

From: Dawn Lund
To: Rick Robbins; Debra Rushton; Lois Bahle; Ty Wessell; Patricia Soutas-Little; Gwenne Allgaier; Melinda Lautner
Cc: Alison Middleton
Subject: BOC Agenda Item #10
Date: Monday, November 14, 2022 10:21:31 AM
Attachments: Dam Authority Letter 1 Oct 10 2022.docx
Dam Authority Letter 2 10.24.22.docx
BOC Letter #1.docx

Dear Board of Commissioners:

The most recent posted BOC agenda item #10 concerns a membership proposal for the Leland Dam Authority. It is important the new members be accountable to uphold the 1978 court order to maintain water levels at the Leland Dam.

The level as maintained at the dam has been too low since 2017 and the court order is not being followed. You can verify this at <https://lakeleelanau.org/lake-levels-history/>. Obviously with November 15th drawing near, our main concern is for April 15th, 2023 and beyond.

I have attached two very detailed letters showing the court order has not been followed since 2017. It is imperative there is long-term support from the Commissioners to ensure the Dam Authority will uphold the court order as written with accountability.

Thank you,

Dawn and Chris Lund

Dawn and Chris Lund
PO Box 582
Leland, MI 49654

October 10, 2022

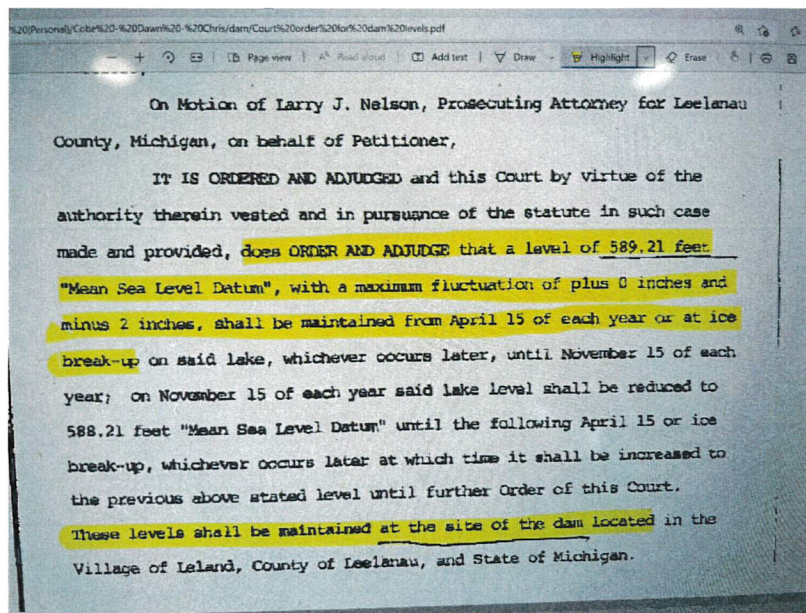
Leland Dam Authority
8527 E. Government Center Dr.
Suttons Bay, MI 49682

Dear Leland Dam Authority Members:

Thank you members Christensen and Popa for attempting to respond to our questions earlier this month. We wanted to follow up with the Authority to try and resolve the questions surrounding the level of Lake Leelanau as we feel they were not resolved.

Table 1 Below is a snapshot of the wording from the court order dated October 1978 which clearly outlines the ordered levels and site at which the level needs to be maintained. Please note the ordered level is 589.21 feet with a maximum fluctuation of plus 0 inches and minus 2 inches from April 15th (or ice breakup) to November 15th. The order indicates "These levels shall be maintained at the site of the dam located in the Village of Leland."

TABLE 1 - Court Order



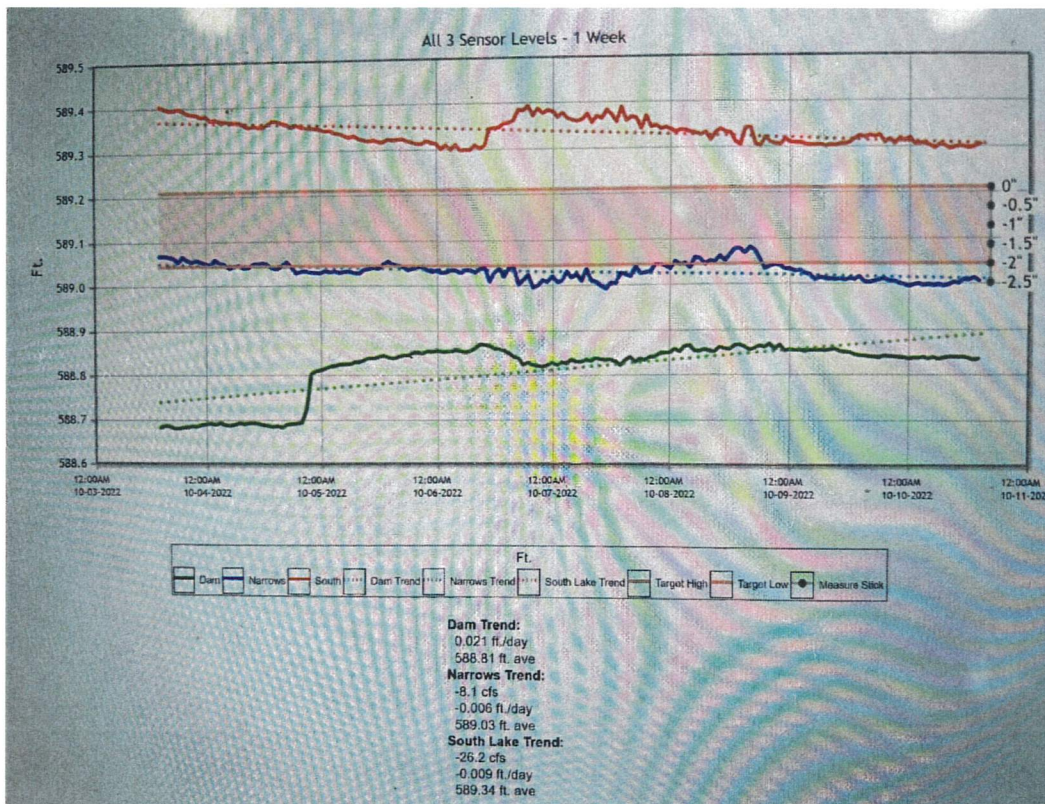
The Lake Leelanau Lake Association's website (<https://lakeleelanau.org/lake-levels/>) publishes the levels at three sensors throughout the lake (**Table 2**). One is located at the dam, one is located in the narrows and one on the South end. The LLLA also clearly states

on their website “the court ordered levels are measured at the dam (the green line)” and has notes about the graph as quoted below:

“A few notes on the graphs:

- The court-ordered levels are measured at the dam (the green line).
- The ordered levels are: level raised to 589.21 feet after April 15th or last ice and lowered to 588.21 feet after November 15th.
- Both the high and low targets are measured at the dam.”

TABLE 2 – Lake Leelanau Lake Association Website Graph of Weekly Lake Levels



The graph above is basically a week snapshot of the levels, with the red box indicating the high and low court ordered levels. You can see that the green line which is the line as measured at the dam does not fall within that box.

Table 3 below is a graph showing the history of the lake levels since 2016. We drew two extended black lines on the initial red box to more easily depict the high and low court ordered levels. You can see the green line basically does not meet the court ordered low level since 2017. Also, in conversations with the Authority members, it was stated they focus more on the blue line because the level can not be measured “at the dam”. The Lake

Leelanau Association publishes the level "as measured at the dam" (the green line) so that data is available. There are also "tick" marks on the bridge which corresponds with the LLLA sensors so there shouldn't be a question as to the accuracy of the levels as measured at the dam. I have corresponding pictures of the tick marks at the bridge with the published lake levels on the LLLA website below as well which would also indicate the sensors are recording properly (Tables 4A & B)

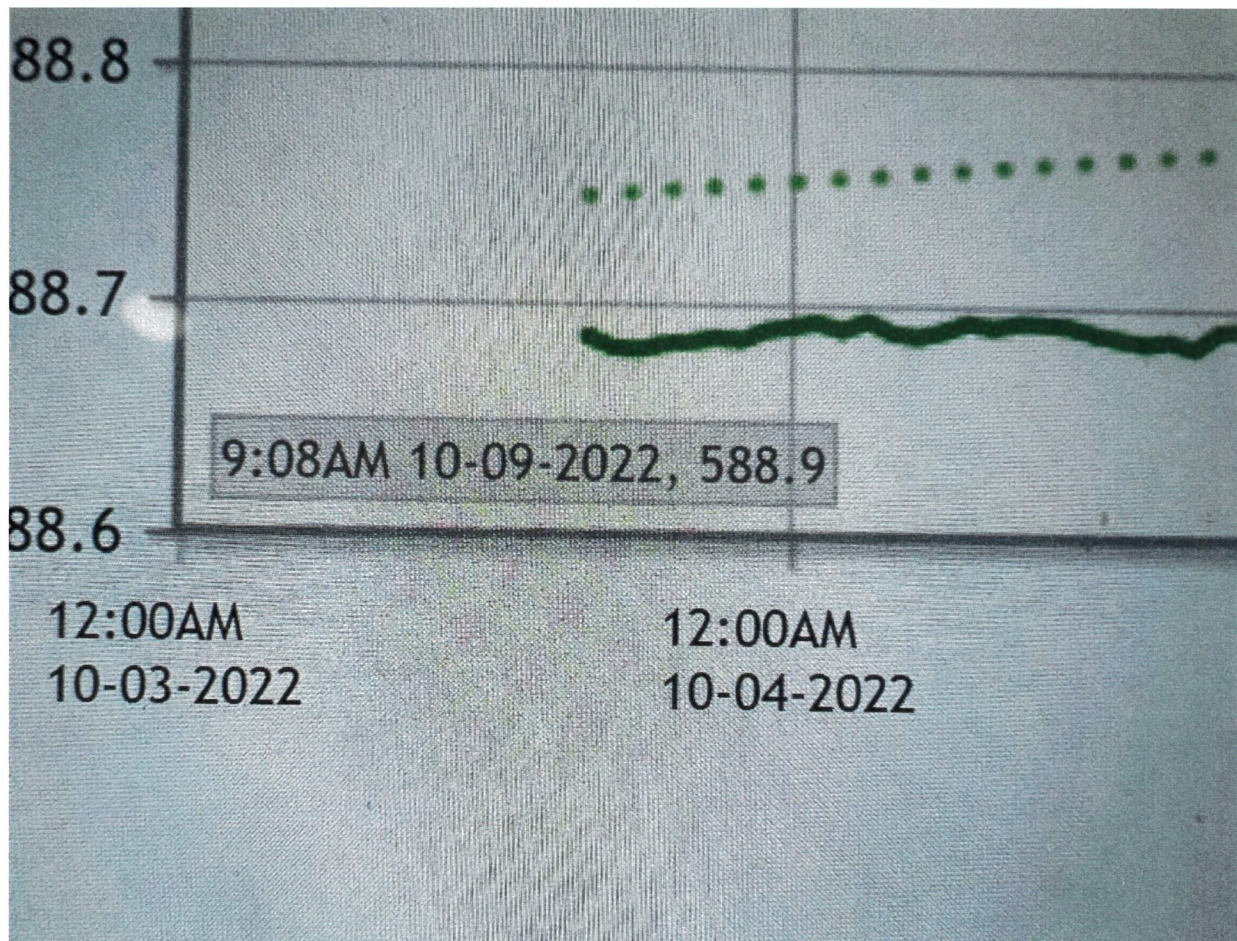
Table 3 – Lake Level History



Table 4 A – Picture of the Bridge level tick mark October 9 at 9:07 AM



Table 4 B – Picture of the LLLA published level sensor October 9 at 9:08 AM



In addition in the picture below, you can see there is a dark line "stained" in the wall of where the level used to be. This is basically at the court ordered level of 589.21, and obviously, the level has come down greatly to a new dark line stain and even now lower

water level. This picture shows the level at least 6 inches lower than the court ordered minimum. These tick marks also match very closely to the published Lake Leelanau Lake Association website levels, as measured at the dam when this picture was taken at the bridge.



We have property on the river, the south end and mid-north end and have lived in Leelanau County for 50 years. The levels of the lake throughout the year have been very low and continued to decline. We have watched this be a navigational hazard in the Leland river as boats try to drive down the middle of the river to avoid the shallower edges, causing near head-on collisions. This becomes an extremely challenging safety hazard as increasing kayakers and paddle boarders try to navigate the river as well. The compounding effect of not following the court order, as well as the river filling in over the years will only create a more urgent safety issue.

We are asking the Leland Dam Authority to review the pertinent data that is available to them and follow the court order by raising the level to 589.21 each year between April 15th and November 15th as measured at the dam and use the maximum fluctuation allowance of minus 2 inches only occasionally as it was intended and not as the court ordered minimum.

Sincerely,

Dawn and Chris Lund

Dawn and Chris Lund
PO Box 582
Leland, MI 49654

October 25, 2022

Email to: Leland Dam Authority
Email to: Lake Leelanau Lake Association

Dear Leland Dam Authority Members:

Thank you for listening to our public comments on October 11, 2022 and receiving our first letter dated 10/10/22. This 2nd letter is a follow up to the discussion that ensued at the most recent Dam Authority meeting.

The reason we are copying the Lake Leelanau Lake Association (LLLA), is when the Dam Authority was established a (county) commissioner questioned "whether a 4 person authority was really a proper thing and felt strongly that it would be appropriate to have someone that could represent the riparian rights and had in mind, without any firm conviction, that the Lake Association is a strong group that may be an appropriate lobby for that" https://www.leelanau.gov/downloads/leelanau_co_res_2004_007_leland_dam_authority.pdf.

It also appears from time to time there has been a liaison from the LLLA at the Dam Authority meetings.

The reason for this letter is to make a documented observation that there seems to be a shift in 2017 away from the 1978 court order at where the levels are to be maintained and therefore, not in compliance with the order. We have read the Dam Authority minutes of the past, the court decision and order, and come with an informed observation, not hollow complaints. We are also not trying to undervalue the level of effort that is put into operating the dam.

Court ordered Lake Levels as Maintained at the Dam

As you are aware, the 1978 court order stated that a level of 589.21 feet "Mean Sea Level Datum" with the maximum fluctuation of plus 0 inches and minus 2 inches shall be maintained from April 15th of each year or at ice breakup on said lake, whichever occurs later until November 15th and that these levels shall be maintained at the site of the dam located in the Village of Leland."

The court decision on which the order was based specifically states "The present elevation of Lake Leelanau is the most proper because it allows the best use of the Lake." It states the court heard testimony from interested parties and read numerous letters submitted to the court. It addresses erosion, flooding, septic tank problems, basement flooding, navigational difficulties and more. The decision also states the narrows connecting the northern and southern portion of Lake Leelanau should be dredged to allow for "freer passage of water" recognizing the differing lake levels.

We point these things out because it is clear the court was aware and acknowledged that the issues that are debated today, were debated and evaluated back then. The effects of rain, wind, erosion, to dredge or not to dredge, differing lake levels from the north to the south were all acknowledged, and the court decided the level ordered was the best use of the Lake balancing all these things. No matter what the lake level is, someone will always have a reason to want it higher, and someone will always have a reason to want it lower. But that debate was settled with the court order.

In fact, we couldn't say it any better than as quoted in the **Regular Meeting of the Dam Authority – Tuesday, May 5, 2015** "Lake Leelanau resident Wayne Wunderlich remarked that historically, where we are right now is exactly where we were in 1977. The issues of who can dredge, who cannot, the reason this was formed; you have the court order and the court decision. The court decision specifically addresses responsibility of wind damage, shoreline erosion, ice damage – specifically. Those are the responsibilities of the parties who asked for this to be done. That is the petition of the County. There are responsibilities. He doesn't want to get into interpretations, but the court order says the lake level will be maintained at the Dam. It doesn't say read, it says maintained"

Legal interpretations of the Court Order

According to the Dam Authority minutes, the court order has been legally interpreted on at least three occasions. Below are the minutes for your reference:

Regular Meeting – Tuesday, May 5, 2015 Chairman Popa said after reading Commissioner Melinda Lautner's comments regarding the County's attorney, he reviewed the court order, which states the County has the responsibility to maintain the Dam and control the lake level, and also included in the orders, it listed five things; safety, health, property values, and this, to maintain this level, and read (that level) at the Dam. You are required to maintain the level.

Wednesday, July 8, 2015 –Administrator Janik said a letter issued by the County's legal counsel, states that strictly by the letter of the law it is to maintain the level of the Dam in Leland. Christensen said the level of the lake; maintaining the level of the lake, as measured at the Leland Dam. Janik said as stated by legal counsel, from a legal perspective, the County's responsibility is the Dam level at Leland. Christensen said it's the level of the lake as measured at the Dam in Leland. Discussion ensued. Christensen said the court order is for the lake level; Commissioners need to know – the court order is to maintain the level of the lake. They take a measurement at the Dam; they maintain the level of the lake. Janik gave the example of if there was a four-inch difference between the South end of the lake and the Dam. Christensen affirmed – the levels at all points have always been different – they will be different. The court order is to control the level of the lake; Commissioners need to know this – to control the level of the lake. That is what it is. Janik said legal counsel will disagree with that.

April 2019 Meeting Minutes: Popa said back in January he had written to Prosecuting Attorney Joseph T. Hubbell of the concerns from the last couple of years on where the lake levels are being recorded at, that it is ordered to be taken at the dam. Popa received a letter back from Hubbell stating that the petition for the lake level was granted replacing on older common law and that if opened back up it would be unlikely to succeed in changing the order and would be subject to dismissal by summary disposition under the grounds that the matter has already been litigated between the parties.

*Notice the 2019 opinion is if the order can be *changed*, we don't think those believing they are operating within an order would ask for a change.

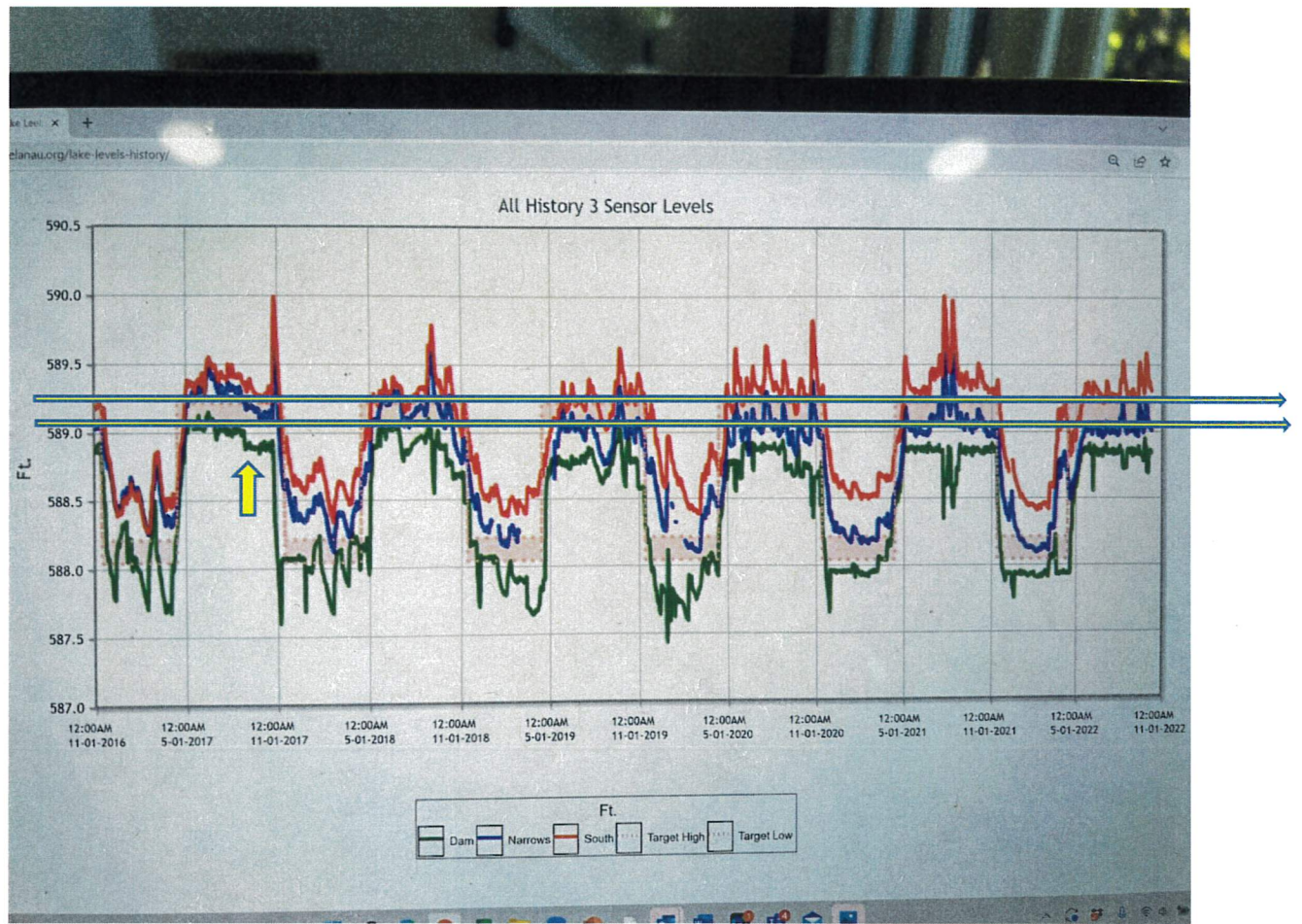
Documented Shift from the Dam Authority Minutes away from the Court Order

Since the sensors were installed, there is a shift documented in the Dam Authority meeting minutes on which measuring point the levels should be maintained. Much discussion ensued about the "engineering way to look at water flow and levels" due to the differences in the south end, the narrows and the Leland River; and that the "average lake level" should be measured by the narrows. But the language in the order is very specific, already acknowledging those differences, and ordered what was "proper because it allows the best use of the lake". Discussion also surrounded how a neighboring lake measures their readings. However, the 1978 order dictates the level unique to Lake Leelanau. The order doesn't leave room for individual or neighboring interpretation or speculation and it's not optional.

In the period during the shift, many Board and Commission members are repeatedly quoted throughout the minutes as stating, "the court order is clear we need to maintain the level at the Dam". Despite this, as well as the legal opinions, a shift has guided the levels since 2017. It has shifted from maintaining at

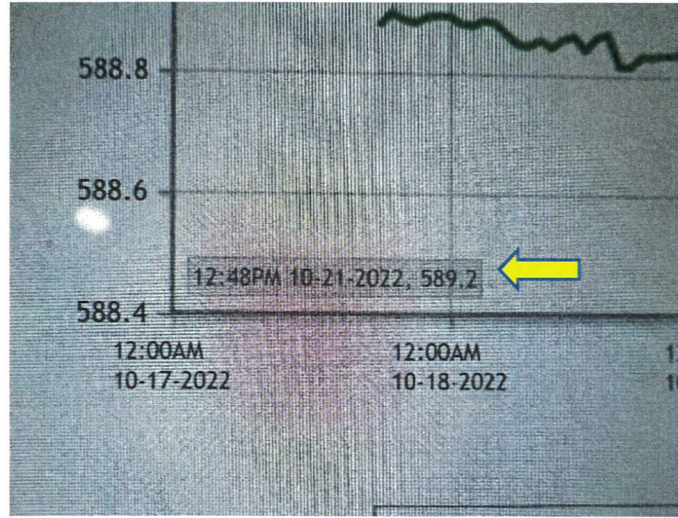
the court ordered level as maintained at the dam in Leland (green line on LLLA website) to maintaining the level at the narrows (the blue line on the LLLA website) as well as seemingly using all of the 2" variance much of the time to target the very minimum allowed. The word "variance" indicates an occasional deviation from the court ordered level. If the intent were to always target the minimum, the order would read "589.21 minus 2". Changing the measured level to the narrows and targeting the variance at the extreme minimum has exponentially compounded being out of compliance.

As you can see from the history as published on the LLLA website, this trend of not meeting the court order (green line) appears to happen half-way through 2017 (yellow arrow) and continues today. We drew two extended yellow lines on the red box to more easily depict the high and low court ordered levels that are to be maintained at the dam in Leland from April 15th to November 15th.

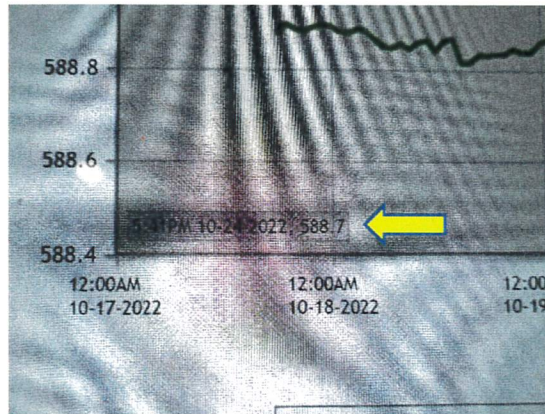
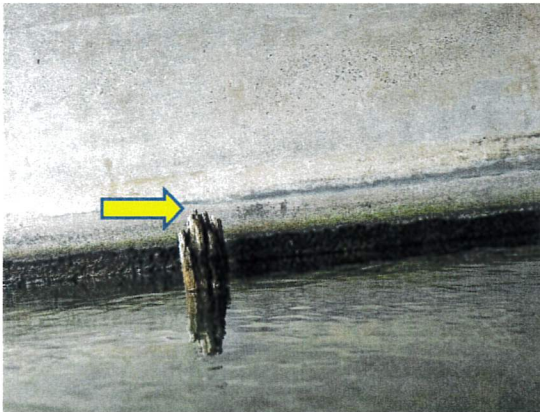


How can you tell this is a shift and the order was followed prior to 2017?

For the first and only time (in sensor history) on 10/21/22 the sensor located at the bridge in Leland showed the water flowing at 589.2 (court ordered level) and we took the picture below. There are naturally occurring markers that would indicate the order was followed prior to 2017. Wood, when covered under water, will not rot. Waterlogged wood will not allow oxygen in to support the growth of fungi that creates rot. Below is a picture of an old piling under the bridge in Leland. Notice the very top of the wood is just covered by water. Also notice the "stain mark" on the wall of the bridge in Leland matches the water level and matches the height of the wood piling immersed in the water. The level at the date and time when this picture was taken was 589.2; the court ordered level. The condition of this old piling would indicate that for much of its life, it was covered by water at 589.2. The stain mark on the wall of the bridge in Leland would indicate water *flowed* and *maintained* (wording in court order) for a length of time at 589.2.



Below is the same piling when the court order is not being followed. Notice the piling is exposed 6", the water is 6" below the stain on the wall, and the reading from the LLLA website is 588.7 or 6" from the court ordered level of 589.2.



Lengthy discussion at the last Dam Authority meeting by the members turned to the need for "calibration studies and shutting the gate to stop the flow at the dam in order to measure accurately". These pictures show the precise accuracy of the digital sensors compared to naturally occurring markers as it was *flowing and being maintained* there. We also showed in the first letter to the Authority that the digital sensors exactly match the "tick marks" on the Leland bridge; a second indicator the digital sensors are correct. All the digital, manual, and naturally occurring markers corroborate. Substantial data is currently available to uphold the court order as written without additional studies.

In addition, discussion from the Authority members ensued about dredging the Leland river. Although dredging may be helpful, it is a separate issue from the court order. If the order were first followed, much of the navigational and depth issues would greatly improve. In addition, with the level as maintained at the dam in compliance, dredging could be addressed with a complete picture and therefore, lead to a more informed decision.

Once again, we encourage the Dam Authority to follow the court order as written with the data that is currently available and published publicly. Thank you for your consideration we look forward to your affirmative response soon.

Dawn and Chris Lund

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November 14, 2022

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Dear Board of Commissioners:

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