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# THE MICHIGAN **RIPARIAN**

DEVOTED TO THE MANAGEMENT AND WISE USE OF MICHIGAN'S LAKES AND STREAMS

Published Quarterly – February, May, August and November



## **HOUGHTON LAKE, MICHIGAN'S LARGEST INLAND LAKE**

**20,044 ACRES, LOCATED IN ROSCOMMON COUNTY**

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**EDITORIAL**

**EASEMENTS OVER PRIVATE LAND**



Don Winne

As executive director of Michigan Lake & Stream Associations, I am asked to refer to Michigan law which defines the scope of easements—rights of access to water over land owned by another person.

I am not aware of any state law which deals with the scope of access to water over private land. Access to water over private land may be given to a second party by the lot owner. Sometimes an owner of a shoreline parcel may provide a strip of land for his use as an access before he sells a parcel to another person.

Some plats or subdivisions will set aside a lakefront lot as a park or access lot for use by the lot owners within the subdivision. The uses allowed on this lot are described in the Dedication of the subdivision.

Some townships own lake lots, and usually define uses that are permitted, such as swimming, wading, picnicking, etc. Some townships have passed ordinances which may apply to only one or all lakes of the township. For example, West Bloomfield Township in Oakland County, provides that a subdivision may provide for a recreational park and be dedicated for swimming and picnicking by the lot owners. The ordinance also provides that, "The launching of boats from recreational parks shall not be permitted nor shall boats be allowed to be docked at recreational parks."

*Donald E. Winne*

*The Michigan Riparian* welcomes letters to the editor, articles for publication, comments, suggestions, and article ideas. If you wish to write an article or just have an idea for one, it would be best to write us a short note or give us a call to discuss it.

—The Editor

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## DEQ Works to appease developer on Hanley Lake

Before we begin, TLA would like to thank the field staff person from the Department of Environmental Quality for their efforts in reviewing the permit for the Hanley Lake Cove development (40 boat slip marina, massive pier system, 39 condos, wetland fill, and an important shoreline habitat area). DEQ field staff held a well-run public hearing back in January before a standing room only crowd (a couple of people with a stake in the project supported it, many, many others opposed), provided timely information as requested by interested parties under the freedom of information act, and fairly applied the state law in the review & decision on this application. The result: The Hanley Lake Cove application was denied on April 13.

“East Shores Development is requesting permission to construct 18 docks which would provide dockage to 36 watercraft, more than twice the amount of watercraft per lot that is typical on Hanley Lake and other lakes in Antrim County. The cumulative consequences of allowing this number of docks per lot would drastically reduce the surface area of the lake that is available for public recreation.”

- DEQ Field Staff, Land & Water Management Division. Excerpt from DEQ application denial letter, sent to applicant 4/13/01.

Forward ahead about a month-and-a-half. The DEQ supervisor is set to approve an application for the marina project, with a reduction in slips from 40 to 24. In this second round of the process, there has been no public hearing. The laws governing wetlands and inland lakes, which were applied in the first review, have not changed.

The Three Lakes Association has joined with several other organizations in submitting a letter urging that this decision (almost a complete reversal of the earlier decision) not go forward. As the *TLA Quarterly* went to press, the permit was approved. For the project to be stopped now, those same organizations would have to file for a contested case hearing in order to even be heard.

Make no mistake, that sort of step is a big one to take for a small, not-for-profit organization. However, the decision by the DEQ to allow such an inappropriate-sized project at such

a small site is a poor one. Furthermore, the manner in which they have gone about this reversal is poor public policy and an insult to all those who took the time to comment on the original proposal. One cannot help but wonder if this is yet another decision that puts politics before water.

Why get involved up at (little) Hanley Lake?

As most of our membership already is well aware, water from further up in the Chain of Lakes will, inevitably, make it down to the lakes we are named for. Sediment and excess nutrients will make it here also. Furthermore, decisions to allow developments that are inappropriate for a particular location, will, once made somewhere else on the chain, set a terrible precedent for more of the same.

“The wetlands directly adjacent to Hanley Lake provide valuable breeding, nesting, feeding, or cover for a variety of wildlife, including amphibians, waterfowl, and shore birds. This wetland may also provide cover for fish and aquatic invertebrates on which they feed.

The emergent wetlands that are located at this portion of the lake provide prime fishing opportunities for the public. Constructing numerous piers would occupy approximately 1.4 acres of the surface area of Hanley Lake, thereby removing the public value of this popular fishing area for private benefit.”

- DEQ Field Staff, Land & Water Management Division. Letter sent to applicant 4/13/01.

This decision by the DEQ is yet another in what is becoming a very, very long line of poor decisions influenced by the leadership within the department. They have worked to set low standards for the Department of Environmental Quality and ensure that even those are not met.

At the offices of the Three Lakes Association, we take the time to review applications that could impact water quality. While a growing population in northern Michigan means more and more development, it does not have to mean development that looks (and functions) as it does further to the south.

That belief leads us to the approach not of, “Don’t Do It!” but rather, “Do It Better.” (Thank you Keith Schneider for the quote.) For Hanley Lake it means not putting in a marina

(Continued on page 10)

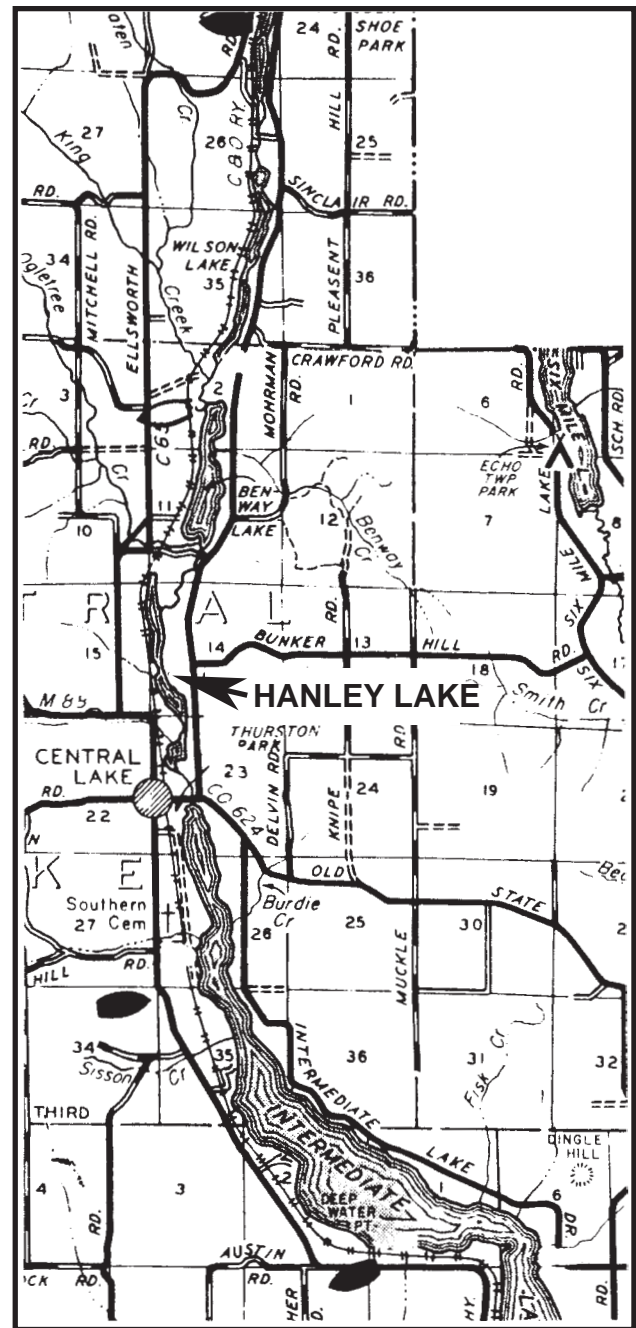


## DEQ Works to appease developer on Hanley Lake *(continued from page 9)*

in an area of shallow water that functions as important habitat. Forty boat slips is too many at this site. Twenty-four boat slips is too many at this site. In our letter submitted to the DEQ back in January, we noted that the applicant, like everyone else on the lakes, has the right to the equivalent of one dock per 100 feet of property. In some zoned townships this means one boat per 100 feet; in other townships it means two. In either case, the applicant (based on 700 feet of frontage) clearly has the right to at least 7 boat slips, and perhaps up to 14. We continue to urge the DEQ to hold the Hanley Lake Cove developers to the same standard of other property owners on the chain.

As an aside, better planning and design standards that fit the community and lake would have been accomplished had Central Lake village or township had zoning. In the end, it would have produced a better plan and saved everyone (including the developer) time and money. With no basic planning & zoning, the community of Central Lake has NO ability to ensure well-planned developments. There are some who might think this approach is good for growth and economic development. Unfortunately, as rapid, unplanned growth occurs, resources will be degraded. Once that happens, the area will have little to offer, property values and tourism will actually decline.

What is easier in the short-term will bring long-term harm to the people and resources of Central Lake Township. It doesn't have to happen...



Lakes in the Intermediate Chain:  
Beal, Benway, Hanley, Intermediate, Ellsworth, Scott, Six Mile, St. Clair, and Wilson.

Editor's Note: Riparians on inland lakes in Michigan have both natural and correlative rights. Natural rights include use of the water for domestic purposes, install a dock or anchor a boat on his bottomland, accretions of land. Correlative rights include use of the waterfront parcel to "increase his comfort or prosperity for commercial or recreational pursuits." Such uses must be reasonable and not infringe on the rights of other riparians and members of the public to use the waters.

The request by the developer to put 40 boat slips on Hanley Lake was unreasonable. The scaled back request to permit 24 boat slips is also unreasonable on a 93 acre lake. If all shoreline property around Hanley Lake were permitted a boat for every 30 lineal feet of shoreline (as requested by the developer) the total number of boats permitted would be 576. This number of boats on a 93 acre lake would amount to 6 boats per acre. The same argument holds in this case as was found by the State Supreme Court in the **Thompson v. ENZ** 379 Mich 667 (1967). "The majority opinion considers the project to be an unreasonable use of the lake because of the added pollution and boatage on the lake."



# Attorney Writes

By Clifford H. Bloom

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## THE TOP TEN EXCUSES— ARE YOU KIDDING?!

Are you one of the unlucky riparians who own property on a lake where local officials refuse to do anything to help the lakes? In particular, has your municipality refused to enact anti-funneling/keyholing regulations, road end ordinances or lake preservation zoning techniques because municipal officials have one or more lame excuses for not doing so? Does it frustrate you that the excuses appear to be a smoke screen for municipal officials who do not want to adopt such regulations and do not have the courage to simply say so? If so, this column is dedicated to you and contains the top 10 baseless excuses which some municipal officials use to justify not doing their jobs.

### 1. Liability.

This is the good old standby excuse. Supposedly, the municipality's attorney has told municipal officials that the adoption of such regulations will cause the municipality to incur damages or liability. There are at least three defects in this reasoning. First, municipalities generally have governmental immunity when it comes to ordinances. While such immunity is not absolute (for example, "takings" cases), it is a formidable barrier to municipal liability. Second, some municipal insurance policies cover some or all of such potential liability. Third, if this is truly a concern, the municipality involved should repeal all of its other ordinances (including the zoning ordinance), sell its parklands, cancel all parades, abolish its fire department and close up shop. Everything which anyone, including a municipality, does in this country involves a liability potential. Nevertheless, matters must be put in perspective. Adoption and enforcement

of anti-funneling and road end ordinances involve no greater liability potential than for any other type of zoning provision or ordinance. In fact, based on the case law, a good argument can be made that the liability potential is less than for many other zoning techniques or ordinances.

### 2. Litigation.

This is a variation of the liability excuse mentioned in Excuse Number 1, above. Some municipal officials will argue that even though it may be unlikely that municipalities will incur liability or have to pay damages if they pass such ordinances, the municipality still could face lawsuits challenging the ordinance, thus incurring considerable expense for the municipality due to legal fees and costs. As previously stated, some (but not all) municipal insurance policies will cover some or all of the municipality's attorney fees and costs if damages are claimed. Even if not covered by insurance, the lawsuit potential should also be kept in perspective. Anti-funneling regulations have been in effect in many municipalities in Michigan for 15 years or longer. In excess of a hundred municipalities have such ordinance provisions today. There has been no rash of litigation regarding such regulations. The favorable decisions of the Michigan Supreme Court regarding such regulations (discussed below) has undoubtedly cut down on such litigation. Finally, there is no evidence whatsoever that anti-funneling and lake regulations will breed any more litigation for municipalities than any other type of zoning provision or ordinance.

### 3. This is a private matter which the municipality should not get into.

This excuse is particularly perplexing given that zoning ordinances regulate a myriad of other structures, uses and activities which could otherwise be deemed "private." Zoning regulations typically regulate lot size, building height, private roads, setbacks, maximum lot coverage, etc. Regulating lake access and frontage is perfectly consistent with other typical zoning regulations. Zoning regulates a wide range of real property issues, and riparian land and appurtenances are simply another type of real property. Why is it any more of a "private matter" to regulate the lakefront or lake access than to tell someone they cannot place a shed within 10 feet of the side property line or have more than two dogs on their property?

### 4. We don't have the resources to enforce that type of ordinance.

Again, this argument might be reasonable if the municipality involved had not adopted any other ordinances or is considering repealing all of its other ordinances. Lake-use regulations generally involve no more enforcement expenses (or frequency) than other zoning regulations, junk ordinances, vehicle ordinances or other regulations. In fact, enforcement of ordinances in general over the last half decade has become simpler, quicker and cheaper for municipalities given the advent of municipal civil infractions.

Some municipal officials bemoan how difficult they claim this type of ordinance would be to enforce. The counter-question which should be asked is why lake access regulations are any more difficult to enforce than any other regulation? Determining whether someone is operating an illegal business out of their home or whether a house has

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# ML&SA NEWS

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## HOUGHTON LAKE FISHERY 27 YEARS AGO

*From an article printed in the Houghton Lake Reporter, December 5, 1974.*

### Desirable Fish; How to Help Them

The following is a brief summary of what DNR biologists believe to be the present status of the various fishes in Houghton Lake. Included are comments and recommendations outlining present management practices and proposals.

#### NORTHERN PIKE

Northerns are somewhat slow growing and tend to be small in Houghton Lake. Fishing pressure for and catch of them is high each year. This factor is largely responsible for the small size and short life span of these fish. Operation of the artificial spawning marshes is necessary to maintain the present fishery. Given the present situation of heavy fishing pressure and high annual catch, it is unlikely that this situation can be improved with present technology.

It is imperative that no additional natural spawning marshes be lost through development or other activities of man. Pike play a major role as a predator on yellow perch which are over abundant in the lake.

#### WALLEYES

One of the most highly prized of Houghton Lake fishes, walleyes seem to be holding their own. Their population appears to be quite stable and is as good today as it has been in modern times. Walleyes are naturally self-sustaining in the lake but it is possible that the overall population might be increased by the addition of large fingerlings in substantial numbers. Toward

this end, the DNR will cooperate with the Houghton Lake Association in an attempt by the latter, to rear walleye fingerlings for Houghton Lake. Their value as a sport fish and as a predator on perch makes them a valuable asset to the lake.

#### BLUEGILLS

A limited population of large, fast-growing fish are present in Houghton Lake. Even though bluegills are one of the most sought after fishes in Houghton Lake, the fishery for them would have to be termed sporadic. Normally, only knowledgeable local fishermen catch them with regularity. Heavy fishing pressure undoubtedly plays a major role in keeping bluegill numbers lower than most anglers would like. Small perch probably offer severe competition for young bluegills. Any success in reducing the number of perch in the lake should result in a corresponding increase in bluegills.

#### YELLOW PERCH

The population of these fish consists of many small slow-growing individuals. The over-abundant, slow-growing perch are thought to be the major flaw in the Houghton Lake fish population. Management of the lake's fishes centers around efforts to increase predators (i.e., pike and walleyes) in the hopes that they will eventually reduce the numbers of small perch and result in greater production of bluegills. ♦



## THE EXECUTIVE DIRECTOR RESPONDS

This page is a trial run to see if it generates enough interest among the RIPARIAN readers to make it a special feature of the magazine. Many calls and emails come to the two ML&SA offices, asking for information about waterfront rights, water law, and water quality issues. If I have information from statutory or case law, I will answer the question. If the question involves legal expertise, I will advise the individual to get help from an attorney well versed in riparian and water law. Some examples of recent questions and answers follow.

If you have a question that has considerable interest among waterfront property owners, and would like to have it considered for an answer in a future issue of the magazine, mail or email your question to THE MICHIGAN RIPARIAN, P.O. Box 249, Three Rivers, MI 49093 or email to [dwinne@miswa.org](mailto:dwinne@miswa.org).

➤ **Question: Can an owner of shoreline along any of the Great Lakes fence his property to keep trespassers off?**

Response: The answer is YES, however, he cannot put any permanent structure on the bank closer than the high water mark. The highest level of Lake Michigan and Lake Huron since 1900 was reached in October 1986 at 581.62 feet above sea level. This level would probably be considered the “high water mark” for Lakes Michigan and Huron. It may be of interest to know that the lowest level of Lakes Michigan and Huron was reached in March 1964 of 575.35 feet above sea level. This makes a difference in elevations of 6.27 feet.

➤ **Question: If the shoreline of a lake recedes, and a new shoreline is established leaving 20 to 40 feet of new upland, who owns that exposed bottomland, and how is it determined?**

Response: “If the deed describes the parcel going to the waters edge, then whoever owned the shoreline parcel would own the new (relicted) land. How much of the new decreased total shoreline of the lake could he claim? In one court case, the Judge decided that the person would own a percent similar to the percent he owned on the original shoreline of the lake.”

➤ **Question: What do I do if my neighbor places his dock right at the edge of his bottomland boundary in the water so that his boats tied up to his dock ride in the water above my bottomland?**

Response: “You can appeal to his sense of fairness and ask him to locate his dock far enough within his boundary line to leave room for his boats to float above his bottomland and not yours. If this doesn’t work, you might consider asking your township to adopt an ordinance, which will establish a set back distance from the bottomland boundary for all lakes in the township. One Township has established a distance of seven (7) feet set back.”

➤ **Question: What can be done if individuals are violating Michigan water law?**

Response: “It should be reported to the County Sheriff of the county in which the violation occurred. Some county sheriffs will prosecute if they are supplied with a videotape of the infraction together with other data. For example, the date and time of the infraction, the infraction that occurred, identification of the boat and license number (if available), etc.

➤ **Question: Does the size and/or depth of a lake have any bearing upon riparian rights?**

Response: The answer is NO. The Michigan Supreme Court, in **HALL vs. WANTZ**, 336 Mich 112 (1953) stated, “Inland riparian lake ownership carries ownership to the middle of the lake, no matter how deep.” The Court continues to state, “...a riparian’s rights are limited by the public right to navigation, but this does not include the right to anchor indefinitely off the riparian’s shoreline.”

### PICTURE ON FRONT COVER

The picture of Houghton Lake, Roscommon County, was supplied to THE MICHIGAN RIPARIAN by Bob Smith of Aerial Graphics, Grand Rapids, MI. Aerial Graphics has been photographing Michigan Lakes since 1989. Most inland lakes in the Lower Peninsula have been photographed. The home based business is owned and operated by Bob & Barb Smith.

#### FREE PHOTO

Aerial Graphics will provide one free 20x24 color photo to any active Lake Association that is willing to show the photo to lake residents and organize a group order. Photos are greatly discounted when ordered in quantity. An order of only 10 photos provides a 40% discount. That reduces the cost of one 20x24 inch print from \$89 to just \$53.

Aerial Graphics has worked with hundreds of Lake Associations throughout Michigan. For more information, feel free to call 800-780-3686 or log on their website at [www.aerialgraphics.com](http://www.aerialgraphics.com).

been built six inches taller than the height limitations in the local zoning ordinance are areas which are potentially difficult to enforce, but that does not stop municipalities from enacting such regulations. There is no legal requirement that once a municipality enacts a lake access regulation (or any other type of regulation) that the municipality is required to hire a boat load (pardon the pun) of zoning enforcement officials. The enforcement of this type of regulation would be done in the same fashion as any other municipal regulation. Obvious and highly visible violations could be discovered by municipal officials, while other violations would be addressed on a complaint basis. As mentioned above, the advent of civil infraction ticket procedures also makes enforcement much easier.

**5. It is not clear that we have the authority to regulate lake uses and the courts may not uphold such regulations.**

Anyone who would make such an assertion is either ignorant or is willfully misleading the listener. The top court in Michigan, the Michigan Supreme Court, has upheld these types of regulations in *Hess v West Bloomfield Township*, 439 Mich 550 (1992) and *Square Lake Hills Condominium Association v Bloomfield Township*, 437 Mich 310 (1991), so long as the ordinance involved is reasonable. In fact, the legality of anti-funneling and similar ordinances is much more certain than is the case with the overwhelming majority of zoning regulations, since probably 80% (or more) of the typical zoning provisions found in ordinances throughout the state have never been tested in court.

**6. We cannot adopt the ordinance provision without doing an expensive lake carrying capacity study first.**

Talk about excuses! Admittedly, the chances of having a particular ordinance provision upheld in court are always greater if there is an expensive study or report done first to support the regulation, preferably by an expert. Unfortunately, such studies and reports are often expensive and time-consuming, and the expense is often used as an excuse not to adopt a particular ordinance provision. There is no requirement in law, however,

that such a study or report be done as a prerequisite to passing lake-use regulations. Furthermore, probably less than 1% of all zoning regulations out there are based on a particular report or study. If any municipal official ever uses this excuse, ask that person to show you the comprehensive study which they commissioned before they decided to set a 10-foot side yard building setback for their residential zone. Or for their requirement that buildings in a particular district not exceed 35 feet in height or to support listing restaurants and motels as permitted uses in the light commercial zoning district, but not banks. You get the picture.

Indicating that a study or report must be done regarding on-water carrying capacity is odd for two additional reasons. First, there is no universally-recognized method or standard for determining lake carrying capacity. Second, anti-funneling and road end regulations generally have little to do with on-lake boating activities, but are rather a regulation of land uses.

**7. Since there does not appear to be a problem at the moment, we should not adopt such an ordinance.**

Under this warped logic, municipalities would never adopt an ordinance or ordinance provision until a severe problem already exists. This area is entitled “zoning and planning.” Planning means that a municipality should look ahead and try to prevent problems before they happen.

Waiting until a “problem” arises might be too late—if a developer commences to develop a major keyhole development and there are no regulations presently in effect governing such developments, the municipality will not be able to stop that development.

**8. It’s not our problem—this is best left to some other level of government and it would simply constitute another layer of government regulation.**

Some municipal officials will assert that anti-funneling regulations or the regulation of the waterfront is best left

to the state of Michigan or the county and that the local municipality should not become involved. Wrong again! Except where county zoning is in effect and where the local municipality has no zoning itself, counties do not have general ordinance powers. Furthermore, regulation by the state of Michigan regarding funneling, road ends, and the lakefront is virtually nonexistent. Theoretically, the Michigan Department of Environmental Quality (“DEQ”) does have some jurisdiction under the Michigan Inland Lakes and Streams Act regarding marinas, permanent docks, and similar matters, but as a practical matter, such jurisdiction is limited and the DEQ has been quite permissive in these areas. Accordingly, to assert that someone other than the local municipality should take action is, in actuality, an argument that nothing should be done.

**9. It is not needed.**

On occasion, a municipal official will assert that existing zoning regulations already protect against anti-funneling. Unfortunately, that is usually not the case. Furthermore, it is also generally best to have very specific regulations tailored to a particular problem in effect, rather than take a chance that existing regulations will not be sufficient.

**10. A public access site or existing lake overcrowding makes such regulations useless.**

Municipal officials occasionally argue that new lake access regulations would be a waste of time given an existing public access site on a lake or present lake overcrowding. What a goofy argument! Just because a problem exists in some areas of a lake does not mean that you give up on all efforts to prevent similar problems from occurring elsewhere on the lake or on other lakes. This is akin to having a municipality give up on all regulation of commercial uses because a problem with a particular commercial business already exists in one portion of the municipality. Just because one horse has already escaped from the barn does not mean that you don’t shut the barn door to keep in the other five horses! ♦



# Perrier's bottled water plant tests new Great Lakes pact

By Mike Magner, Washington Bureau

WASHINGTON—Now that Great Lakes governors have pledged to limit water diversions from the basin, the Perrier Group of America's plan for a Michigan bottling plant has become a test of the State's resolve for strong water management.

Environmentalists and a Michigan congressman want Governor Engler to show his commitment to Great Lakes protection when his administration decides this summer on Perrier's request to pump up to 750,000 gallons a day from springs in Mecosta County.

But state officials say Engler has already demonstrated good stewardship by insisting that Perrier not only protect groundwater around its bottling plant near Big Rapids but also improve the Muskegon River watershed.

As a result, the company will put \$500,000 into a fund for watershed studies and improvements, such as wetland restoration, said Perrier spokeswoman Deborah Wudyka.

"It's the first such initiative by any Company in Michigan," Wudyka said, "and it's very much in line with the way Perrier Group conducts itself."

Despite the promises of water management, Perrier's plan for a \$100 million bottling plant about 50 miles north of Grand Rapids has become a lightning rod in a recent storm of debate about protecting the Great Lakes.

Concerns about diverting Great Lakes water to thirsty regions outside the basin began to rise in 1998, when an Ontario company proposed shipping up to 159 million gallons of Lake Superior water to Asia each year.

The plan was scuttled by public protests, but leaders of the eight states and two Canadian provinces around the

lakes began drafting a strategy to protect the basin, which contains 20% of the world's fresh water.

The effort resulted in a pact signed Monday (June 18th) in Niagara Falls, N.Y., by the governors of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin and by the premiers of Ontario and Quebec.

The agreement, known as Annex 2001 to the Great Lakes Charter, calls for new standards to be developed in three years requiring all Great Lakes water users—both inside and outside the basin—to practice conservation, to prevent environmental harm and to improve water resources.

A northern Michigan congressman whose district borders three of the Great Lakes, questions whether Engler's support for Perrier's project is consistent with his pledge to guard against diversions.

"Is Engler going to ask the blessing of the governors and premiers for Perrier?" asked U.S. Rep. Bart Stupak, D-Menominee, "if he really believes in this as he says, he will."

Some environmentalists also want to see sound water management when the state Department of Environmental Quality acts on Perrier's request to build wells in Mecosta county. The company has already received easements for pipelines. The study found that about 37 million gallons of bottled water are imported into the region annually, while only 2.6 million gallons are exported.

Mike Magner can be reached at [mike.magner@newhouse.com](mailto:mike.magner@newhouse.com)

## ENVIRONMENTAL GROUP FILES INJUNCTION

Michigan Citizens for Water Conservation, a statewide environmental group based in Mecosta, Michigan has filed for a Temporary Restraining Order seeking to stop the construction of a water bottling plant by Great Spring Waters of America, a subsidiary of Perrier. The proposed plant is located on 8 Mile Road near US 131 in Mecosta Township outside of Big Rapids, Michigan.

"We are quite frankly stunned by the arrogance of this company. Perrier began construction of the project prior to obtaining the necessary permits from the State of Michigan and from the local governments. It is obviously an attempt to circumvent the administrative and legal processes in order to deny citizens their right to contest or challenge the project," said attorney James R. Samuels, co-counsel for the Michigan Citizens for Water Conservation (MCWC).

Samuels noted, "What is equally surprising, is that Mecosta Township passed an interim zoning ordinance a few weeks ago. The ordinance clearly states that construction on a project cannot go forward until all the necessary permits have been obtained. Apparently, the township has overlooked their own zoning ordinance.

The request for a Restraining Order has been given to Judge Lawrence C. Root in Mecosta County, who could issue the Restraining Order immediately, or schedule the matter for a contested hearing.

# Personal watercraft to be banned

*Kalamazoo Gazette, Saturday, June 2, 2001*

**BY JOHN HEILPRIN**  
THE ASSOCIATED PRESS

WASHINGTON—Only two more summers for personal watercraft in the national parks.

The small vessels that generally accommodate one or two riders are to be banned in all national parks and recreation areas by September 15, 2002, unless the Park Service can prove the machines don't harm the environment on a site-by-site basis.

The gasoline-powered boats are already banned from 66 of the 87 parks, recreational areas and seashores where motorized boats are allowed.

But the settlement of a case accepted Thursday by U.S. District Judge Gladys Kessler affects the remaining 21, one of them in Michigan, at Pictured Rocks National Lakeshore.

Kessler dismissed a challenge from watercraft manufacturers and vendors to the agreement negotiated last December by the Interior Department and the Bluewater Network, a San Francisco-based environmental group. The Bush administration endorsed the accord.

"This Jet Ski settlement is great news for the national parks," said Sean Smith, spokesman for Bluewater Network, which had sued the National Park Service. "It will better protect the visiting public as well as park resources and wildlife from these noisy, smelly and dangerous machines."

The Park Service agreed that each of the sites will be added to a list of personal watercraft-free zones in two years unless it can be shown the boats are harmless.

Last year, the Park Service banned them from two-thirds of the national parks and Bluewater Network filed a federal lawsuit to widen the ban to the remaining areas.

The Personal Watercraft Industry Association and the American Watercraft Association tried unsuccessfully to intervene.

Manufacturers and owners have argued that personal watercraft pollute less and are more maneuverable than motorboats, and that the nation's 1.2 million watercraft owners have a right to use public waterways.

Monita Fontaine, the industry association's director, said Thursday she was disappointed but still expected to get personal watercraft, which cost an average of \$7,000, approved for use in the parks based on new technology that reduces noise and emissions.

Over the past three years, she said, the two-stroke outboard motors used in the boats have reduced their hydrocarbon emissions by 75 percent and their noise by 70 percent.

"If there is evidence that there is a substantial impact on the environment from Jet Ski use, they have the right to ban them," she said. "However, we believe that we will be able to pass any environmental assessment."

The 21 areas affected are:

- Glen Canyon National Recreation Area (Arizona, Utah)
- Lake Mead National Recreation Area (Arizona, Nevada)
- Whiskeytown National Recreation Area (California)
- Curecanti National Recreation Area (Colorado)
- Cumberland Island National Seashore (Georgia)
- Gulf Island National Seashore (Florida, Mississippi)
- Indiana Dunes National Lakeshore (Indiana)
- Cape Cod National Seashore (Massachusetts)
- Assateague Island National Seashore (Maryland/Virginia)
- Pictured Rocks National Lakeshore (Michigan)
- Bighorn Canyon National Recreation Area (Montana)
- Cape Lookout National Seashore (North Carolina)
- Delaware Water Gap National Recreation Area (New Jersey, Pennsylvania)
- Fire Island National Seashore (New York)
- Gateway National Recreation Area (New York)
- Chickasaw National Recreation Area (Oklahoma)
- Amistad National Recreation Area (Texas)
- Lake Meredith National Recreation Area (Texas)
- Padre Island National Seashore (Texas)
- Big Ticket National Preserve (Texas)
- Lake Roosevelt National Recreation Area (Washington)

— — —  
*On the Net:*

*Bluewater Network Web site:*  
<http://www.bluewaternet.org>

*National Park Service Web site:*  
<http://www.nps.gov>

*Personal Watercraft Industry Association Web site:*  
<http://www.pwia.org>

# Inland hunting and fishing rights heating up

The Sault Tribe News, March 19, 2001 — by Diane Pavlat

The Sault Tribe Board of Directors passed a resolution on Feb. 28 to amend the complaint in *United States v. Michigan* to clarify tribal rights to hunt, fish and gather on the lands and inland waters established by the 1836 Treaty.

According to Tribal Attorney, Jim Jannetta, the original complaint in *U.S. v. Michigan* focused on fishing rights on the Great Lakes, while the amended complaint will extend hunting and fishing rights to inland lakes and lands.

Despite the board taking action to get the ball rolling, a delay of several months is anticipated to allow for a new Bush Administration to be appointed.

“We are still awaiting the U.S. Department of Interior decision to amend their complaint to raise inland rights—now delayed because we have a new administration and new decision makers most of which have not been appointed,” said Jannetta who explained that in January, it was thought that the Clinton Administration was going to approve the filing of the amended complaint, but the U.S. Attorney’s Office in the Western District of Michigan decided to hold off until a new administration has been appointed.

The State of Michigan has “basically consented” to filing the amended complaint, because “they want to get the issue resolved.” However, both the Tribe and State continue to wait for the United States to join suit.

“The tribes have met and talked about going ahead on our own, but we feel that it’s important to have the United States with us on this,” said Jannetta adding that the U.S. plays an important role including as referee between the tribes should a dispute arise among them.

“We just think it will go better if we have their [U.S.] backing from the start and its worth waiting for,” he continued. “We’re taking the time to hire our experts, so that we are ready to jump right in and go full bore once the decision is made.”

Once in court, two phases of litigation are anticipated. 1) THE HISTORICAL PHASE in which the tribe has to prove that the Treaty of 1836 includes the inland right to hunt, fish and gather on the ceded territory—just as the previously settled right to fish on the Great Lakes. Further, that right has not been extinguished by settlement, sale or the 1855 Treaty or whatever the state comes up with to claim that they don’t exist anymore.

The 1836 Treaty secured the right to hunt and other usual privileges of occupancy “until the land is required for settlement.” According to Jannetta, there will be more of a historical debate about what the meaning of that phrase is.

“We’re contending that it essentially means that the tribal right can be exercised on public waters which aren’t “settled” and on any lands that are not now in “private ownership.”

“We’re not intending to claim a broad right to hunt on every parcel of land in ceded territory,” added Jannetta, “only on those parts open for hunting in one way or another which includes all of the state/federal forest lands, plus the lands that are in that woodland tax status where the land owner gets a tax break in return for leaving his land open for public hunting.”

“If the court says there is no such right, then we’re done, but if the court agrees with us that this right still exists then we go into an implementation phase,” he continued.

2) THE IMPLEMENTATION PHASE will require negotiations similar to the consent decree, however negotiations are anticipated to be a little easier since the tribes have not engaged in nearly as extensive activities on the land as they have on the Great lakes—a fully developed commercial fishery.

In Wisconsin and Minnesota, where treaty rights have been implemented, the courts have said tribes are entitled to 50 percent of what is harvested. But even then, the deer harvest of six Chippewa tribes in Wisconsin never amounted to

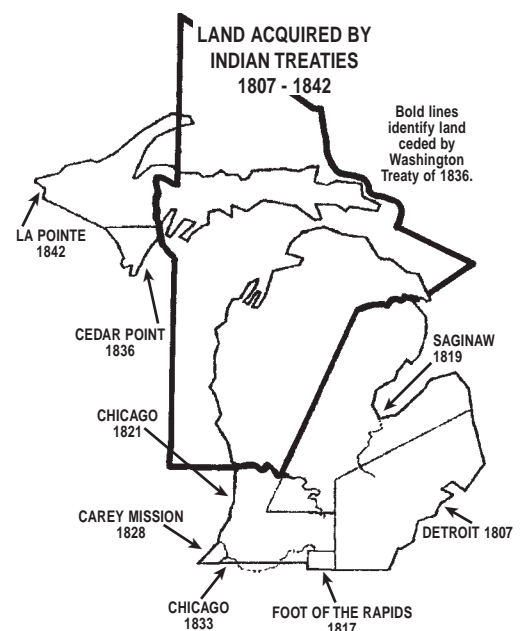
more than two percent of the harvest in the ceded territory. (All together there are about 10,000 Wisconsin Chippewa. That’s more than the other four tribes in Michigan, excluding the Sault Tribe.)

Implementing inland rights could have a commercial component, but other Chippewas with inland rights have tended not to engage in commercial activities other than trapping and wild rice.

In conclusion, Phase one and phase two of the inland hunting and fishing litigation waits for the Bush Administration. In the meantime, the Sault Tribe is taking measures to deal with another hunting and fishing permit lottery.

“We will probably do a modest expansion on the existing arrangements,” said Jannetta who has met and discussed issues with Fred Paquin, Chief of Police and Tom Gorenflo, Inter-Tribal Fisheries and Assessment Program.

According to Chief of Police Fred Paquin, a joint meeting between the Sault Tribe Board of Directors and the Sault Tribe Conservation Committee will be held within 30 days—tentatively April 3rd or 4th to determine the number of inland hunting and fishing permits and the date of issuance.





# Information From Lake Associations Around The State...

## **Crystal Lake Association Benzie County Cliff Graves, President**

### **DNR BOAT LAUNCH UPDATE**

Since we last reported on the proposed DNR public boat launch, some progress has been made. An alternate site has been found on the south shore east of the Railroad Point Natural area. However, some obstacles remain for the DNR to acquire the land for this alternate site. Despite this, a number of public and private organizations have provided letters of support for this alternate site. Accordingly, the CLA board of directors resolved that the following letter be sent to Paul Yauk, Bureau Chief, MDNR Parks and Recreation Division.

The letter read:

*"This letter seeks to reaffirm the Crystal Lake Association's position on the development of a public boat launch on Crystal Lake and lend support to the MDNR's efforts to relocate to a development site more suitable than the Outlet. While the Crystal Lake Association opposes any development around Crystal Lake that threatens water quality, safety, or environmental integrity, the Board is particularly opposed to the site currently owned by the MDNR for a boat launch.*

#### **OPPOSITION TO THE OUTLET LOCATION**

*The Board opposes the construction of a boat launch at the Outlet (Denton) property purchased by the DNR in 1997. We oppose the construction for the following reasons:*

- 1. This is a valued parcel containing a unique diversity of fragile, natural features including topography, vegetation, dunes, and wetlands. A boat launch and parking area would destroy the character of this natural area.*
- 2. Congestion and use conflicts will arise between boat launch users and visitors to the adjacent Railroad Point Natural Area.*
- 3. A boat launch located in the shores of this natural bay would not only compromise the quiet enjoyment that hikers, picnickers and swimmers derive from the area but their safety as well.*

*4. Shallow water extends far out into Crystal Lake at this site. Wave action would fill an artificial navigation channel thus requiring the disruption and cost of repetitive dredging.*

*5. Where dredging has occurred elsewhere in our sandy bottomed, crystal clear Crystal Lake, it is observed that invasive aquatic plants such as Eurasian Milfoil establish themselves and black muck accumulates. There is no reason to believe that a dredged channel by the outlet will not produce the same result.*

*6. Dredging operations would disturb bottom sediments and re-introduce nutrients from the lake bottom into the water.*

*7. A channel cut into the lake bottom would further compromise the safety of swimmers around the outlet as well as boaters.*

*8. Access to a parking area from Mollineaux Road near the Outlet would create new traffic hazards. Mollineaux Road would require widening and additional modifications, further contributing to the negative impact on the area. Further, we do not believe that wet lands across Mollineaux Road should be filled in under black asphalt to build parking capacity.*

#### **ALTERNATE SITE**

*The CLA believes that the MDNR should proceed with the acquisition of the alternate site under consideration. We [...believe] that this site is less threatening to water quality, is less threatening to the surrounding natural environment, is less intrusive upon other recreational users of the lake, and is less intrusive on the serenity of adjacent property owners.*

*We believe that the [...obstacles] surrounding the acquisition of this alternate site are very well worth the effort to resolve and we support your patient and persistent efforts in this direction.*

*The CLA looks forward to working with the MDNR and all other stakeholders in making this project a success."*

## **Elk-Skegemog Lakes Assoc. Antrim, Grand Traverse & Kalkaska Counties Don DeMott, President**

### **FISH STOCKING PLANNED**

The Michigan DNR has been stocking fish in ESLA waters continuously for 21 years. This spring the DNR Fisheries Division will continue to support our fishery by stocking 20,000 Rainbow Trout in Elk Lake.

The best thing we can do to improve our fishery is to limit our take. Catch, photograph, and release the big Lake Trout and Bass so they may live to swim another day. These are the fish we want to spawn, pass on their genetics and thus improve the fishery. Harvest the 18-24" Rainbows for the table, as these are the fish the DNR replenish by planting every spring.

Catching perch can be a lot of fun but if we deplete the 5-6" long fish, we will never catch 8-10" or larger perch in the future. ESLA's waters have a limited fishery and it is being fished more every year. Limit your take to only what you will eat fresh that day and leave the rest for another day and generation...

*Geoffrey Bryant, Fish Status*

## **Lake Fenton POA Genesee County George Dyball, President**

### **RESULTS OF THE DNR WATER SURVEY IN MAY 2000**

The results of the DNR Water Survey conducted on Lake Fenton last May have been provided. The objective of this survey assessment was to evaluate the Lake Fenton fish community with particular emphasis on walleye. The walleye stocking prescription expired in 1999. Six inland trap nets were fished for three nights at nine locations. Two experimental gill nets were set for one night in deep water areas. Age-growth data was collected from principal sport fish.

A total of 668 fish representing 15 species were collected with trap net gear. Bluegill, bullhead, sunfish, bass, and rock bass were most abundant comprising 84% of the catch. Bluegills were the most abundant fish collected comprising 26% of the catch. The 175 bluegills averaged 5.8 inches. The largest bluegill was 9 inches.

## **Information From Lake Associations Around The State...**

Rock bass were the second most common fish collected. A total of 103 rock bass averaging 6 inches comprised 15% of the catch. The largest rock bass measured 11 inches. A total of 57 largemouth bass were collected averaging almost 12 inches. The largest largemouth bass was 19 inches. There were 15 northern pike also collected averaging 20 inches. Only 6% of the northern pike were greater than the legal limit of 24 inches. For the record, one longnose gar pike measured 34 inches and almost 4 pounds.

A total of 112 fish were collected with the gill net gear. Common white sucker was an additional species not collected with the trap nets. There were three walleye caught in the gill net averaging almost 3 pounds.

The DNR summarized their findings by stating that the fish community of Lake Fenton appears in a healthy state. Very good recreational angling opportunities exist for bluegill, largemouth bass, and rock bass. They believe the walleye fishery may show improvement with the increased stocking rates applied in 1997. Management recommends to continue stocking spring fingerlings walleye at a rate of 100/acre or 84,500 on an alternate year program. Stockings should be scheduled for 2001, 2003, and 2005. In addition, they recommended that they stock our lake with sunfish for the next three years. They are excellent shellfish crackers and could help control the Zebra Mussel population that we have in our lake.

Happy Fishing and Good Luck!

### **Higgins Lake POA Roscommon County Bob Frye, President**

#### **SWIMMER'S ITCH RESEARCH COMPLETED**

The Swimmer's Itch Research Project conducted by the Michigan State University Zoology Department on Higgins, Walloon and Leelanau Lakes during the last four summers has been completed.

Until a better method of control is available, the following precautions may help stave off the bothersome parasite:

1. Try not to spend much time in shallow water (water under three feet in depth). Of course, this will be just about impossible with young children and may not work anyway.

2. Before going into the water, use an insect repellent containing DEET to cover exposed skin. For children, it might

be a good idea to talk to your doctor or a pharmacist before using DEET.

3. A good suntan lotion may also be effective in repelling the parasite, but it doesn't last long and may not work on everyone.

4. Immediately upon leaving the water, dry off with a towel and change from your wet bathing suit.

5. If you should contact swimmer's itch, get in touch with your doctor or a pharmacist immediately. There are a number of items available that may ease the rash.

6. Do NOT call the swimmer's itch hotline as records are no longer being kept as to the number, severity, or location of contacts.

The information listed above is not medical in nature nor is it necessarily a positive guideline for protecting yourself from swimmer's itch. The information is derived simply by those callers who related what worked best for them. As always, your family doctor or pharmacist is the most reliable source for protection.

**REMEMBER, THERE IS NO LONGER  
A SWIMMER'S ITCH HOTLINE!!!**

### **Missaukee Lakes Association Missaukee County Richard A. Morrow, President**

#### **LEGALITY OF THE STRUCTURE**

It is our contention that it was built and installed as a permanent structure without the necessary permits. This is also the position of Mr. Powers of the MDEQ, who states in his 09/27/00 letter to Senator McManus (cc'd to you), "therefore, under Part 301, Inland Lakes and Streams, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, a permit for a permanent dock (and possibly a marina operating permit) is required." If you are unable to locate this letter, please let me know and I will send you a copy.

To date, there has been no application submitted with the MDEQ Permit Unit for this structure. Therefore, it remains in violation of the law as described above.

This brings us to the problem at hand. MLA wants a public hearing on this entire issue. We believe there are other environmental and safety issues

associated with this dock in its present location that demand that a public hearing be conducted. Mr. Spencer has confirmed that the MDEQ would notify us when this permit application is filed, so that MLA can request this public hearing at that time.

### **Portage-Base & Whitewood Owners Association Washtenaw & Livingston Counties**

#### **WASHTENAW COUNTY MARINE PATROL-DEPUTY PAUL COOK**

Paul advised the association that the Marine Patrol has operated for the last two years without a contract with the PBWOA and that he is providing good service, not only to our lakes, but also other lake communities. He advised that this year would be the same. Paul met with the Livingston County Marine Patrol last year after the annual meeting. A co-op arrangement was made with the Livingston Patrol, that the two counties could work together to establish Patrols in some of the areas that do overlap due to county lines by dividing up the waterways.

This worked well, saving many man-hours. A question was asked as to the authority to make arrests in Livingston County. Paul said that "yes they can" and that they have had good success at issuing tickets in Livingston.

Paul suggested that the membership take the booklet available in the back of the room on the rules of operating as Personal Water Craft. If you are having a problem with a neighbor or even your own family as to the proper operation of a PWC, hand them the booklet. It's got all the rules.

Hours on patrol. Paul stated that the Marine Patrol put in 358 hours on the Portage Base Chain. The division of the time came to: 272 hours on Portage lakes, 61 hours on Baseline and 25 hours on the upper lakes. They spent twice as much time as last year. Many patrols were other than on weekends. They wrote 134 citations, which is up in accordance with the hours spent. 58% of the citations were to lake residences' or their guests. 34% were to non-residence people. The other 8% could not be determined as to residence. Paul encouraged our membership to approach persons, in a friendly manner, whose conduct is irresponsible. Of the 134 citations written, 52 of them were for after hour operation of Personal Watercraft.

*(continued on page 20)*

Paul said that his budget is only \$32,000 per year. The Marine Patrol Officers work for very low pay. He has a dedicated group of people that are willing to do the job. He has hired five new deputies that are experienced and mature. The youngest is 24 years old and he is the Dam operator at Ford Lake. One is a retired US Coast Guard Captain, one a High School Principal and one a retired Dispatch Operator.

Paul stated that the closeness of the Marine Patrol with this association does not in any way affect their position as to the enforcement of the law. Paul closed by encouraging the membership to employ the good neighbor policy and that we personally advise our friends and guests, that Safe and Polite Conduct on the water is the call of the day.

**Walloon Lake Association  
Charlevoix & Emmet Counties  
John Hopple, President**

**MICHIGAN LEGISLATURE  
MAKES ADDITIONAL  
MODIFICATIONS TO JET SKI  
REGULATIONS**

The state of Michigan continues to fine tune the law regarding the operation of personal watercraft (PWC) or jet skis as they are commonly called. Several of the changes were published in the August 2000 issue of the *Walloon* but, because of the complexity, they will be repeated in this article.

- People ages 14-21 **must** obtain a safe boating certificate to operate a PWC. (Last summer it was ages 14-20.) Legal hours of operation for PWCs are 8:00 A.M. to 1 hour **before** sunset. On Walloon we suggest you voluntarily limit PWC operation to the hours of 11:00 A.M. to 5:00 P.M.
- A person shall not operate a PWC if a child under 7 years of age is on board **or towed** unless the child is with a parent or a guardian, or a designee of a parent or a guardian.
- A person under the age of 14 shall not "operate" a PWC in the state of Michigan.
- A person who is 12 or 13 years of age may "use" a PWC in Michigan if **all** of the following circumstances exist:
  1. The person must be accompanied solely by the person's parent or legal guardian (an aunt, uncle, cousin,

brother or sister does not qualify unless they are the legal guardian).

2. Both the person and the parent or legal guardian have obtained a safe boating certificate.
3. The PWC is equipped by the manufacturer with a lanyard-type engine cut-off switch, and the **parent or legal guardian** has a lanyard attached to his or her person, clothing or PFD.
4. The PWC is designed to carry not less than 2 persons.
5. The operators of a PWC **must** carry their safe boating certificate and display it upon demand of a peace officer.

- Each person on board a PWC must wear a personal flotation device that is not an inflatable.
- Each person 12 years of age or older **riding or being towed** must wear a type I, type II or type III personal flotation device.
- Each person less than **12 years of age riding or being towed** is restricted to wearing a type I or type II personal flotation device. All PFDs have a label which tells you whether they are a type I, II or III life jacket.
- The law defines the difference between "operate" and "use" as follows:
  1. "Operate" means to be **in control** of a PWC while the PWC is under way.
  2. "Use" means to operate, navigate or employ (while the operator is in control or in charge of the PWC).
- Where a safe boating certificate requirement applies, the certificate must be on the person(s) while under way on a PWC.
- You must also have your PWC registration on board at all times.

A part of the existing law which is often overlooked has to do with the rated carrying capacity of a PWC. For example, if 2 people are aboard the PWC and towing a 3rd person on skis, a tube or any of the towing inflatables available, the PWC must be rated to carry **3 people**, even though 2 are on board and 1 is being towed. Also, all 3 people must wear approved life jackets.

Most of the violations under the law governing the operation of PWCs are misdemeanors, which is more serious than a civil infraction, such as most automobile speeding infractions.

Sheriff George Lasater continues to have a "zero tolerance" policy as far as the operation of PWCs is concerned. To our knowledge, Walloon Lake has had only 1 reportable accident in the past 5 years.

We currently have 2 Safe Boating Courses scheduled during the summer of 2001.

Have you checked the web page of The Michigan RIPARIAN Magazine?  
[www.mi-riparian.org](http://www.mi-riparian.org)

## What's New!

### Now ON-LINE, the "searchable" Riparian Magazine

Back Issues of The Michigan Riparian Magazine are now ON-LINE!

Every page of each issue, from January 1977 to May of 2000 have been scanned in - thanks to the efforts of John Drake. The painstaking process of keying in all the index and author information into a searchable database has also been completed, thanks to the efforts of Pat Wolters. All are now on line - thanks to Rob Bonnell, ML&SA Web Tech Committee Chairman. Other project helpers have been Bruce Bonnell and Judy Johnson.

You can search for articles from January 1977 to May 2000. It will be our goal to keep this index current as of the latest issue. You can find the search area link on the navigation bar to the left. Select - "The Magazine."

Soon you will be able to purchase past issues of the RIPARIAN on a Compact Disk.

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Charlevoix, MI  
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**OUR 25th YEAR**