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TO: Al Robinson, Chair
Ways & Means Committee

THROUGH: Robert E. Guenzel
County Administrator

FROM: Janis Bobrin
Drain Commissioner

DATE: February 24, 1999

SUBJECT: Whitmore Lake Level

BOARD ACTION REQUESTED:

Board authorization to undertake an engineering study to evaluate improved lake level control capability of the Whitmore Lake Level and to exceed the Statutory annual lake level control facility maintenance limit of \$10,000 for the 1999 assessment year (July 1, 1998 to June 30, 1999) for Whitmore Lake Level

BACKGROUND

Whitmore Lake level is operated and maintained by the Washtenaw County Drain Commissioner.

Whitmore Lake Level is managed by the Counties of Washtenaw and Livingston under the Inland Lake Level Act (P.A. 146 of 1946 as amended by P.A. 51 of 1992). Through this Act, and in response to petition by at least two-thirds of the property owners around the Lake, and action by the Boards of Commissioners of Washtenaw and Livingston Counties, the Livingston County Circuit Court established a legal lake level in 1969. Whitmore Lake spans county lines. A portion is in Northfield Township, Washtenaw County, and a portion is in Green Oak Township, Livingston County. The actual operation and maintenance of the Lake Level was assigned by the two County Boards of Commissioners to the Washtenaw County Drain Commissioner.

Whitmore Lake is what is termed a "kettle lake," having no major sources of water flowing into or out of it. Its level, therefore, fluctuates significantly, based principally on annual rainfall and evaporation. Its only source of inflow is water pumped from a small stream, the Horseshoe Lake Outlet Drain. In many years, by late summer, residents report that the level is too low, interfering with recreational use (boating).

This memorandum provides information about the Inland Lake Level Act and the authority it

provides, a brief history of the Whitmore Lake Level, and a description of actions requested from the Washtenaw and Livingston County Boards of Commissioners.

DISCUSSION ONE: ENGINEERING STUDY REGARDING IMPROVED MANAGEMENT OF WHITMORE LAKE LEVEL

The Inland Lake Level Act provides that, upon receipt of a petition from two-thirds of the owners of land abutting an inland lake, or upon its own motion, a board of commissioners may direct its legal council to initiate a petition in court requesting proceedings to determine the "normal" level for the inland lake, and a special assessment district that will pay for any improvements (i.e., dams, pumps or other facilities) required to maintain the lake at the court-established level. The "normal" level is defined in the Public Act as "the level or levels of water of an inland lake that provide the most benefit to the public; that best protect the public health, safety and welfare; that best preserve the natural resources of the state; and that best preserve and protect the value of property around the lake..."

The above-described process, initiated by property owner petition, was pursued for Whitmore Lake in the 1960's. Because the Lake straddles two counties, both Washtenaw and Livingston County Boards agreed to petition the Court; the legal levels to be maintained---not below 895.00 feet above sea level, nor above 895.60 above sea level---were established by Livingston County Circuit Court in 1969. These levels were intended to enhance the recreational use of the Lake, yet to keep the level below a point where damage to low-lying property might occur.

The two counties agreed that Washtenaw would construct and maintain facilities designed to achieve these levels. The County Drain Commissioner was assigned this responsibility (named the "delegated authority" in the terminology of the Act) on behalf of the Board. Under the Inland Lake Level Act, the delegated authority may then undertake necessary studies and surveys, acquire and/or construct facilities necessary to maintain court set levels, and subsequently, spend up to \$10,000 per year to maintain lake level control facilities. Costs are assessed against the property owners in the court-established special assessment district.

Office files indicate that the project was controversial from day one. There is no major source of water to feed Whitmore Lake. The lake level facilities for Whitmore Lake that exist today are those that were in place in 1989, when I assumed office. They consist of a pump that brings water into the Lake from the Horseshoe Lake Outlet Drain when the water level in the Drain is high enough to make pumping feasible. A weir structure allows water to be let out of the Lake if the level exceeds the Court set high level. (See attached maps.) In late summer, generally the driest time of the year, and also when lake level augmentation is most needed, Horseshoe Lake Outlet Drain has little or no flow to supply. Over the years, low summer levels have been a continual concern. A study conducted by the Huron River Watershed Council did not provide a viable solution to augmenting summer low levels.

While the Inland Lake Level Act provides me (as delegated authority) with the ability to maintain and repair the facilities that have been established to maintain the Whitmore Lake Level, up to the annual ceiling of \$10,000, there is no authority in the Act that allows me to undertake additional studies or to construct new facilities. It is the opinion of legal counsel (attached) that an additional petition and/or action by the County Boards of Commissioners is needed to initiate these activities.

Residents have long requested that a study be undertaken to identify, evaluate, and cost-out alternative lake level management options. All associated costs for a study would be assessed against the Whitmore Lake Special Assessment District. The summer of 1998 was extremely dry, and interest in exploring additional options for maintaining the Lake level has become a major concern among Lake property owners.

It is estimated that, for a cost of approximately \$12,000 (engineer's estimate), a study could be performed evaluating the feasibility of low-flow pumping from Horseshoe Lake Outlet Drain into Whitmore lake. With 437 parcels in the special assessment district that pays for Whitmore Lake Level maintenance (178 in Washtenaw and 259 in Livingston), the cost would be approximately \$27.50 per parcel. (Whether to proceed with actual construction would be the subject of future, independent action.) Several Whitmore Lake riparian owners have asked for the opportunity to address the Washtenaw County Board of Commissioners to discuss the Lake Level issue and request that the Board authorize a study as described above; they will be present on February 24. A similar presentation will be made to Livingston County Commissioners. If the Board so decides, an appropriate resolution authorizing the requested Lake Level Study, conditioned on Livingston County's concurrence, will be prepared for Board action.

DISCUSSION TWO: AUTHORIZATION TO EXCEED ANNUAL MAINTENANCE LIMIT

The Lake Level Act, Section 24(4), allows the expenditure of up to \$10,000 per year for annual maintenance. This section also provides that expenditures in excess of \$10,000 shall be authorized by resolution of the County Board. The fiscal year for Drain and Lake Level assessments is July 1 to June 30. For the year to date, approximately \$6,000 has been expended. Most of this was spent on siting and installation of new gages for measuring the Lake Level. Inspection reveals that there is an immediate need to perform maintenance activities that would exceed the funds available. These activities include removal of sediment that is obstructing a pipe through which water flows from the pump at Horseshoe Lake Outlet Drain into Whitmore Lake (estimated cost of \$5-6,500), and installation of safety improvements at the pump---including guard rail, an access walkway and installation of grating around the pump (estimated cost of \$7-\$8,500). With approximately \$4,000 remaining of the \$10,000 that I may assess annually, I request authorization to exceed the annual maintenance limit by \$11,000.

With your approval, a resolution authorizing the Delegated Authority, Washtenaw County Drain Commissioner, to exceed the annual maintenance limit of \$10,000 by an amount not to exceed \$12,000 will be prepared for Board action. Again, note that action by the Livingston County Board of Commissioners also will be required.

Please further note that the study called for under Discussion 1 would not be completed in the current assessment year, so that repayment of the expenditures described in this memorandum could be staggered over the next two years.

IMPACT ON HUMAN RESOURCES:

None

IMPACT ON BUDGET:

None

IMPACT ON INDIRECT COSTS:

None

ATTACHMENTS:

Resolution

Legal Opinion of G. Seidlein

Map of area showing Horseshoe Lake Outlet Drain, pump, etc.

A RESOLUTION AUTHORIZING A STUDY TO EVALUATE IMPROVED LAKE LEVEL CONTROL CAPABILITY OF THE WHITMORE LAKE LEVEL AND TO EXCEED THE ANNUAL LAKE LEVEL MAINTENANCE LIMIT

WASHTENAW COUNTY BOARD OF COMMISSIONERS

March 10, 1999

WHEREAS, the Washtenaw County Board of Commissioners has charged the Drain Commissioner with the responsibility of maintaining court-set lake levels; and

WHEREAS, the level of Whitmore Lake fluctuates significantly based principally on annual rainfall and evaporation; and

WHEREAS, Whitmore Lake residents have expressed concern with low lake levels for many years; and

WHEREAS; the Lake Level Act allows expenditure of up to \$10,000 per year for annual maintenance; and

WHEREAS, inspection reveals that there is an immediate need to perform maintenance activities that would exceed this amount for the assessment year; and

WHEREAS, this matter has been reviewed by Corporation Counsel, the Finance Department, Human Resources, the County Administrator's Office and the Ways and Means Committee

NOW THEREFORE BE IT RESOLVED that the Washtenaw County Board of Commissioners hereby authorizes the Drain Commissioner to undertake an engineering study to evaluate improved lake level control capability of the Whitmore Lake Level in the amount of \$12,000.

BE IT FURTHER RESOLVED that the Washtenaw County Board of Commissioners hereby authorizes exceeding the Statutory annual lake level control facility maintenance limit of \$10,000 for the 1999 assessment year for Whitmore Lake Level.

BE IT FURTHER RESOLVED that these actions as taken with the understanding that said actions must also be approved by the Livingston County Board of Commissioners.

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