

Bankson Lake Drain Project Petition for Flood Relief

06/24/2019 Van Buren Count Drain Commissioner Meeting Summary: – Jack Jellies

At the June 15th, 2019 meeting of the Bankson Lake Association a motion was approved to request that soon to be past president Mark DiJulio and the next president (subsequently determined to be Jack Jellies) meet with the county Drain Commissioner (Joe Parman) and work with him to clarify the many questions that arose about the process involved in mitigation of the high water level on Bankson Lake.

Mark and I were able to meet with Mr. Parman for 1.5-2 hours on June 24th, 2019 and we had a very productive conversation. Please note a disclaimer here that my interpretation is just that. There are many things that do not have definitive answers, and some that do. So in some cases the answer below is my interpretation of what I heard said, and for all definitive answers please refer to the published materials and/or speak with Mr. Parman yourself. I have run this summary by Mark and he may also be able to add to or amplify some things.

Almost all answers to direct process questions can be found at www.vbco.org/pages8864135.asp
And almost all questions about how assessments will be determined can be found at www.vbco.org/2018drainassess.asp

However, our BLA group had requested specific amplification on some matters, and you will discover in the above references that a number of key things are to be determined directly by the Drain Commissioner himself. So it was useful to have a direct conversation with him and gauge his awareness of things and ask him to provide some insights into possibilities, if not absolutes.

First a few straight-forward process things.

Is the Bankson Lake Drain Project petition (for flood relief) to initiate the project valid? Answer: yes. It has been determined by the legal authorities in the county that the petition is valid and an initial hearing will be scheduled. (Note, this is a petition to link to an existing drain, not for a new drain.) Jack's note..... I realize there were some negative views expressed about the petition but....the process can arise by petition but also be initiated by a number of other routes. Given that the DNR has published that our access has been closed for the season because of flooding, and there have been many high water complaints, it may be that the petition was simply a formal confirmation of the situation on the ground right now. In any event, the authorities are considering it a valid instrument.

When will the hearing take place? Answer: TBD, but Joe Parman estimates it will be the middle to the end of July. All affected residents and all those in the watershed area will receive written notice of the time and place of this hearing. (Mark and I were asked for advice and we suggested a weekend in order to allow an opportunity for our seasonal residents to more readily attend).

This initial meeting is a public hearing before the Board of Determination for them to receive testimony and evidence to determine whether the project is necessary and conducive to the public health, convenience or welfare. Residents should be prepared to attend and document/testify about the way they are, or are not affected by the high water level. If a resident cannot attend, they should be encouraged to send their written testimony/opinion to the Drain Commissioner BEFORE the hearing.

Who decides? An inter-county Board of Determination will preside over the hearing (made up of the VanBuren Drain Commissioner, Cass Drain Commissioner and a representative from the Department of Agriculture) will decide at the completion of this first meeting if the project is to continue to move forward. Please note, this initial meeting is not a vote by residents. If anyone disagrees with the decision of this board after the hearing, they have 10 days to file an appeal (see references above). While not a vote, it was clear that the folks responsible for decisions are very interested in consensus and determining the will of those affected.

This initial inter county Board of Determination does NOT decide the complete scope, feasibility, or cost of the

project at the initial meeting. . Those decisions will be made by the inter county board at or after the subsequent meeting only if the project is going to move forward. If the Board of Determination decides at the end of the first meeting that the project should continue to move forward, Joe Parman will enlist input from engineering/survey specialists and conduct a study to determine the details of a proposed project. It will not be until that happens that feasibility can be addressed. Mark and I did explore a few likely scenarios with Mr. Parman and I felt he was very knowledgeable, thoughtful and mindful of all the issues.

If the results of the first meeting are that the project is to move forward, Mr. Parman said there would be a second public hearing, 2-3 months after the first, to speak more directly to the results of the feasibility and cost study performed by the engineering/survey specialists and at that time discuss/present a more specific proposal. It would be at that point when we should have at least a very general estimate of costs, with the understanding that until all issues were finalized, actual costs cannot be specified.

Please note, the costs of the initial study/survey and background research to develop the project plan (performed between the first and second meetings) will be included in the total costs of the project in the event it goes forward. Also, if the project is determined to not go forward after the second meeting, the costs of this initial study/survey will be responsibility of all affected residents and all those in the watershed area.

Please note also, while these decisions are the responsibility of the Drain Commissioner and the inter county board, he indicated a clear understanding that prohibitive costs might indeed scuttle an effort, as might unforeseen complications in the implementation. By law, for example, the solution to our high water level cannot negatively impact downstream areas and there are statutes that govern the details of diverting water and the Drain Commissioner appeared very well versed in these. An important side note, the diversion of water also cannot negatively impact our lake environment and Mr. Parman seemed very well aware that the natural fluctuations in water level were an essential component of our lake ecology. This factor would be involved when it comes time to determine the precise nature of the proposed project, more about that below.

Summary of BL Drain Process Steps:

1. Submitt Bankson Lake Drain Project petition (to link to an existing drain). [Completed](#).
2. 1st Meeting: Public hearing before the Board of Determination for them to receive testimony and evidence to determine whether the project is necessary and conducive to the public health, convenience or welfare.
3. Board of Determination decides if the project should continue to move forward. [If yes, to step 4.]
4. Feasibility and cost study performed by the engineering/survey specialists.
5. 2nd Meeting: Public hearing before the Board of Determination to determine if the complete project should move forward.

Who decides what the high water level should be? The Drain Commissioner.

That is the short answer, let me try and flesh that out a bit as I understand it (I could be mistaken). There is a process involving the courts whereby a legal lake level can be determined. The process is entirely separate from the process we are going through to address the possibility of mitigating high water levels. It seems that one upside would be that there would then be a simple reference. However, that reference level may, or may not make sense. Since Bankson does not have an input like a stream or river we couldn't raise the level anyway. Then it is not clear how that level would be set. Would the court determine that the current highest level is the legal level? The lowest level? The 1986 level? The average level over 15 years? 5 years? 100 years? My personal take on the issue is that while there might be some advantages to having a set level as a reference, this legal lake level process may not be the best route for us since fluctuation in level is what seems to be our normal and necessary for our unique ecology. Then there is the DEQ ordinary high water mark. This is an empirically determined mark based upon vegetation and altered contours referenced to levels on the Great Lakes. This is necessary to know for construction projects where you might need a DEQ permit such as a sea wall or dumping sand/fill but it doesn't seem to be a particularly useful way for us to determine where to peg the high water maximum since our levels have historically fluctuated so much. The Drain Commissioner suggested a preferable way to approach this is for him to determine (assuming the project is necessary) a "Flood Relief Elevation." My understanding of this is that he would investigate where there are currently negative impacts such as compromised septic, water inside structures or seriously eroding critical shorelines and determine a minimal but reasonable/realistic level necessary to mitigate those existing flood-related impacts. He (wisely in my view) cannot or will not say what level that might be, but he seemed well aware that it cannot be so much as to compromise our normal fluctuations and it cannot be so much as to require too much/too fast downstream input. So, while I have an intuition about what that level might be, each of you can also simply look around the lake and ask yourself, how much lower would the level need to be to just take properties and shoreline/accesses out of current danger from flooding.

Can the project be stopped? Yes. The Drain Commissioner is not compelled to move forward and as noted above, there are a variety of things that might arise that could disrupt a project. Excessive, or large unforeseen costs is but one example.

Can we temporarily pump on an emergency basis? No. The costs and permitting for that would quite possibly be very prohibitive and it is not an immediate process either.

Assuming all goes forward, what is the timeline? Typical would be 18-24 months.

If the flood relief drain project were to be completed, what about maintaining the drain? Those costs will also be assessed but it is not a “blank check.” The Drain Commissioner is limited by law to spend no more than \$5000/year/mile. If an issue arises that requires more money, the residents would again need to petition to make that happen.

What effect will redirecting water now, at the high point have on the inevitable decrease in water level we will experience at some point in the future? **None.** Our water levels are determined primarily by the water table. Redirecting surface waters does not influence the future water table.

What happens if the water level goes down, have we wasted our money? That is for you to decide. My take, if the project even happens, is to remember that the water level will go down, but we cannot know when or by how much. We also know that the water level will rise and currently we cannot know when or by how much. Setting a Flood Relief Elevation might be beneficial for any and all periods now and in the future where the water levels rise to such high levels.

Who decides how much residents will be assessed and who is assessed? The Drain Commissioner.

Once again, that is the short answer. Please see the link above for more detail. One thing to be aware of is that while Riparians will be assessed, so will all properties feeding water into our lake from the surrounding area and all properties benefitting from the redirected flow. It seems likely that there will be a determination of per parcel not dissimilar to the sort of thing we have experienced before with our water/vegetation management process.

Speaking of the “weeds” if we have extra money there can we use it towards flood control? No. That money is legally restricted to be used for specified purposes.