

WHO PULLED THE PLUG ON MY LAKE?

by: Clifford H. Bloom
Law, Weathers & Richardson, P.C.
Bridgewater Place
333 Bridge Street, N.W., Suite 800
Grand Rapids, Michigan 49504-5360

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 Commission 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:

1. Attempt to gain the formal support of the lake association first, if one exists.
2. 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.
3. 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.
4. 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.
5. 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.

6. 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.

7. 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.

8. 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.

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