

ATTACHMENT B

REQUEST FOR BOARD OF COMMISSIONERS ACTION  
ADMINISTRATIVE REVIEW

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**TO BE COMPLETED BY DEPARTMENT**

Date Submitted: 8-April-2011

Department Name: Water Resources Commissioner

Action Requested: RESOLUTION AUTHORIZING LEGAL ACTION TO ESTABLISH  
WINTER LAKE LEVEL FOR PORTAGE AND BASELINE LAKES

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Janis Bobrin, 222.6886  
Prepared by/Phone Number

Department Head Signature

**CHECK OFF LIST FOR REQUIRED ITEMS:**

**SECTION I ITEMS INCLUDE: (One Original)**

- Department Head Signature on Request for Board Action
- Resolution
- Cover Memorandum
- Disk or Directory -Saved As: [bdactionfrm portage baseline winter lake level.doc](#) (Must spell out directory)

**SECTION II ITEMS INCLUDE: (\*Minimum of two originals, plus four copies)**

\_\_\_\_\_ Position title, control number and union affiliation (Required of all personnel related requests)

\_\_\_\_\_ Salary projection (required for grant applications and revisions if different from application and any requests affecting a department's personnel budget)

\_\_\_\_\_ Requested action includes contract/lease and contracting party has agreed to the terms contained therein. \*

\_\_\_\_\_ Requested action includes grant application/grant award or other supportive documentation.\*



**COUNTY ADMINISTRATOR**  
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TO: Conan Smith, Chair  
Board of Commissioners

THROUGH: Verna J. McDaniel  
County Administrator

FROM: Janis Bobrin  
Water Resources Commissioner

DATE: 20 April, 2011

SUBJECT: RESOLUTION AUTHORIZING LEGAL ACTION TO ESTABLISH A WINTER LAKE  
LEVEL FOR PORTAGE AND BASELINE LAKES

**BOARD ACTION REQUESTED**

It is requested that the Board give authorization to the Water Resources Commissioner to initiate action in circuit court to establish a winter lake level for Portage and Baseline Lakes.

**BACKGROUND**

In response to action of both Washtenaw and Livingston County Boards of Commissioners pursuant to Part 307, Inland Lake Levels, of Michigan's Natural Resources and Environmental Protection Act, as amended, proceedings were initiated in Washtenaw County Circuit Court in the 1940' and 1950's to set a legal level for Portage and Base Lakes, located in Webster, Dexter, Hamburg and Putnam Townships. The Court set the legal lake level at 851.54 feet above mean sea level.

The Portage Baseline Lake Dam, constructed to maintain the court-set lake level in Portage and Base Lakes, was built in the 1960's. It is located in Section 1 of Dexter Township just south of the County line between Livingston and Washtenaw Counties (see attached map). This structure is operated by the Washtenaw County Water Resources Commissioner (WCWRC), as the "Delegated Authority" on behalf of the Washtenaw and Livingston County Boards of Commissioners pursuant to Part 307. Properties in both Washtenaw and Livingston counties are assessed for the operation and maintenance of the lake level.

**DISCUSSION**

Since the late 1960's it has been practice to lower the lake level 12 to 15 inches from November to mid-April, in an effort to minimize shoreline ice damage. In discussions regarding the dam and lake level with the officers of the Portage, Base, and Whitewood Homeowners Association (PBWOA), it was brought to the attention of the Livingston County Drain Commissioner and the Washtenaw Water Resources Commissioner, that this historic practice, though beneficial for riparian property owners, has no formal basis in law, as the Circuit Court never set a winter level for the lakes. Having an established

winter lake level would provide the legal basis for continuing the established historical practice of lowering the winter lake level.

Under Part 307, Inland Lake Levels, one of the procedures to initiate a court action to set a lake level is a resolution by the Board of Commissioners. In this case because the lakes are in two counties, action by both the Washtenaw and Livingston County Boards of Commissioners is required. Because both Counties must act, the resolution being sought makes Washtenaw County approval contingent on approval by Livingston County as well. The Livingston County Drain Commissioner supports this action and is seeking a similar resolution from the Livingston County Board of Commissioners.

Although a lake level action is initiated by the Board of Commissioners, under Part 307, the question of the proper level is left to the Circuit Court. Once this lake level is established, the court has continuing jurisdiction in this matter:

Sec. 30707 (5) The court shall determine the normal level to be established and maintained, shall have continuing jurisdiction, and may provide for departure from the normal level as necessary to accomplish the purposes of this part. The court shall confirm the special assessment district boundaries within 60 days following the lake level determination. The court may determine that the normal level shall vary seasonally.

The Washtenaw County Circuit Court issued the original order establishing the normal lake level, and therefore it has continuing jurisdiction in this matter to establish a winter lake level.

**IMPACT ON COUNTY HUMAN RESOURCES**

None

**IMPACT ON BUDGET**

No impact. The legal costs for obtaining a court order are specially assessed to the Lake level special assessment district as already established by the Circuit Court. There are 539 parcels in the special assessment district in Washtenaw County, which contains just over fifty percent of the special assessment roll. There is no at-large assessment to the county or townships associated with this project.

**IMPACT ON INDIRECT COSTS:**

None

**IMPACT ON OTHER COUNTY DEPARTMENTS OR OUTSIDE AGENCIES:**

The Michigan Department of Natural Resources and the Michigan Department of Environmental Quality, as agencies in charge of fish and wildlife habitat and environmental impacts, may be called by the court to testify in this matter.

**CONFORMITY TO COUNTY POLICIES:**

Conforms to County Policies

**ATTACHMENTS/APPENDICES:**

Resolution

Location Map

RESOLUTION AUTHORIZING LEGAL ACTION TO ESTABLISH A WINTER LAKE LEVEL FOR  
PORTAGE AND BASELINE LAKES

WASHTENAW COUNTY BOARD OF COMMISSIONERS

APRIL 20, 2011

WHEREAS, the Washtenaw County Water Resources Commissioner (hereinafter the "Delegated Authority") has been charged with responsibility for operation and maintenance of the Portage Baseline Lake Dam on behalf of Washtenaw and Livingston Counties under Part 307 of the Michigan Natural Resources and Environmental Protection Act, , 1994 P.A. 451, as amended; and

WHEREAS, the Delegated Authority has annually authorized a 12 to 15 inch drawdown from the court-appointed level of 851.54 feet above mean sea level at the dam site in early November; and

WHEREAS, the aforementioned drawdown is performed to protect the shoreline and properties around the lake from ice damage that would otherwise occur if the court-appointed level was maintained in the winter months; and

WHEREAS, though not court ordered, the aforementioned drawdown has been a historical practice of the Delegated Authority for over four decades; and

WHEREAS, the Delegated Authority now requests that the historical practice of winter drawdown be formalized by the establishment of a winter lake level by Washtenaw County Circuit Court; and

WHEREAS, Washtenaw County Circuit Court set the currently established lake level, and retains continuing jurisdiction over the lake level pursuant to MCL 324.30707 (5); and

WHEREAS, Washtenaw County Corporate Counsel has reviewed this request, and has determined that it is advisable to petition the Court for establishment of a winter lake level in accordance with MCL 324.30707 (5), if authorized by both Livingston and Washtenaw Counties.

NOW THEREFORE BE IT RESOLVED that the Washtenaw County Board of Commissioners hereby authorizes its Corporate Counsel to petition the Washtenaw County Circuit Court for establishment of a winter lake level in accordance with MCL 324.30707 (5).

BE IT FURTHER RESOLVED that the costs for said court proceedings and all subsequent activities associated establishing and maintaining a winter lake level are to be assessed to the property owners within the Portage and Baseline Lake Level Special Assessment District in Washtenaw and Livingston Counties.

BE IT FURTHER RESOLVED that this resolution becomes effective upon passage of a similar resolution by the Livingston County Board of Commissioners.

Moved:

Supported:

Carried:

