



Courte Oreilles Lakes Association
P.O. Box 702
Hayward, WI 54843

August 16, 2021

Jay Kozlowski
Zoning and Conservation Administrator
Sawyer County Zoning & Conservation Department
10610 Main Street Suite 49
Hayward, WI 54843

Re: **Notice to return lake levels to prior established elevations**

Dear Jay:

The Problem

Sawyer County has lowered the water level of the Billy Boy Flowage and Little LCO lake, and stated that the goal to lower the level of Lac Courte Oreilles, relying on a Public Service Commission (PSC) order from 1955, which used numbers from 1936.

In 2021 the elevations have been moving lower due to the County trying to correlate the lake levels to a 1930's elevation that cannot be re-established since the PSC order specified the gauge at a particular location and this original pipe marking elevation is no longer in existence. This has been adversely affecting the riparian owners' rights. Numerous owners have noticed that water levels are significantly lower than they have been for years, and these lower levels are already affecting their abilities to safely remove or return their boats on their lifts (some having to do it by hand), dock lengths, and ability to navigate, use and enjoy on the lakes.

The Wisconsin PSC has no authority in regards to lake levels. In fact, by their own statement, they do not. Their order is not valid. See the Riparian Owners' Rights section below.

In the past the Courte Oreilles Lakes Association, Inc. (COLA) has had a more neutral position on the lake levels as some members thought it the water seemed high, others too low. But it was virtually always within a usable, acceptable range. But, these newer, significantly lower levels are not within what was previously established and managed for well over the last twenty-plus years. COLA, as you know, represents hundreds of property owners on the LCO Lakes.

Useable, Historic Water Levels

For years prior to and since 2006, as noted from *FAS, LLC v. Town of Bass Lake, WI Supreme Court* case where the DNR established/set the lake level on an LCO property (tax ID 2345) by the insertion of a steel pipe on the property showing OHWM and the lake level that is to be maintained. This pipe placed by the DNR is still on the property.

Additionally, the gauge on the Billy Boy Dam was set in 1953 and has been the level (elevation) at which the lake has been maintained. This should not be changed since this has been the level riparian owners have relied on for over 68 years.

There are three outspoken residents in the Town of Bass Lake who've been seeking to lower the water, negatively affecting the riparian lakeshore owners' rights on Little LCO and LCO water levels. None of these three individuals own lakeshore on LCO or Little LCO and have no standing to question the water elevations that have been maintained for decades.

The Riparian Owners' Rights

Following cited from:

[Wisconsin Water Law](#)

A Guide to Water Rights and Regulations

Paul G. Kent and Tamara A. Dudiak

University of Wisconsin-Extension

Cooperative Extension

University of Wisconsin-Stevens Point

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The DNR since 1967 is the regulatory agency for water levels:

The DNR is the primary agency that regulates dams and flowages in Wisconsin.²

²*Historically, because of the relationship between dams to transportation and commerce, dams were regulated in Wisconsin by the Railroad Service Commission. The Wisconsin Department of Natural Resources undertook these functions in 1967 when the Department was reorganized from the Conservation Department and other agencies. See 1967 Wis. Laws Ch. 75.*

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Wisconsin case law shows that since this has been the established levels (elevations) for over 20 years, they must be maintained:

Apart from regulatory requirements, the courts have in some cases held that neighboring landowners who have relied on the water created by the dam may have the right to seek to have the dam continued. In general, if an artificial body of water is created and maintained for at least 20 years, the owners have a right to have that water level continued if they have reasonably relied on its use.⁴⁰

⁴⁰*Tiedeman v. Middleton, 25 Wis. 2d 443, 130 N.W.2d 783 (1964). For example, in Smith v. Youmans, 96 Wis. 103, 70 N.W. 1115 (1987), the owner of a dam created a flowage which established a navigable body of water for over 40 years. Plaintiffs made sizeable expenditures building summer cottages along this flowage. Court proceedings began when the defendants threatened to lower the lake level. The court enjoined the defendants from interfering with the lake level on the theory that a prescriptive right arose which prohibited the defendants from interfering with the lake levels. See also, Charnley v. Shawano Water Power & River Improvement Co., 109 Wis. 563, 85 N.W. 507 (1901); and In re Horicon Drainage District, 136 Wis. 227, 235, 116 N.W. 12 (1908).*

Correct The Problem

We request that any current action taken on adjusting/lowering the elevations and water levels be reversed and put back to the elevations that riparian owners have relied upon for well over 20 years. This benchmark should be set off the pipe located at 7915N County Road E and transferred to a location at the Town of Bass Lake Boat Landing in Anchor Bay with a gauge for public access (see attached map).

Sincerely,

Kevin Horrocks
President
Courte Oreilles Lakes Association

Cc: Tom Hoff, Sawyer County Administrator
Jacob Druffner, Wisconsin Department of Natural Resources