

# PIPELINE

**MICHIGAN ASSOCIATION OF COUNTY DRAIN COMMISSIONERS**

MANAGING MICHIGAN'S WATER RESOURCES SINCE 1899

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**ESTABLISHING AN INLAND LAKE  
LEVEL UNDER PART 307**

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**STAFF SPOTLIGHT:  
JEFFREY PETERS  
WASHTENAW COUNTY WATER  
RESOURCES COMMISSIONER'S OFFICE**

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*Cover photo provided by Brian Jonckheere, Livingston County Drain Commissioner. This photo shows one of the lakes in Livingston County where the county had a lake level established under Part 307.*

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# PRESIDENT'S MESSAGE

**JOE BUSH**

**Ottawa County Water Resources Commissioner**



Hello everyone.

I hope everyone is doing well with staying safe and healthy. During this time, there are many challenges before us including the elections, COVID, protests, rioters, budget cuts, and simply the unknown of what the future holds. While we have not had summer conference and many of us have not met in person, I wanted to highlight a few things going on.

We are moving forward with several drain code bills, hosting a new drain school virtually, and we are still hopeful we can still see everyone at winter conference in Traverse City. That decision should be made within the next few months.

Each county is faced with specific, unique challenges that may not be common to the other counties. As an example, in Ottawa, we are still dealing with high ground water levels, high lake levels, shoreline erosion, and various petition projects. Our thoughts continue to be with one of our past Presidents, Doug Enos in Midland, whose house burnt after surviving the dam break earlier this year. He and his wife walked away, but with very little else. I know that each of you are going through this next season with many new unknowns, please lean on each other, our association members, consultants, and I am also here, as President, as a resource to help aide in anything that may arise.

My anticipation is that each of you are resolving your individual trials and tests to the best of your ability. I have spoken to many of you in our association about the challenges specifically and hopefully the dialogue is useful and helpful moving forward.

Missing summer conference was a huge let-down due to the close-knit group we have established over the years. It isn't just sitting through the sessions, but it is the handshakes, the pats on the back, and the time relaxing after hours that brings us all together.

MACDC, as an organization and tight-knit family, will get through these unknowns and the challenges mentioned. I will do all that I can to finish out my last six months being President of this association to the best of my abilities with supporting our members and all that are involved with MACDC.

Grateful to be your President,

Joe Bush  
MACDC President



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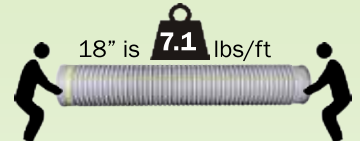


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# ESTABLISHING AN INLAND LAKE LEVEL UNDER PART 307

By: Kyle O'Meara, Fahey Schultz Burzych Rhodes

You may have had property owners asking you to establish a lake level for an inland lake or presenting you with petitions to establish a new lake level. These requests are becoming more common in response to recent historic rain events and high groundwater. County boards of commissioners and drain commissioners are specifically responsible for administering the inland lake level projects under Part 307 of the Natural Resources and Environmental Protection Act ("Part 307"). MCL 324.30701 et seq.


Part 307 outlines a detailed step-by-step process by which a lake level can be established and maintained. The process is unlike many other lake improvement processes and requires a court hearing before a circuit court judge. Thus, it is important to strictly adhere to the statute.

This article intends to simplify the detailed process and shed light on tips that can help a county effectively establish and maintain lake levels. The primary focus of this article is for establishing a new lake level, but a variety

of the information below can assist with: (1) establishing a new lake level special assessment district (requires a circuit court hearing); and (2) amending an existing lake level order (requires a circuit court hearing). Moreover, this article also gives tips on what the Department of Environment, Great Lakes and Energy ("EGLE") would like to see from a county before it establishes a lake level.

## 1. Initiating the Lake Level Process

The inland lake level process must begin either with (1) a petition signed by 2/3 of the landowners abutting a lake OR (2) a motion by a county board of commissioners. See MCL 324.30702. In rare circumstances, the State of Michigan may petition to establish a lake level. MCL 324.30706. If property owners submit a petition attempting to set a lake level, lakefront landowners are counted individually, not by property. For example, a husband and wife owning a property will count as more "landowners" (2 owners) than a limited liability



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company that owns a similar lakefront property (1 owner).

The practical difficulty with the unique property owner petition requirements is that it can be a challenge to calculate how many “landowners” signed a petition. Therefore, we often recommend that a county board of commissioners begins a lake level process by both recognizing a property owner petition and by its own motion. This way, if there is a miscount of signatures or the petition is otherwise defective, the process can still move forward.

After a county board of commissioners begins the process to start lake level proceedings, it will often delegate its authority under Part 307 to a county drain commissioner. See MCL 324.30702. This causes a drain commissioner to be responsible for most activities related to setting and maintaining a lake level. However, a drain commissioner must be cautious before undertaking any action associated with a lake level, as Part 307 requires county board approval for certain specific actions (e.g. spending over \$10,000 on lake level improvements). See MCL 324.30722.

If a county begins the process to establish a new lake level, a county board of commissioners must obtain a lake level study prepared by a professional engineer related to establishing a lake level. MCL 324.30703. It may require payment from property owners for the cost of the study (up to \$10,000). Id. A county may want to require money towards the lake level study from property owners not only to recoup costs associated with a lake level study, but also to indirectly see how much support a lake level project has from property owners.

The preliminary lake level study must consider a variety of factors mandated in Part 307, including (1) feasibility of a lake level; (2) alternative methods to establish a lake level; (3) any estimated improvement costs; and (4) a proposed special assessment district. Id. Generally, our office recommends sending a copy of a draft lake level study to EGLE. “Sending a lake level study to EGLE as early as you can before a lake level hearing is very helpful. We appreciate time to review studies so we can address any practical issues and concerns before a court hearing.” – Luke Trumble, EGLE Water Resources Division.

Once a lake level study is complete, the next step of the Part 307 process is a circuit court hearing to establish a lake level. At this point, legal counsel should assist a county with filing a lake level petition. Often times, a lake level petition may include a copy of a preliminary lake level study to help inform a judge about a particular project. It may also include various



letters of support from lake associations as exhibits to show support of the proposed lake level.

## 2. Court Hearing to Set a Lake Level

After a lake level petition is filed, a court will set a date for the lake level hearing. Part 307 requires counties/drain commissioners to provide unique notice of the court hearing by: (1) publishing notice in a newspaper (for three successive weeks); (2) sending notice to landowners in the proposed special assessment district by first class mail; and (3) sending notice to EGLE and other governmental agencies. MCL 324.30707. Therefore, it is recommended to double-check the date of the court hearing to ensure that you can meet all of the notice procedures.

Lake level hearings are unique, as property owners are invited to attend and offer testimony, much like a “public hearing.” At a typical hearing to establish a lake level, a judge will consider a variety of factors relating to the lake in question. These factors include: (1) past lake level records, (2) the location of septic tanks, drain fields, sea walls, docks, etc., (3) government surveys and reports, and (4) the hydrology of the watershed, among others. Id.

A court will use these factors to set a “normal” lake level, which is a level a lake should be under normal circumstances. This level can vary at times, based on things like heavy rain, drought, etc. Further, a judge may create normal lake levels that vary by season. Id. Often times, a lake will have both a “summer” and “winter” lake level.

A court may also set a boundary for the special assessment district of landowners that will benefit from the lake level and will be responsible for paying for it. The special assessment district may include those with direct or indirect access to the lake, DNR lands, public access sites, and municipalities. Id.

We recommend sharing both the proposed lake level and special assessment district with lake associations and other stakeholders before a court hearing to build consensus and avoid disputes arising about those issues at the hearing.

## 3. Hearing to Determine Special Assessments

Assuming a lake level and special assessment district boundary is established and a county wishes to pass lake level costs through to property owners, a drain commissioner will have to create a special assessment roll containing the parcels and landowners to be assessed and the amount of the assessments. These assessments can be used to recoup court costs and attorneys’ fees incurred to establish a lake level.



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A drain commissioner must hold a separate hearing (from the court hearing) regarding any special assessments and project costs. These hearings typically take place at a drain commissioner's office or a local township hall. Notice of these hearings must be published in a newspaper and provided by mail. MCL 324.30714. We recommend including a phone number and assessment amounts on any notices to address any assessment questions before the hearing.

Landowners will have the opportunity to protest any special assessments either in person at the hearing or by letter. After a consideration of these protests, a drain commissioner will either approve or revise the special assessment roll. Id. Next, a county board of commissioners must approve the roll as recommended by a drain commissioner. Once approved by a county board of commissioners, a lake level special assessment roll is final unless it is appealed within 15 days. Id.

#### 4. Inspections, Maintenance, and Future Proceedings


After a lake level has been set according to the Part 307 procedures, all dams on a

lake must be inspected every 3 years by a professional engineer. MCL 324.30722. A drain commissioner may spend up to \$10,000 per year on maintenance of a lake level and must obtain approval from a county board of commissioners for greater maintenance amounts. Id.

Over the years, should a county want to amend a lake level or a lake level special assessment district boundary, it must file a new petition in circuit court, as circuit courts have continuing jurisdiction over lake level orders pursuant to MCL 324.30707.

#### Conclusion

Part 307's process for establishing inland lake levels is unique, as it requires court action and for a county to obtain an engineering report. However, once a lake level and a lake level special assessment district are established, there is a funding mechanism in place for future lake level improvements. Should property owners approach you about an established or proposed lake level, we recommend you retain legal counsel experienced in Michigan lake level actions to help you through the nuances of Part 307's unique process.



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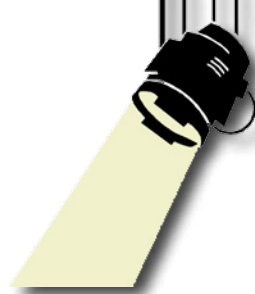
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# STAFF SPOTLIGHT: JEFFREY PETERS WASHTENAW COUNTY WATER RESOURCES COMMISSIONER'S OFFICE



Jeffrey Peters, Washtenaw County Water Resources Commissioner's Drain Maintenance Technician, is happiest when he is working outdoors. Jeff was the seasonal drain maintenance crew leader for nine years and has been the drain maintenance technician for the past year and a half. He spends about two-thirds of his time mowing the County's open channel easements with the office's brush hog and boom mower. Jeff's other responsibilities are making structure repairs, replacing pipe, and clearing brush.



*Jeffrey Peters, Drain Maintenance Technician, Washtenaw County Water Resources Commissioner's Office*

From an early age, Jeff knew he would never be happy with an office job. During high school and summers home from college, he worked at a dairy farm. Jeff earned his Bachelor of Science degree in Horticulture from Michigan State University and then spent the next 21 years working in the landscaping and wholesale nursery industry.

In 2008, the landscaping/nursery industry took a hit with the economic

downturn, and Jeff found himself laid off. Soon after, he applied for a position at the Water Resources office but did not get hired. Undeterred, he applied again in 2010 for a crew leader position with the office and was hired. It was a perfect fit.

Jeff's favorite aspects of his position are his ability to work outdoors, and his variety of work locations and tasks. Each day brings its own set of challenges, not the least of which is Michigan's changeable weather that can alter a planning schedule. When asked about his most useful tech tool, Jeff responds it is his smart phone, hands down, because no longer does he have to retrieve paper drain maps from the



*Jeffrey Peters, pictured with Washtenaw County Water Resources Commissioner's boom mower.*



# Copy of Tax for the Drainage of Lands

By Aitch No. 27 in Town No. 7 South of Range 3 East, for A. D. 1864

NAME.	SUB-DIVISION OF SECTIONS.	Sec.	No. of Acres.		Valuation.		Amount of Tax		
			Acres.	100ths.	Dollars.	Cents.	Doll.	Ct.	
Cyrus Brown	N 1/2 of N.E. 1/4	9					51	80	
David P. Holmes	1/4 sec. off the S.E. corner of N.W. 1/4	9					6	45	
W. J. Lawrence	S.E. 1/4 of S.E. 1/4	8					6	47	
"	N 1/2 of S.E. 1/4	9					19	42	
Lenawee County	E 1/2 of S.E. 1/4	9					77	70	
George Tarbock	N 1/2 of S.E. 1/4	9					161	87	
Phineas Price	N 1/2 S.E. 1/4	8					38	55	
"	E 1/2 N.E. 1/4	8					12	71	
D. W. Lyon	S.W. 1/4 S.E. 1/4	8					32	37	
Mary A. Quincy	E 1/2 S.W. 1/4	8							
Alfred Cronin	N.E. 1/4 of the N.W. 1/4 of S.E. 1/4	17					19	42	
	N.E. 1/4	17							
Signed								161	87
C. C. Crane								65	71
Justus Lowe									
Rollin Robinson									

1864 drain ledger signed by Ridgeway Township (Lenawee County) Drain Commissioner Justus Lowe, Fourth Great Grandfather of Jeffrey Peters. Photo credit: Jenny Escott, Lenawee County Drain Commissioner.

office; instead, he has direct access to the maps wherever in the field he may be.

Jeff notes that he has a great team of co-workers at the Washtenaw County Water Resources Commissioner's Office. Jeff's colleagues would say the feeling is mutual. As just an example of Jeff's consideration, Water Resources Commissioner Evan Pratt notes that Jeff "brings in sunflowers to our front office staff" and snapped the picture (below) of the beautiful bouquet to prove it.

In fact, those sunflowers are home-grown. In his spare time, Jeff raises about two acres of produce and cut flowers that he sells at a local farmer's market on Saturdays throughout the summer.

During cooler weather, Jeff has spent hundreds of hours on genealogical research, which will culminate in the book he is writing for and about his family. Through that research, Jeff was surprised to learn that his fourth great grandfather served as a county drain commissioner – possibly in Lenawee County – for six years in the late 1800s. Jeff also found that several family members in his history were "ditchers," according to the census records. Jeff says, "I guess drain work runs in the family."



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The program will include sessions on water quantity; water quality; water finance and planning; and water policy issues. Topics to be covered include:

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# 2021 MACDC

# INNOVATION & EXCELLENCE AWARDS

## PROJECT SUBMITTALS NOW OPEN!

Pre-application Entry Form must be received by **5:00 PM, November 1, 2020**

Complete applications are due by **5:00 PM, December 1, 2020**

Application is available at <https://macdc.us/awards>

## Awards Program | Rules and Procedures

### Purpose and Goals

This Awards Program aims to:

- Recognize creative and innovative accomplishments of all scopes, sizes, and budgets, of Members and Associate Members of the Michigan Association of County Drain Commissioners (MACDC).
- Promote public awareness of the activities and contributions of MACDC, its Members and Associate Members.

### Eligibility

Any MACDC Member or Associate Member may enter this Awards Program. Drain Commissioner(s) and/or Associate Member(s) may submit projects jointly or separately. Associate Members submitting separately must obtain the signature of the Drain Commissioner of record on their Entry Form.

### Award Categories

MACDC's panel of judges will review submittals. Two projects will receive an *Innovation and Excellence* award. MACDC will provide one award for each winning project; recipients may purchase additional copies of the award. MACDC may also award Honorable Mention certificates to a maximum of two projects.

### General Criteria

1. All entries must be submitted in accordance with the rules outlined in this document.
2. The project must have been conducted under the direct authority of the Drain Commissioner or through a Board of which the Drain Commissioner is a member.
3. A Member or Associate Member may enter as many qualified projects as they wish.

4. Projects that have received awards from other organizations may be entered.
5. Projects must have been completed and in use between April 1, 2018 and December 31, 2020.
6. Entries must comply with Submission Guidelines section of this document. Failure to comply may disqualify an entry. Please read the Guidelines thoroughly.
7. MACDC Awards Committee reserves the right to determine entry eligibility.
8. MACDC Awards Committee determines the Award Category based on submitted information.

### Judges and Judging Criteria

The MACDC Awards Committee will evaluate entries based on the work completed by the entering organization(s). Finalists and winners are selected based on overall project excellence. Judges will evaluate and compare projects based on the following.

#### Judging Criteria (*in no particular order*):

1. Public involvement and education
2. Environmental and water quality benefits
3. Use of new materials  
(*including improving/finding new uses of existing materials*)
4. Use of new technologies  
(*product/method/tool to solve problem*)
5. Innovation
6. Complexity
7. Cost effectiveness

**Note: Projects need not contain all seven of the above criteria. However, the more criteria that a project effectively encompasses, the greater consideration it will be given.**




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# ASSOCIATE MEMBER NEWS

## JEFF SKINNER CELEBRATES 30 YEARS AT CSI GEOTURF



Skinner

Donn Ellis, President of CSI Geoturf, and the entire staff of CSI Geoturf would like to recognize Jeff Skinner for his 30 years of sales and leadership at CSI Geoturf. Jeff began his career as inside sales where he set the tone of first rate customer service at the Highland, MI corporate location. He quickly became known for his expertise in all things geosynthetic, erosion and sediment control and stormwater management. Soon after having moved to a vitally important outside sales and service position, he continued to demonstrate his value to both the company and his wide ranging customer base. I cannot think of a more knowledgeable and professional representative to have on our staff. Congratulations Jeff on a job well done and your unmatched contributions to the company and industry that you have served.



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- Concrete

# MACDC EVENT CALENDAR

## DECEMBER 1 – 3, 2020

Great Lakes Water Infrastructure  
Conference  
Suburban Collection Showplace, Novi

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## FEBRUARY 10 – 12, 2021

MACDC Annual Winter Conference  
Grand Traverse Resort, Acme

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## JULY 13 - 16, 2021

MACDC Annual Summer Conference  
Mission Point Resort, Mackinac Island

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Editor's Note: to place your event on this  
calendar, contact us at 517.484.9761.



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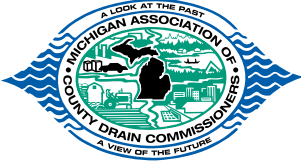
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