

STATE OF MICHIGAN

IN THE 13th CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

IN THE MATTER OF DUCK LAKE,

GRAND TRAVERSE COUNTY
BOARD OF COMMISSIONERS,

CASE NO. 15- _____ -CE

Petitioner.

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A civil action between the parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in this court where it was given docket number 59-4450 and was assigned to Judge Chas L. Brown. The action is no longer pending.

**PETITION TO DETERMINE NORMAL LAKE LEVEL AND ESTABLISH A
SPECIAL ASSESSMENT DISTRICT FOR DUCK LAKE**

Petitioner, the Grand Traverse County Board of Commissioners, through the Grand Traverse County Prosecuting Attorney, and Olson Bzdok and Howard, P.C. co-counsel, states in support of its petition as follows:

1. Petitioner, the Grand Traverse County Board of Commissioners, is the governing body for Grand Traverse County, a Michigan municipal corporation.

2. Duck Lake, formerly known as Lake Wah-be-ka-ness, is an inland lake that is approximately 1,930 acres in size, and is located in Grand Traverse County near the village of Interlochen.
3. On or about October 7, 1957 and November 30, 1957, 36 landowners who were residing on, or near Duck Lake, filed a petition with the then Grand Traverse County Board of Supervisors, requesting the County Supervisors to initiate a Circuit Court proceeding to determine the normal lake level for Duck Lake.
4. On October 13, 1958, the Board of Supervisors adopted a resolution directing the Grand Traverse County Prosecuting Attorney to institute by proper petition in the Grand Traverse Circuit Court a proceeding to determine the normal lake level for Duck Lake.
5. Shortly thereafter, the Prosecuting Attorney filed a petition to determine the normal lake level for Duck Lake with this Court, and on June 18, 1959, this Court entered an order determining the normal water level to be 837.3 feet. A copy of the Court's order is attached to this petition as Exhibit A, and is incorporated by reference.
6. The Court ordered lake level of 837.3 feet does not provide for a winter draw-down period or any seasonal variation.
7. On February 10, 1960, the Board of Supervisors Committee on Roads, Lakes and Bridges adopted a resolution to establish a special assessment district for Duck Lake in order to defray the costs of building a control dam used to

control the normal lake level set by the Court. The Committee's resolution is attached to this petition as Exhibit B, and is incorporated by reference.

8. Thereafter on or about August 1, 1960, the control dam was constructed and the County Treasurer spread the special assessment on the tax rolls.
9. However, in a resolution adopted on June 22, 1960, the Board of Supervisors only authorized the assessment to be payable in two installments, the first by December 1, 1960 and the second and final payable by December 1, 1961. The Board's resolution is attached to this petition as Exhibit C, and is incorporated by reference.
10. Thereafter, and continuing today, the operation and maintenance of the Duck Lake control dam is no longer funded by the special assessment district but funded through use of the Grand Traverse County Revolving Drain Fund.
11. The cost of maintaining and improving the Duck Lake control dam has negatively impacted the funds available in the Revolving Drain Fund, which is a fund used by the Grand Traverse County Drain Commissioner for various drain projects.
12. The Duck Lake control dam is over 50 years old and is in need of proper repair and maintenance.
13. Moreover, keeping a static lake level with no seasonal variation can potentially cause shoreline ice damage, erosion and flooding during periods of seasonal high water.

14. The reestablishment of the special assessment district would provide proper funding to maintain and operate the control dam, while eliminating the negative impact on the Revolving Drain Fund.
15. Establishing a winter drawdown level is intended to minimize shoreline ice damage, minimize erosion damage during periods of high water in the fall and spring, minimize flooding by providing a cushion against high water (particularly in the spring), and to control certain aquatic weeds.
16. Thus, this petition is necessary to re-determine the normal lake level of Duck Lake with a winter drawdown level and re-establish a special assessment district.
17. Under Part 307 of the Natural Resources and Environmental Protection Act (“NREPA”) MCL 324.30701, *et seq.*, Petitioner is vested with the power and authority to initiate action to take necessary steps to cause to be determined the normal level of an inland lake.
18. Under Sections 30704 and 30711 of Part 307 of NREPA, MCL 324.30704 and MCL 324.30711, the Board of Commissioners shall direct the Prosecuting Attorney to initiate a proceeding by a petition filed in Circuit Court for determination of the normal level for the inland lake and for establishing a special assessment district if the Board of Commissioners determines by resolution that a special assessment district is necessary to defray the cost of the project to establish and maintain the normal lake level.
19. Petitioner has authorized the undersigned to file this petition in a resolution adopted at its meeting held on August 26, 2015. The resolution also includes a

determination by the Board of Commissioners that a special assessment district is necessary to defray the cost of the project. The authorizing resolution is attached to this petition as Exhibit D and is incorporated by reference.

20. Prior to authorizing the filing of this petition, Petitioner, pursuant to Section 30703 of Part 307 of NREPA, MCL 324.30703, required that a preliminary study be conducted by a licensed professional engineer.

21. On August 19, 2015 Lawrence Protasiewicz and Thomas Bourdon, who are both licensed professional engineers, prepared the preliminary study for Duck Lake. The preliminary study is attached to this petition as Exhibit E and is incorporated by reference.

22. The preliminary study prepared by Mr. Protasiewicz and Mr. Bourdon recommends that the normal lake level remain as is, at 837.3 feet, but that a winter lake level be set at 836.8 feet.

23. Petition will request this Court, at the hearing on this matter, to keep the normal lake level for Duck Lake at 837.3 feet but set a winter lake level at 836.8 feet

Therefore, the Petitioner, the Grand Traverse County Board of Commissioners, requests that this Honorable Court:

- a. Enter an order, pursuant to Section 30707 of Part 307 of NREPA, MCL 324.30707(1), fixing the date upon which the Court shall hold a hearing to determine the normal lake level for Duck Lake;

- b. At the conclusion of the hearing, reaffirm the normal lake level of Duck Lake at 837.3 feet and set a winter lake level at 836.8 feet.
- c. Confirm the special assessment district boundaries within 60 days following the Court's determination of the lake level.
- d. Grant the Petitioner any other relief to which it may be entitled.

Respectfully submitted,

SCOTT W. HOWARD (P52028)
CO-COUNSEL
OLSON, BZDOK & HOWARD, PC

GRAND TRAVERSE COUNTY
PROSECUTING ATTORNEY'S OFFICE

Dated: October 6, 2015.



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EXHIBIT
A

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

IN THE MATTER OF PETITION ON BEHALF OF THE GRAND TRAVERSE COUNTY BOARD OF SUPERVISORS TO DETERMINE AND ESTABLISH THE NORMAL HEIGHT AND LEVEL OF THE WATERS OF DUCK LAKE (ALSO KNOWN AS LAKE WAH-BE-KA-NESS), GREEN LAKE TOWNSHIP, GRAND TRAVERSE COUNTY, MICHIGAN, PURSUANT TO THE PROVISIONS OF ACT 194, OF MICHIGAN PUBLIC ACTS OF 1939, AS AMENDED.

ORDER FIXING AND DETERMINING THE NORMAL HEIGHT AND LEVEL OF THE WATERS OF DUCK LAKE (ALSO KNOWN AS LAKE WAH-BE-KA-NESS), GREEN LAKE TOWNSHIP, GRAND TRAVERSE COUNTY, MICHIGAN.

At a session of said Court held in the courtroom of said Court in the City of Traverse City, Michigan, on the 8th day of June, 1937.

PRESENT: HON. CHAS. L. BROWN, Circuit Judge Presiding.

It appearing to the Court that pursuant to ACT 194 of the MICHIGAN PUBLIC ACTS of 1939, as amended, that it has been deemed expedient by the BOARD OF SUPERVISORS OF THE COUNTY OF GRAND TRAVERSE, State of Michigan, to have determined and established the normal height and level of the waters of DUCK LAKE (also known as LAKE WAH-BE-KA-NESS) same being located on parts of Sections 14, 15, 22, 21, 25, 27, 34, 35, 26, and 23, Town 26 North, Range 12 West, Green Lake Township, Grand Traverse County, Michigan, and proper RESOLUTION for such purpose having been passed by said BOARD in session assembled directing the Prosecuting Attorney of said County to institute by petition in this Court, proceedings for such determination, and such proper petition having been filed and full, complete and proper notice of hearing having been given thereon and therefor by said Prosecuting Attorney pursuant to statute and the direction of this Court, on all owners of record of lands abutting or touching on said lake, as required by, and within the time set by said statute, and hearing being had before this Court at the time and place set by said Court, and said Court having proceeded to hear the allegations and proof with respect to the matters set forth in said petition, and all proceedings being proper and pursuant to statute and to the satisfaction of said Court, and it appearing to said Court it is expedient and desirable for the purpose of promoting the public health, welfare or safety and the conservation of the natural resources of this State, and specifically as to said lake, that said level be determined;

IT IS THEREFORE ORDERED that the normal height and level of the waters of the waters of DUCK LAKE (also known as LAKE WAH-BE-KA-NESS) located in the