



GREAT LAKES
COALITION

Lake Michigan Chapter for Shoreline Preservation

NEWSLETTER – SUMMER 2007

"The Lakeshore and all those lucky to have known Priscilla will miss her deeply"

Joe Milauckus – President, GLC

In Memoriam - GLC Board Member Priscilla Mueller

Priscilla Mueller, Board Secretary, was the backbone of our organization since it's inception over 20 years ago. All appreciated her dedicated and loyal service. In February, Priscilla experienced a serious health problem requiring surgery at the Meijer Heart Center in Grand Rapids, MI. Despite a valiant effort to recover she passed away quietly at her beloved Bendemeer on the shores of Lake Michigan on June 22nd. Memorial donations may be made to the National Coalition for Women with Heart Disease at <http://womenheart.org/> or WomenHeart, 818 18th Street NW Suite 930, Washington, DC 20006 or to the Fennville Elementary School Library, c/o Kathy Kirby, 8 North Street, Fennville, MI 49408

Lake Michigan/Huron Expected to Drop Further

The lakes basin is ending it's seasonal rise and is currently two inches lower than last year at this time. Experts are predicting that Lake Michigan/Huron will ultimately decrease more than 2006. Cynthia Sellinger of the National Oceanic and Atmospheric Administration says, "All indications are the lake is going to be lower than it was last year." The reason for this prediction has to do with Lake Superior, which is within 5" of its all time low, and that means less water is moving down the St. Mary's River and into Michigan/Huron. You are reminded that if you want timely level reporting you can sign up for weekly updates through the Army Corps of Engineers (ACOE) at:

<http://www.lre.usace.army.mil/greatlakes/hh/greatlakeswaterlevels/waterlevelforecasts/weeklygreatlakeswaterlevels/index.cfm>

Special Interests Back Effort to “Plug up” St. Clair River

There are interest groups within our basin who think that so called “low water” is not the result of natural low precipitation phenomena but instead the fault of ongoing riverbed erosion on the St. Clair River, the primary outflow of Lakes Michigan and Huron. A group called the Georgian Bay Association commissioned a study that contends that dredging work done by the ACOE contributed to an artificial lessening of long-term levels on Michigan/Huron. Their solution is to have the government consider building mitigating structures that would add more water to the basin essentially “plugging up” the St. Clair River and engineering a significant rise in Michigan/Huron levels. This proposal will need to be watched closely in the near future. Our participation in International Joint Commission (IJC) Upper Great Lakes Study Group is essential in order to have a full and open discussion on this issue. Roger Smithe, our International Great Lakes Coalition Chair is our nominee to be part of this study. We are soliciting others with interest and expertise. Please contact our Saugatuck office at (269) 857-8945 if you have interest.

Low Water and Coastline Enforcement

The state is very upset with the Cherry Tree Condo Hotel in Traverse City for beach grooming. As the water has dropped many of our shallow areas in the basin have attracted growth both native and foreign that is upsetting to property owners. In particular, they are enraged over a non-native species called phragmites that is choking canals. Plowing followed by sand replacement is really driving the DEQ berserk. Although the property belongs privately to the hotel this is what is being said. - “This has been going on far too long” said Bob McCann, spokesman for the Department of Environmental Quality. “They’ve just taken the attitude they’re going to do what they want to do.” Additionally, McCann says. - *“When the traditional coastline is down several feet, you can’t just get out your own bulldozer”*. What do you think?

Property Rights–The Heaphy Case

This case has a major impact on our ability to protect our private property rights. The Heaphy case had to do with restrictions on building near the lake rendering the Heaphy’s land useless. Good news for the Heaphy’s. They were awarded \$1.74 million for the clumsy state attempt to take what belongs to them.

Property Rights–Banks v. US

In this important case, coalition board member and attorney, John Ehret has ably represented a group of riparians just south of St. Joseph. While in the works for

years this important erosion case is finally having it's day in court. The bench trial was heard in the U.S. Court of Federal Claims in early June. Judge Emily Hewitt will author the decision.

In a nutshell, the 36 plaintiffs contend that the steel-encased piers in St. Joseph have caused severe erosion on their property. Ehret argues that the case is about constitutional rights. *"This case is about people's rights to private property."* He also asserts that the government has failed to take proper steps to mitigate the damages caused by the pier head. *"In the interest of fairness and justice, the damages should be paid by the government and not disproportionately on property owners,"* he said.

Proper steps could have included a better follow through on Section 111 beach replenishment or shortening the piers to reflect modern usage. Neither approach has occurred. The downstream damages to the properties south of the pier are startling even with lower water.

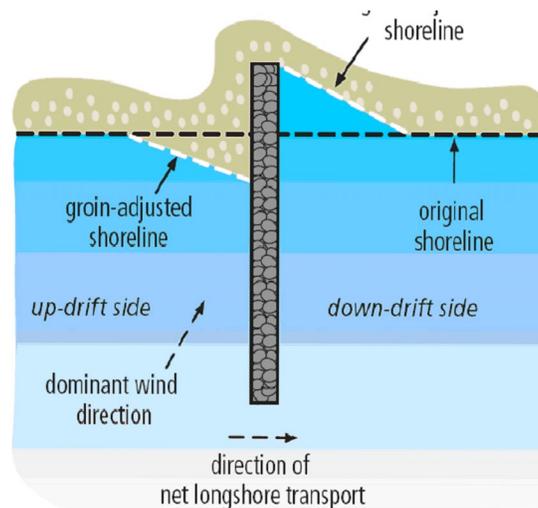
The government has refused to accept responsibility for their action in *Banks v. U.S.* thus far.

Section 111-The Forgotten Promise

From our GLC web page: <http://www.greatlakescoalition.org/>

Navigation structures such as harbor piers that are invariably constructed and owned by the Federal Governments are large enough to cause permanent damage. Sometimes power companies commercially own these structures.

Only a portion of the interrupted sand accretes on the beach up drift of piers, but huge quantities have been diverted out into the lake beyond the depth of closure but thus lost to the beach forever.



Beach Response to a Groin

These piers date back to the 1860's when most were constructed of wooden cribbing that offered navigational protection at the mouth of the harbor but still allowed the natural littoral drift of sand. Yes, the Government knew early on that solid piers would cause erosion problems down drift; they just did not know how long the process would take. It was not until the later part of the last century that sheet piling was added to these piers so that the harbor entrance would not fill up with sand. That is when the interruption really started big time.

The United States Government recognizes their responsibility through section 111 of the Rivers and Harbors Act of 1968 in which Congress required the Army Corps of Engineers [ACOE] to quantify the degree of interruption in terms of cubic yards of sand interrupted per year. Congress then *authorizes but does not require* the ACOE to replenish the amount of sand thus removed from the littoral drift. In all it's goodness, the ACOE does sometimes replenish threatened reaches, but only after the annual budget override has been assured and appropriated funds are available. This always happens at the end of the fiscal year in the fall, and with almost no warning to even the affected municipality. It is impossible though GLC has not tried under FOIA, to obtain any timely information about ACOE replenishment plans.

111 Projects on the Lake Michigan shore are: **New Buffalo, St. Joseph, South Haven, Holland, Grand Haven, Muskegon, and Ludington**. GLC Board members Bill Andresen and John Boyd have been in close contact with Congressman Peter Hoekstra (R) MI over the appropriations process. It will be a goal of the Great Lakes Coalition Lake Michigan Chapter to make sure that the government keeps their word and protects our shore.

Facts about Section 111 of the Rivers and Harbors Act of 1968

- Harbor structures impede the transport of littoral sediments (sand)
- Section 111 authorizes perpetual mitigation but does not appropriate the necessary funding
- The fifth amendment of the U.S. Constitution forbids takings without compensation or mitigation
- Removal of sediment from the littoral system is a documented and quantified taking
- Without federal funding Section 111 is at odds with the fifth amendment
- **We need your help to develop a plan for correcting this discrepancy!**

Write your congressman today and let them know they have an obligation to provide funding for Section 111 of Rivers and Harbors Act of 1968.