

A HIGGINS LAKE PROPERTY OWNERS' ASSOCIATION PUBLICATION

water LINES

President's Message

By Pat Springstead, HLPOA President

What a great summer! It was perfect weather, conducive to recreational activities on Higgins Lake. We are pleased to report that we had fewer complaints regarding inappropriate use of the lake than in any time in our memory. We would like to thank everyone for being thoughtful and respectful of one another. The annual meeting was a "sell out." We thank our members for your support and participation with many thoughtful questions.

The nice weather allowed us to get out on the lake and evaluate its health. The deep water is still very pristine; however, at the shoreline we are not as fortunate. We continue to have shoreline erosion caused by wave action and periods of heavy rain that cause degradation of the near shoreline. This stress on the shoreline has caused soil buildup under the sand which promotes weeds as well as creating an environment for snails and ducks to thrive. This condition at the shoreline may be a factor in the increased incidence of swimmers itch in recent years. We are lobbying the State to allocate research funds for methods to eradicate or control swimmers itch.

Eurasian Water Milfoil control is an ongoing priority. The first preference is to eliminate the use of chemicals. We continue to research all options of control. More news later in this newsletter about some effective new methods that are available.

The Roscommon County Commissioners and the Spicer Group, a respected engineering company, have been studying the Higgins Lake dam to determine its effect on lake level and

erosion. A conclusive report will be completed soon.

We have talked to legislators in Lansing about using Higgins Lake as a pilot program for mandatory boat washing prior to launching at state access sites on Higgins. As easy access to a boat wash site increases, we believe this would be beneficial for Higgins Lake and eventually all inland lakes of Michigan.

Gerrish Township is still struggling to implement their lake access plan even though they have successfully launched the Gerrish Community Park Marina. They need to take into consideration that Higgins Lake is a finite resource while they are trying to increase legal lake access. It is important that the elected officials be pro-active and that they have a vision of how they would like to see the lake ten or twenty years into the future.

Our ability to talk to all the local politicians has allowed us to articulate our goals and opinions regarding issues that impact the lake. Though they may not always agree with us, it allows us to have input on issues that affect the lake as well as the residents.

Kelly Beach, Grosbeak and Sovereign Park continue to confront issues that have been difficult for residents in terms of legal, fair and balanced solutions that would benefit all. The lawsuits have been dismissed, but underlying problems have still escaped solutions.

As nice as the weekend weather was this year, there was never a time that you could not launch a boat on Higgins Lake, if you so desired. The North State Park and West Launch sites always had space available.

We continue to work with the people in our area to help the local community weather the economic downturn. A strong and vibrant

community makes the area and the lake a better place to raise a family and enjoy outdoor recreation.

As always we are still more involved in legal issues, both at the local and state level, than we would like to be. We would certainly prefer to be spending money on other things that would benefit the lake. In the Legal Update on page 4, Bill Carey and Rich Jaskowski will fill you in on the cases that we are involved in and cases that we have an interest in.

It is our goal to keep our members as informed and updated on lake issues as possible. Please visit our recently updated website (www.hlpoa.org). If you have not already given us your email address, please do so.

We thank our members for generously supporting HLPOA goals to keep Higgins Lake as environmentally healthy as possible and as peaceful as this past summer was. I thank each and every one of you for your financial and moral support; both are needed and appreciated. We encourage anyone who has not contributed to consider a membership to protect the lake for this and future generations. I would also like to thank the totally volunteer and uncompensated board for their dedicated efforts, time and talent in representing you and protecting the future of Higgins Lake.

Wishing you and your family a happy, healthy and prosperous Holiday Season.

hlpac

By Rick Meeks

This was the election cycle with the long ballot that included all officials elected state wide (except for the two U.S. Senators), all the state senators, the full state house of representatives, all the county commissioners and two of the five county road commissioners. None of the township officials who were elected two years ago to four year terms were on the ballot this time.

Your HLPAC reviewed many of those candidates' qualifications and past voting records to make voting recommendations for our members to consider. Members received those recommendations under separate cover. It should be noted that our candidate recommendations were those whom we felt would join with us in our efforts to protect the lake from further environmental assault.

We have been busy this fall attending fundraisers in Lansing, Detroit and elsewhere in the state. It assists us in attaining our goal of protecting the lake when elected officials across the state become familiar with our issues. Our discussions at those gatherings have ranged from swimmers' itch control to mandatory boat washing. We also made the point that, even though Higgins Lake has more public access sites than any other lake in the state, we continue to be supportive of the plan Gerrish Township has developed to provide legal access for the public.

We would like to thank all of you who made generous donations to HLPAC. Financial contributions are undoubtedly the least desirable aspect of the political system, but those gifts allow us to assist candidates who will help us preserve, protect and restore Higgins Lake for this and future generations.



This 70 foot tree fell onto Higgins Lake after an ice push last winter.

Caring for Higgins Lake

If you **boat** on Higgins Lake... it IS your problem...and your responsibility.

If you **fish** on Higgins Lake... it IS your problem... and your responsibility.

If you **swim** on Higgins Lake... it IS your problem...and your responsibility.

If you **live** on Higgins Lake... it IS your problem...and your responsibility.

If you **care** about Higgins Lake... it IS your problem...and your responsibility.

What can you do?

1. At the very least... be a member of the HLPOA and support the organization that is actively working to keep this lake pristine.

2. Have your septic system inspected and maintained often to insure sewage is not leaching out into the lake.

3. Stop fertilizing your lawn if you live near the lake, those fertilizers leach down through the soil and end up in the lake.

4. Fish responsibly... adjust your anchoring practices to make sure you are not dragging an anchor through weed beds and spreading milfoil and other invasive species. Bring any fragmented weeds back to shore and dispose of them on the dry beach where they will die, instead of starting new weed patches.

5. Boat responsibly... maintain and operate your boat in a way that does not add excessive gas and oil into the water. Avoid running motors over weed beds.

6. Wash your boat at the Higgins Lake Boat Wash and keep it free of weeds and invasive species.

7. Become an advocate for Higgins Lake... write letters and speak to the elected public officials who are in charge of taking care of Higgins Lake and make sure they proactively protect the lake from excess road-end runoff, ground-water pollution, and other threats to the lake.

By Marv Bolton

This season saw a great variety of activities related to the efforts to control the spread of milfoil in Higgins Lake. In late spring there was a further attempt to use chemical treatment on a specific patch of milfoil. Two seasons ago, chemical treatment of five sites around the lake had provided disappointing results. Possible reasons given for the lack of effectiveness were the timing of the application late in the season and the type of herbicide used. This year earlier application of a different chemical produced a visible knock down of the patch of milfoil on the north side of Point Detroit.

Still, by late summer there were obvious signs of the milfoil reappearing at this location. These results seem to indicate that chemical treatment is not capable of being a long term solution to our milfoil infestation.

The benthic barrier program continued this season. Our inventory of barriers and the various supplies needed to go with them was replenished through a generous grant from the Higgins Lake Foundation. Our original barriers were about 10 years old and had developed many tatters and tears from their continual use.

This season we placed additional barriers down on patches of milfoil off Chaney Point, between Old Point Comfort and Point Detroit and east of Treasure Island. We also pulled up several barriers from the large patch of milfoil near Old Point Comfort. This was all accomplished by our reliable and dedicated group of scuba divers, boat captains and deck hands. On behalf of all of the Association members and other people who use Higgins Lake, I would like to give a very well deserved thank you to these hard working volunteers: **Bill Blamer, Dan O'Keefe, Cal Phillips, Bob Blamer, Ed Panyard, Wayne Schoeppach, and Brian Carson.**

I would also like to thank the numerous people who helped to clean barriers, haul rocks or tend boats while the divers were in the water. Finally I need to thank the Coast Guard Auxiliary for the hours they spend acting as a protective shield between our divers and the boat traffic on the lake.

The barriers are a clean and effective way to eradicate small areas of milfoil. There are no chemicals or other pollution involved, and once removed the only sign that the barriers were there is the bare sand. The drawback to barriers is the immense number of man hours of labor it takes to put them down, pull them up and clean them. Over the past several seasons using volunteer help, we have been able to cover about 2000 sq. ft. each summer. This is not enough to keep up with the spreading milfoil. The only way to expand this program is to get more people involved.

There are opportunities for people who would be willing to organize and coordinate additional teams of divers and for non-divers to place barriers on milfoil sites that are in shallow water near shore. If you would like to join the effort, contact the HLPOA office or send an email to Marv Bolton (mgbosail@peoplepc.com) to get started.

The newest potential tool for milfoil control is a process called suction harvesting. Several members of the HLPOA board attended a presentation by a company which uses this process at the ML&SA Conference. We asked for a demonstration, and in August they brought their equipment and team to Higgins Lake for a day. It was set up and put to work for several hours on the Flag Point milfoil site. The equipment is a pontoon boat deck fitted with large capacity water pumps connected to 6 inch hoses which reach down to the bottom of the lake. There is also an air compressor to provide air to workers down in the water. The workers in the water hand pull milfoil and feed it into the suction hoses which draw water and milfoil onto the boat. On deck the discharge water is run through strainer bags to remove all of the milfoil biomass and return the water to the lake. The material collected in the bags is taken to land where it can be disposed of or used as compost. The process uses no chemicals and looks like it has the potential to clear large areas when operated by a dedicated team of workers. Members of the HLPOA and the Higgins Lake Foundation are jointly working on getting quotes for this type of equipment

and investigating ways to set up a team of people to operate it. Both the equipment and its operation will require a substantial financial commitment to the control of milfoil in Higgins Lake.

Finally we need to acknowledge that all of the milfoil control efforts this year were funded by grants from the Higgins Lake Foundation. We should all thank and continue to support this important partner in our efforts to preserve and protect Higgins Lake.



Legal Update

By William L. Carey, Counsel for HLPOA

As legal counsel for the HLPOA, the firm of Carey & Jaskowski continues to be involved in a variety of matters which directly or indirectly impact the riparian interests of all HLPOA members.

The following report summarizes various legal issues now pending with our firm.

Baum v Charlevoix County Road Commission

This very important litigation is now before the Michigan Supreme Court. Oral arguments were entertained by the Supreme Court on October 5, 2010. At issue in the Baum case is whether or not property owners whose land is separated from an inland lake by a public boulevard are considered to be riparian owners. Prior to the lower court decisions in the Baum case, it was considered well-settled law that lots situated adjacent to lakeside boulevards enjoyed exclusive riparian rights. The Charlevoix County Circuit Court and the Michigan Court of Appeals have ruled to the contrary in the Baum case. The firm of Carey & Jaskowski represented the Baum Trust in its appearance before the Michigan Supreme Court. We expect a decision from the high court in late 2010 or early 2011. A complete review of the court's decision will appear in the spring 2011 HLPOA newsletter.

Temporary/recreational mooring

A problem that is evident at Higgins Lake, and many other inland lakes throughout the state, is the temporary anchorage of watercraft for the purpose of socializing, sunbathing and other recreational pursuits. Typically this type of temporary anchorage involves large numbers of boaters located in a small area. Currently the law in Michigan is less than clear on whether such activities are lawful when conducted on a riparian owner's bottomlands, without the riparian owner's permission. The Michigan Supreme Court addressed this issue in the matter of Bott v The Commission of Natural Resources of the State of Michigan in

a 1982 decision. In Bott the Supreme Court observed riparian owners have the right to share the reasonable use of waters, but the rights of the public as an incident of the navigational servitude are not coextensive with the rights of riparian owners. This court has recognized fishing as an incident of the navigational servitude in inland lakes but has also held that hunting is not such a right.

A member of the public has no right to anchor decoys for the purpose of attracting ducks on the bottomlands of a private riparian. Such acts are not incident to navigation, and in doing them a member of the public is not exercising a license to navigate the waters of an inland lake. The public has a right to use the lake as a public highway, but every other beneficial use and enjoyment belongs to the owner of the riparian bottomlands. Fishing is a quiet sport. General boating and water recreation can, however, be intrusive and jarring.

Based on Bott a reasonable legal argument can be made for a riparian to assert that temporary recreational mooring is a riparian trespass.

It is, however, far from clear as to how a circuit court would react to such a lawsuit. Currently a case in which Carey & Jaskowski are involved may be addressed by the Ogemaw County Circuit Court. The issue is ripe for appeal, and we anticipate that the law on this issue will develop in the upcoming years.

Almeda Beach/Don M Boulevard

Don M Boulevard is a lakeside boulevard located in the plat of Almeda Beach Subdivision. Almeda Beach Subdivision is located just easterly of the Higgins Lake South State Park.

A court claim has been pending for approximately five years wherein the Higgins Lake Civic Association asserted the right of its members to use Don M Boulevard as a lakeside park.

In August of 2010 the Civic Association agreed to dismiss its claims. The case is now closed.

Sovereign Park/Lake Drive

A lawsuit seeking to change the dedication

language of the plat of Sovereign Park to allow for boat mooring, sunbathing, picnicking and lounging along a lakeside boulevard known as Lake Drive has been pending for approximately seven years.

In August of 2010 the litigants, various backlot owners within Sovereign Park, agreed to dismiss their claims. That matter is now closed.

Water Level

As members of the HLPOA know, the Association has been actively campaigning with the Roscommon County Commissioners to more effectively manage the lake levels of Higgins Lake.

It is the Association's position that high water equates with severe shoreline erosion at various points around the lake. Recently the MDNRE has joined forces with HLPOA on this issue. The Roscommon County Board of County Commissioners has the statutory obligation to manage the lake level of Higgins Lake in a manner which will not result in damage to adjacent shoreline properties.

The Board of Commissioners may not delegate this duty to other government entities. Further, the County is financially responsible for damage to adjacent properties for mismanagement. The HLPOA and Carey & Jaskowski will be working with riparian owners and the MDNRE to further pursue an appropriate resolution to this issue.

Conclusion:

Carey & Jaskowski as counsel for HLPOA will continue to work diligently toward the resolution of the matters reported above and protect the interests of Higgins Lake and its riparian members.

Respectfully submitted by William L. Carey,
Legal Counsel for HLPOA, September, 2010

Legislative Report

By the time you read this, the election will be over. As you know, we have been extremely active in both local and state level politics. There will be new politicians to talk to and educate regarding lake issues and environmental problems. There will be a tremendous turnover in the House of Representatives and Senate.

This turnover is one of the problems with term limits; just when the politicians learn the issues and problems, they are going out the door. This means we have to start all over meeting, educating, and building confidence and trust with them. At the end of December whatever bills have not passed will be extinguished.

It is our hope that Senator Bashram's Bill 736 which would set up a pilot program road end marina in Lyon Township will be among them.

As I have said in the past, all the road ends on Higgins Lake have been litigated, and as our attorney Bill Carey said, cannot be overturned by legislation. The opinion paper by Attorney General Cox stated that it is his opinion that Bill 736 would not stand up to judicial review. It will be our goal to educate the next legislature that a bill like 736 is not good for the inland lakes of Michigan.

Additional goals: getting the State to support making it mandatory to have your boat washed before you can launch a boat at the State access sites on Higgins Lake. We will be working to convince the State of the need to fund research to find a method to eradicate swimmer's itch which has been a major problem at Higgins Lake.

We would like to work with local officials to see them implement mandatory septic inspections through the local health department. Gerrish Township has been pro-active with their Community Park Marina as well as controlling road end abuse through the Michigan Lakes and Streams ACT 301. Although Lyon Township still lags behind Gerrish in their plans for legal lake access, there have been some rays of hope that they may soon be open to cooperation.

We will have both a new Senator and Representative to work with in our ongoing mission of protecting the environment and quality of life at Higgins Lake, and, as always, we will be diligent in promoting your best interests.

Our Website

By Don Correll

Although it has taken a while to convert our old website to the new one, the HLPOA website is now up and running. We want to thank John Bowen and Laurie Smith Tudor for their assistance in making the conversion.

It is now easier to update and add new content. When you browse HLPOA.ORG, you will find information about the Cut River Dam, the current water level of Higgins Lake, and copies of past and current *Water Lines* newsletters.

In addition, you can find information about upcoming events and HLPOA activities, important phone numbers and links to other sites. Check us out and visit often to see future updates.

Office Central

By Noreen Osborn, Administrative Assistant

I have enjoyed my first year with HLPOA as the office representative. It has been a very busy one, and I look forward to many more. I would like to ask that everyone keep me informed of any changes in your mailing, email and telephone information.

I appreciate the extra effort many of you have made in getting me your updated information. It really helps to keep things running smoothly and also saves in the cost of returned mail.

You may reach me through the following contact information:

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Office Location: 207 Terrace Drive, Roscommon
Phone: (989) 275-9181
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Email: hlpoa0@gmail.com

PLEASE NOTE OUR NEW EMAIL ADDRESS

For those who like to plan ahead, the Annual Meeting is scheduled for July 16, 2011. The meeting will be held at the CRAF Center again this year.

Happy Holidays to everyone! Have a safe and fun winter!



High lake levels cause sediment to wash into the lake, increasing phosphorus loading.

Environmental Report

By Rick Meeks

Water testing

The water testing season is over for this year. The water samples and data collection sheets have been turned in to the state. The results from the lab work will be available on the Department of Natural Resources and Environment (DNRE) Cooperative Lakes Monitoring Program (CLMP) website in February. We've already received notice to sign up for the program next year which we intend to do.

The water testing revealed the same high quality we have come to expect. The late summer oxygen levels below the thermocline were as high as any we've seen in the past. The secchi disk/ water clarity tests ranged from 30 to 46 ft with the deepest at the north site on May 23rd.

This year's testing was plagued by bad weather. We had consistent high winds during several of the scheduled testing windows that prevented us from venturing out onto the lake. In all, weather wise, it was the worst testing season I've had in the six years I've been overseeing the program on Higgins Lake. Usually water testing is done in the best of conditions, perfect days to be out on the lake.

We are seeking a volunteer, or group of volunteers, to take over some, or all, of the responsibility for our continued participation in the CLMP. It requires someone to go out and anchor a boat at two GPS locations eight times, roughly every 15 days, during the course of the summer. Once on site, the tests take approximately one hour. All told, what with the time to travel to the two sites, prepping the equipment and running the tests, it takes a total of about three hours (unless you finish with a trip to the South State Park store for an ice cream cone which adds another 1/2 hour). We would like to begin training someone next spring and work with them during the 2011 testing season. HLPOA has participated in the State of Michigan's lake monitoring

program almost continuously since its inception in 1974. If you, or someone you know, are interested in maintaining the 36-year history of data collection from Higgins Lake, please contact the HLPOA office.

Drains

We continue to utilize the services of the Roscommon office of Raven Labs. Raven is a DNRE certified lab licensed to perform all types of residential and commercial water tests. We are fortunate to have this facility available locally for our testing needs.

We have in the past had occasions where algal blooms, wave concentrated organic debris or post-rain-event stream and drain overloading have caused unsightly and potentially dangerous situations on the lake. We have an arrangement where we, or in some cases they, will draw samples from the affected area to ascertain the composition of the plume.

Raven has also been conducting tests on a few of the drains that flow into the lake. The Kennedy Drain, which lies near the Gerrish Township Hall, empties on the east shore of the south basin. For years heavy rain events have produced large brown plumes off the mouth of this Drain. Similar plumes occur near the ends of several smaller drains on the west side of the lake. The testing to date has shown that "Despite the color of the water entering Higgins Lake from the drains, the lake water is still exceptionally clean and free from inorganic matter and bacterial matter. What we are seeing is water which is unpleasantly discolored and quite acidic (pH of about 4) by high amounts of tannins." This is not a perfect situation, but our concerns about water with high levels of nutrients being dumped into the lake have at least temporarily been put to rest.

Water level

The original winter water level was set by court order at 6" below the summer level in 1982. The goal of a lower winter level is to protect the shoreline from ice damage. Starting with an order in 2008, which was renewed in 2009, the court allowed for an additional 3" drawdown for a total drawdown of 9". This past winter was the second year of an increased

winter drawdown experiment. The result was not only greater protection for the shoreline but also an increased amount of sand being pushed back up on shore by the ice as the lake attempted to restore itself. Unfortunately, as soon as the dam was closed in the spring and the level was brought back up to the summer level, the sand was taken back out into the lake and we returned to a level that allowed boat chop and storm generated waves to continue the shoreline erosion problem we have experienced for decades.

On August 12th we invited three representatives of the DNRE (two from what was formally DNR Fisheries and one from the former DEQ Water Management Division) to visit Higgins Lake. The issue was the regulation of the water level of the lake and its effect on shoreline erosion. The result of their visit was a letter to the Roscommon County Commission which stated: "It was very clear that ongoing shoreline erosion was occurring, and site photographs indicate significant shoreline loss has occurred in some areas of the lake. The presence of seawalls also indicates shoreline erosion is occurring in various areas of the lake."

The letter recommends that "removal of the lake-level control structure on Higgins Lake should be considered." The letter also stated: "Higgins Lake has a fairly wide, shallow, sandy shelf near shore around most of the lake. It is our belief that the primary effect of removing the dam and dropping the lake level will be more beach exposure, which will significantly reduce shoreline erosion. Boat mooring and docking should not be affected with the exception that a wider beach area will be present." The letter further suggested that an engineering firm be contracted to study the issue of lake levels in Higgins Lake.

An engineering firm, The Spicer Group, has been hired by the county board. The draft of the firm's report suggests that, among other issues, removal of the dam should be considered. We will keep you posted via the HLPOA website of continuing developments with this all important project to protect the health of the lake.



Rick Meeks, HLPOA Environmental Chair, talks to participants interested in boat wash facilities at the Michigan Lake & Stream Associations Conference in Lansing last April.



Don Correll, an HLPOA board member, discusses the importance of conservation with a group of Roscommon Elementary 4th grade students during the 2010 LakeSaver Day.



Rick Meeks discusses boat washes with Jacqueline Pilette, Wetland Specialist for the Little Traverse Bay Bands of Odawa Indians.

Higgins Lake Property Owners' Association Board of Directors

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2010 Memorial Donations

The HLPOA gratefully acknowledges the following memorial donations:

In Memory of Howard Buhl

Lynn Buhl

In Memory of Jim King

Steve & Dorothy Bakita

In Memory of Mollie Little

Patricia Emmenecker

In Memory of Fred Mills

Tom & Alice Ellis, Bruce Enyart, The McCue Family, Robert & Christina Fonger, Ray & Phyllis Mills, Vern & Janice Smith, Carol Williams

Our Mission:

To Protect, Preserve, and Enhance the
Quality of Higgins Lake and its Surrounding Watershed.

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Save the Date:

The HLPOA Annual Meeting is scheduled for July 16, 2011 at the CRAF Center



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