



## Resolution 22-2024

Date: March 20, 2024

### Resolution of Support for Adoption of SB662\_2024

**WHEREAS**, the Grand Traverse County Board of Commissioners met in regular session on February 10, 1960, and resolved to establish a special assessment district for the purpose of constructing a dam on Duck Lake, located in Green Lake Township, to control the level of Duck Lake; and

**WHEREAS**, the Grand Traverse County Board of Commissioners met in regular session on October 29, 1986, and resolved (#133-86) to establish a special assessment district to determine and maintain a high-water level for Silver Lake, located in Garfield and Blair Townships, and to promote drainage from the lake; and

**WHEREAS**, the 13th Circuit Court has issued orders for the maintenance of lake levels on Duck Lake and Silver Lake, and dams were constructed on both lakes for the control of drainage from the lakes in furtherance of maintaining the Court-ordered lake levels; and

**WHEREAS**, Part 307 of the Natural Resources and Environmental Protection Act (NREPA), Public Act 451 of 1994, as amended, is entitled "Inland Lake Levels," being Section 324.30701, et seq. of Michigan Compiled Laws (MCL). Part 307 regulates the maintenance of the "normal level" of lakes established by Court orders in accordance with Part 307; and

**WHEREAS**, the Grand Traverse County Board of Commissioners entered into an Administrative Consent Agreement (ACO-05362, dated: July 15, 2019) with the State of Michigan Department of Environment, Great Lakes, and Energy to resolve the State's Failure of Notice claim attendant to the 13th Circuit Court's proceedings in 2017 to re-affirm the "normal level" of Duck Lake; and

**WHEREAS**, ACO-05362 imposes normal level maintenance obligations upon Grand Traverse County to maintain monthly minimum flows out of Duck Lake in addition to maintaining the "normal level"; and

**WHEREAS**, the 2022 court case Citizens for Higgins Lake Legal Levels v. Roscommon County Board of Commissioners in Michigan's Court of Appeals held that a normal lake level must be strictly maintained with no variance allowed to the Court's-ordered level; and

**WHEREAS**, the Court of Appeals ruled that Roscommon County had a clear legal duty to maintain the normal lake level at the precise elevation set forth in the Circuit Court Order, such that even the slightest deviation constituted a breach of that ministerial duty; and

**WHEREAS**, the appeal to the Michigan Supreme Court of Michigan's Court of Appeals ruling in Citizens for Higgins Lake Legal Levels v. Roscommon County Board of Commissioners has not resulted in establishing any revision to the Court of Appeals' ruling in the matter of "normal level" maintenance; and

**WHEREAS**, the Grand Traverse County Board of Commissioners adopted Resolution 89-2021 to delegate limited authority to the Grand Traverse County Drain Commissioner to operate the lake level control structures (dams) that maintain the normal levels of Duck Lake and Silver Lake pursuant to Part 307 of the NREPA; and

**WHEREAS**, Duck Lake Dam is equipped with an automated lake level monitor that continuously measures, records and broadcasts the Duck Lake level to the Grand Traverse County website for the benefit of stakeholders, including the Drain Commissioner who utilizes monitoring with weather forecasting in an effort to maintain the "normal level" and the ACO-mandated minimum outflows; and

**WHEREAS**, Duck Lake has multiple streams that inlet to the lake and which, in addition to natural springs, provide water flow into Duck Lake affecting normal level; and

**WHEREAS**, Duck Lake has only one, solitary, outlet stream which is the headwater flow of the Betsie River, which flow is controlled by the Duck Lake Dam; and

**WHEREAS**, the normal level of Duck Lake can be influenced by factors downstream of the Duck Lake Dam, which is outside the control and limited authority of the Drain Commissioner and can include the natural actions of beaver and other wildlife, woodland deadfall obstructions, human activities that restrict or increase stream flow, and the unregulated flows of downstream tributaries to the Betsie River that occupy its stream channel capacity for flows; and

**WHEREAS**, the Drain Commissioner is a licensed Professional Engineer, examined by the State of Michigan and found competent to practice in the engineering areas of hydraulics, hydrology, open-channel flow and hydrogeology, and has reviewed 2½ years of Duck Lake Dam operational data along with the engineering studies previously commissioned by the Grand Traverse County Board of Commissioners in establishing and affirming the "normal level" for Duck Lake. The Drain Commissioner has also reviewed the "Betsie River Hydrologic and Hydraulic Study, May 2014," commissioned by the Water Resources Division of the Department of Environment, Great Lakes and Energy in conjunction with the Drain Commissioner's limited authority to the maintain normal level of Duck Lake; and

**WHEREAS**, the Drain Commissioner has found it is technically impractical, perhaps impossible, to consistently maintain the normal level of Duck Lake utilizing the Duck Lake Dam for flow control, and that the additional obligations to maintain minimum flows imposed by ACO-05362 can counter efforts to maintain a normal level if minimum flows out of Duck Lake diminish lake levels at and below the normal level; and

**WHEREAS**, Senate Bill 662 of the 2024 legislative session proposes to amend Part 307 of the NREPA, including the definition of “normal level”. The proposed "normal level" would allow for temporary fluctuations in water level resulting from weather, natural events, or construction activities—offering greater flexibility to Grand Traverse County to comply with the current Circuit Court Order and with ACO-05362; and

**WHEREAS**, Senate Bill 662 was passed out of the Senate by a considerable majority and now resides in the House Committee on Natural Resources, Environment, Tourism and Outdoor Recreation; and

**WHEREAS**, Senate Bill 662 has been reviewed by outside Civil Counsel to the County Board of Commissioners who identify benefit to the County if the bill is adopted into law as presently written.

**NOW, THEREFORE, BE IT RESOLVED BY THIS BOARD OF COMMISSIONERS, THAT** Grand Traverse County supports Senate Bill 662 of 2024 as currently written, and hereby urges the Michigan Legislature to amend the current definition of “normal level” under Part 307 of Public Act 451 of 1994, as amended, with the definition included in Senate Bill 662 introduced to the House Committee on Natural Resources, Environment, Tourism and Outdoor Recreation.

**BE IT FURTHER RESOLVED** that the Grand Traverse County Clerk is requested to forward copies of the adopted resolution to the Governor of the State of Michigan, the State Senate Majority and Minority leaders, the State House Speaker and Minority Leader, the members of the Grand Traverse County delegation to the Michigan Legislature, and the other 82 counties of Michigan as commissioner correspondence.