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REAL SOLUTIONS

Regulation of Dams and Lakes

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2021 MICHIGAN ASSOCIATION OF COUNTIES ANNUAL CONFERENCE

Overview

Introduction to Part 307 (Inland Lake Levels)

Establishment of a New Lake Level

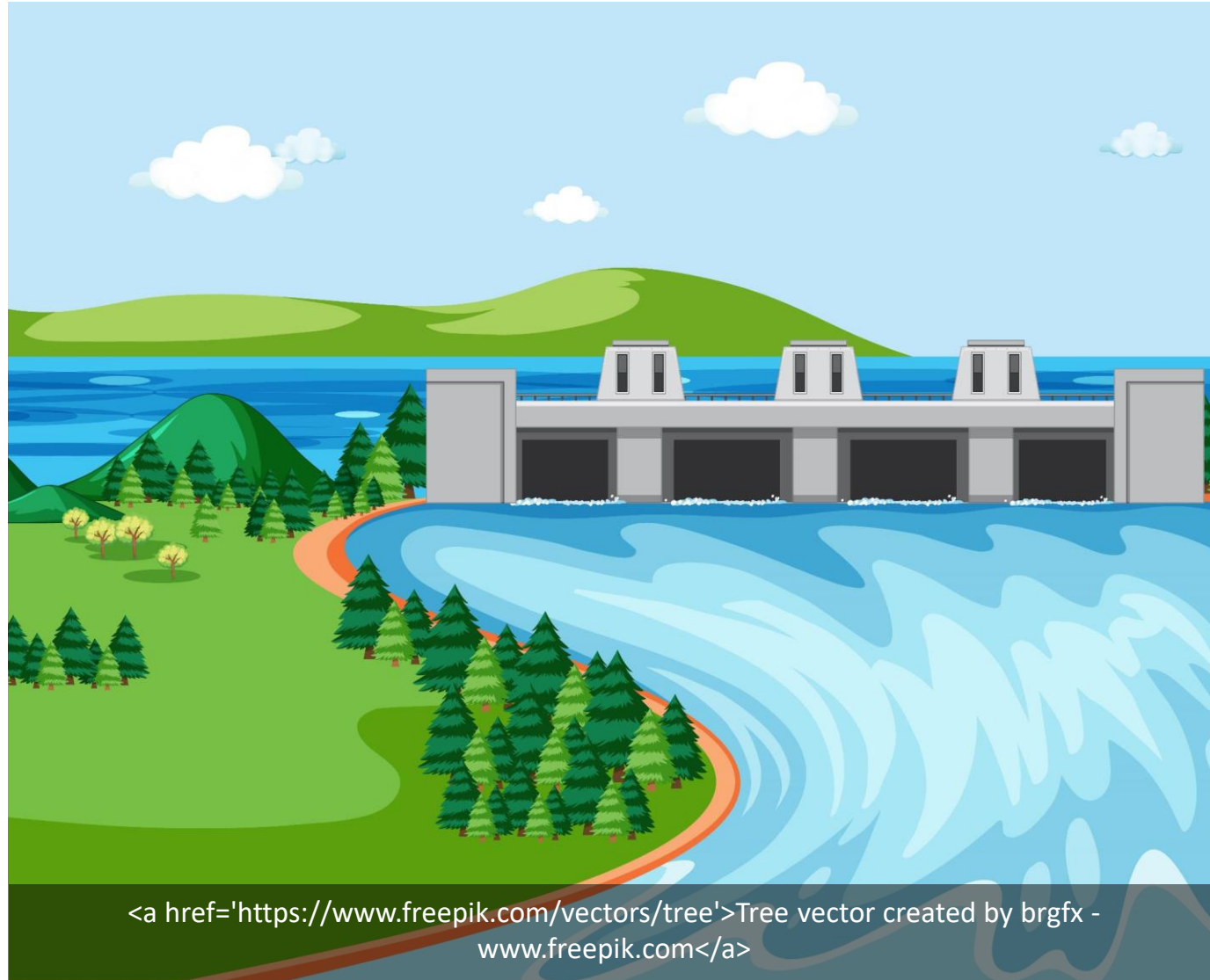
Maintenance of an Established Lake Level

Why We Expect More Lake Level Requests



Dams in Michigan

- Michigan contains approximately 2,500 dams
- Of the 1,861 for which EGLE has records . . .
 - 207 are < 42 years old
 - 1025 are 42-71 years old
 - 629 are > 71 years old

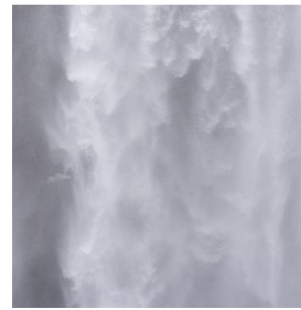


Part 315 (Dam Safety)

- Requires EGLE permits for dam construction, maintenance, improvements
- Regulates dams based on different levels of hazard potential
- Hazard potential is based on the potential for loss of life, property damage and environmental damage downstream of a dam in the event of a dam failure
- Requires inspections and that maintenance/improvements to dams take place based on inspection report



Dams Regulated by Federal Energy Regulatory Commission (FERC)



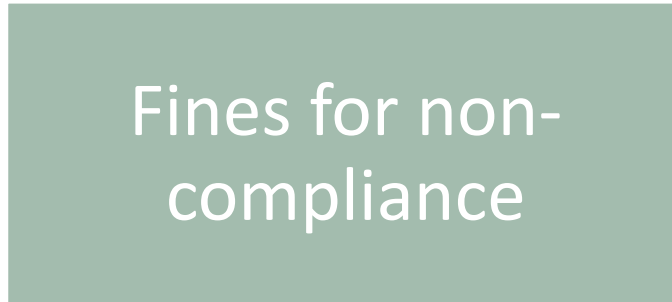
Hydropower dams
are regulated by
FERC



Licensing
requirements



Inspections and
compliance



Fines for non-
compliance



Part 307 (Inland Lake Levels)

- Court establishes a “normal lake level” administered by County Board of Commissioners
- Process provided in Part 307, MCL 324.30701 *et seq.*





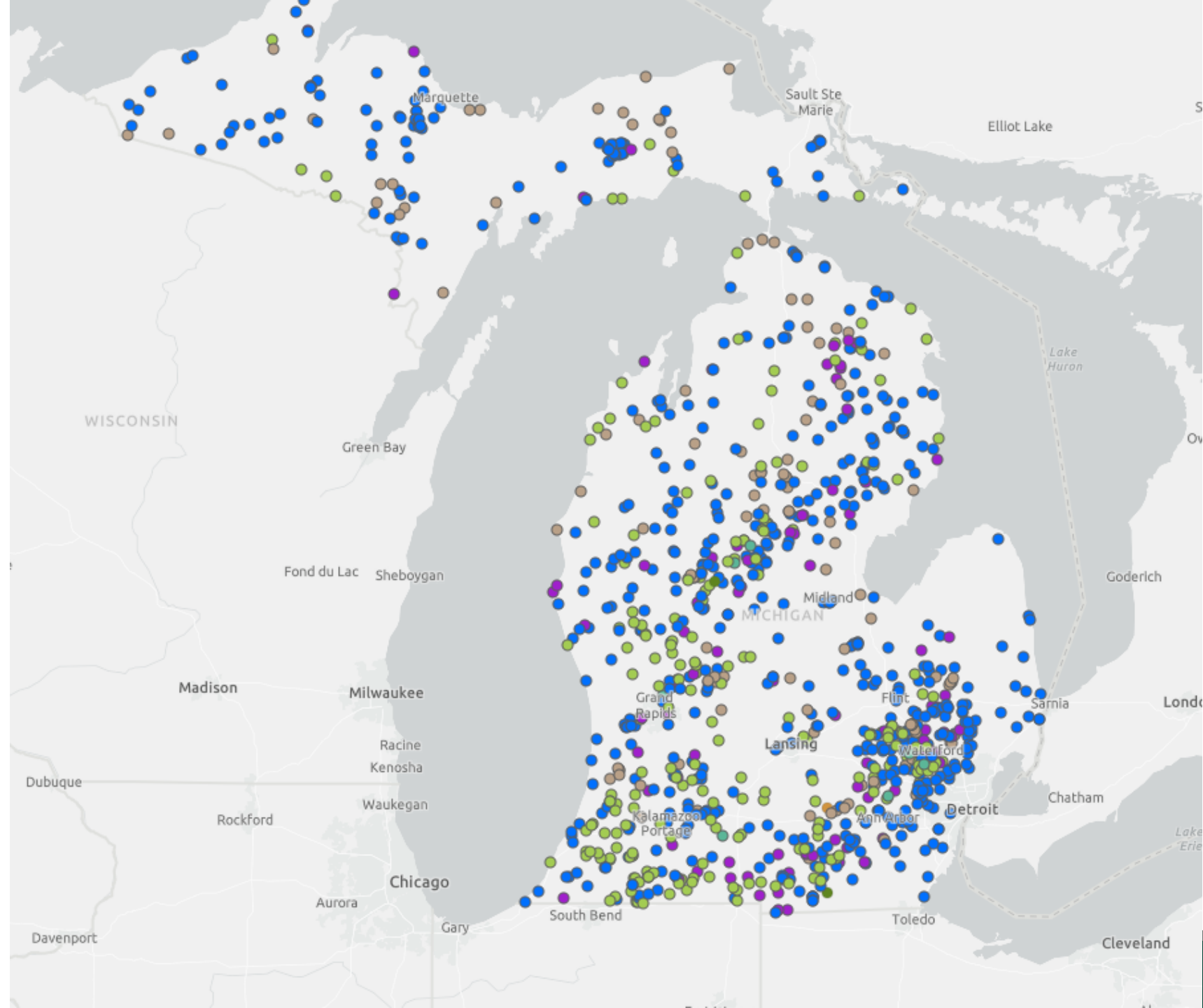
Breakdown

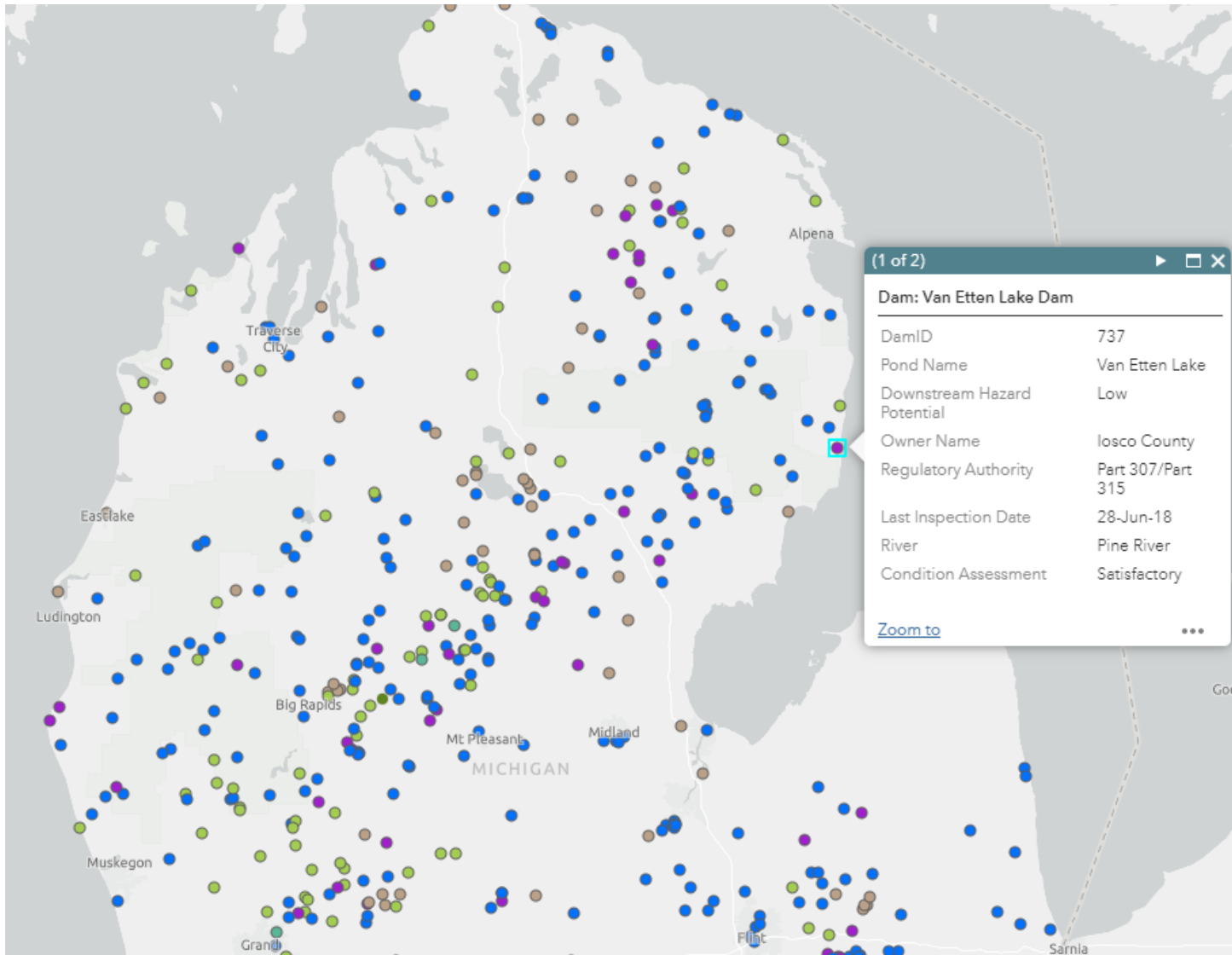
- 2,500 dams in Michigan
- 813 dams regulated under Part 315
- 99 dams regulated by FERC
- Less than 400 lakes have established lake levels under Part 307
- Only about 1/3 of established lake levels have dams regulated under Part 315 and/or FERC



Regulated Dams

- **Blue:** regulated by Part 315 but no lake level established
- **Green:** Lake level established but not regulated by Part 315
- **Purple:** Established lake level AND regulated by Part 315





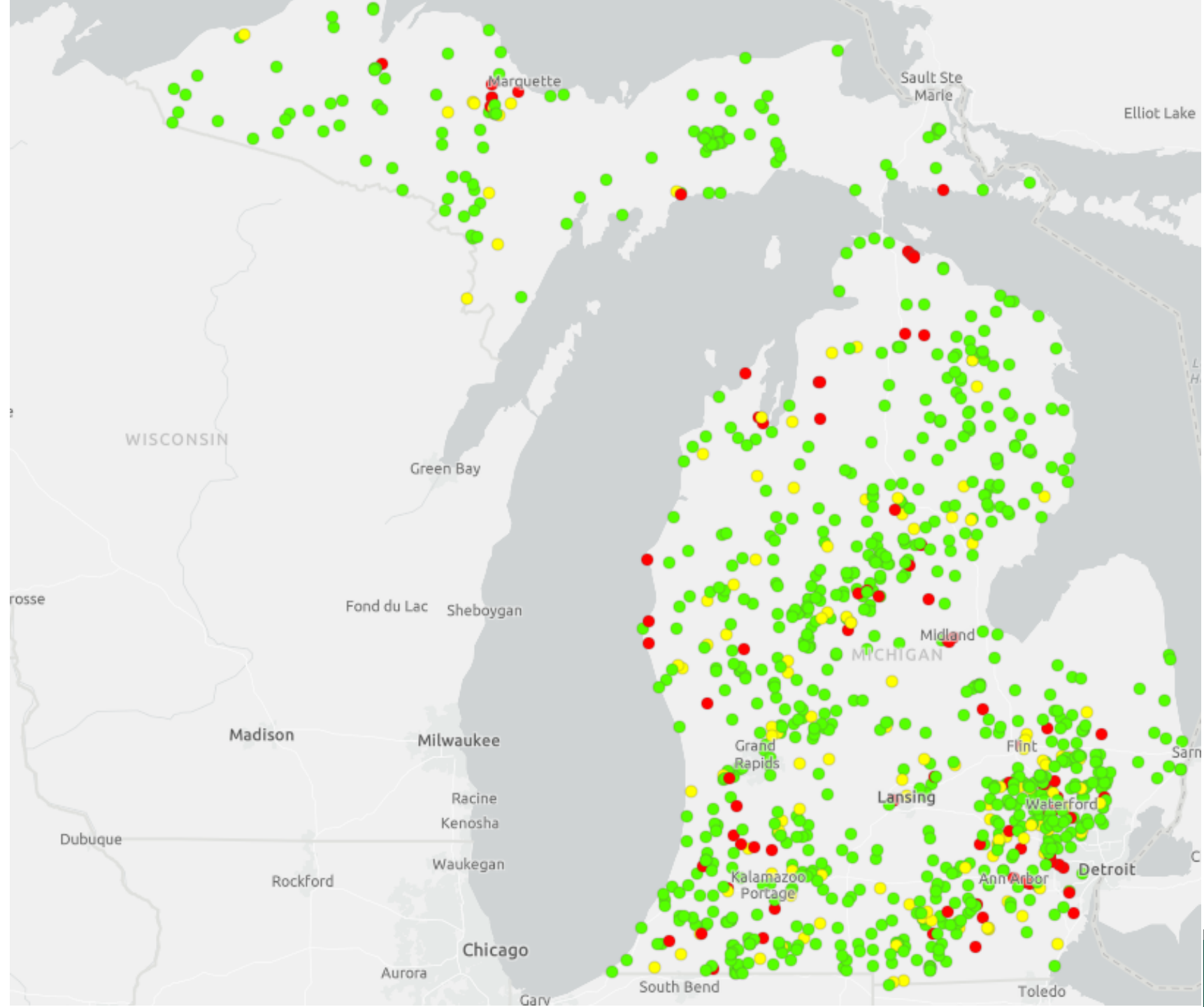
Available Information

- Dam ID
- Name
- Owner
- Regulatory Authority
- Date of Last Inspection
- Condition Assessment



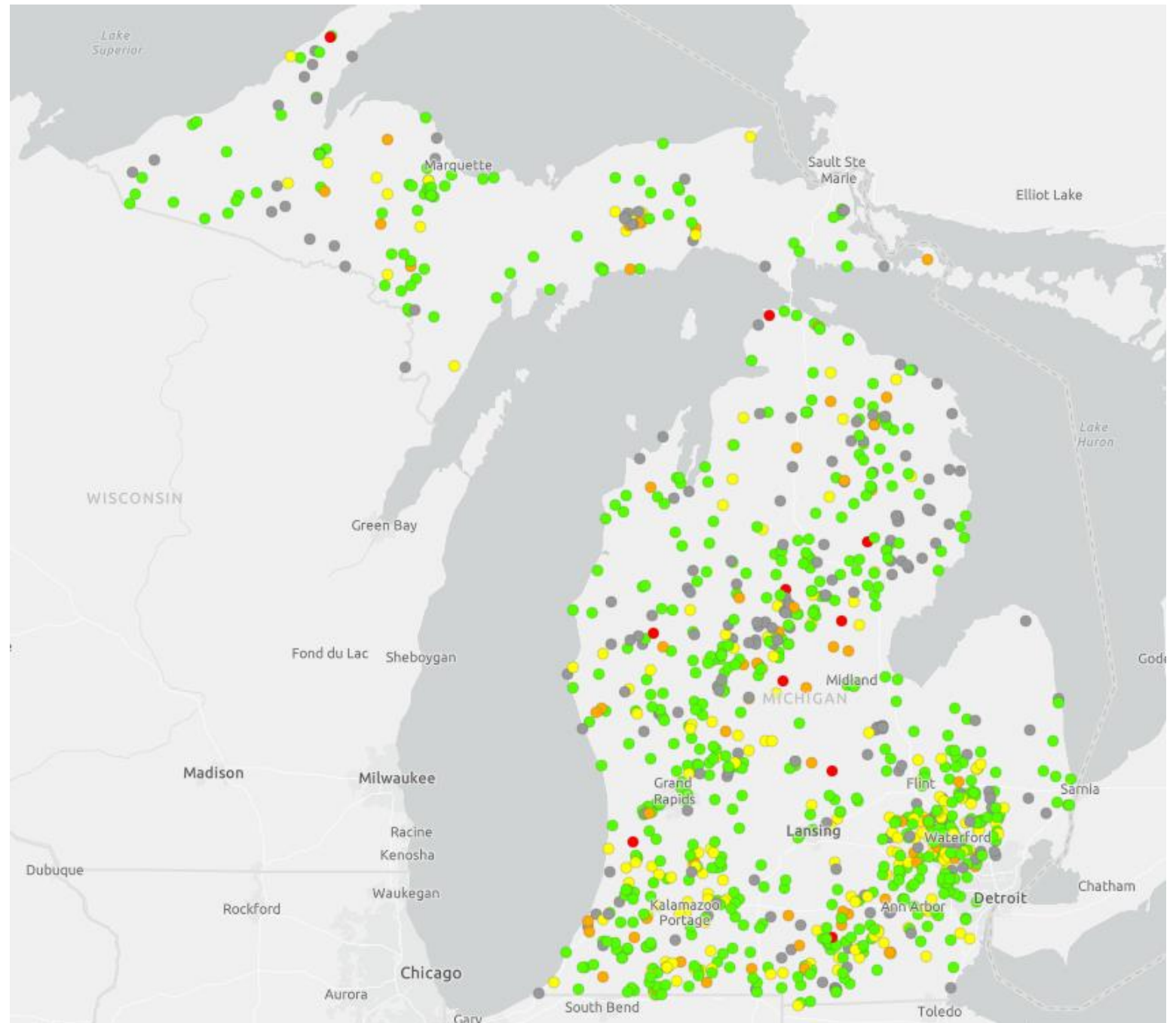
Downstream Hazard Potential

- **Green:** Low
- **Yellow:** Significant
- **Red:** High



Condition Assessment

- **Yellow:** Fair
- **Green:** Satisfactory
- **Orange:** Poor
- **Red:** Unsatisfactory
- **Gray:** Not Rated



Why “establish” a lake level?

- ✓ Disagreements between property owners as to appropriate lake level
- ✓ Improvements needed to private dam/control structure
- ✓ Insurance
- ✓ Financing/Assessing
- ✓ Inspection/Operation/Maintenance





What is the County's Role?

- Establishment
- Construction/
Ownership
- Inspection
- Operation/
maintenance
- Insurance
- Financing
- Assessments



Lake Level Infrastructure

- Dams/water control structures
- Emergency Spillways
- Berms/Dykes
- Augmentation Wells

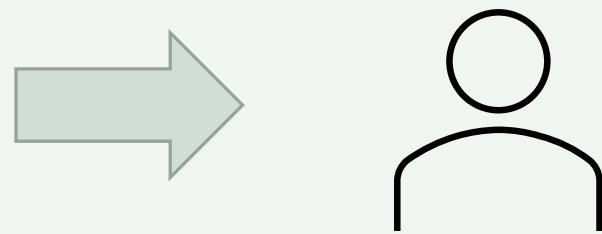


How is a New Lake Level Established?

Establishment begins with one of the following:

- Petition to County Board by 2/3 owners of land abutting the lake
- Motion of County Board (always recommended)
- Initiation by the State

After an action is initiated, the County Board appoints a delegated authority



Delegated Authority

- County Board can appoint a “Delegated Authority”
- Delegated Authority performs the duties under Part 307 on the County’s behalf
- Drain Commissioner or any other person designated by the County Board



Preliminary Engineering Study



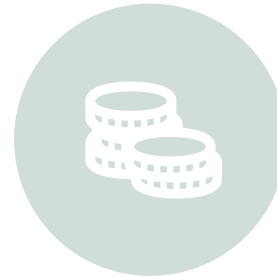
County Board may require a preliminary study (highly recommended)



Must be performed by a licensed professional engineer



County can require a cash deposit of up to \$10,000



Cost of study is recouped through assessments if lake level is established





Preliminary Engineering Study

- Study ***must*** include:
 - Analysis of feasibility of project
 - Expediency of the normal level project
 - Feasible and prudent alternative methods and designs for controlling level
 - Estimate costs of construction and maintenance
 - Financing method
 - Necessity of a district and proposed SAD boundaries



01

County initiates
proceedings by
resolution

02

Notice provided to
MDNR and all
impacted property
owners

03

Court holds
hearing to set lake
level and SAD
boundaries

Circuit Court Proceedings



- Past lake level records
- Locations of septic tanks, drainage fields, seawalls, docks, etc.
- Government surveys/reports
- Hydrology of watershed
- Downstream flow requirements & impact on downstream riparians
- Fisheries and wildlife habitat protection and enhancement
- Upstream drainage
- Rights of riparians
- Testimony from interested persons



Considerations by the Court



Establishment of “Normal Lake Level”

- Court sets “normal” lake level
 - “Normal” means the designed level with the understanding that it will fluctuate seasonally and based on weather conditions
- May set seasonal variations (winter v summer levels)
- Maintains continuing jurisdiction in the event revisions are necessary over time





Special Assessment Considerations

➤ Direct Access vs. Indirect Access

- Deeded access
- Platted access
- Road access
- View
- Property “profiting” from lake

➤ MDNR Lands

➤ Public Access

➤ Assessments to counties and municipalities



Special Assessment Process



Hearing on project cost and assessments



After public hearing, County Board must approve roll and project cost by resolution



County Board must approve financing



Appeals within 15 days after County Board approval



Financing

MCL 324.30705

- Special assessment district may issue bonds or notes to finance project costs
- Full faith and credit of the county is often required
- Financings can take place up to a period of 40 years



Maintenance/Operation Responsibilities



Delegated authority can perform maintenance/repair up to \$10,000 annually



County Board approval needed for expenditures over \$10,000



EGLE requires inspections of water control structure required every three years



Section 30722(3): A person failing to comply with this section, or falsely representing dam conditions, is guilty of ***misconduct in office***



How is an Established Lake Level Maintained?

- County's Delegated Authority is responsible for maintaining an established lake level
- May include property / easement acquisition of:
 - Water control structures
 - Ingress / egress
 - Emergency spillways
 - Dykes / berms
- County has authority to condemn property if needed



How is Maintenance Paid For?

Special Assessment District – properties that benefit from a lake level are specially assessed if the court creates a SAD boundary



2-step Approval Process :

- Drain Commissioner
- County Board of Commissioners



Potential Issues

- Special Assessment District needs revisions
- Actual lake level is different from court-ordered lake level
- Datum needs to be updated
- Lake needs seasonal levels
- Problematic assessment methodology language in lake level order
- Dams are not covered by insurance
- Appropriate contracts are not in place for operation and inspections

Circuit Court has continuing jurisdiction over lake level and SAD boundaries



Expect More Established Lake Levels

- Increased regulation/inspection requirements
- Age of improvements
- Financing
- Lack of ability to obtain insurance





Questions

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