



*Promoting stewardship,
conservation and restoration in the
Deep Creek Lake watershed*

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Ms Erin M. Fitzsimmons
Special Assistant for the Environment
Office of the Attorney General
200 St. Paul Place
Baltimore Maryland 21202

Dear Erin:

This letter is to follow up on the Attorney General's visit to the Youghiogheny River watershed and Deep Creek Lake.

Those of us who live out here feel we are a long way from Annapolis. Friends of Deep Creek Lake wants to let you know how appreciative we are that the Attorney General and so many staff chose to visit, to listen and learn about what life is like "beyond the Bay".

We wanted to follow-up on 7 topics for continued conversation with your office.

1. The State authority over the publicly owned lake buffer strip, programming and financial responsibilities
2. Actual or potential conflict in two laws which govern Deep Creek Lake and state management.
3. Imposition on private citizens of the management, maintenance, restoration and protection programs and costs for this publicly owned resource.
4. Requirement for Watershed Improvement Plan for the Youghiogheny watershed and

Deep Creek Lake

5. Deep Creek Lake or Youghiogheny River Restoration Fund.
6. Remedy to taxation without representation
7. State role to provide protection to Deep Creek Lake watershed, NRMA in anticipation of Marcellus Shale drilling.

We are attaching to this letter brief background information on each topic and questions for further exploration. We hope to engage you and the AG's Office in exploring these topics of critical importance to the management and future sustainability of this publicly owned state resource "beyond the Bay".

Please extend an invitation to all the staff that we would love to have them return to visit and, if they want another boat ride, that they should feel free to contact Captains Jeff and Bill and the Friends of Deep Creek Lake crew.

Cordially

Barbara Beelar for the Board of Friends of Deep Creek Lake

Topic I: The State authority over the public owned lake buffer strip, programming and financial responsibilities.

On the boat tour someone suggested there is a parallel between the shoreline buffer strip and the “tree boxes” abutting streets and highways. This is not an appropriate analogy. The shoreline is not a fixed boundary like a curbed tree box. This shoreline buffer strip land, trees and stabilizing vegetation is being lost due to erosion. A public agency maintains and protects the tree box and may choose to devolve some tasks to others. At Deep Creek Lake the state agency has undertaken no maintenance of the public land, putting all responsibility—initiation, planning and implementation of protective work and associated expenses on the abutting private property owner.

When the State purchased the lake it specifically purchased the bottom of the lake and the existing buffer strip. This land is defined by elevation level and demarcated by boundary monuments. Lake property owners do not hold lake front lands except in the cases where the buffer strip has been so eroded it no longer exists. There is no state program or funding for protection of the buffer strip such as may be found on many comparable lakes.

The lake shoreline has been eroding all around the lake. There is less public land now than when the State purchased the lake just eleven years ago. This erosion has resulted in decline in water quality and recreational enjoyment and the decline will continue because there is no shoreline stabilization program.

The only shoreline protections which have been installed have been initiated by the abutting private property owners. They have to obtain DNR permission to install shoreline protections and, if the proposal is deemed to be a “substantial” project, must also obtain permission from MDE, provide an engineering plan as well as pay the MDE fees totaling \$1500.

Buffer strip property owners obtain an annual Buffer Strip Permit for the right to install a dock and certain other uses which are not spelled out in a contract between the DNR and the property owners. No set of regulations are provided to each property owner for such uses, including fines and appeals.

.Our questions:

1. Is the current framework which requires initiative and funding by abutting private property owners for shoreline protection of public land consistent with State law? Are there precedents for privatization of a public resource elsewhere in the State?
2. Should private property owners paying for such improvements on public lands be required to pay MDE fees for the planning of such protections?
3. Are there any relief measures, such as tax breaks or deductions, to offset the expenses of protection of public lands and the lake incurred by private citizens?

Topic 2: Actual or potential conflict within two laws which govern Deep Creek Lake and state management.

The State has responsibility from FERC to manage the Deep Creek hydro-electric dam. These responsibilities are incorporated into State law with MDE as the lead agency. When the State purchased the lake another set of laws were enacted with DNR as the lead agency. There is no inter-agency coordination that assures consistent and cohesive implementation of these laws and regulations as they concern lake management, watershed improvement planning and implementation.

The recent decision by MDE raised this of potential conflict. MDE staff undertook a review of lake water levels and withdrawals by the dam. They decided lake water levels would be held near Full Pool through the end of July, not the end of June as previously mandated. The result is during most of the high recreational use season, lake levels are higher. In turn boat wakes and wind waves are causing increased erosion of the unprotected shorelines. MDE staff responsible for this policy change was informed their decision would result in increased erosion. Friends of DCL requested MDE to study the impact of the policy change but no research into the impact of the changed policy has been undertaken.

The increased erosion of the shoreline and turbidity are causing water quality and recreational decline, contrary to the COMAR management principles for the lake. Further, the State of Maryland has been very clear it does not intend to pay for removal of sediment accumulation, so the costs for this increased sediment accumulation caused directly by the MDE action will increase the cost for sediment excavation, which will fall on current property owners.

Our questions

1. How can we request a review of the two major laws and others governing Deep Creek Lake to determine areas of potential legal conflict and/or/ contradictory or inconstant management mandates.
2. How can we work for creation of an Inter-Agency Task Force like the one for the Chesapeake Bay?
3. If MDE chooses to maintain high water levels can MDE be held accountable for damage to public property and decline in water quality created by their decision? Can they be required to install stabilization measures to mitigate increased erosion?
4. While other businesses which use lake waters pay a fee, Brookfield Renewable Power, pays no fees. Why are some businesses required to pay this fee and not Brookfield Renewable Power? Is Brookfield exempt under the law or is this a policy decision?

Topic 3: Imposition management, maintenance, restoration and protection of public property costs on private citizens

Management and lake protections are privatized expenses at this publicly owned resource. The Buffer Strip Permit Fees funds Lake Management operations, as well as covering staff time working at the State Park and increasingly on the Youghiogheny River. Currently, no public funds are available for lake protection, such as shoreline stabilization.

Other major expenses loom on the immediate horizon.

1) DNR Sediment Study. There is a multi-year study to assess sediment accumulation in the lake and develop of option alternatives. When other components of this study have been completed, property owners will be presented with options on how they (not the the State as owner) pay for sediment remediation and excavation.

In the Bay, sediment removal costs have been covered by the Waterway Improvement Fund, a trust fund supported by the state vessel excise tax. Bay-centric public decisions coupled with tight economic times have drained the Fund. Further, the State has redefined the Fund purposes. We are told the result is no funding will be available for work at Deep Creek Lake and our only option is creation of a tax district with current property owners paying for necessary remediation programs of this public natural resource.

2) Emergence of Eurasian Watermilfoil. This invasive Submerged Aquatic Vegetation is now well established in Deep Creek Lake and has been here at least a decade according to DNR. A survey of distribution of EWM will be conducted this summer and eventually we anticipate a plan for control will be developed. As with other matters, DNR has made it clear the cost for control of EWM will be the responsibility of the private property owners. A short term measure of benthic mats has been approved—with the permit cost as well as purchase and installation of mats to be paid by the property owners.

Our questions:

1. Is there any recourse for Deep Creek Lake property owners to obtain funding from the Waterway Improvement Fund for sediment excavation costs? Purchase of boats for lake use did contribute to this Fund since its establishment in 1965.

2. DNR, the agency which has been managing the lake since 1980, has allowed the importation of EWM into the lake. Do lake property owners have a case against DNR for being negligent? Is there any way we can force the State rather than private property owners to pay for the necessary EWM controls? Can DNR be required to establish controls to prevent importation of additional EWM into the lake?

Topic 4. Requirement for Watershed Improvement Plan for the Youghiogheny

watershed and Deep Creek Lake. In the Bay watershed, the State of Maryland is now requiring local governments to develop and submit Watershed Improvement Plans.

As we hope we made clear, the lake is just one component of the watershed eco-system. However, the responsibilities for management, protection and restoration are split between the State and the County, with little communication or coordination.

It is clear to Friends of Deep Creek that Secretary Griffin's call for a "broader watershed approach" will not take place in Garrett County unless the State sets requirements for a Watershed Improvement Plan.

Our question:

1. Is there a legal basis upon which the State could act to broaden the requirement for development of a Watershed Improvement Plan to the whole state, not just the Bay? Is this a legal or policy issue?

Topic 5. Creation of a Restoration Fund. As an aging lake which has been manifesting signs of decline over more than a decade, substantial financial resources are necessary to underwrite restoration projects, as suggested above.

Our questions:

1. Is it possible to establish a Restoration Fund just for the Deep Creek Lake watershed?
2. Are there precedents based on State action for the Bay?

Topic 6. Taxation without representation. Deep Creek Lake property owners provide 61% of the total property taxes in the County as well as other direct sources of revenue for the local government, including 25% of the Buffer Strip Permit Fee.

About 90% of the property owners are non-residents. They have no voice in decisions made at the county level which may impact protection and restoration of the lake. In other states, (Vermont) such non-resident tax payers have been given the right to be involved in local decisions which directly impact the allocation of property tax revenues.

Our question:

1. Is there an option in the State of Maryland Statutes to permit voting representation for non-resident tax payers in local decision relating to the allocation of property tax funds in the State of Maryland?

Topic 7. Protection of Deep Creek Lake from Marcellus Shale drilling. There are a number of mineral leases within the lake watershed.

The only protection the County provides through its DCL Zoning Ordinance is setback requirements for drilling equipment, compressors and the like.

Our Questions:

1. Is there any action the State can take to exclude drilling in the Deep Creek Lake watershed? As the second highest tourist destination in the State and major producer of tax revenue for the County, any spill or error would have tremendous broad economic impact on this state owned natural resource
2. We have been told that then PennElec sold the buffer strip to the State that it retained the mineral rights. Is there a split estate between the State and a mineral lease holder in the buffer strip of Deep Creek Lake?