

# ASK THE EXPERTS

If you have a question about water related issues, riparian rights, and/or lakes and streams, etc., let us know by email or snail mail.

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The Old Pucker Street Hydroelectric Dam in Niles, Michigan

**Question:** Can a lake association or the local government raise or lower the level of our lake via a dam, impoundment or pump?

**Answer:** In general, no, not without a court order. MCL 324.30701 et seq. provides a procedure whereby a county circuit court can set lake levels for an inland lake in Michigan. The process (via a lawsuit) is initiated by either citizen petition or action by the county board of commissioners. The circuit court judge decides whether or not to set a lake level or levels, and if so, at what elevation(s). Typically, the court holds at least one public hearing so that all of the affected parties can be heard.

Attempting to maintain, raise or lower a lake level without a court order presents significant liability potential to the local government or persons who attempt to manipulate the water level. If the level is raised too high without a court order, the owners of properties subject to flooding could potentially have a damages claim against the municipality or individuals who raised the lake level. Conversely, if the lake level is maintained too low artificially, a similar damages lawsuit could be pursued based on wells going dry, decreased recreational opportunities and similar claims. There are a few situations, however, where a local municipality or a lake association could lawfully maintain lake levels without a court order. That would be true if a municipality owns and controls the entire lake or a lake association created by deed restriction is expressly given the authority to maintain the lake level.

Over the years, court lake level orders have become more sophisticated. Lake levels set by court order 40 or 50 years ago typically have only one lake level set year round, which often proves ineffective. Today, courts will often set two lake levels – one for the summer season and one for the winter. Even for those lake levels, a court will typically specify a range of elevations. In most cases, the court orders the county drain commissioner to operate the dam, impoundment or augmentation well involved. A person who wrongfully interferes with the apparatus maintaining a lake level set by court order could be held in contempt of court, face criminal penalties and could also be liable for damages. The court normally also imposes a special assessment on the benefitted properties to fund the costs of controlling lake levels.

Of course, setting lake levels can often be challenging for the court involved. Some people prefer high lake levels (including boaters and farmers), while other groups prefer lower lake levels (such as riparian property owners whose properties or basements are potentially subject to flooding). For more information regarding this matter, please see the earlier article by Cliff Bloom in the fall 2000 issue of *The Michigan Riparian* magazine.

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Our experts include our riparian attorney, a biologist, a limnologist, an engineer, a college professor and a state agency official. They look forward to responding to your question.