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**INDIANA LAKE MANAGEMENT WORK GROUP
Indiana Government Center South
Indianapolis, Indiana
April 24, 2008**

Meeting Notes

Attendees

Members

Rep. Nancy Dembowski
Sen. Robert Meeks
Rep. Richard Dodge
Paul Oakes
Bill Jones
Jim Hebenstreit
Pete Hippensteel
Bob Madden
Jeff Krevda
Jed Pearson
Lee Bridges
Larry Coplen

Guests

Carol Meeks, LaGrange County
Ellen Jacquart, TNC
Lynn Dennis, TNC
Lyn Crighton, Tippecanoe Watershed
Foundation
Dave Tyler, Tippecanoe Watershed
Foundation
Kathy Clark, Lake Maxinkuckee
John Davis, IDNR
Ron McAhron, IDNR
Ryan Hoff, IDNR
Mike Neyer, IDNR
Steve Lucas, NRC
Doug Nusbaum, IDNR
Angela Sturdevant, IDNR
Gwen White, IDNR – Recorder
Jim Ray, IDNR – Coordinator

Meeting called to order by Representative Dembowski; self-introductions by all in attendance.

Lake Sediment Removal

Krevda spoke about restrictions imposed on lake dredging projects by IDNR. A briefing paper he had written was distributed. He explained that the LMWG had historically supported increased funding for the Lake and River Enhancement program; part of the funding was to be for lake dredging. LARE funding is appropriate for sediment removal from mouths of streams flowing into lakes, while for cost effectiveness, privately-funded dredging of channels can be performed while equipment is on lake. LARE program was formerly housed in IDNR Division of Soil Conservation; is now in IDNR Division of Fish and Wildlife. Much of what has been allowed to occur on natural lakes, such as

seawall installation, has contributed to sediment problems, i.e., trapping decaying organic material in nearshore areas. IDNR's dredging permit restrictions significantly limit amount of time available annually for dredging, making it difficult for dredging contractors from a business perspective. There are early spring limitations due to fish spawning concerns; July and August are difficult because of number of recreational boaters who can run over dredging pipeline; September and October are alright as long as the disposal area is not affected by farming; November and December become difficult with inclement weather and freezing lake; January through March very uncertain because of weather and temperature. Questioned IDNR approach to imposition of limitations and wanted to know whether policy should be established in that regard.

Meeks indicated that it's difficult to know who should be contacted in IDNR about obtaining approval for removal of leaves and other debris from nearshore area of lake. Asked if there was specific policy about sediment and debris removal and if there are guidelines for permitting of dredging projects.

Davis described the current IDNR permit application review process, including the roles of various divisions.

Krevda expressed his belief that the LARE program is influenced differently by being in the Division of Fish and Wildlife than it was while in the Division of Soil Conservation.

Meeks wondered if there were philosophical differences between Division of Water and Division of Fish and Wildlife related to dredging activities and if that affected the permitting process, particularly with regard to the amount of time required to issue a permit.

Krevda indicated that permit issuance was "much better", requiring about six weeks.

Madden suggested that the topic be taken up for consideration by the biology subgroup; the entire group agreed.

Invasive Species Task Force

Jacquart, Co-Chairperson of the Indiana Invasive Species Task Force, provided an overview of the task force's genesis and its efforts to date. Recommended actions have been drafted, to wit:

1. Establish state invasive species council
2. Integrate data on invasive species
3. Organize and conduct conferences
4. Coordinate with other states
5. Coordinate education and outreach initiatives
6. Assist agencies in determining programmatic deficiencies
7. Acquire and allocate resources
 - IDNR terrestrial invasive species coordinator

- Executive director for invasive species council
 - Grant funds
 - Emergency fund
8. Amend statutes to clarify authorities

After further review and clarification, a report will be presented to legislative Natural Resources Study Committee later this year.

Meeks asked whether IDNR didn't already have responsibility to take actions reflected by the recommendations, and indicated discomfort with some of the funding recommendations.

Following Oakes' comment about the proposed council appearing to be something like a private organization, Jacquart shared his view that seeking grants would be viewed favorably.

Clark expressed support for the recommendations and reiterated need for coordination.

Madden noted that the LMWG's mode of operation would be a model to consider if no immediate funding is available for the recommended council.

Regulations for Piers and Related Topics

Lucas explained that IDNR Advisory Council had been considering changes to administrative rules for piers – for both navigable waters and public freshwater lakes. Advisory Council forwarded recommended changes for navigable waters to NRC for possible adoption but asked that LMWG review changes regarding public freshwater lake rules before forwarding them. Basic purpose of changes is to establish substantive standards. Significant changes include:

- Modification to definition of group pier, specifically re “yacht” club
- Addition of language re determination of boundaries of riparian zones, in accordance with non-rule policy entitled “Riparian Zones within Public Freshwater Lakes and Navigable Waters”
- Addition of language regarding permissible limitations for group piers

Hippensteel asked if the group pier language would establish any size constraints. Lucas replied that the proposed changes would establish relative length limits and clearance distances on either side.

Advisory Council also recommended changes to the administrative rule definition for “lake”, following recent enactment of a statutory definition. Purpose is to add clarity and avoid confusion.

Lucas noted that an NRC rule adoption took effect on April 3, 2008 which established that IDNR can require multiple landowners on a lake to utilize a common structure, such as a pier, when installation of multiple structures would otherwise result in conflicts.

Lucas also noted that the NRC had adopted a rule change that would remove the word “docks” from existing marina rule definitions, thereby allowing for differentiation between marinas and group piers.

Hippensteel asked if the new marina definition would affect local ordinances regarding approval of such facilities. Lucas indicated that the new definition would have no effect on local decisions about facilities or structures landward of the shoreline.

ACTION ITEM: Ralph Taylor subgroup should evaluate the proposed rules, then submit recommendations for entire LMWG to consider presenting to the IDNR Advisory Council prior to its June or August meetings.

Proliferation of Piers

Oakes distributed aerial and water level photographs of particular piers along a section of shoreline in an area called Arcadia Beach on Clear Lake in Steuben County. He explained that there is much competition for pier space among landowners. At least one landowner had created controversy by placing his pier out into the lake at such an angle that it passed in front of the adjacent property. He described how pier proliferation may eventually lead to diminished property values.

McAhron noted that efforts are underway in IDNR to establish rules regarding group piers, which may alleviate some of the concerns expressed by Oakes.

Madden indicated that, because the City of Bloomington controls Lake Lemon – which is managed by a conservancy district – the district can regulate pier or dock placement and avoid pier proliferation.

Meeks reiterated that Ralph Taylor’s subgroup should review the Advisory Council’s proposed rule changes; the entire group agreed.

Lucas noted that the next Advisory Council meeting will be in June, prior to the NRC’s July meeting. If the LMWG isn’t able to provide recommendations by June, the next Advisory Council meeting will be in August.

Krevda noted that the pier rules are based on providing sufficient water depth for safe boat access. He asked if the depth was measured from the water surface to the original lake bottom or to the top of sediment deposits.

Legislation

Meeks stated that SEA 41, which defines “acquiescence” and “lake” and requires IDNR to prepare a list of public freshwater lakes, was enacted. SEA 88, which extends the LMWG expiration date to July 1, 2010, was enacted. SB 39, which would have explicitly required IDNR to implement the public trust doctrine, died in the House of Representatives for lack of a hearing. SB 40 also died in the House. Its most significant element would have required a new landowner to apply for an individual license from IDNR if an existing pier did not conform to current standards suitable for a general license. That proved to be contentious, in part, because of misunderstanding of its intention and effects. Meeks believes that aspect of the bill to be a good idea, despite the controversy surrounding it.

Pearson wondered if it might not be wise to separate some of SB 40’s elements into different bills so that those portions which were controversial might be addressed separately from those which were non-controversial.

Meeks spoke of SEA 134 which he authored and which also passed. He asked Lucas to describe the bill. Lucas responded the legislation would allow a party to consolidate multiple IDEM and DNR cases, pending before the NRC and the Office of Environmental Adjudication (OEA), if the cases are about water quality or water quantity. He said his office and OEA are drafting proposed rules to help implement SEA 134.

Dembowski spoke about HEA 1120, which will disallow phosphorus in dishwashing detergents. She explained that there was detergent industry support for the bill once some concessions were made regarding the date of its implementation and allowance for continued use of phosphorus for commercial purposes.

Early Season Bass Fishing

Pearson indicated that he and Oakes had been discussing whether allowing early spring largemouth bass fishing had an impact on the bass community. He noted that he had prepared a report on thirty years of largemouth bass data for Indiana lakes and that there would be continued discussion of the topic in the biology subgroup.

Economic Value of Lakes

Oakes distributed a summary of a preliminary lake economics study performed by Professor John Stephens of Tri-State University. Secchi disk data have been compiled and the next phase of the effort will require a \$5,000 monetary infusion necessary to pay for acquisition of property value information for the study area. Oakes will be seeking foundation funding to acquire the data.

Marine Fuel Tax

Because a question had been raised at the October 2007 meeting, Ray distributed copies of information regarding the gasoline tax that is collected from marinas on Indiana lakes.

That revenue is placed in the Fish and Wildlife Fund. The revenue was \$141,606 for FY 2007.

Midwest Glacial Lakes Partnership

White distributed an update on efforts being undertaken collectively by Midwestern Great Lakes states to acquire grant funds for implementation of projects that will protect aquatic habitat in glacial lakes.

Attendance

Madden expressed concern about the relatively low number of members in attendance at the meeting. Meeks stated that he was going to send a letter to the Governor indicating which of the members had a poor overall attendance record and ask that replacements be named.

Blue-Green Algae

Jones inquired about the status of efforts to address blue-green algae concerns. McAhron stated that he and representatives from the Governor's Office, IDEM, the State Department of Health and the State Board of Animal Health had been conversing about the topic. They are working on guidance for lake users and are creating a blue-green algae web site. There will be "common sense" recommendations for lake users. There is coordination between IDNR and IDEM on matters such as conducting a study of the Fall Creek watershed. There will possibly be statewide lake screening for toxin-producing blue-green algae if funds can be found. Jones urged better coordination with county health departments, physicians and veterinarians to better educate them, encourage better understanding of the issue and acquire information from them about incidences of algal toxicity.

Local Fertilizer Phosphorus Bans

Dodge pointed out that the Town of Clear Lake had adopted an ordinance banning phosphorus in lawn fertilizer, but was told by the Office of the Indiana State Chemist that such a ban was not legal since the town did not have the authority to regulate fertilizer content. The town is attempting to clarify the issue. Oakes stated that the Steuben County Lakes Council is also communicating with the OISC in an effort to determine whether there could be a countywide ban imposed on phosphorus in lawn fertilizer.

It was agreed that Representative Dembowski would send a letter to the State Chemist asking for clarification of the issue and request that OISC send a representative to the next LMWG meeting in early July.

Shoreline Erosion Control

Krevda spoke about concerns related to different types of materials used for shoreline erosion protection. He noted that glacial stone is much more expensive than limestone riprap and its availability is limited. He questioned IDNR's prohibition against using riprap. Pearson pointed out that the prohibition is not universal; riprap is acceptable along "developed" shorelines.

Biology/Chemistry/Watershed Issues Subgroup

1. Dredging

a. Location

- i. Issue is related to dredging on lake proper as opposed to channels, where dredging is allowed or even encouraged.
- ii. Combining privately-funded projects with LARE projects to optimize mobilization costs, especially to maintain channels.
 1. Mobilization cost about \$10,000

b. Timing

- i. Seasonal restrictions for biological impacts in first half of the year.
- ii. Dredge on state lakes in July-December
 1. Interference
 - a. July-August: Boat traffic
 - b. September-October: Wait for crop harvest to deposit sediment in cropland dewatering basin
 - c. November-December: Depends on weather and ice
 2. Months available for dredging are second week of March through May (high water in spring may limit access).
 - a. May be able to go to areas with least boat traffic in June-July.
 - b. Spring closure due to fish spawning
 3. May have to close the lake for dredging to boat traffic
 - a. Close completely for one summer.
 - b. Buoys to mark areas closed to traffic around the barge and pipeline.
 4. Lose one year of fish spawning in dredge area during one spring.
 - a. Interference with beds already occurring in developed areas when residents are installing shore stations and piers.
 - b. Question survival of nests in areas inundated with organics; some areas where nests no longer occur.
 - i. IDNR can't track location of nests in all lakes, so general guidelines are applied.
 - ii. Muck areas with vegetation are used for nests and cover for the young fish and amphibians.

- c. Entire littoral zone not dredged all at once, so doesn't destroy the entire year class for that lake.
 - i. Localized impacts are minimal but also cumulative as one more stress on the environment in addition to boat traffic, construction, etc.
 - ii. Balanced against areas that are not currently good spawning sites.
 - d. Restriction also imposed in winter time for hibernating amphibians.
 - iii. A lot of science but not necessarily enough science to make site-specific decisions
 - c. Lake bottom
 - i. Big Turkey Lake example – delineating natural lake bed; in area that had been previously mined for marl, so dredging was allowed.
 - ii. Never has been any differentiation of lake bottom regarding sediment as original bed or what has eroded into the lake.
 - iii. Seawalls are retaining organic material, so natural decomposition and consolidation don't take place.
 - iv. Not enough oxygen for organisms to survive in these areas due to organic buildup.
 - v. May not have information on depth from water surface to current lake bottom compared to lake bottom shown on contour maps in 1950s.
 - 1. Probing with PVC pipe to determine sediment depths.
 - 2. Dredge cutterhead will not work in dense consolidated material and heavy organic material
 - 3. Technology needed to determine depth of deposits
 - d. Quantification of lake bed before dredging – LARE sediment removal plan (lake restoration)
 - i. Sites identified with GPS
 - ii. Sediment samples taken to the lab per IDEM requirements (typically no contaminant issues in agricultural watersheds, but some areas may have manufacturing impacts)
 - 1. Toxaphene may occur in rural areas; selenium may occur in animal feed.
 - 2. PCBs may be released by disturbing sediments
 - iii. Probe with pipe to determine depths of accumulated sediment, then calculate volume of material to be removed.
 - iv. Design of dewatering basins.
 - v. Covers all proposed dredging areas including privately-funded areas.
 - vi. Priorities for LARE are publicly-accessible sites, due to limited funding.

- vii. Don't have assessment of the local impact of the dredge operation itself with disturbance to water clarity and dislodging of weeds.
- e. Permit process
 - i. No concerns about administrative aspects.
 - ii. Construction in Floodway - law to prevent flooding was the origin of the permitting process; Division of Water conducts engineering calculations. Did not originally include an environmental review.
 - 1. Division of Water continued to be the permit administration agency when Public Freshwater Lake law was created.
 - 2. Some permits are reviewed for boating impacts by Law Enforcement, some for Historic Preservation, biological impacts by Fish and Wildlife.
 - 3. Division of Water staff compiles recommendations and determines final decision based on environmental or other comments.
 - 4. Do a technical review to determine whether the dredging will break the seam of the lake and disrupt lake levels.
 - iii. Draft policy guidelines for environmental review, including consistent guidelines for dredging.
 - 1. Hydraulic modeling guidelines now on the website for review by engineering firms.
 - 2. Has been some inconsistent application of decisions in past.
 - 3. Eight biologists in local areas around the state do the reviews.
 - 4. Will provide some legal certainty, possibly as rules in the future.
 - 5. Have been operating under the guidelines.
 - 6. Eventual nonrule policy would be available for anyone.
 - 7. Jim Hebenstreit will provide a copy of draft guidelines with background information to the subgroup.
 - f. Need to determine exactly what agency response is desired
 - i. Asking for case-by-case consideration to determine where dredging is appropriate. Makes consistency difficult.
 - ii. Krevda sent several letters over the past few years; relaying frustration of lake residents.
 - iii. Whole-lake management plan for where opening in-lake channels may be preferable for lake use.
 - iv. Put criteria on paper.
 - 1. Seasonal restrictions for biological protection.
 - 2. Channels nearly always approved.
 - 3. Coves susceptible to wind with unconsolidated material.
 - a. Areas that never were dredged before would be denied.
 - b. At mouth of inlet may be allowed.

- c. Status of lake since 1947.

- g. Definition of lake and regulatory
 - i. "Lowering of lake" standard refers to 10 acre lakes.
 - ii. Definition of lake changed to 5 acres (minimum).
 - iii. Question about where the lake shoreline ends going up an inlet, which rules apply.

- h. Overall concerns
 - i. Lake management seems to be on the back burner for the state. The LMWG has a history of looking at things, making compromises and looking at what should be done. Could look at fish and wildlife, hydrology, materials, nutrients, and habitats on the lakes.
 - ii. Determine where it may be appropriate or necessary to dredge, such as developed areas where seawalls are creating a problem. Organic material may be contributing to nutrients in the lake. There is information in the diagnostic studies on the relative contribution of internal recycling. The fuel for those nutrients comes from outside the lake. Internal loading is a major component affecting the functioning of the lakes.
 - iii. Purpose of LARE money was for sediment accumulation at mouth of inlet compared to naturally marshy wetland area.
 - 1. Example of Koontz Lake with well-known sediment on east end, but not knowing how that has gotten redistributed around the lake.
 - 2. How to document that change.
 - 3. Once channels are full, the same thing is happening on lake due to prevailing winds and effects of basin with seawalls.
 - 4. Once the material is in the lake, not much goes out of the lake, even without seawalls. Gravity forces most of the material into the center of the lake. Most sediment deposition will be in deepest part of the lake. Bulk of sediment that decreases capacity is inorganic. What affects water oxygen is the organic material? Phosphorus gets into the lake on sediment. Not one thing or another. Sediments don't flow out of the system. Seawalls may reflect waves, depending on prevailing winds in embayments with calm areas out of the wind fetch.
 - 5. What about flushing sediment out of the lake? Will negatively affect downstream waters.
 - 6. Just because lake bed has organic material piling up is not necessarily bad or unnatural.
 - 7. Control structures will catch most sediment that may go out.

ACTION ITEM: IDNR will provide its draft guidelines to subgroup for review, possibly resulting in recommendations to guide the permit process.

2. Closed bass fishing seasons

- a. Draft IDNR document summarizes questions
 - i. Summary of 30 years of bass sampling on natural lakes.
 - ii. Shows an increasing trend of more, bigger bass over this period.
 - iii. Water quality has improved over time.
 - iv. Had no size limit on bass until 1973 to 14-inch limit in 1998, along with catch and release philosophy in which bass aren't removed.
 - v. Reproduction does not limit the population. Doesn't take many bass for successful reproduction, whereas fishing directly affects number of large bass.

Questions and answers

- b. Oakes contended report is flawed due to only 30 years of data compared to 70 years of fishing experience
 - i. Oakes contended there were substantially more bass 70 years ago; explosion of development started in the early 1950s with bass tournaments starting in 1970s
 - ii. Fishing regulations, in addition to catch and release, have seen a 99 percent reduction in the number harvested.
- c. Nighttime electrofishing around the perimeter of the lake
 - i. 90% of the fish are in 10% of the lake; will get higher percentage of bass in the shocked areas compared to where most people fish.
 - ii. Electrofish in springtime when fish are in shallow water. Conduct a population estimate with mark and recapture to estimate the entire population. Catch rates by shocking are as high as or higher than most other lakes in the nation.
- d. Catching more fish in Canada estimate more per hour.
 - i. Different species and less development, so there is more habitat.
- e. Why are there hunting seasons for other animals, but not for fish
 - i. Addressed in paper.
- f. Bass tournaments effect on post-catch mortality
 - i. Weigh-in ceremonies and barbless hooks
 - ii. Tournaments organized out of Michigan do not come to Indiana as much, but individual anglers
 - iii. Links to regulation of bass tournaments were addressed by LMWG in the past. Only two lake communities have taken advantage of IDNR regulations regarding tournaments.
- g. NALMS conference in Chicago and NALMS *Lake Line* issue will address fish habitat

ACTION ITEM: Subgroup will review report and determine whether any of the recommendations should result in actions by the LMWG.

3. Economic impact study

- a. Will not need more than \$5,000 for property tax/value information to finish the study.
- b. Tax information will be key.
- c. Second homes with large waterfront mansions.
- d. Reasons for study
 - i. To prove to legislators and decision-makers that spending money to keep lakes clean, restrict piers, and enhance lakes.
 - ii. Appearance before Senate Finance and House committee to provide funding to enhance lakes.
 - iii. Use study to support regulations, such as the phosphorus ban.
 - iv. Link to degradation of lake, such as misuse of shoreline
 - v. Support the value of Lake and River Enhancement fee and other funds by enhancing lakes that provide local revenue for county services.

In-Lake Structures/Watercraft/Density/Government Coordination Issues Subgroup

Senate Bill 40

Dodge indicated that SB 40 was contentious. Realtors expressed concern that the requirement for new property owners to apply for individual permits for nonconforming piers could devalue property. Fear that pier access would be lost. Great deal of misunderstanding regarding what the statutory change would actually do.

Dodge said Taylor met with northeast Indiana realtors association to explain the legislation. Expressed that in some cases property values would actually increase because some individual pier disputes would be resolved.

Meeks stated that he faced considerable opposition to the bill. One senator related concerns to Meeks about not being able to install a pier that would provide protection for his grandchildren from boaters; Meeks told him the pier configuration he proposed was unlawful because it would block off a portion of the lake from public use.

It seems that realtors now have better understanding of intent and effect of SB 40. Dodge had impression that Taylor supports reintroduction of bill in next session.

Hippensteel pointed out that property owners will have concerns about future limitations on nonconforming piers, e.g., possible reduction in number of watercraft they may be able to accommodate for relatives.

Hippensteel expressed concurrence with idea of reintroducing SB 40 as currently written.

Bridges asked what kind of property sales disclosure information is required by law regarding legality of piers.

Pier Rule Amendments

Lucas spoke about administrative rule amendments proposed by Advisory Council. One specific detail was deletion of word “yacht” from group pier definition. 312 IAC 11-4-8 is most significant proposed change; it’s attempt to establish standards for group piers – a reiteration of unwritten existing IDNR practices.

Meeks and Madden suggested that appropriate LMWG members meet with Taylor in the near future to discuss proposed amendments and develop recommendations to be presented to Advisory Council prior to its June meeting.

Madden noted that the existing rules and proposed amendments don’t address environmental issues.

Lucas indicated that a particular point of interest to the courts is the right of property owners to “wharf out” to gain access to the water. On lakes, that issue is viewed in a manner similar to navigable waters.

Madden asked if the LMWG is going to consider regulating the number of piers on a lake.

Hebenstreit stated that it could be useful to evaluate what is occurring in other states such as Wisconsin and Minnesota with respect to pier regulation. Wisconsin has a rule “skeleton”.

ACTION ITEM: IDNR staff will obtain current information about Wisconsin and Minnesota pier regulation to share with LMWG.

Hippensteel indicated that it’s difficult to determine how to address all pier-related concerns because there are so many variables involved. He asked if it would be worthwhile to consider establishing limits on the number of boats per pier or to limit areal coverage of piers.

Lucas noted that the Court of Appeals would likely be troubled by any attempt by IDNR to “just say no” to a pier, which would be tantamount to denying riparian access to the water. Instead, there must be acceptable standards or limits established for piers. He said that non-riparian easement holders can be granted a right of access to water, but if that’s expressed ambiguously it’s necessary to look back at the origin of the easement declaration to determine what rights were intended at that time. An easement holder can have fewer rights than fee simple owner, but not more.

Hippensteel offered compliments to Lucas for the proposed amendments being a major step in the right direction.

Tyler asked if first sentence in 312 IAC 11-4-8(d)(6) was necessary, to wit: “Do not cause or appear to cause appropriation of public waters unnecessary to the reasonable exercise of riparian rights.”

Entire Lake Management Work Group Reconvened

Jones recapitulated discussions in his subgroup’s meeting.

- Issues related to IDNR permitting of lake dredging projects
- Issues related to early season largemouth bass fishing
- Economic study of lakes and ways in which information could be beneficially utilized

Meeks recapitulated discussions in his subgroup’s meeting.

- Need to thoroughly review proposed pier rule amendments and provide recommendations to Advisory Council
- Need to determine what action to pursue regarding SB 40; consider splitting out contentious portions of bill to increase likelihood of other portions’ enactment

ACTION ITEM: Ralph Taylor subgroup will determine whether to recommend LMWG action with respect to SB 40.

Meeks will send letter to Governor recommending changes to LMWG membership, based on attendance records, and will provide names of possible members for consideration.

It was agreed that another meeting should be held in early July, sometime after the 4th.

ACTION ITEM: Ray will work on date selection and meeting room accommodations for next meeting.

ACTION ITEM: Ray will draft annual report for submittal to the entities specified in the law.