

Taylor Lake Association

Newsletter - Summer 2000

Presidents Message

Joni Grob

We sure have been having a beautiful summer on the lake, not too hot, and not too cold.

Thinking of news since the last newsletter. The board is looking into the possibility of having a lake association web site soon. As soon as we have more information we will let you know.

I've attended the Michigan Lakes and Stream annual conference, and learned a lot of valuable and interesting information.

Chuck Pilar has been continuing his water quality testing including the weekly secchi disc readings, and the spring and summer phosphorus tests. All tests have been positive indicators of our Taylor Lake water quality.

As an update on the Goose Round Up, the number of geese on the lake during the round-up dates in June was only five. Because we had voted on a minimum number of ten geese on the lake before we would remove the geese, we did not participate in the program this year. A discussion about the quantity of ten geese as the trigger for Goose Round up participation, and the amount to remove was brought up at our last board meeting. The question will most likely be brought up for discussion at our next annual meeting.

We are preparing for our annual picnic. The date is Sunday, August 6th, 1:00 p.m. at my house (18469 Pellett). The picnic is always a nice opportunity to meet some new neighbors and old neighbors.

Goosegate – History and status of the Canada Goose

First, an update on the ongoing Taylor Lake goose management program: In accordance with the decision of the general membership made at a previous annual meeting, a roundup of the geese was scheduled for this June. The number of the geese resident on the lake was twelve (in two family groups) which is above the threshold level of ten set at the annual meeting. As the day of the round up approached only one of the family groups could be found on the lake. This brought the number of geese well below the ten needed for the roundup. It was then agreed that the round up would be skipped for this year.

The Canada Goose, magnificent bird of the North American migratory flyways, or Lawn Rat? This is one of the few issues concerning the lake about which there seems to be very little room for compromise or a consensus of opinion. I became aware of the issue the first year I lived at the lake. In the initial meetings I attended where there was a representative of the DNR speaking on the subject the term “nuisance geese” was used to describe and differentiate these geese from those geese that were the true “migratory” geese. I was skeptical about this distinction. I thought it was like how people separate plants into weeds and non-weeds, like how a rose is a weed if it is growing in a cornfield.

The DNR told a story about how the non-migratory resident geese (the problem geese) were created by breeding programs at a number of the Midwest's natural resource agencies. These programs were an attempt to restore the

Canada Goose population, which had crashed to very low levels by the first half of the 20th century. We were told that the breeding programs changed these geese. They had become larger, they migrated only short distances, and they had habituated to living in urban and suburban areas. I remained skeptical about whether there really was any difference between the Frankenstein Goose created by man in a misguided effort to do good, and the true wild migratory Canada Goose. But, I did notice, as the DNR representative had pointed out, that the geese flights that landed on the lake during the normal fall migration did seem to be made up of smaller birds. These would land on the lake in the evening and leave in the morning. They did not come up on lawns and were not approachable on the lake.

I recently happened on an explanation of the goose problem that does pacify the uneasiness I had with the DNR's account. The March 2000 issue of Audubon Magazine has an article on the Goose Problem with an alternative explanation of why the resident geese behave differently than the migratory geese. The article states that when the Midwest was settled in the Nineteenth century there was already a native population of larger geese, which migrated only a few hundred miles each year, and whose natural habitat was prairie pothole lakes, ponds, and wetlands. This subspecies of the Canada Goose, *Branta canadensis maxima*, was one of the first populations to crash because they were so easy to hunt. They could be hunted (for both birds and eggs) year round because they lived and bred in the Midwest, while the migratory geese could only be hunted during the spring and fall migration. By the time that subsistence and market hunting were banned, most of the survivors of this subspecies existed only in captive flocks kept as live decoys.

When the States began their breeding programs many of the birds they started with were taken from these already captive flocks. In the words of Harold Hanson, an Illinois biologist, these birds are "large, low-flying Canada geese, innately placid and highly adaptable to human rearing". Even if some of the breeding stock did consist of the smaller migratory geese, the *maxima* birds likely out-performed them in the captive programs. When the resulting birds

were released into the human engineered environment of the late Twentieth century U.S. they found a close approximation of their native prairie origins in the golf courses, manicured lake fronts, and other suburban residential and commercial areas.

From the above explanation it looks like the resident birds are not manmade Frankenstein Geese but are a natural subspecies that have been able to take advantage of a human modified environment. All this may not change anyone's opinion about how to best manage the *goose problem* but at least it does illustrate how nature often adapts or reacts to human actions in unexpected ways.

Gypsy Moth update

Early in the morning of May 15th some of you may have seen a low flying helicopter flying back and forth over the lake and nearby properties. There was also a small airplane that circled overhead. The helicopter was spraying the BT pesticide used to control the Gypsy Moth caterpillars. The airplane was the spotter, which identified the areas to be sprayed, and directed the helicopter pilot.

BT stands for *Bacillus thuringiensis*. It is considered to be one of the safest pesticides as it affects only caterpillars, and only at a specific time during their growth cycle. The BT degrades into harmless elements within a few days after the application. Caterpillars for moths and butterflies that hatch before or after the Gypsy Moths should not be affected since they are not at the same growth stage during this time.

By mid June the Gypsy Moth caterpillars that survived the BT spraying had grown and began gathering on the tree trunks. Then on June 19th it was noticed that nearly all of these had died. This was most likely due to the entomofaga myahmega fungus. This fungus, which is specific to Gypsy Moth caterpillars, is activated by a period of moist weather during the later stage of the caterpillar growth cycle. The fungus remains in the soil in spore form and is ready to attack the caterpillars in the years the weather cooperates and provides the rainy period at the right time.

There should be a very low number of Gypsy Moths which breed and lay egg masses this year. Hopefully these tree-eating pests will not be a problem again for at least several years. Of course everyone should still be on the lookout for the egg masses and destroy them whenever they are found.

Beach Sanding and Docks

Creating a sandy beach or installing a dock are the most common changes a waterfront property owner wants to make to their shoreline. The lake association does not have any ordinances or restrictions concerning how these are constructed, but the Michigan Department of Environmental Quality does.

In the State of Michigan “Part 301” Inland Lakes and Streams statute it states that a permit is required before any dredging or filling of a bottomland is performed, and for the construction of any permanent structure on the bottomland. Specific exceptions to the permit requirement are listed for “a seasonal structure placed on the bottomland to facilitate private noncommercial recreational use” *such as a dock which is removed in the winter.* And “reasonable sanding of beaches to the existing water’s edge by a riparian owner” *but not into the water.*

Before installing a dock it is not a bad idea to check with your neighbors and make sure they agree with yourself about where the lake-bottom property line is located. The line does not necessarily follow the line that is on the land. In resolving property line issues, the courts customarily rule that the bottomland property line goes from the shoreline straight out to the center of the lake without regard to the angle that the upland property line hits the shoreline.

Before attempting to create a sandy beach it is not a bad idea to think a bit about what the real objectives are. On a small inland lake like ours most properties have a naturally weedy, mucky bottomland between the shoreline and the deeper water. Simply dumping sand into the water (permit required) or sanding on the shoreline may not be best solution, and is certainly not a permanent solution. Many people find that removing the lake weeds by

raking eventually creates the kind of weed-free area that is pleasant to swim or wade in. Over a period of several growing seasons, the layer of muck, which is no longer renewed by the decay of the weeds, oxidizes and a firmer sandier bottom appears. Of course as they say, your results will vary, depending on the topology of your bottomland and how deep the mucky layer is. The other factor is the geese issue mentioned above. The geese do seem to be particularly attracted to those sandy beaches.

FAQ - Frequently Asked Questions

This issue’s FAQ column is all about property rights and how they affect a riparian property owner.

Is there a zone on land at the water-edge where there is public access to walk around the lake?

No, although this is a common misconception. The confusion is caused by the difference between a riparian body of water and a non-riparian body of water. On non-riparian waters, like the oceans and the Great Lakes, and a few of the larger inland lakes that are considered commercially navigable waterways, the waterfront property ends at the “ordinary high-water mark”. On large waters where there is tidal or storm action this is normally where terrestrial vegetation ends and the sandy or rocky beach begins. The beach is considered to be bottomland and part of the lake. In this case the lake and the beach is publicly owned and it is not a trespass to walk on the beach. On a riparian lake, which includes nearly all small inland lakes and of course Taylor Lake, the waterfront property does not end at the water-edge but continues out to the center of the lake. The State of Michigan “Part 301” Inland Lakes and Streams statute says this: “...A riparian owner among other rights controls any temporarily or periodically exposed bottomland to the water’s edge, wherever it may be at any time, and holds the land secure against trespass in the same manner as his or her upland...”. As for wading around the lake, this is provided for as a temporary recreational use of the bottomland, similar to anchoring while fishing from a boat.

Does the association decide who can be on the lake?

No. Who can be on and use the lake is actually determined by legislative acts and riparian common law that as evolved over many, many years of court rulings. In the case of Taylor Lake three types of access have been provided over the years. First, the majority of accesses, approximately sixty parcels, are direct lakefront riparian use. Any property that has any lakefront boundary has full legal use of the lake. The second type of access is by the use of a common lakefront parcel that is shared (owned in common) by non-lakefront properties. The common property is defined as a park. There is one such park on the lake that provides full legal use of the lake for thirteen owners. The third type of access is by ingress/egress easement, which is the right to pass over a property for the purpose of gaining access to the lake. There is one such easement on the lake that provides legal access for four off-lake property owners. Current land use and land division ordinances make it unlikely that very many additional accesses will ever be created. Environmental regulations prevent the creation of channels and canals that, in the past, were a method used to expand lake access. Township ordinance prevents the creation of additional access easements. There are a few un-built side lots, and a few larger parcels that could provide a modest number of additional lake users. There is no road-end or other public property that provides for public access.

Occasionally someone who I do not know asks if they can bring their boat across my property to go fishing in the lake. They kind of imply that they have the right to fish if only there was access. Should I feel guilty if I do not permit them to do this? Or am I not protecting my own property rights and those of my lake front neighbors? Or, in other words, is the lake really private property, or is it public property that happens to be completely enclosed by private property?

Let's say you own a 160-acre parcel of dry land. Your land is private. A member of the public that could teleport into the middle of your land would clearly be trespassing if they were there without your permission.

OK. Now let's say you're ambitious and dig-out a 45-acre hole in the middle of your property and it floods from ground and rainwater, creating a 45-acre lake. You stock the lake with fish. There is no connection by surface water from your lake to any natural body of water. Then a member of the public teleports themselves to the middle of your lake and begins fishing. Are they trespassing? Yes. In this case, as an artificially created body of water with no connection to any natural body of water, it is no different than if you found someone using your backyard swimming pool.

Now let's say that instead of digging your own lake, you buy a 160-acre parcel with a 45-acre lake in the middle of it which was naturally created at the end of the last ice age. There is no watercourse that flows into the lake but there is very small non-navigable watercourse (ditch size) which occasionally flows out of it. Other than that, your upland property completely encloses the lake. If a member of the public teleports themselves to the middle of the lake and begins fishing. Are they trespassing? Do you own the lake? Or does the State own the lake? In the case of a naturally created lake the answers are not always simple and clear. Of course, barring the development of teleporation technology the fisherman obviously had to trespass to enter or exit the lake.

The final example is of course a description of Taylor Lake, exempt that instead of a single private property owner there are just over seventy private property owners.

Doesn't the State of Michigan own the lake or at least the water and fish in it? How can the lake, or any lake, be private if this is the case?

Here there is confusion over the power to regulate, the right to use, and the ownership of. The riparian property owner owns the bottomland of the lake. And, as determined in numerous court cases, the riparian has the primary right-of-use to the water in the lake. The State of Michigan has the power to regulate the use of the water and the management of the wildlife in the lake. No one actually owns* the water in the lake, just as no one owns the air over the lake.

* We know of two exceptions to this. In many western States, where water is a scarce resource,

it is possible to buy and sell water rights. In effect, to buy and sell the water in a lake or river, or groundwater, using laws known as “the doctrine of prior appropriations”. This is how cities like Los Angeles have been able to reach out and take water from more rural areas and literally drain lakes dry.

The other exception applies here in Michigan. When the water is frozen the adjacent riparian property owner also owns the ice. This is a result of the need to define ice ownership when lake ice was harvested in the winter as a commercial product.

So why if “the State of Michigan has the power to regulate the use of the water and the management of the wildlife in the lake” can’t it require the lake be opened up for public use?

First of all, the power to regulate is limited. Its primary purpose is to assure that the water resource is not wasted by being polluted and

that the resource is preserved into the future. An analogy can be made between this and deer hunting regulations. The State determines how, where, and when deer can be hunted. Many deer live on private property, and the property owner does not own the deer. However, the State cannot require that a property owner make their private property available to the public for deer hunting.

Well, I am still confused. If I do not allow access, am I hogging a natural resource that should be able to be used and enjoyed by anyone?

It is kind of up to you. As riparian property owner you may let anyone you want to, to use the lake. But be aware that with your permission that they may become your guests and, as with a guest that you invite into in your home, you may share some risk and liability.

In the above column you may have noticed several references to the State of Michigan “Part 301” Inland Lakes and Streams statute. This statute is the bible of regulation for riparian property owners. For those of you who surf the Net:

<http://www.dnr.state.mi.us/law%5Fbook/statutes/code/part301.html>

Takes you to an online copy of this statute.

A second governmental URL of interest to Taylor Lake property owners is:

<http://www.dnr.state.mi.us/law%5Fbook/rules/lwc%5F63.html>

Which is the published MDNR’s Oakland County Lake Regulations where Taylor Lake is listed as a “no wake” lake. In the next newsletter issue we will explain why the lake is “no motor” by Taylor Lake Association ordinance but “no wake” by Rose Township ordinance.

Annual Association Picnic
This Sunday
August 6th 1:00 p.m.
18469 Pellett