



Attorney Writes

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TRESPASS!

“Trespass” is the venturing onto the lands of another without permission. As many riparians well know, trespass is a common problem around lakes.

There are two types of trespass and related legal remedies – criminal trespass and civil trespass. Criminal trespass is what most lay people think of when they consider pursuing legal action against someone for trespass. There are potentially three laws available whereby a trespasser can be prosecuted. First, under state law, trespass is illegal pursuant to several statutes. MCLA 750.552 is the general state statute for trespass. This statute prevents anyone from trespassing upon the premises of another after having been forbidden to do so. Violation of the statute is a criminal misdemeanor offense, punishable by a fine of up to \$50.00 and 30 days in jail or both. There are also several statutes which make it illegal to trespass and to damage property, cut trees, destroy or take crops, etc. Under such statutes, someone who is found guilty of entering the land of another without permission and destroying property is potentially liable for actual damages, and in some cases, even double or triple damages. See MCLA 600.2919, 750.546 and 750.547. Second, some local municipalities (i.e. cities, villages or townships) have their own trespass ordinances. Finally, the Michigan Recreational Trespass Act (MCLA 324.73101 et seq.) (“RTA”) covers trespass involving recreational uses. Depending upon the statute under which a trespasser is prosecuted, conviction can either constitute a criminal misdemeanor or civil infraction offense. The RTA was also amended recently to add “teeth,” such that the penalties have been beefed up significantly.

Unfortunately, many police agencies (i.e. county sheriff departments, city police officers, etc.) and prosecuting officials (i.e. county prosecutors, city or township attorneys, the Michigan Attorney General’s office, etc.) are reluctant to prosecute trespassers—it is simply not a high priority in most jurisdictions. Many law enforcement officials will tell a complaining property owner that they cannot prosecute a trespasser until the offender trespasses a second time. Although under most laws it is not technically true that someone has to trespass a second time before they can be prosecuted, it is true that most laws require some type of

prior notice. For example, MCLA 750.552 requires that the trespass occur after the trespasser has been “forbidden to do so by the owner or occupant” or that the trespasser neglects or refuses to leave when requested by the owner or occupant. The RTA requires that a property be posted with no trespassing signs or at least be fenced prior to a violation occurring, but it does not require any other notice to the trespasser. Some local ordinances do not require any prior notice at all. There are other reasons why law enforcement agencies are often reluctant to prosecute trespassers. First, trespass claims have unfortunately been used as fodder in domestic and neighborhood disputes. Second, it is often difficult for law enforcement officials to determine whether someone has trespassed due to uncertainty about boundary lines – this is particularly true with regards to bottomlands under a lake or upland boundary lines which are in dispute. Third, such disputes often involve one person’s word against another’s – the offender claims that he or she was given oral permission to be on the property while the owner denies that such permission was given. Such disputes are often viewed as more civil law matters with which law enforcement should not become involved.

The other remedy for trespass is a civil lawsuit. In such cases, law enforcement agencies are not involved and the individual property owner must file a lawsuit against a trespasser at his or her own expense. In some cases, the property owner can recover damages, even where little harm has been done to the property involved. See the RTA and MCLA 600.2919, 750.546 and 750.547. In most civil lawsuits for trespass, however, damages are rarely awarded, and the goal of the property owner is to obtain a court order precluding the offender from trespassing again under pain of contempt of court and possibly jail.

Around lakes, the issue often arises as to whether it is trespassing on a riparian’s bottomlands when someone else places a dock, shorestation or raft anchor on the riparian’s bottomlands or walks on the riparian’s bottomlands without permission. Under Michigan law, most riparian property owners own the bottomlands adjacent to their properties toward the center of the lake in a pie-shaped fashion. While both riparians and members of the public have the right to

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watermilfoil with minimal impacts on native species is between five and eight parts per billion (ppb).

MDEQ Conclusion 5. Boosting the concentration of Sonar® 10 - 14 days after the treatment (i.e., bringing the concentration of Sonar® in lake water back up to the target concentration) enhances the effectiveness and timeliness of the treatment without additional negative impacts on native species.

In general, the scientific literature supports and the MESB Panel concurs with both MDEQ Conclusions 4 and 5; however, several suggested changes regarding the current MDEQ methodology for calculating lake volume and a more precise application rate are offered by the MESB in the report. In particular, the MESB Panel recommends that the application rate of Sonar® for selective control of Eurasian watermilfoil be six ppb followed by the potential of retreatment boosting the concentration back to six ppb two to three weeks after the initial treatment based on results of a FasTEST® for water column concentrations of the compound. Under this protocol, impact to non-target native plant species would be minimal in the year of treatment and beyond, and the amount of native vegetation habitat remaining would be adequate for fish and wildlife.

MDEQ Conclusion 6. Sonar® is one tool for controlling Eurasian watermilfoil on a whole-lake basis.

The MESB Panel concurs with MDEQ Conclusion 6 since each lake has unique aquatic plant populations and distributions. When exotic species, such as Eurasian watermilfoil, grow in numbers that are considered nuisance then all control options must be considered including mechanical harvest, chemical control, and nutrient source reduction. Currently, the MDEQ requires that only a minimum of information be provided with a permit application. In order to better understand the dynamics of the interrelated natural ecological processes that operate within a lake and, therefore, the potential impacts that may take place due to manipulation of these processes, a greater level of information would be useful. There currently exist several lake information-gathering models that may be used to supplement the information currently required by the MDEQ. The MESB Panel suggests that the MDEQ evaluate the use of these and other similar models and encourage the use of such tools in conjunction with its permit program.

MDEQ Conclusion 7. Sonar® does not have any direct negative impacts on fish or wildlife populations, or pose any human health concerns when used according to the product label.

The MESB Panel concurs with MDEQ Conclusion 7 but recommends that it be modified by adding the words, “and its permitted use by the MDEQ” to the end of the sentence.

¹A summary of a report written by the Michigan Environmental Science Board Sonar Investigation Panel.

²The author, who was recently appointed to the Michigan Lake and Stream Associations’s Science Advisory Committee, gratefully acknowledges the efforts of all the other Panel members who co-authored the report.

freely float on the water over another’s bottomlands and even to temporarily anchor thereon pursuant to navigation, people do not have the right to place docks, shorestations or raft anchors on the bottomlands of another without permission, or to moor boats other than temporarily on such bottomlands. Furthermore, one cannot normally walk on the bottomlands of another without permission. Unfortunately, law enforcement agencies will almost never prosecute bottomlands trespass cases due to their lack of knowledge of riparian law and the difficulty of ascertaining bottomlands boundaries. Only a county circuit court in a full-blown civil lawsuit can determine true bottomlands boundaries, which is an expensive and complicated process. Accordingly, the ultimate relief for the owner of bottomlands who experiences bottomlands trespassing is a private civil lawsuit.

The various trespass laws differ regarding whether or not a property must be posted before a trespasser can be pursued. The RTA requires signage at every visible point, or, alternately fencing. Some local ordinances do not require any signage or fencing, while others do. To be safe, it is best to post your property, utilize fencing or use both methods if you are concerned about trespassing. If you are dealing with a relatively small lot, a confined area or lake bottomlands where fencing or posting is not practical, either you or your attorney should send a warning letter to whomever has been a trespasser in the past warning that person not to trespass or you will take appropriate legal action. Obviously, you should keep a copy of the letter in your file and preferably send it by registered mail to the potential trespasser so you can later prove that he or she had prior notice if court action should be necessary.

Here are a few additional tips regarding trespass:

1 Once you have had a survey done (which can be quite expensive), you may desire to dig a small hole around each corner iron (without disturbing it) and pour a little redi-mix cement into the hole, leaving a half-inch or so of the iron protruding through the concrete. If you desire, you can place topsoil over this cement and plant grass. This will ensure that corners do not get moved, lost, bent, etc., so that your property lines will remain established.

2 If someone trespasses on your property and damages, cuts or takes your trees, crops, wood or other natural resources without permission, they are potentially liable for triple damages under MCLA 600.2919.