



**GREAT LAKES
COALITION**

***Michigan/Lake Michigan Chapter
For Shoreline Preservation***

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Newsletter – Summer 2019

ANNUAL MEMBERSHIP MEETING

Seeking answers and voicing concerns about government inaction, over 200 shoreline property owners filled the meeting room at the Haworth Inn & Conference Center in Holland, Michigan on Saturday, August 10, 2019 for the Great Lakes Coalition's Annual Membership Meeting. With lake levels being at near-record highs and with erosion and property damages mounting, residents are searching for reasons and for solutions. Why have water levels that were at record lows just a few years ago risen so rapidly, and to near-record levels? What kind of solutions or assistance can we hope for from the state, federal government, Corps of Engineers? As attendees entered the meeting room, a slide show of erosion and damage photos sent in by members was being shown.

Coalition President Joe Milauckas of Saugatuck opened the meeting by welcoming the large audience and giving a history of how and why the Coalition was formed back in 1986 during another devastating high water period. Over the years, Coalition directors have taken part in committees of the International Joint Commission, a joint body of the U.S. and Canada who govern the Great Lakes. The Coalition has been instrumental in voicing members' concerns to the IJC and to the U.S. Army Corps of Engineers.

President Milauckas then introduced Coalition Vice President Roger Smithe of Manistee, who talked about the fluctuating water levels over the years, asking who had previously installed shoreline protection, and who now needs shoreline protection. Vice President Smithe then described the workings of the International Joint Commission and the International Lake Superior Board of Control, an agency of the IJC, whose responsibility is regulating the outflow from Lake Superior into Lake Michigan-Huron. Supposedly the ILSBC has no control over Lake Michigan levels but there are several things they could do to stem the flow. These measures were approved by the IJC in the past but have never been implemented:

- In the 1940's, the Long Lac Ogoki rivers in Canada that flowed into Hudson Bay were reversed to flow into Lake Superior. This caused an increase of 4 inches in Lake Michigan.
GLC says: **REVERSE THE FLOW BACK INTO HUDSON BAY!**

- The Chicago Diversion could be increased to let more water out of the lake.
GLC says: **INCREASE CHICAGO DIVERSION!**

- The Niagara River flows from Lake Erie into Lake Ontario.
GLC says: **REMOVE OBSTRUCTIONS ACCOMMODATING MARINAS AND REOPEN AND REFURBISH THE BLACK ROCK LOCK!**

- The Welland Canal carries some of the outflow from Lake Erie into Lake Ontario.
GLC says: **INCREASE THE OUTFLOW IN THE WELLAND CANAL!**

GLC says: TURN OFF THE FAUCET AND OPEN THE DRAIN!

Vice President Smithe concluded his presentation by stating that we need your help. The Boundary Waters Treaty was signed in 1909 to prevent and resolve disputes over the waters shared by the U.S. and Canada. At that time balancing the growing demand for hydroelectric power with navigation interests was the main concern. Boating interests, beaches and environmental concerns were not mentioned. The Coalition is in contact with the IJC and we need YOUR voices to be heard too. Mr. Smithe distributed a list of addresses of who to write to. Voice your concerns and document your erosion conditions to the IJC, U.S. Army Corps of Engineers, Michigan Dept. of Environmental Quality and Michigan Governor Gretchen Whitmer, Senators Debbie Stabenow and Gary Peters and the representative from your district. Search their websites and you can contact them in the message boxes provided. A representative from Sen. Stabenow's office was in the audience and stated that the senator has been instrumental in the goals of the Great Lakes Restoration Initiative and will follow up. You can contact Sen. Stabenow's Regional Office at: 3280 Beltway, N.E., Suite 400, Grand Rapids, MI; phone 616-975-0052, Attention: Mary Judnich.

President Milauckas then introduced Melissa "Missy" Kropfreiter, P.E., Hydrology Engineer with the U.S. Army Corps of Engineers, Detroit District Office. Ms. Kropfreiter stated that the Corps has been collecting lake level data for 100 years now. They coordinate with Canada and have specific gauges for each of the Great Lakes. The monthly average level is used for publication. The record low level was set in January 2013. That winter had very little ice cover causing much evaporation. We are now at almost-record highs and the water has risen fast. Why? The ice cover plays a role in evaporation and water temperature. The last two years had good ice cover thereby limiting evaporation. Precipitation also plays a role and 2018 was the wettest year on record with 2019 also being very wet – there is a lot of water in the system. She described the "net basin supply" which consists of Evaporation plus Precipitation plus Runoff plus inflow from upstream (St. Marys River from Lake Superior to Lake Michigan-Huron) minus outflow (Chicago Diversion). Lake levels are lowest in winter, start to rise in Spring with melting and runoff, peak during the summer months and start to lower in the Fall with evaporation.

In 2018-2019, Lake Superior saw a net .7 foot rise. Mother Nature (or Net Basin Supply) accounted for 3.8 feet plus .2 feet from the Long Lac-Ogoki Diversion with a 3.3 foot outflow (regulated) from Lake Superior to Lake Michigan-Huron.

In one year Lake Michigan has risen 1.3 feet, with April, May and June being wettest with snowmelt, ice and rain. Mother Nature (Net Basin Supply) accounted for 4.6 feet plus 2.3 feet of outflow from St. Marys minus 5.6 foot outflow at the Chicago Diversion resulting in a net 1.3 foot rise. Lake Michigan is now at almost-record highs. The Corps feels that August and September will still be high but we should start seeing a decline as we go into the Fall months.

Ms. Kropfreiter concluded her presentation by stating that the International Joint Commission regulates, the Corps of Engineers executes. Therefore, we must talk to the IJC. She recommended contacting the IJC, Senator Stabenow's office and other politicians to influence the IJC and make our voices heard. As far as dealing with Mother Nature – implement adaptive management and learn how to handle changes.

A question was asked from the audience regarding the scale of the 100-year graph. Appears that the Lake Superior graph is of a different scale than that of the other Great Lakes. President Milauckas has questioned the USACE about this.

Another question asked if the outflow from Lake Ontario into the St. Lawrence and therefore into the Atlantic Ocean affects the Atlantic coast.

The Annual Meeting then continued the agenda with a report from Director Ron Watson of New Buffalo and the New Buffalo Shoreline Alliance:

The New Buffalo Shoreline Alliance (NBSA) is working on both short term and long term solutions to their sand supply problem. Short term is to obtain sand on their beaches and long term is to construct offshore breakwaters to protect coastline and build beaches. Dredging the New Buffalo harbor has been completed with the dredging material being placed on their beaches south of the New Buffalo harbor. The dredging was accomplished thanks to actions taken by local officials. (The South Haven and Saugatuck harbors were also recently dredged with the funding obtained.) NBSA leadership has been meeting with the USACE in Detroit along with meeting State officials to help them understand how critical the problem is and to understand the causes of shoreline erosion and impact of sand loss. The group is also exploring new technologies to help control erosion and improve beach sand accretion.

Director Watson then introduced Berrien County Commissioner Ezra Scott who has been instrumental in advocating for the NBSA with visits to representatives in Washington, D.C. and in obtaining funding needed for the harbor dredging. Commissioner Scott was asked to attend the recent IJC conference in Milwaukee. He reported on the meetings and stated that the IJC, in addition to lake levels, is responsible for the environment of the Great Lakes including the phytoplankton, shorebirds, and stated that lake levels ARE an environmental problem as well. High lake levels result in higher levels in the rivers and streams flowing into the lake. Farm fields are flooding causing increased fertilizer runoff to streams, sewers cannot drain properly since water table is higher and sewage backup is occurring. Commissioner Scott recommended getting in touch with your County Commissioners. The commissioners from the State of Michigan are being invited to a leadership conference at the White House on October 3. Express your concerns to them. There is money available – just need to know who to talk to and how to get it. Commissioner Scott said he will be happy to help. You can contact his office at: commissioners@berriencounty.org, or call the Commission office in St. Joseph at 269-983-7111, Ext. 8095.

Director John Ehret gave a summary and update on the Banks vs. USA lawsuit. Several property owners south of the St. Joseph, Michigan pier from St. Joseph to Stevensville have sued the USA/U.S. Army Corps of Engineers for illegal taking of land. The lawsuit is now in the settlement phase. An Order has been received from the U.S. Federal Circuit Court of Appeals and the case has gone to Alternative Dispute Resolution and parties will confer after October 15 to propose dates for site visits and a settlement conference. It has been ruled that erosion above the high water mark will be considered back to the time of construction of the St. Joseph, MI pier back in 1903.

Treasurer John “Ric” Curtis stated that the Coalition is in sound financial condition. Membership has been increasing along with increased income from dues contributions.

Secretary Marcia Wineberg reported that our mailing list now consists of 5,000 names. Our Summer 2019 newsletter will be mailed out shortly after this meeting. Our Coalition website has recently been updated and online credit card payments will soon be accepted. Our new web address is www.greatlakescoalition.org.

Three directors are up for re-election at this time: A motion was made and seconded to re-elect Directors John “Ric” Curtis (Fennville), Jim Hettinger (South Haven) and Joe Milauckas (Saugatuck). Motion passed and the directors were re-elected for 3-year terms. A nomination was made from the floor by/for Rita Alton of Manistee. Anyone interested in serving as a director of the Coalition may submit a resume to the Board at info@greatlakescoalition.org. Ms. Alton’s and other nominations will be considered at our next regular board meeting in October.

Questions and comments were then taken from the audience:

A property owner questioned the permit process. Right now it takes up to 2 months for approval and soon it will be winter. Contractors are backed up and time is of the essence; waiting through another winter would incur further damage.

It was asked if we could provide talking points so members could better communicate with the IJC and government officials. We will post information on our website.

With no further business, the Annual Membership Meeting was adjourned at 12:25 p.m. Next meeting will be held in August, 2020.

WATER LEVELS

Great Lakes water levels continue to rise and will continue to rise at least through the 2019 season. As of August 9, Lake Michigan-Huron is at 581.82 feet, 13 inches above last year at this time, while Lake Superior is at 603.22 feet, 12 inches above last year. The beach you visited last year may not be there this year. Several members are reporting disappeared beaches along with washed out stairs and decks. The U.S. Army Corps of Engineers Monthly Lake Levels Bulletin shows this pattern to continue at least in the near future.

<http://www.lre.usace.army.mil/missions/Great-Lakes-Information/Great-Lakes-Water-Levels>

NEW IJC COMMISSIONERS

The International Joint Commission is a joint agency of both the U.S. and Canada created to manage the lake and river systems along the border. The IJC is guided by the Boundary Waters Treaty signed by both countries in 1909. The two main responsibilities of the IJC are approving projects that affect water levels and flows across the boundary, and investigating transboundary issues and recommending solutions. Canada and the U.S. each appoint three of six commissioners. One commissioner from each country serve concurrently as Chairs. New commissioners were recently appointed by the U.S. President, after confirmation by the Senate, and by the Cabinet in Canada. They are: Jane Corwin, U.S. Commissioner/Chair; Henry Lickers, Canadian Commissioner; Merrell-Ann Phare, Canadian Commissioner; Robert Sisson, U.S. Commissioner; Lance Yohe, U.S. Commissioner; and Pierre Beland, Canadian Commissioner/Chair. The IJC publishes a series of newsletters and you can subscribe by visiting their website at www.ijc.org. It is important too to keep the IJC apprised of our current conditions on Lake Michigan. Coalition members should feel free to document your shoreline conditions and send a letter to the IJC at the following addresses:

International Joint Commission
U.S. Section
1717 H Street NW, Suite 801
Washington, DC 20006

International Joint Commission
Great Lakes Regional Office
P. O. Box 32869
Detroit, MI 48232

To expedite your communication, there is an on-line message form on their website at www.ijc.org.

EPWORTH ASSEMBLY PRESENTATION

On July 25, 2019, Coalition Vice President Roger Smithe was invited to make a presentation about the Coalition to the Thursday night Lakeside Series talks at the Epworth Assembly in Ludington. The Epworth Assembly is a private summer resort on the shore of Lake Michigan just north of Ludington. Epworth provides programs during the main eight weeks of activities between June and August. The majority of the programs are for the Epworthians. However, the public is invited to the Church services on Sunday mornings, Vespers on the Beach on Sunday evenings, Monday Musings held on Monday mornings, the Thursday night Lakeside Series talks and some special entertainment programs during the summer. The Epworth Museum is also open mornings during the season, Monday through Saturday. Vice President Smithe reported there were 75 attendees, many of whom are seasonal residents from out of state and were very interested to learn about the workings of the MDEQ, USACE and the permitting process. The Coalition was honored to have been invited to participate in the Lakeside Series talks.

LEGAL MATTERS

A recent ruling in a case has some positive news for landowners. The U.S. Court of Federal Claims has found the U.S. Army Corps of Engineers responsible for extensive property damage caused as a result of recurring floods along the Missouri River. A group of farmers, landowners and business owners in several Midwestern states filed suit against the U.S. Army Corps of Engineers in March 2014. In a decision reached in March 2018, Senior Judge Nancy Firestone ruled that the Corps was liable for damages caused by recurring floods. Next step is to determine the amount of compensation to the property owners. Damages are estimated to exceed \$300 million. (Source: St. Louis Public Radio News. Case: Ideker, et al. v. United State of America.)

USEFUL INFORMATION

The Michigan Department of Environment, Great Lakes, and Energy (EGLE) has many reports available for viewing on their website at:

https://www.michigan.gov/egle/0,9429,7-135-3313_3677_3700---,00.html

Reports include:

Protecting Your Shoreline –

- Living on the Coast
- Adapting to a Changing Coast
- Great Lakes Shorelines Information for Permit Applicants
- Sand Dune Stabilization Best Management Practices
- Great Lakes Water Levels

And—more useful contacts:

U.S. Army Corps of Engineers, Detroit District
477 Michigan Avenue
Detroit, MI 48226
Phone: 313-226-5013
Website: www.lre.usace.army.mil

Michigan Dept. of Natural Resources
Shore Protection Division
120 Chapin St.
Cadillac, MI 49201
Phone: 231-876-4442 (Barry Peterman)
E-mail: Peterman@michigan.gov

International Lake Superior Board of Control
U.S. Army Corps of Engineers
550 Main St.
Cincinnati, OH 45202
Phone: 513-684-2010
Website: www.ijc.org/en/labc

KEEPING THE FAMILY COTTAGE IN THE FAMILY

by Director Ron Wilson

My great-grandfather built our family cottage in 1933; it has been handed down to my grandmother and then to my mother and her five siblings. One sibling chose to cash out her share eight years ago. The other families were forced to either buy her out or sell the cottage and split the proceeds. We negotiated a buy-out price and struggled to come up with the money. When the cottage roof needed to be replaced the next year, my wife and I offered to pay for half if there was an agreement that no one would opt for another buy-out within the next five years.

After reading *Saving the Family Cottage: A Guide to Succession Planning for Your Cottage, Cabin, Camp or Vacation Home* by Stuart Hollander, Rose Hollander and David S. Fry, we then turned to legal counsel to create a limited liability company (LLC) structure, by transferring the family cottage to an LLC owned by family members. A proposal was drafted and sent to my parents, aunts and uncles, and cousins. We received positive feedback on our drafted LLC agreement that established rules and protocols by which incorporated the long standing practices of the management of the cottage and tossed in a few new ones to deal with succession, limits to new projects that could be undertaken by the LLC, the payment options for those projects, and the terms by which a family could sell its share.

We also defined:

- Who are the permitted members of the limited liability company (and thus indirectly the owners of the cottage). This should include limits on transferability (both during a member's lifetime and upon death), and address whether spouses or other persons who are not descendants of the original owners are permitted members.
- A governance system for LLC decisions, including those relating to use and operation of the cottage.
- We restricted the circumstances and terms the sale, transfer or termination of a member's interest in the LLC may occur. We required a right of first offer in favor of other family members of the LLC, and an agreed-upon based on the State's Taxable Value of the cottage and that the buy-out could be made over a ten year period to make it less desirable for future buy-outs.
- Each member's obligation to contribute to the maintenance and improvement of the cottage, including provisions setting forth what happens when a member fails or refuses to participate in the financial obligations.

An LLC structure will be especially beneficial for large families like ours – three sets of aunts and uncles, eleven sets of cousins, and plenty of second and third cousins. We established a “branch” system to simplify the management, use and operation aspects of the ownership. Since there were here sets of aunts and uncles owning the cottage, we prepared an LLC agreement that creates three ownership divisions, each controlled by one set of aunts and uncles and their heirs. Each family division, or “branch,” is represented by a manager appointed by the respective families. Inheritance or transfers of membership interests in the LLC can be maintained within each family branch so that no one family branch becomes overrepresented, which protects a family branch that may have fewer members. The branch concept assists with scheduling, improves the likelihood of collecting member assessments, and preserved the power structure originally intended when the property is transferred to the LLC.

An LLC can be a useful tool to create a “cottage succession plan” that allows families to create an ownership structure that reflects family values, history and personalities, and to help ensure the cottage stays in the family for generations to come. When we completed our LLC, we maintained the “ownership” of the cottage by having the current “owners” be the managers of the LLC. This permitted us to keep the taxable value of the cottage capped at the 1994 level. Unfortunately, a recent decision by the Michigan Court of Appeals, transferring your family cottage into a limited liability company could increase your property taxes significantly. The decision came in the case of *Scott v. South Haven*, which was decided by the Michigan court of Appeals in April 2018. And just last month, the Michigan Supreme Court decided not to review the *Scott* decision, which means the Court of Appeals decision is final. Under the precedent in *Scott v. South Haven*, if you want to transfer a family cottage to an LLC you will risk uncapping the taxable value. Depending on the difference between the cottage's current taxable value and its SEV, such an uncapping could lead to a significant increase in property taxes. You should carefully analyze the potential tax increase and whether such an increase is a worthwhile tradeoff. If you have questions, you can contact Director Ron Wilson at info@iglc.org

Disclaimer: This article was presented for information only and is not meant to be an endorsement or recommendation by the Great Lakes Coalition. If you feel this type of action could be beneficial to you, we suggest you contact legal counsel as Ron did.

NEW COALITION PRESIDENT

At the Board of Directors meeting held immediately following the Annual Membership Meeting, current President Joe Milauckas announced he is not seeking re-election at this time. Director Ron Wilson of Manistee and Lansing was then elected President of the Great Lakes Coalition for a one-year term. Thank you to Joe, who is a founding member of the Coalition, for his many years of service and dedication to the Coalition. He will remain on as a Director. And, congratulations are in order to Ron as incoming president. Ron has many years' experience as a lobbyist in Lansing and his expertise and contacts will be great assets to the Coalition.

MONARCH WATCH

by Director Marcia Wineberg

Those of us who are fortunate to live along the lake shore have a front row seat to one of Mother Nature's wonders. From about Labor Day weekend through the month of September the Monarch butterflies will be catching the light winds from the north and heading south toward their winter hideaways in the valleys of Mexico. The newly hatched butterflies follow the Lake Michigan shoreline and down the Mississippi River until they reach the valleys in central Mexico. I have milkweed plants in my garden and have been attracting the butterflies for years now. This year I have already seen two Monarchs hatch with a third still in its chrysalis under my windowsill and ready to emerge. So pull up your lawn chairs and watch this beautiful phenomenon take place right along your shoreline. On some days the traffic is pretty heavy!

If you have not already done so, time to renew your membership for 2019, or join us if not already a member:

Michigan/Lake Michigan Chapter-Great Lakes Coalition
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NAME _____

MAILING ADDRESS _____

LAKE PROPERTY ADDRESS IF DIFFERENT

E-MAIL ADDRESS _____

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

8/19



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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.