



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.

EATON COUNTY BOARD OF COMMISSIONERS

JUNE 20, 2024

**RESOLUTION OPPOSING MDHHS PLANS TO IMPLEMENT NEW CONFLICT
FREE ACCESS AND PLANNING STRATEGIES IN MICHIGAN**

Introduced by the Public Safety Committee

WHEREAS, Community Mental Health Authority of Clinton, Eaton, and Ingham Counties (CMHA-CEI) is a multi-county Community Mental Health Services Program (CMHSP) and a Certified Community Behavioral Health Clinic (CCBHC) serving residents of Clinton, Eaton, and Ingham Counties. CMHA-CEI provides specialty mental health services and supports to over 13,000 persons with mental health conditions, youth with serious emotional disturbance, individuals with intellectual/developmental disabilities and individuals with substance use disorders; and

WHEREAS, the public mental health system in Michigan is based on the Federal Community Mental Health Centers Act of 1963 and grounded in the Michigan Mental Health Code, Public Act 258 of 1974. This created a state and county partnership for community mental health and related safety net services; and

WHEREAS, this arrangement ensures that shared state and county mental health policy objectives are accountable to local communities and their elected representatives. This arrangement also ensures that resource and care decisions are ultimately accountable through board governance to the persons and families that need public mental health services, including allocated PA2 funding; and

WHEREAS, CMHSPs are instruments of county government with statutorily defined obligations that mitigate against the likelihood of a pecuniary conflict of interest. These include direct accountability to the community through a public board, open meetings, a guaranteed recipient rights appeal & grievance system, established independent person-centered planning facilitation requirements, and expanding availability of consumer self-determination/self-directed options.

WHEREAS, MDHHS has announced its decision to require CMHSPs to separate service assessment and planning from service delivery, requiring beneficiaries to receive the assessment and planning services from one entity and ongoing direct services from another, separate entity by October 1, 2024; and

WHEREAS after careful review the conclusions are that the current decision:

- Is in conflict with the statutory responsibilities of CMHSPs under Michigan law;


- Erroneously implies profit driven or undue enrichment motives on the part of governmental entities (CMHSPs and PIHPs) instead of recognizing what is actually a formal transfer of governmental responsibility from the State to the Counties for the delivery of public behavioral health services;
- Ignores the capitation-based financing of the Michigan public behavioral health system, which is constant and does not vary by volume of individuals served negating any conflicts of interest in service planning and service delivery;
- Ignores Michigan's current shared risk (with MDHHS) financing system which already mitigates against conflict and self-interest.
- Is in conflict with the Certified Community Behavioral Health Clinic (CCBHC) model currently being implemented and expanded in Michigan;
- Ignores, at best, and disregards, at worst, input from persons with lived experience that have consistently stated that the available procedural safeguards are preferable to systemic/structural upheaval inherent in MDHHS announced decisions.

THEREFORE, BE IT RESOLVED, in the strongest possible terms, and for the reasons noted herein, the Eaton County Board of Commissioners **opposes the MDHHS announced structural strategies** for compliance with the federal Conflict Free Access and Planning Rules.

FURTHER BE IT RESOLVED, that Eaton County respectfully asks the Governor to urge MDHHS to rethink their proposal for the Conflict Free Access & Planning requirements within the context of the 61 year state and county statutory relationship for public mental health services and collaborate with the Michigan Community Mental Health Association to identify procedural pathways for compliance that build on the strengths of the existing CMHSP system.

FINALLY, BE IT RESOLVED, that a copy of this resolution be provided to US Senator Debbie Stabenow, US Representative Elissa Slotkin, Governor Gretchen Whitmer, Senate Majority Leader Winnie Brinks, Speaker of the House Joe Tate, Senator Sarah Anthony, Representative Angela Witwer, Michigan Department of Health and Human Services Director Elizabeth Hertel, the Michigan Association of Counties, and all Michigan counties.

THIS RESOLUTION was adopted by the Eaton County Board of Commissioners at its regularly scheduled meeting on June 20, 2024.



 Chairman of the Board of Commissioners



 Clerk of the Board of Commissioners