

November 12, 2002

Editor, People's Forum
The Bay City Times
311 Fifth Street
Bay City, Michigan 48708

**Re: *Save Our Shoreline's Response to "Save our shoreline,"
printed Sunday, November 10, 2002***

To the Editor:

Well, now we have seen their true face. In their Sunday People's Forum letter, environmentalists David Dempsey, Cyndi Roper, and Terry Miller have become so desperate that they have resorted to name calling. They characterize me and virtually all of my neighbors, and Save Our Shoreline's 1,600 member households, as "radical" people that use "deception." Gee, you guys. Having met Terry in a recent television debate, I am disappointed that the debate has sunk to this level.

So let's talk about deception. The DEQ, joined only by some in the environmental community, asserts that our beaches are owned by the State of Michigan. The above named writers say "Sorry, state law and federal public trust doctrine has consistently determined that those exposed lands...belong to the public." Really? My deed doesn't say that. The Michigan Supreme Court, who is the final arbiter of ownership of our beaches, doesn't say that. Attorney General Jennifer Granholm's office doesn't say that. In fact, after a year of research, we cannot find any Michigan law that says that. None. So we asked the DEQ, through a Freedom of Information Act request, to provide us with the law that says that. They declined, citing an exemption to the Act. So I challenge the DEQ and the environmentalists to show us any of that "consistent" law that says the public owns the beaches upward of the water's edge as it lies on my beach on any given day. I am confident I will not hear a convincing response.

This ownership issue was decided long ago in favor of shoreline owners. Up to the mid 1920's, most people believed that shoreline owners owned to the water's edge. A court case then held that shoreline owners owned only to a "meander line," and not to the water's edge. That created a great uproar in the mid 1920's as the State of Michigan started planting stakes on the beaches and claiming ownership. Public outcry ensued, as the court had changed 75 years of public understanding. So in 1930, the Michigan Supreme Court decided to resolve the issue once and for all. It invited the State Conservation Department to file a brief of its views, and it performed a remarkable, in depth analysis of the law, considering the laws of England, federal law, law from other states, and the law of Michigan. In Hilt v Weber, 252 Mich 198 (1930), the Michigan Supreme Court held that the states, and not the federal government, had the power to determine who owned the beaches, and it held that in Michigan, shoreline owners owned to the water's edge, at whatever stage. The court considered that "public control of the lakeshores" might have many benefits, including "conserving natural advantages for coming generations," and it acknowledged such goals as "most laudable and its benefits most desirable." But the court held that the state "must be honest," and if it wants to do those things with private property, it must pay the landowners compensation.

Many of today's environmentalists do just that. They form conservatories and buy land to preserve it for future generations. This is a laudable nationwide movement, and one that SOS supports. But others in the environmental community would rather simply "take" land from private owners. They have embraced and utilized an expanded version of the "public trust" theory as their newest tool in their assault on private property rights. Problem is, that theory was considered, but rejected, by the Hilt Court in 1930. One of the Hilt judges, probably a liberal environmentalist himself, disagreed with the Hilt decision. He complained that the decision was "far reaching, for it constitutes the Michigan shoreline of 1,624 miles private property, and thus destroys for all time the trust vested in the state for the use and benefit of its citizens." That meant that the beaches were not subject to the public trust doctrine. So when Mr. Miller and others say that "public trust doctrine" makes our beaches state land, we don't get it. We're still waiting for the proof.

Attorney General Jennifer Granholm's office, as late as March of 2001, wrote that Hilt v Weber still controls, and that "where property abuts a Great Lakes shoreline, the shoreline is the boundary of the property regardless of the subsequent advancement

or recession of the water's edge." So is it SOS that is engaged in deception about beach ownership, or is it the DEQ and parts of the environmental community? If our attackers are wrong about this, what else are they wrong about? And if the state did take our private property without compensation, will yours be next?

Our attackers suggest we "fail to mention" the economic benefit of wetlands to the public, citing the value of our nation's \$26.8 billion fish and sales industry. Remember, SOS seeks only to maintain the status quo, as we have been maintaining our beaches for decades, and our attackers cite no proof that our continued beach maintenance will have any affect on this industry. It is the DEQ, Corps, and some environmentalists that seek to change the status quo, by re-interpreting decades of old laws to support their newly established goals. And while a \$26.8 billion fish industry is important, our attackers ignore our nation's \$1.2 trillion tourism industry. "Tourism is America's largest industry, employer, and earner of foreign exchange, and beaches are the largest factor in travel tourism," according to a 2002 study by the United States Army Corps of Engineers. In Michigan, tourism is Michigan's number two industry. We can't afford to shut Lake Huron's beaches down. We should be doing more to capitalize on some of the most beautiful beaches in the world here in our front yards.

Another example of our attackers' desperation is the attempt to downplay the threat of West Nile virus, quoting a Lansing ecologist as saying the shoreline mosquito threat is "exaggerated." But Bay County Mosquito Control Program Director Tom Putt disagrees, and was quoted as saying, "We've found some high counts of mosquito larvae along the shoreline in Bay County." I'll take the opinion of the mosquito control expert who has been on our beaches over a "Lansing ecologist."

So on closer analysis, it is not SOS that has engaged in "deception." Our 1,600 member families are fighting to preserve their home values, their health and safety, their local economy, and their way of life. They seek only to do that which they have done for decades.

Mr. Miller and his friends also suggest that the nuisance vegetation on my beach is "the North American equivalent of the South American rain forest." Really? Have you seen the "beach" at the Bay City State Recreation Area lately? What is now a marshland was for decades one of our state's most popular beaches. What is more disconcerting is that the DEQ and some of the

environmentalists are so intent on establishing wetlands out of our beaches that they have ignored the real environmental calamity that is occurring on our beaches. So what happened? Pollution in the water has caused explosive vegetation growth on what once was this state's number one beach in attendance. In an earlier article, Terry Miller himself acknowledged the link between pollution and beach vegetation. Shoreline owners believe that what happened to the State Park is happening to their beaches, too. It is not the normal state of affairs.

In 1930, it was ranked #1 in Michigan State Park attendance with 1,565,903 visitors. In 1958, it ranked 4th with 834,000 visitors. In 1965, the lowest water we have seen since at least 1918 (our records only go back that far), the water was about one foot lower than the lowest point recently in 2001. Yet a picture from the "Bay City Centennial 1865-1965 Picture Album" shows a beautiful, vast and vegetation free beach in 1965.

Our beautiful Bay City State Park Recreation Area, once the most popular beach in the state will remain a marsh unless we act now. Previous community efforts to restore the beach have failed. In 1994, Joseph Rivet, now our state representative, chaired a citizen's advisory group to create a Master Plan for the State Park. In their report, they lamented the park's wetland condition, and noted that "just a few years ago the entire stretch of beach consisted of beautiful sand and not wetlands." As a "critical recreational and economic asset to Bay County and the State of Michigan," the committee recommended "that nearly all the coastal area be converted to a swimming beach." Likewise, this newspaper recently noted with approval a youth group's recent recommendation to do the same. These yearnings fall on deaf ears. The government recently issued illusory permits which allow grooming on less than 10% of the park's beach, as long as that grooming does not take place from March through June.

Because of the awareness that SOS has raised, today is the day for this community, and its leaders to stand up and tell our state lawmakers that our beaches should stay beaches, and not be converted to a marsh like our beautiful State Park. We are at a historical crossroads. And with the momentum that SOS has created, we may not get a better chance. Join the 1,600 families of SOS, write your state representative now, and tell him or her you want

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your beach at the Bay City State Recreation Area back. Not part of it, but all of it. And tell them to support H.B. 6418.

Sincerely,

SAVE OUR SHORELINE, INC.

DAVID L. POWERS,
Vice President

DLP/cmk

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