



GREAT LAKES  
COALITION

*Michigan/Lake Michigan Chapter  
For Shoreline Preservation*

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## Newsletter – Summer 2018

### ANNUAL MEMBERSHIP MEETING

Our Annual Membership Meeting will be held on Saturday, August 18, 2018, once again at the Haworth Inn & Conference Center on the campus of Hope College in Holland, Michigan. Meeting will start at 10 a.m. In addition to our regular business, our guest speakers will be Jacob Pollock and Sabrina Miller with the U.S. Army Corps of Engineers Detroit office. Their presentation will include various methods of shoreline protection, the permitting process, some of the obstacles involved and how to speed the process, and management of lake levels. Please plan to attend this important meeting. You need not be a member to attend – bring your neighbors.

### LAKE MICHIGAN SHORELINE GETTING WASHED AWAY BY LAKE SUPERIOR REGULATION

As of June 2018, Lake Superior is 5” BELOW last year’s level and Lake Michigan-Huron is 4” HIGHER THAN LAST YEAR! Even more concerning is that Lake Michigan-Huron is 18 inches above the Long Term Average (LTA) while Superior is only 4 inches above the LTA. However, the Lake Superior Board of Control continues to release flows above average and deviate from the regulation plan (Lake Superior Regulation Plan 2012) to increase the disparity of above average levels between the lakes. Where is the “balance” that is called for in the Plan? Lake Michigan-Huron variance above LTA is 200% higher as compared to Lake Superior and now they want to make it even worse!!! We say the Great Lakes Coalition **cannot allow this to happen!!**

In a news release dated May 3, 2018, “Update on Lake Superior Outflow Conditions—May 2018,” the International Lake Superior Board of Control, an agency of the International Joint Commission (IJC), has stated that “...levels cannot be fully controlled through regulation...”, and “...nor can regulation completely eliminate the risk of extreme water levels...”. Note they do not say regulation does not have “any” or “some” or “considerable” or “significant” effect on levels. They minimize their impact on levels through regulation by denying their ability to have complete control, which is true. They used to say “only minimal” impact, but now they realize that 4, 6, 10 or even 12 inches is NOT minimal when it comes to impact on the shoreline, so they say regulation does not have “complete” control. They are saying that we shoreline folks on Lake Michigan should not push for more equitable regulation because that will not completely solve the problem. They simply will not admit to what degree their regulation decisions have on Lake Michigan levels. If they did so accurately, that would open the door for the Board of Control and the IJC to have to react to our requests to reduce rather than increase flows.

## **PROPERTY RIGHTS AND LAKEBED SLOPE**

**LAW:** Generally speaking, state law defines property interests, including property rights, in navigable waters and the lands underneath them. Littoral owners have certain special rights with regard to the water and the foreshore. These include the right of access to the water, the right to use the water for certain purposes, and the right to receive accretions and relictions to the littoral property. This is generally in accord with well-established common law, although the precise property rights vary among jurisdictions (United States Supreme Court, 2010).

In the Michigan jurisdiction, riparian owners have a right to the enjoyment of the natural flow of the stream with no burden or hinderance imposed by artificial means, such as the 2,700-foot jetty at St. Joseph, Michigan. Riparian rights are property. The right to accretions to land is itself one of the riparian rights. Title of the riparian owner follows the shore as a movable freehold. Where the land encroaches upon the water by gradual and imperceptible degrees, the accretion belongs to the owner of the land (Michigan Supreme Court, 1994).

**FACTS:** Based on the U.S. Army Corps of Engineers' expert's slopes of the lakebed, the lakebed has steepened from 1:80 in 1870 to 1:35 in 1999. The congressionally mandated 1999 Monitoring Report finds that any adverse effects of the harbor structures result from disruption of the littoral processes; i.e., the removal of material from the littoral system. That material must be replaced. That amount of material can be geometrically quantified as being 770 cubic yards per front foot of shoreline. Citing the Banks v. USA lawsuit, in which a group of our members are plaintiffs, Plaintiffs' combined shoreline is 6,352 feet. The loss had been accretions eroded since the piers at St. Joseph were built to the closure depth in 1903. There is no other structure long enough to remove sand beyond the 20-foot closure depth (depth of no return). The steepening allows waves to plunge at the shore instead of breaking offshore, such as on first and second sandbars. This has an exponential effect on the ability of waves to transport sand along shore to the jetties which with their new steel-clad surface reflect 100% of that sand beyond the depth of no return (20 feet). The Federal Circuit Court of Appeals has mandated that the 1999 Monitoring Report is the law-of-the-case binding on the court below.

**QUESTION:** Can the statute of limitations accrue when the nature and extent of damage has not stabilized but is accelerating and expanding along the shore (to the Cook Nuclear Plant in Bridgman)?

## **BANKS v. USA**

In Banks v. USA, the Federal Circuit Mandate of June 5, 2018 returns the case to the Court of Claims for determination of damages based on the 1999 Report (see above article) in letter and spirit. That report calls for replacement of all material caused to be lost by the St. Joseph (MI) jetties. This "return to position" can only be done pecuniarily by the Court of Claims. Plaintiffs' attorneys have 60 days to discuss with the Department of Justice.

## **NEW BOARD MEMBER NEEDED**

With the resignation of board member John Yerington of Stevensville, our board is in need of nominations for a new director. If you are interested in more hands-on participation and can offer a few hours a month, let us hear from you. Our board meetings are held bi-monthly during the spring, summer and fall months and our annual membership meeting is held in August. Past, present – and future property owners will be considered. Send your name and a short bio to [info@iglc.org](mailto:info@iglc.org) or [marciawineberg@yahoo.com](mailto:marciawineberg@yahoo.com). We look forward to hearing from you!

## **WHERE IS ALL OUR SAND GOING??**

Sugar sand! That's what the travel articles say about our beautiful Michigan beaches. But, unlike sugar, sand does not dissolve in water. So – where is all our sand going?

- Some sand is under water due to the high lake levels which aggravate sand loss;
- Some sand is being blocked by piers and harbors causing sand "starvation" beyond the pier/harbor thus impacting the natural littoral drift;
- Some sand is being lost forever due to the piers that move sand out into the lake beyond the depth of closure;
- Some sand (dunes) that naturally enter the littoral system has been removed (hauled away) or been graded away from the shoreline for building construction;
- Some sand that would normally enter the littoral drift system via rivers and streams was removed by dredging and not placed back into the littoral system;
- Some sand is trapped in bays (example: Grand Traverse Bay) thus causing rise in lake bed.

Piers and harbors are the primary source of sand loss since each year since they block thousands of cubic yards of sand that normally would be part of the littoral drift system and they "direct" thousands of cubic yards of sand out into the lake. The lake bed slope is much steeper today than it was many years ago primarily due to the destructive action of these piers. Steeper lake beds result in much more shoreline damage and also allow sand to be carried out into the lake during storms. (See preceding article.)

### **What Can be Done to "reclaim" the sand?**

- Move sand that is blocked by the piers around the structure (back into the littoral drift);
- Provide sand nourishment (dredge from lake or from a land source) where piers remove sand from the littoral drift;
- place sand from harbor dredging into the littoral system;
- design piers/harbors to allow sand to by-pass the structure;
- protect sand dunes, especially where they are sources for lake sand;
- keep water levels at moderate levels (expose more sand and will reduce sand/shoreline erosion).

### **And -- What is Great Lakes Coalition doing?**

- working with state, national and international organizations to mitigate extremes in Lake Michigan water levels;
- fighting any attempts to increase Lake Michigan water levels;
- working with various groups to get support from the Michigan Department of Environmental Quality (MDEQ) and the U.S. Army Corps of Engineers (USACE) to implement improved pier and harbor design, reduce erosion, and institute remediation practices;
- fighting to keep as much sand in the natural littoral drift system as possible; i.e., place harbor dredging in littoral zone, move blocked sand around piers;
- working with various groups to communicate our issues to government bodies, discuss viable options, and, DEMAND ACTION!

## REPORT FROM NEW BUFFALO

Director Ron Watson reports that a delegation comprised of Ted Gryzwacz, president of the New Buffalo Shoreline Alliance (NBSA), Ed Oldis, NBSA founding member, Greg Weykamp, president of Edgewater Resources (coastal engineering firm with offices in St. Joseph, Michigan and Plantation, Florida) and Berrien County Commissioner Ezra Scott, were in Washington, D.C. recently to address the shoreline and pump house issues as previously reported in past editions of this newsletter. Edgewater Resources was hired by the NBSA to do an engineering study for recommendations on a solution to the erosion situation. A meeting was held at the Department of the Interior where the County Commissioner was able to speak with Secretary of the Interior Ryan Zinke. The group also had a meeting at the office of Michigan Senator Debbie Stabenow. Senator Stabenow is Co-Chair of the Senate Great Lakes Task Force and her office has been a supporter of the NBSA's efforts. The group then moved to the Pentagon for a meeting with the Assistant Secretary of the Army who is in charge of the Army for Civil Works.

The group's presentation included a discussion of the U.S. Army Corps of Engineers (USACE) suggested engineering solution back in 2009 and how successful these projects are in saving and rebuilding beaches. The Assistant Secretary gave them guidance on how to get the project funded and who to contact within the government. The NBSA has also enlisted the aid of U.S. Rep. Fred Upton (R., Michigan, 6<sup>th</sup> District) who wrote a letter to the USACE outlining the urgency of the situation and requesting them to up the priority of this project. The government officials are supportive in the NBSA's efforts to save their coastline and pump house. The NBSA and Edgewater also met with the Michigan Department of Environmental Quality (MDEQ) to discuss permitting requirements. Since a project of this type would be the first in Michigan, the State may need computer modeling for them to analyze the effects the structures would have on the shoreline, fish habitat, navigational issues, liability concerns and legal authority questions.

Subsequent meetings with State officials at the MDEQ discussed conceptual plans to protect and reestablish the beaches south of the New Buffalo Breakwater. County Commissioner Scott has had numerous discussions with the USACE, both in Detroit and Washington, and learned the importance of designing offshore breakwaters to not only reduce wave energy but to create fish nurseries. Southwest Lake Michigan waters are key perch, salmon, and trout waters. These fish, and others, will benefit from properly designed offshore breakwaters. We believe that the current scenario where sand is being lost "to the lake" with the subsequent steepening of the lakebed and resultant damage to the lake bottom and shoreline has significantly damaged our fish habitat. Properly designed breakwaters reduce wave energy, will help retain shoreline sand, reduce damage to the lake bottom, and will create an improved "ecosystem" for fish reproduction.

To help offset engineering costs, the NBSA has applied for a matching grant from the Michigan Coastal Management Department. In addition, New Buffalo Township has developed a new master plan and is awaiting feedback from residents. Success is dependent on the cooperation of the federal, state, and local governments, and the private sector.

Township Supervisor Michelle Heit wrote a very strong letter to the Corps asking them to assist in constructing offshore breakwaters to restore the fish habitat through the provisions of the Great Lakes Fishery and Ecosystem Restoration Program. This was followed up by a letter from New Buffalo Mayor Lou O'Donnell. On May 25 the Corps wrote Mayor O'Donnell and informed him that they accepted his letter of request.

The Great Lakes Fishery and Ecosystem Restoration Program commission has the final say on funding, and they will be meeting this fall. The NBSA will be working with the State and local governments to provide data to the Corps to show the benefits of this program to our lake and our community.

And, the group learned that there was money in the 2018 budget that covered dredging that had not yet been allocated. The NBSA had a meeting with Representative Upton and a number of follow-up conversations between Commissioner Ezra Scott, the NBSA and Rep. Upton's Washington staff to secure funding for dredging.

So, finally, some really good news, Commissioner Scott reports that the efforts in Washington have paid off. Congressman Upton, in his press release, reports that New Buffalo will receive \$275,000 this year to be used to dredge our harbor. Dredging the harbor puts much needed sand on our beaches (dredged sand will be placed in the littoral zone south of the harbor).

<https://upton.house.gov/news/documentsingle.aspx?DocumentID=399047>

Additional dredging funds were allocated to harbors in South Haven (\$365,000.) and Saugatuck/Kalamazoo River (\$375,000.).

## NEW MEMBERS

Coalition Intern Nicole Hahn, hired last summer to create a new Coalition brochure and compile a database of property owners along the eastern shoreline of Lake Michigan, has completed her assignment and has submitted her resignation due to accepting full-time employment. Thanks, Nicole! We wish you much success in your future endeavors. The campaign has been quite successful. At least 200 new members have joined to date and we anticipate more to come with mailings to 5,000 shoreline property owners. A larger membership base will give us a louder voice. Spread the word to your neighbors about the Coalition!

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**If you have not already done so, time to renew your membership for 2018, or join us if not already a member:**

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We are a 501(C) (3) tax-exempt organization  
Contributions are deductible to the full extent of the law

NAME \_\_\_\_\_

MAILING ADDRESS \_\_\_\_\_  
\_\_\_\_\_

LAKE PROPERTY ADDRESS IF DIFFERENT:  
\_\_\_\_\_

E-MAIL ADDRESS \_\_\_\_\_

**SUGGESTED MEMBERSHIP CONTRIBUTION:**     \$35     \$50     \$100     Other



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**RETURN SERVICE REQUESTED**

***MISSION STATEMENT***

*The Great Lakes Coalition (GLC) concentrates on water levels; natural sand supply to beaches, dunes, and bluffs; and coastal management. The objective is to promote environmentally sound management of the coastal zone. Natural conditions have been changed by sometimes flawed government intervention and judgment. The GLC is a respected advocate for shoreline property owners that challenges inappropriate regulations and encourages beneficial government decisions.*