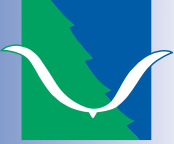


Emmet County Lakeshore Association

Summer 2022 Newsletter



LTBB – U.S. SUPREME COURT -- THE CASE IS OVER.

U.S. SUPREME COURT DOES NOT ACCEPT TRIBE'S CASE ON APPEAL

The Little Traverse Bay Bands of Odawa Indians (the "Tribe") in 2015 filed suit asking that 337 square miles of Emmet County and a portion of Charlevoix County be declared an Indian Reservation. ECLA's request to intervene in the case was approved by Federal Judge Maloney. The case involved the interpretation of an 1855 Treaty.

Judge Maloney ruled against the Tribe and the Tribe appealed to the 6th Circuit Court of Appeals. A 3-judge panel again ruled against the Tribe. The tribe asked for the entire 6th Circuit Court bench of judges to decide the case and that request was denied. The Tribe then appealed to the U.S. Supreme Court. The Supreme Court declined to hear the Tribe's case. **THE CASE IS NOW SUCCESSFULLY OVER!**

ECLA hired a law firm with attorneys experienced in Indian law. Like the Tribe, ECLA also hired an attorney with extensive experience before the U.S. Supreme Court. This legal representation was extremely expensive. At one point, ECLA was \$600,000 in arrears on legal bills, but through the goodwill of ECLA's law firm, the Dykema Gossett PLLC firm, and our Vice President's relationship with that firm, the firm carried us until we were able to raise the funds to defend the litigation. ECLA, with the

help of a steering group, raised several million dollars to finance its defense. It was the seed money from ECLA's memberships that financed the kickoff and permitted the intervention. For this, ECLA members should be very proud of their part in this success. We hope all ECLA members will attend our celebratory annual meeting luncheon on August 5, 2022, at the Birchwood County Club. RSVP by July 29th to Mandi Garber at 231-373-0754.

As a side bar, while our case was pending, both the Michigan Supreme Court and the U.S. Supreme Court were presented with two cases where a criminal defendant sought to have convictions overturned on the basis that their crimes occurred on LTBB's "Reservation." ECLA filed a brief in the Michigan Supreme Court case explaining that this issue was already pending before the 6th Circuit Court of Appeals and that the lower court had already determined that the area was not an Indian Reservation. Not surprisingly, the Tribe has filed a brief supporting this defendant. In the U.S. Supreme Court matter, a certiorari petition filed by the criminal defendant was denied. We do not read anything into that decision, however, as there were numerous procedural reasons for the Court to deny cert.

Case 1:15-cv-00850-PLM-PJG ECF No. 641, PageID.12605 Filed 02/28/22 Page 1 of 1

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

February 28, 2022

Scott S. Harris
Clerk of the Court
(202) 479-3011

Clerk
United States Court of Appeals for the Sixth Circuit
540 Potter Stewart U.S. Courthouse
100 East Fifth Street
Cincinnati, OH 45202-3988

FILED
Feb 28, 2022
DEBORAH S. HUNT, Clerk

Re: Little Traverse Bay Bands of Odawa Indians
v. Gretchen Whitmer, Governor of Michigan, et al.
No. 21-769
(Your No. 19-2070, 19-2107)

Dear Clerk:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

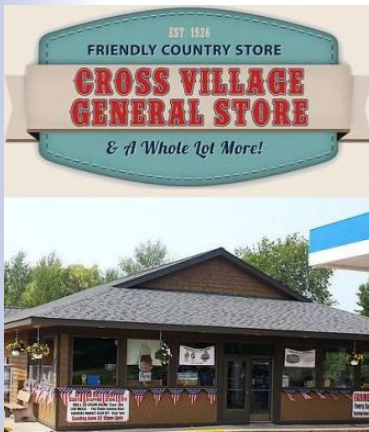
Scott S. Harris, Clerk

CROSS VILLAGE -- THE VILLAGE STORE AND THE BREWERY

THE GENERAL STORE

Twenty-five years ago the Howard family purchased a store site from Cross Village Township and built a much-needed general store and fuel station at the corner of State and Levering Roads. Since that time, it has been a popular relief for local year-round and seasonal residents to avoid having to drive up to 20 miles for fuel and basic grocery necessities. It has also been a popular stop for ice cream cones, and among other things, the store has hosted a Monday morning men's coffee group which has identified itself as a "think tank".

Lee, Sue, and Leroy Howard, and Jan Hill ran the store for over 20 years with a short period under different ownership, and



grateful area residents were blessed with a well-run business able to survive the leaner cold-weather months. When fuel delivery issues led to the store closing about a year and a half ago, the local residents were left without what they had taken for granted as a vital part of their lives.

The good news is that long-time local residents Adam and Tania Wolniewicz acquired and re-opened the store in April of this year. They have continued the store practice of making baked goods, pizza, and deli products and, with the help of Blarney Castle, have solved the fuel delivery issue. They have made a lot of local people very happy by re-opening the store, and will be maintaining 8:00 a.m. to 7:00 p.m. hours of operation.

THE ACQUISITION OF THE OLD WORLD CAFÉ BY PETOSKEY BREWING



Several years ago, Bo Gierak built and opened a very unique restaurant facility in Cross Village with Old World architectural features and quaint breakfast and lunch menus. After building a local following of area residents and tourists, Bo decided to sell the property to Petoskey Brewing this past winter.

The new owner plans to incorporate the features that have made the Petoskey location successful, and to expand the outside space for serving customers. Petoskey Brewing expects to create at least one brew that is unique to the Cross Village location. They have lined up required trades to build the planned changes and additions to the Café.

Owner Tyler Gostinger says the timing of reopening has not been set pending renovation permitting, liquor licensing, and the actual construction of the new venue, which will include a taproom and outdoor covered patio and bar. When completed, this venue will offer a good outdoor alternative for pub-restaurant dining in northern Emmet County.

ENBRIDGE, LINE 5 AND THE TUNNEL

"The Line 5 pipeline of Enbridge Energy, Limited Partnership ("Enbridge") was built in 1953. The pipeline extends across the Straits of Mackinac for a distance of approximately 5 miles. The pipeline consists of two 24-inch pipelines and was installed pursuant to a permit issued by the State of Michigan. Line 5 transports daily up to 540,000 barrels - or 422.68 million gallons -- of light crude oil and liquid natural gas.

Because of the age of this line, previous mishaps concerning this line, as well as a major 2015 oil spill by Enbridge in the Kalamazoo River which cost approximately \$1 billion to clean up, many individuals and organizations have taken steps to have Line 5 removed from the Straits of Mackinac. The 2019 and 2020 newsletters provide much more detail concerning the history of these lines and the problems associated with Enbridge and Line 5.

Former Governor Snyder previously approved Enbridge's proposal to construct a tunnel in the bedrock underlying the Straits to house the pipeline, ostensibly to avoid a spill entering the waters of the Great Lakes. This proposal has brought opposition and challenges -- some against the tunnel with concerns about its environmental impacts, and others voicing a concern that during the 7 to 10 years it will take to construct the tunnel, Line 5 continues to pose a threat of contaminating

the Great Lakes if it should rupture. This newsletter will update the readers on what has transpired in enforcement efforts."

Lawsuits involving Governor Whitmer and Enbridge are a litigation quagmire.

CHALLENGES TO LINE 5:

Governor Whitmer filed suit in Michigan state court to shut down Line 5, giving Enbridge six months to do so. This lawsuit was removed by Enbridge to federal court. Attorney General Nessel then filed a motion in federal court to remand that case



to state court. This motion was denied based on Enbridge's argument the matter is subject to a treaty between Canada and the United States and that the matter falls under the purview of the Federal Pipeline and Hazardous Materials Safety Administration. Nessel then dismissed the federal case (the state court case removed to federal court) and reactivated a state lawsuit filed earlier which had been paused pending the federal case.

THE TUNNEL:

"MPSC Overruled Administrative Law Judge in April 2021

On April 17, 2020, Enbridge filed an application with the Michigan Public Service Commission (MPSC or Commission) pursuant to Public Act 16 of 1929, MCL 483.1 et seq., also referred to as Act 16, requesting authority to replace and relocate the segment of Line 5 crossing the Straits of Mackinac into a tunnel beneath the Straits of Mackinac. Opponents of the tunnel argued that in evaluating the impact of the proposed tunnel, under the Michigan Environmental Protection Act, Enbridge must also address the issue of Climate Change -- namely, what impact would the construction of the tunnel and the extension of the flow of fossil fuels have upon the environment by reason of Green House Gas emissions ("GHG"). Enbridge rejected this argument and an

Administrative Law Judge ("ALJ") ruled in favor of Enbridge. The ALJ's decision was appealed to the full Commission which reversed the ALJ. This is a significant decision in that it is the first one determining that GHG is likely to pollute or impair the environment and thus must be considered under the Michigan Environmental Protection Act."

Originally, construction was to begin in 2022, to be finished by 2024, but now Enbridge is saying it won't start construction at the earliest until 2024.

"Biweekly meetings - U.S. and Canadian Governments:

The Governor's order to shut down Line 5 was not well received by the Canadian government, which strongly opposes shutting down Line 5. Quietly there have been biweekly meetings between representatives of the Biden Administration and the Trudeau Administration. The Army Corps of Engineers in June issued a directive that an Environmental Impact Statement needed to be prepared identifying all possible environmental impacts from the construction of the tunnel. This order of the Army Corps was not well received by Enbridge and not received well by certain opponents who are concerned that this will lengthen the time for the construction of the tunnel and thus leave Line 5 in continued risky use for even longer."

GREAT LAKES RESTORATION

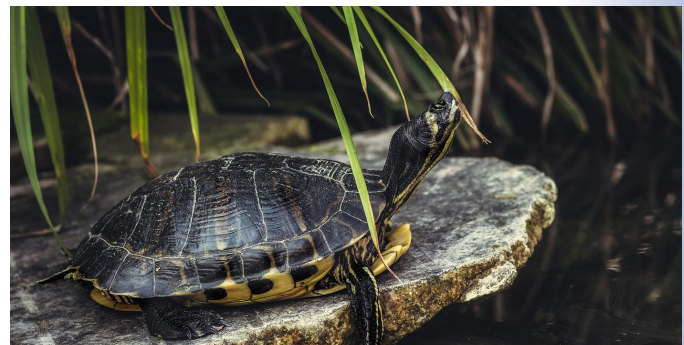
The Great Lakes Restoration Initiative, or the GLRI, has greatly accelerated efforts to protect and restore the Great Lakes – the largest system of fresh surface water in the world. Since its 2010 inception, the GLRI has continued to address the historically challenging environmental problems and imminent threats facing this indispensable ecosystem. Led by the U.S. Environmental Protection Agency's Great Lakes National Program Office, GLRI has funded over 6,700 projects that focus on the most important Great Lakes environmental issues, including cleaning up highly contaminated Areas of Concern (AOCs), reducing phosphorus going into the Lakes that would contribute to harmful algal blooms, protecting and restoring native habitats and species, and preventing and controlling invasive species. An independent economic study found that every GLRI dollar spent produces an additional \$3.35 of additional economic activity.

The GLRI has also been active in Emmet County, funding over 45 projects totaling more than \$5.5 million.

The GLRI is poised to accomplish even more. The Bipartisan Infrastructure Law provides a billion dollars over five years to support GLRI work. GLRI plans to use this "once in a lifetime" opportunity to finally address legacy pollution and other severe environmental damage that has persisted in AOCs because of a lack of funds to do something about them.

GLRI has a goal of completing the cleanup and restoration actions necessary for delisting all but three AOCs by the end of 2030, and, by that same deadline, delisting an additional sixteen AOCs.

The GLRI will also continue to be active in efforts to keep Asian Carp from moving into the Great Lakes from the Illinois River.

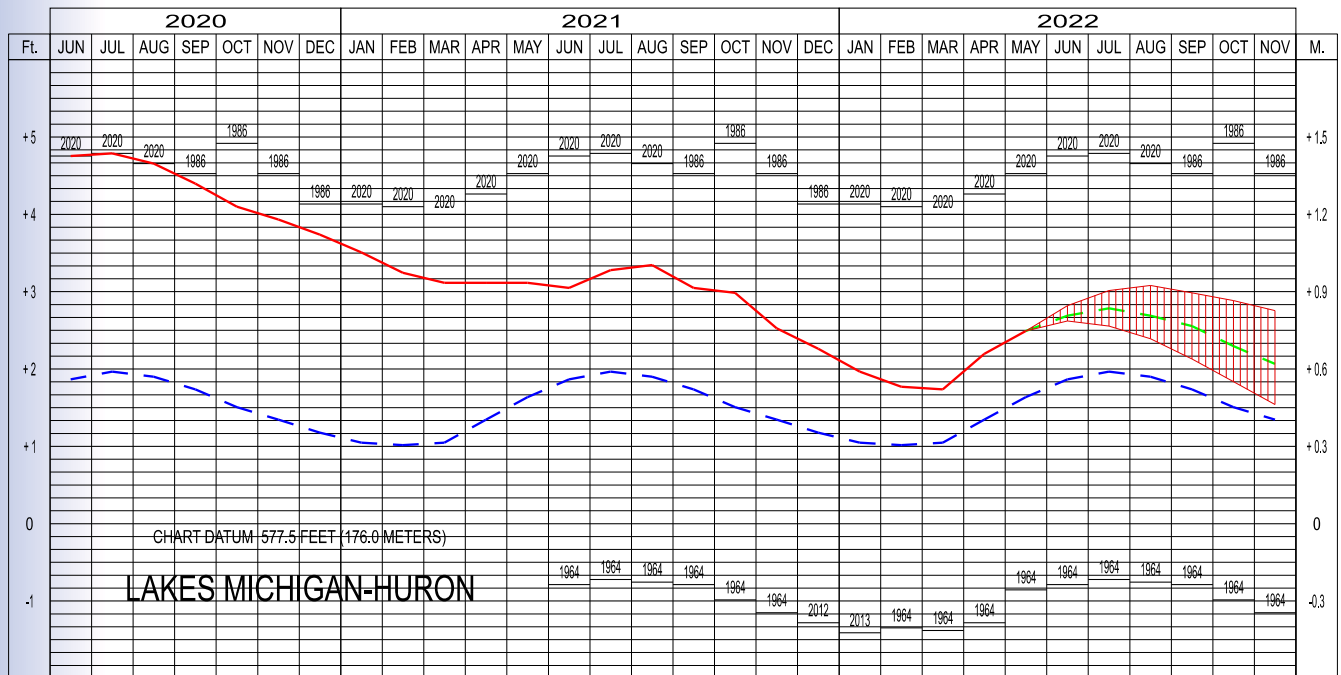


Great Lakes Water Levels

On April 8, 2022, the water level was forecasted at 579.49 feet. Lake Michigan-Huron had dropped 12 inches since April 2021, but rose 4 inches over the past month. Levels were down 26 inches below the monthly high mean set in 2020. Lake Huron remains at 40 inches above the record monthly low set in 1964. The lakes are expected to rise by four inches through mid-May 2022. Lake Michigan-Huron is expected to stay above its long-term monthly mean water level well into 2022.

Precipitation throughout the different lake basins has ranged from 84 percent to 102 percent during the last 12 months. All lakes had above-average water supplies, with the exception of Lake Erie, which had below-average water levels. Outflows remain above average except for outflow from Lake Superior, which was below average.

LAKES MICHIGAN-HURON WATER LEVELS - JUNE 2022



THE GOOD AND THE BAD OF LOW WATER LEVELS IN LAKE MICHIGAN

The good -- expansive beaches this summer. The bad -- Avian Botulism and algae in our water and on our beaches.

ECLA has extensively written on this subject. While much of this is still theory, the thinking is that with low-water levels, algae receive more sun which promotes the growth of the algae. This growth of algae creates what is known as algal mats, creating an anaerobic condition that allows botulism naturally occurring on the bottom of the lake to develop into a toxin. This toxin is consumed by zebra and quagga mussels which in turn are eaten by the round goby, an invasive fish, which is then poisoned and floats to the surface where it is consumed by waterfowl. In the past, we have had hundreds of dead or ill waterfowl on the beaches during low water levels. This summer, dead goby fish along with the alewife fish have shown up on beaches. In other areas on Lake Michigan, birds are dying and washing up on the beach due to Avian Flu.

INVASIVE SPECIES AND THE GREAT LAKES

While there are some 180 invasive species in the Great Lakes, this article is focused on those on today's "front page".

THE SEA LAMPREY IS BACK IN THE NEWS

Background: The Sea Lamprey is an eel-appearing creature with a round mouth and tiny teeth designed to suck on the side of a fish and penetrate its skin. Once penetrated, the Lamprey sucks the fluid from the fish causing the fish to die. Yes, it's a vampire. In the 1950s the Great Lakes fish population plummeted due to the Lamprey. In the late 1950s and early 1960s a small group of scientists undertook efforts to identify a poison that would only impact the Lamprey and not fish. A trial by error took place testing some 6000 compounds until one was found that would kill Sea Lampreys but would not kill fish. The compound would be placed in a jar with a perch. After 6000 compounds were tested, one was tried which resulted in the perch surviving.

By a joint effort between the U.S. and Canada through the Great Lakes Fishery Commission, tributaries were treated, killing the Lamprey larva. The Lamprey, while not eradicated, was under control.

Why it an issue today? Because of the Covid pandemic, crews could not treat tributaries. We can expect a significant spike in the presence of Lampreys and damage to our fisheries.

Large, stinking alewife die-offs along Lake Michigan beaches --something we have not seen in years.



Why and what are all the dead fish on our beaches this summer?

The fish are Alewives, a saltwater fish that entered the Great Lakes through the Weiland Canal in the 1930s. For those of us who are old enough to remember, in the 1950s and 1960s there were piles and piles of rotting dead Alewives on our beaches. Then DNR Director at the time, Howard Tanner, introduced the chinook and coho salmon that were stocked in Lake Michigan and that thrived on the Alewives. Whole new sport fisheries resulted, with people coming from everywhere to fish for salmon in the Great Lakes.

In 2015 the Alewife population reached an all-time low,



resulting in beaches free of the rotting fish and the disappearance of salmon fishing in the Great Lakes.

The die-off we are seeing this year is much larger than in recent years but is part of the Alewife's life cycle, resulting from a quick shift in lake temperature at a time when Alewives come from deep cold water to warm shoreline water to spawn. These dead fish are not diseased. Your dog, given the chance, will no doubt eat a dead Alewife, which should not be a problem.

ASIAN CARP -- NEW BARRIER PLANNED AND FINANCED



In 1970 Big Head and Silver Carp ("Asian Carp") were introduced by fish farmers to clean aquaculture ponds. The Asian Carp escaped the fish farm ponds, entered the Mississippi and Missouri Rivers, migrated north, and have been

found in the Illinois River near Chicago. The concern is if the Asian Carp enters Lake Michigan and establishes itself, it would be devastating to the Great Lakes fisheries.

A recent study by the University of Michigan has intensified this concern. This study found that Asian carp could survive in more of the Great Lakes than earlier thought. This finding ramped up pressure on Congress to fully fund a barrier to prevent the invasive fish from entering the Great Lakes.

Funds for the study of the Brandon Road Lock and Dam project in Joliet, Illinois, in the amount of \$266 million,

have been approved. The total cost of this barrier dam will be approximately \$858 million. The dam will consist of an air bubble curtain, an electric fish barrier, and other deterrents to prevent the Asian Carp from entering the Great Lakes.

As a side note, there is a move to rename these Carp with a more attractive name so that the fish can become a menu item. Its new name, for now, is Copi -- does that help? Apparently, the Asian Carp is not a bottom feeder and while very boney, is quite tasty (if properly prepared).



THREE PINES STUDIO AND UKRAINE FUNDRAISING

Local artist and studio owner, Joanne Condino, in Cross Village, Michigan, has created an artistic way to assist the World Central Kitchen in providing meals for people affected by the invasion of Ukraine by the Russian government. By purchasing 100% linen hand-blocked tea towels, you can join the efforts of your neighbors in assisting with funding for much-needed food for Ukraine. Joanne Condino organized the sewing of the towels, the printing by hand and the shipment of the towels to buyers. The yellow wheat print represents the foods so desperately needed, and the yellow sunflower print represents the Ukrainian national flower. At this time, 3,200 towels have been sold, raising \$53,000 dollars for the World Central Kitchen. The towels are made by volunteers. And orders can continue to be made by going to this website: threepinesstudio.com. Join the much-needed generosity of your neighbors by supporting this local effort to help the Ukrainians.



TICKS AND THE DISEASES THEY CARRY

Expect more ticks in Michigan this year than ever before, partly due to our warm winter. Dr. Howard Russell of MSU says the number of ticks has greatly increased in the Lower Peninsula, particularly in West Michigan, over the last decade.

While there are five types of ticks throughout Michigan, there are two that are most commonly found in Emmet County—the American dog tick and the Deer tick (or black-legged tick.)

American Dog Tick (*Dermacentor variabilis*)

- The most common tick in Michigan
- Have white markings on their backs that should be visible
- Can transmit Rocky Mountain Spotted Fever and other tick-borne diseases
- Active from early May–November
- Will bite humans and pets

Deer Tick/Black Legged Tick (*Ixodes scapularis*)

- Can spread potentially deadly Lyme disease
- Found most commonly on the western side of the state
- Often found on forest vegetation, and along trails



Will Miller, assistant biology professor at Calvin University, is helping map deer ticks, which can carry bacterium that cause Lyme disease. He and his team drag sheets in wooded areas to attract ticks. (Bridge photo by Daytona Niles)

Dr. Russell says the possibility of catching Lyme disease from a tick is very real in Michigan.

“We have several hundred cases of Lyme disease a year in Michigan”. And the stage that’s most likely to transmit is the Nymph stage, which occurs in July, and it’s a very, very tiny tick.”

You can find info about how best to avoid ticks, and remove them once they’ve attached themselves, at a website maintained by the Michigan Department of Health and Human Services.

Dr. Jean Tsao, PH.D and associate professor at Michigan State University realizes many people are re-introducing themselves to the outdoors since the pandemic hit, so she and some colleagues from the have created “The Tick App” thetickapp.org

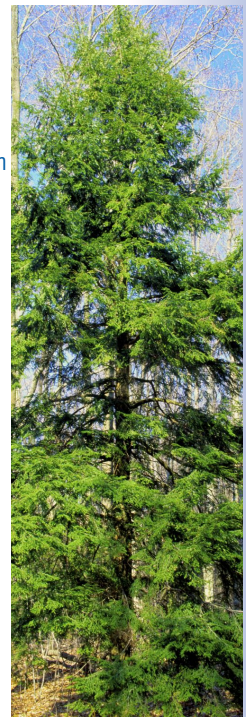
If you find a tick, embedded or not, take a clear picture of it and submit it online through the app, then within a day or two, you’ll receive the information back on what kind of species it is in the life stage. And that information will come from graduate students in the lab. That’s important because not all ticks transmit the pathogens.

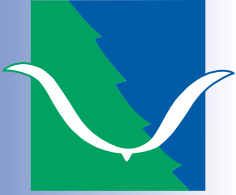
If you do find out it’s a black-legged tick, you can talk to your doctor and decide whether or not you want to take one dose of prophylactic dose of Doxycycline.



HEMLOCK DISEASE

ECLA’s Newsletter last year reported on the Hemlock Woolly Adelgid (HWA). This is an invasive insect from Japan that attacks the Hemlock Tree killing it in 3 to 5 years. It appears as a white thin fungus on the needles of the tree. While HWA is present in other parts of the state, volunteers who are monitoring Hemlocks for the disease have not yet reported it in our area. With the loss of the beech trees and ash trees, we do not want to see additional trees die off, especially the magnificent Hemlocks in our area. If you suspect you have a Hemlock with this disease, please contact Mandi at 231-373-0754 who will arrange for your tree(s) to be inspected.





Emmet County Lakeshore Association

Post Office Box 277
Harbor Springs MI 49740

In unity, there is strength

Emmet County Lakeshore Association

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