to the benefited property owners. A hypothetical lake level order issued by a circuit court could read as follows:

This court hereby sets the statutory lake level for Bear Lake at a target level of 730 feet above sea level, with a range between 728 feet and 732 feet above sea level. The County Drain Commissioner shall use his or her best efforts to meet that target

level and to maintain the lake level within the above-mentioned range at all times. A deep well and pump shall be installed to maintain the lake level, as shown on the plans attached to this Order. Furthermore, the existing Bear Creek Drain outlet located on the township park on the east side of Bear Lake shall be dredged and improved with a dam insert installed as shown on the plans attached to this Order. If the county so chooses, the cost for installing the pump, doing the above-mentioned work on the drainage outlet and for maintaining those items may be paid for by a special assessment district to be levied on the owners of all properties benefited having frontage on or access to Bear Lake.

Are there any other statutes which can be used to authorize setting a lake level? Theoretically, the general special assessments statutes for townships, cities and villages could be utilized to pay for the pump and/or dam apparatus, but they would not accord the necessary authority to set the lake level itself.

If one or more riparians desire to set a level for a lake, I recommend that they consider the following:

I. Attempt to gain the formal support of the lake association first, if one exists.

II. Do not begin to circulate petitions willy-nilly – rather, contact the county drain commissioner in order to come up with the appropriate wording for the petition ahead of time. You certainly do not want to draft your own petition and spend many hours obtaining enough signatures, only to have the drain commissioner or the court reject the form of the petition, so that you have to start over again.

III. Give a realistic assessment of costs to property owners when you are circulating the petition. It does no good to “low ball” the projected cost figures per property in order to obtain petition signatures, since that will only breed opposition later during the court proceedings.

IV. It is often helpful to put together an exhaustive “facts sheet” to give to property owners when you are circulating the petitions, which covers all of the major issues and answers all potential questions regarding the project and the proposed special assessment district. Be sure, however, that everything in such an informational document is absolutely accurate, or the document itself will become a weapon that opponents of setting a lake level will attempt to use against you later. Furthermore, where an issue cannot be nailed down at that time, you should simply state that the particular issue cannot be answered at this time.

V. Remember, the overwhelming majority of people who will oppose setting a lake level will do so because they do not want to be assessed and have to pay for the pump and/or dam necessary to maintain the lake level. Many people who oppose setting a lake level because of the cost involved are embarrassed to admit that the cost is the true reason they are concerned, such that many opponents will argue that the lake level should not be set due to other matters such as environmental concerns (*i.e.* pumping is not “natural”), there is no problem since the lake level will come back eventually, etc. That is not to say that no one will oppose setting a lake level for non-monetary reasons, but it is amazing how many people base their opposition on cost factors.

cariae, however, were collected from shallow water at two sites in a lake late in the summer. These results encourage us to devote more time to develop this technique, which could be used to document dispersal of cercariae.

A new component of our study will examine the effectiveness of copper sulfate in reducing swimmer's itch at specific beaches at one lake, if permits are granted to the lake associations for this activity. We plan to compare the results of this treatment in reducing snail populations and reports of swimmer's itch at these beaches and at other beaches that have not been treated with copper sulfate. We expect to document the effects of copper sulfate on snails and other invertebrates at these beaches.

One of our goals is to develop a model to predict outbreaks of swimmer's itch at beaches. We must be able to detect cercariae after they have been shed by the snail intermediate hosts into the water if we are to achieve this goal. While neither the cercarial trap or the cercariometer worked as well as hoped, we will refine these devices. It is essential that we document the presence and abundance of cercariae in the water if we are going to associate their movements with environmental variables. Data will be generated from field and laboratory studies and will allow us to develop the predictive model. The trap device also enables us to test the effectiveness of potential repellents and possible control agents in the laboratory. Another goal is to study the life cycle and behavior of the snail intermediate host in order to generate information that might be useful in developing an integrated pest management approach to control swimmer's itch. Studies on movement and distribution of snails in relation to limnological variables will be studied in the future. Our research will extend into deeper water using SCUBA to determine what role snails in deeper water play in swimmer's itch.

AUTHORS REQUEST LAKE ASSOCIATIONS TO REPORT CASES OF SWIMMER'S ITCH

With the public's help, we are in-

terested in documenting the distribution of swimmer's itch in Michigan. We are requesting that lake associations or their members, and riparian owners, send us information indicating that cases of swimmer's itch have or have not been reported from their lake and what county it is in. Furthermore, we would like to receive any additional information about the lake and its associated animals that would be helpful to us regarding swimmer's itch. Please include your name, address, and telephone number.

We acknowledge the substantial contributions of Edward B. (Ned) Wickes and Bill Case of the Higgins Lake Association who worked with several lake associations and Senator George McManus to obtain funding for the research. Ned Wickes also helped make local arrangements for researchers, as did Albert Flynn of the Walloon Lake Trust, and Jim Bendig of Lake Leelanau. Many other lake association members too numerous to mention provided assistance and information about local conditions. We also acknowledge the efforts of the 1999 field crew, Merritt Gilliland, Abigail Summers, and Melissa Asher. ■

Who Pulled The Plug On My Lake?

(continued from page 11)

VI. Plan on the process taking a long time. From the early planning stages through a final court decision could easily take months to a year or even longer. That does not include the time it will take thereafter to install the pump, dam structure or other devices.

VII. Strike while the iron is hot and while the lake level is low. If you wait too long to begin the process and the water levels begin to rise, you probably will lose public support and you will not be able to have a lake level set until water levels fall dramatically again in the future.

VIII. For people who are concerned about costs, remind them that the process is not going to become any cheaper in the future. An analogy involves the large number of lakes which are contemplating installing sewer systems. Had sewer systems been installed when many of them were first proposed for a particular lake 20 or 30 years ago, it would have been much cheaper (even if one does adjust for inflation) and less disruptive. ■

Jet Skis Collide, Teen Killed

Kalamazoo Gazette, Sunday, July 16, 2000

THE ASSOCIATED PRESS

GLADWIN — A Collision between two jet skis operated by two teenage half-sisters left one of them dead, Gladwin County authorities said Saturday.

Julie Ann Klauss, 15, of New Baltimore died Friday shortly after arriving at a Midland hospital, sheriff's officials said in a statement.

Her 13-year-old half-sister, also of New Baltimore, was uninjured in the crash shortly before 7 p.m. Friday.

Last month, Gov. John Engler signed into law legislation dropping the minimum age of personal

watercraft operators from 14 to 12. That law requires a parent or guardian to ride with operators 12 or 13 years old, and mandates that young drivers gain certification by attending a daylong boating safety class with their parents.

The sheriff's statement did not mention whether an adult was riding with the 13-year-old girl involved in Friday's accident, saying the case was being investigated by the Gladwin County Sheriff's Department's marine patrol division.

Authorities can ticket parents who allow their children to ride personal watercraft without supervision or the required certification, officials said.