

LAKE MANAGEMENT WORK GROUP

Indiana Government Center South

Conference Center Room 2

June 22, 2007

NOTES

9:00 a.m. Welcome by Senator Robert Meeks and self-introductions of members

Members Present:

- Senator Robert Meeks
- Representative Dick Dodge
- First Sergeant Bill Snyder
- Jim Hebenstreit
- Tim Smith
- Jed Pearson
- Larry Coplen
- Lee Bridges
- Mark Mongin
- Ralph Taylor
- Bob Madden
- Bill Jones
- Jeff Krevda
- Shannon Zezula

Staff and guests:

- Greg Biberdorf
- Valerie Carter
- Major Felix Hensley
- Glenna Shelby
- Ann Knotek
- Angela Sturdevant
- Dick Swennumson
- Dave Tyler
- Jim Ray, coordinator
- Gwen White, recorder

9:15 a.m. Legislative Update

During its deliberations earlier in the year, the legislature took action on a number of issues related to lake and watershed management, including:

- Lake and River Enhancement
- Hydrilla eradication funding – Senator Meeks noted that the importance of this action was not fully appreciated by the author of an Indianapolis Star article
- Indiana Heritage Trust

9:30 a.m. Presentation on Midwest Glacial Lakes Initiative (White)

- PowerPoint presentation and handout
- Federal funding is available to support regional habitat improvement partnerships through the National Fish Habitat Initiative (www.fishhabitat.org)
- Midwest Glacial Lakes Initiative includes representatives from eight states with natural lakes (MN, WI, MI, IA, ND, SD, IL, IN)
- Will not be top-down, but driven by regional and local needs
- Minnesota DNR is providing a project coordinator
- The MGLI group is applying to the Association of Fish & Wildlife Agencies for a Multi-state Conservation Grant. Funds would be available in January 2008. Requesting \$425,000 over three years to support staff, meetings, and projects in the region.
- MGLI intends to address the complex combination of factors, including fisheries, shoreline management, legislation
- ILMWG recognized regionally as an excellent model for addressing issues

Senator Meeks thanked all participants on the LMWG for their dedication and purpose

- Very fortunate to have House and Senate members who come together to help lakes
- One more meeting for this year
 - Need to use that meeting to develop any initiatives for legislation
 - If anyone has an idea for legislation, welcome that input

10:00 a.m. Issues that LMWG members may wish to raise

- Mongin: Indiana Lakes Management Society (ILMS)
 - Holds meetings, bringing in live exotic invasive plants
 - Amazed at interest, but saddened at general lack of knowledge that many riparians have about these plants
 - Need to consider utility of another outreach program
 - Awareness about invasive species is extremely low
 - Need to think about funds to continue educational efforts
- Meeks: Better to find out about plants beforehand rather than afterwards, as the hydrilla is extremely expensive to control
- Jones: Have notes for subgroup
- Madden: Will have to deal with shoreline issue; who can regulate number of docks; lawsuit with marina at Lake Lemon because marina is riparian owner and feels it can control anything that goes into cove, which will test the lake pier ordinance
 - Not building any more lakes, need to get a handle on what is affecting the existing lakes

- Swennumson: Differences in farming practices between counties that affect lakes
 - Have tried any number of strategies to affect practices
 - Anything we can do to help educate farmers on practices that might improve yields and protect lakes will be important
- Meeks: Legislature put \$920,000 in state budget for SWCDs; need to understand why some SWCDs are not operating effectively
- Swennumson: Amount of federal funds that are used varies by county, as well as turnover in employees; meetings to take advantage of federal programs are needed
- Ray: Each SWCD is an independent political entity
- Meeks: Without oversight? To whom are they accountable?
- Ray: In some respects to State Soil Conservation Board and Division of Soil Conservation that provides assistance to them
- Meeks: Need to find out what SWCDs are doing with \$10,000
- Biberdorf: I worked with Soil Conservation for 26 years; each county is individually run, depends on federal staff and FSA initiatives, but a lot of farmers farm the way their parents taught them; lots of government conservation programs, but ultimately is a long learning process to achieve multigenerational change; now everyone wants to plant corn for ethanol, which may result in pulling land out of CRP (Conservation Reserve Program)
- Meeks: How to correct the problem of ineffective districts?
- Biberdorf: Ultimately the farmers make their own choices, driven by economics rather than stewardship for many of them. Tough to get the conservation program incentives high enough. Some LARE funding available, mostly through SWCDs advertising federal programs.
- Coplen: Will see a major issue due to the growth of ethanol industry with anticipated and ongoing growth of confined feed lot operations due to feed availability from plants. Have been approached by representatives of farm operations to expect planning/zoning requests for these large farm operations. Personal opinion is willing to look at all sides and make sure that our state is as prepared as possible to control potential problems.
- Meeks: Legislature just went through that.
- Coplen: Can either be proactive or reactive.
- Meeks: IDEM is the permitting agency. DNR has no input. As long as the permit applications are done correctly, they are approved by IDEM. LaGrange County is getting a 4,000-cow operation in a sandy-bottom over the main aquifer of the county which provides water to whole area. Managed to put three wells that are tested weekly for nitrates. They say there won't be any impact with 1-1.5 feet of clay and polyethylene to contain manure, which will be pumped out to fields. Have met with all these people numerous times. They can work off a satellite to tell where the hotspots are on the fields are to control fertilizer application with a \$150,000 piece of equipment. All regulated. People who live around those operations are distraught. Some folks gravitate to any kind of problem and stir up the situation, making it very difficult. Tried to stop it for a while, but at some point, all we can do is monitor. Get my water from that aquifer. IDEM went ahead and approved it. I went to a dairy operation in

northwest Indiana where they milk 24 hours a day, 7 days a week. No smell, but they have burners that aren't affordable for other farms. The Governor's office is pushing that economic development.

- Jones: All agricultural issues for subgroup discussion. Worst streams to sample near Palestine Lake were in regulated drains with straight-line ditches with a great deal of sediment. May need to open regulated drain act for review.
- Meeks: Has been a few years since we looked at that. May be time to revisit that issue, regarding where we put sediment traps and how it affects lakes.
- Krevda: I take that sediment out of the lakes.
- Dodge: Have a confined feeding operation in Huntington County that has become a real problem with several violations, contamination in reservoir, has been a problem with operator not conforming to regulation. Under a court order to stop spreading or hire a professional applicator to manage the manure.
- Meeks: Legislature put \$400-600,000 in the state budget for more IDEM inspectors.
- Dodge: Struggled with the confined feeding issue through legislative session. After they were all discussed, ended up with watered down controls. Still an unsolved problem. Facility within half a mile of Pigeon River in high risk area.
- Meeks: Will watch that closely.
- Snyder: Are there wells near other farms?
- Meeks: I was told there are three wells to monitor nitrates with county funds, perhaps through SWCD (contact Donna Hunter).
- Snyder: Problems near Huntington and in Steuben County. Proposals look nice on paper, but some operators will get rid of waste however they can do it. Runoff is there to local waters.
- Dodge: Not enough people to do the inspections.
- Meeks: Provided IDEM with funds for more inspectors; sometimes more government is good.
- Dodge: Without inspectors, it is up to the operator. They don't change their operations unless someone files a complaint.
- Pearson: Did anyone follow the bill where dredging of drains would be allowed close to lakes?
- Meeks: DNR has control for a half mile from the lake.
- Hebenstreit: The legislation would modify that.
- Tyler: May be just for maintenance on existing inlets.
- Meeks: Need to get a copy of the bill for Bill Jones' subgroup to review.
- Jones: Couple of things to hand out. May know that US EPA is conducting a survey of the nation's lakes as the first statistically relevant survey since 1972. Testing 21 randomly selected lakes in Indiana to look at regional differences, so they can come back to Congress to answer how lakes are doing nationally. IDEM has selected another 29 lakes, so that we are sampling a total of 50 lakes with 5 duplicates. Includes sediment coring, habitat evaluation, macroinvertebrates, nutrients (nitrates). Will be 8-10 hours per lake to collect samples with about 10 forms. EPA will contract with certified national labs. This will be an adequate sample size for statistical analysis. Will be starting sampling on Monday.

- Meeks: Group will be interested in a report.
- Jones: Will provide a news release to go out to press. Also have three posters for July as National Lake Month. In years past, ILMS has asked the Governor to declare July as Lake Month. Ongoing effort over 7-8 years to publicize lake values. Can get more information on web at: www.nalms.org.
- Madden: Lake survey funded by?
- Jones: Funded by EPA. Have 55 field days. EPA is hoping to do this every five years. This year is field sampling; will complete all lab analysis next year, then report-writing in following year.
- Bridges: This is part of the larger package of EPA funding for monitoring.
- Madden: Should generate great data.
- Jones: Not sure when data will be available, but it will be publicly available.
- Bridges: Will all be analyzed by the same laboratory, so whatever timeline they gave us will likely be extended. Will be some time from sample collection to results.
- Taylor: Is this the same thing that Carol Newhouse talked about? (Yes.)
- Mongin: Will there be plant sampling?
- Jones: Yes, but it will be a sidelight. Have laminated identification sheets of invasive species, but not as detailed of a survey as we will have for other parameters.
- Ray: Passed out a couple of pages of news articles about Steuben County. Town of Clear Lake established an ordinance prohibiting the sale of phosphorus in lawn fertilizers. Then, the Steuben Lakes Council has precipitated a county-wide ban on phosphorus. May be of interest to the group.
- Meeks: Other general comments?

Actions:

- Jones: Provide news release on national lake survey.

10:15 a.m. Sub-Group Discussions

Biology/Chemistry/Watershed Subgroup Issues

Topic: Bluegreen algae

- Group will prepare a paper to discuss toxic bluegreen algae for next meeting
 - NALMS website information
- Dr. Lenore Tedesco will be contacting Bill Jones regarding an upcoming bluegreen algae monitoring project
 - Veolia will be relocating their North American headquarters to Indianapolis

Priority # 2: Aquatic nuisance species (ANS) – Exotic invasive species

The subgroup discussed potential actions to address issues related to invasive species in Indiana waters.

- Plant identification brochures, possibly distributed through bass fishing teams that travel.
 - So much information out there, but wonder how to encourage people to look at the brochures.
 - Economics – closed two lakes out of 500 now (Griffy and Manitou). If the lakes are closed, the operators may be urgently concerned about not being able to boat in them. Need to use a tone of crisis. Don't want to close more lakes. Need to have everyone know what the invasive plants look like, early detection and rapid response.
 - Not as much how to tell the difference, but standard operating procedures.
 - Bill Jones: There was a nuisance species sign at the ramp on Palestine Lake. No signs at Caldwell Lake, just a gravel drive with a dollar-pay launch. Have never seen a boat trailer with more weeds on it, but they didn't come from Caldwell. Couldn't see the rear axle because of weeds; took a picture of trailer. Need to encourage owners to clean boats in such a manner that they won't become defensive.
 - Simple message to get to people.
 - Needs to be available with boat registrations, at marinas. Press release geared to new boat owners.
 - One marina is giving a \$25 NALMS membership to everyone who buys a boat. Boat buyers and marinas need to be allies in combating invasives.
 - Need to figure out what partnerships could be created and utilized.
 - Communities with lakes have been affected
 - ILMS doing a series of 8 meetings so people can look at plants and understand harm they can cause. Convinced that more can be done. Free ILMS membership to everyone who buys a boat?
 - Riparian owners may not generally pay attention. Avid sporting, fishing, duck hunters have more of a vested interest due to their dedication. Lake closure may be more important to those who are using the ramp regularly than the weekend cottagers who are just skiing.
 - People on a closed lake may think the closure is great.
 - Like farmers, difficult to change behavior of lake residents.
 - News media sometimes display a lack of knowledge and awareness.
 - Indianapolis Star article on state budget unfairly criticized Hydrilla funding
 - Bloomington Times comment on overlay zone hammered the ordinance as ridiculous and arrogant
- Regulation and boat inspection

- Legislative initiatives
 - White will contact Dr. Bob Waltz and Doug Keller to collect legislative proposals on the Invasive Species Committee and proposals to make trade and transport illegal.
 - Jones will provide information on examples of regulations, inspections and fines in other states.

Priority # 1: Land conservation practices (agriculture and urban)

The subgroup discussed potential actions to address issues related to nonpoint source pollutants.

Topic: Regulated drains

- Possible review of the state Drainage Code
 - More emphasis on use of sediment basins
 - Need to control sediment after maintenance has been done
 - Causes most of the work for lake dredging
 - Best management practices not being used in order to reduce costs in drainage assessments
 - Low motivation for elected surveyors to promote more expensive best management practices
 - Some farmers doing their own work with excavators to avoid the drainage assessment
 - Other construction activities require erosion control (silt fences), so should be standard for drain maintenance
 - Lake of the Woods in Marshall County gets sediment plumes and deltas from regulated drain maintenance projects
 - Wonder how many inlets that are dredged with LARE funds are getting sediment from regulated drains
 - If legal responsibility for regulated drains was extended into the lakes, there would be more motivation to control erosion
 - Perhaps, rather than reviewing drainage code, make drainage boards accountable for what goes into the lakes.
 - Monitor sediment before maintenance project starts and make the drainage board financially responsible
 - Need to know what, if any, exemptions there are for legal drain maintenance from the permitting requirements
 - Question what kinds of exemptions there may be from State Water Quality Standards for agricultural activities and drain maintenance
 - Kosciusko and Steuben County surveyors

- Could continue an effort that was started with the 1994 “Log Jam Conference” that opened dialogue between county surveyors and natural resource professionals
- Considerable variability in surveyors’ approaches to maintenance
- Need to get local buy-in for erosion control around regulated drains
 - USDA has funding to help implement best management practices
 - Need to find a way to bring it all together
- **Actions:**
 - White can get information on current floodplain permitting requirements for drain maintenance
 - Consider inviting a few county surveyors to future meeting (e.g., Dick Kemper and Larry Gilbert)

Topic: Perception of Lake Resource Value

- Many other states have significantly more lake resources, but fewer lakes are taken for granted in Indiana

Topic: Agency Accountability

- DNR and IDEM accountable only to the administration, which changes directors, who are figure-heads
 - People in agencies’ divisions doing the best they can with what they have, but management at the highest level is not held accountable for ideology, and practices are not as effective as they could be
- How to improve agency director accountability?
 - Perhaps by electing directors of agencies, they would be more accountable for policy so that it wouldn’t change often at the whim of the director.
 - Can’t insulate agencies from politics, even if agency heads were civil service appointees.
 - Funding priorities may change mid-stream.
 - Indiana trails behind surrounding states. More reason and policies are stated.
 - Spawning restrictions in standard dredging policies.
 - Wrote letter to the agency and no one has responded.
 - No stated policy and no one held accountable for policy.
 - Must be frustrating for agency staff.
 - Politicians are accountable for resource management, but also for competing interests of taxes and other issues.

Topic: Increased Corn Production for Ethanol

- CRP land reverting to corn production

- Could probably obtain figures for acreage not re-enrolled in CRP from Farm Services Agency (FSA) for each county.
 - Find out how watersheds may be affected as land is placed back into corn production based on slopes and soil type.
- Political impetus for ethanol production
 - Need to do it with a little higher level of consciousness and sensitivity to environmental impacts.
 - There are relationships between tillage, regulated drain maintenance and lake quality.
 - Need to be putting new technology to use as the land is going back into corn production.
- Purdue has been sending out press releases and reminders to farmers to maintain conservation measures
 - Situation perhaps not as bleak as it might seem. Many CRP acres were set aside as a surplus program (acres were prime farmland, not necessarily environmentally sensitive areas).
 - Many of the environmentally sensitive areas were hard to farm with low productivity anyway, so they may not be affected.
- Initiatives are mostly for press releases and field staff awareness
 - Totally voluntary agency except for Highly Erodible Land
 - May jeopardize other USDA benefits if the HEL is taken out of conservation for crop production
 - May not be productive in the long-term to use environmentally sensitive land

Topic: Confined Feeding Operations (CFOs and CAFOs)

- Connection to use of byproducts from ethanol production for livestock feed
 - Ethanol producers and state agencies promoting the combination of feedlots and ethanol plants
 - Newer confined feedlots are heavily regulated
 - Some farmers are dumping livestock waste onto fields without adequate compliance with the law
 - Examples: Dairy operation near Salamonie Reservoir which appears to be causing algae blooms; facility near Huntington
 - Regulatory agencies need to exercise their authority
 - Have to be ready for the increase in number of facilities
 - Can't keep applying manure to the same field
 - Problems with soil type (sand)
 - Easier to implement precautions before a facility is opened
 - Will have monitoring requirements
 - State had inspectors for Rule 5 that were eliminated
 - Creates problems that possibly can't be fixed later
- If facilities meet the regulatory standards, confident that there won't be water quality issues

- Not every livestock producer is regulated
- EPA requirements may increase the number of operators that are regulated
- Proactive operators that work with agencies will not contribute nutrients to a lake
- Need information on inspectors (\$500,000 for more monitoring of confined feeding operations, initiated through Senator Beverly Gard)
- Need to protect marginal, sloped, erodible land
- Have technology to treat waste (e.g., sewage treatment plants) but would be expensive to implement for livestock operations
 - Could learn from North Carolina hog facilities; outbreaks of *Pfiesteria*; shift in operations to other states
- Political control will affect agency resources for monitoring
 - Economic impact on operations that already exist
 - Will need to learn by example by catching some of the bad actors
 - Producers don't want a bad image; most try to adhere to the law

Topic: Phosphorus Fertilizer Ban (Clear Lake, Steuben County)

- Minneapolis initiated the concept, which then went statewide in Minnesota with no phosphorus in lawn fertilizers unless a soil survey indicates the need for nutrients.
 - Article in *Lake Line* will show some effect of nutrients in runoff.
 - Too early to tell about effects on lakes.
 - Compliance in Minnesota is high with wide availability of phosphorus-free fertilizers.
 - Relationship to phosphorus-free laundry detergents? Indiana was the first state in the country to pass it.
 - Little change in chlorophyll levels in research three years after the Minnesota ban, although they were lower even in that short amount of time.
- Phosphorus is the limiting nutrient in lake systems.
 - Indiana laundry detergent P ban was a point-source control. People continued to drive across state lines to buy phosphorus laundry detergents at the time. It has changed with industry alternatives.
 - Should try to promote the phosphorus-free concept with the whole group.
 - Example of dredging operation in a lake. Association surveyed the bottom and found little soft substrate. Bottom was hard but water looked terrible. Meticulous lawns had seven trucks spraying fertilizers. Recommended reducing fertilizers and placing aerators in lake. Implemented a set-aside area with no fertilizer near lake, which made a big impact.
- Can promote phosphate-free fertilizer instead of banning it
 - Only banned for lawn fertilizer, not agriculture

- Has to be a regulation because some lakes have asked lawn care companies to apply only phosphorus-free fertilizer, but upon testing the liquid, noted that it still contained phosphorus.
 - Would include all landscaping companies
- Soil tests for lake homeowners
 - Purdue will provide some services for \$10-15 each, but there is a turn-around time for results
 - Smaller kits are available for \$20-30 for multiple tests
 - Lake association could have kit available for residents to use which would give immediate results
 - Promote awareness of limited need for fertilizing
- Recognize economic drivers for businesses
 - Phosphorus may be cheaper than whatever the other inputs are to make the lawn green.
 - Abundance of phosphorus in yard already, so the phosphorus isn't actually contributing to lawn color
 - Fertilizers may naturally have some phosphorus which may have to be removed, which could drive up the cost
 - Some lake associations are listing local businesses that sell phosphorus-free fertilizers
- No Purdue fertilizer publications specifically for lake homeowners
- Need to be ready for the response
 - People will get used to a new way of doing things
 - If phosphorus-free is all that is available, that's what they will purchase and apply
 - Lake associations are starting to get the information out
- Other comments:
 - Group originally had representatives from IU, Purdue and Ball State
 - Not many lake-related professionals at those universities other than Carol Lembi
 - More publications from University of Wisconsin or Minnesota

Actions:

- Bill Jones will provide Minnesota information on phosphorus bans
- Consider creating lawn fertilizer publication for waterfront homeowners

Topic: SWCD Effectiveness

- Explore discussions about support for watershed management activities
 - Some disparity in resources and support from county commissioners
 - Loss of some technical support employees
 - Shift to using financial incentives, requiring local match and initiative
 - Any data on effectiveness of staff for local services in watershed management?

- Urbanizing trends
 - Farmers aren't as willing to use conservation programs if they think the land will be sold for subdivisions in the near future
 - LARE program had avoided funding urban conservation practices in the past; may need to reconsider focus on agricultural practices
- SWCD disparity
 - Depends on grant-writing and local conservation support among county commissioners

Actions:

- Zezula and White will develop some initial concepts for recommendations to ISDA Division of Soil Conservation and SWCDs on improving services to lake and watershed groups.
- Use format from the ILMWG report

Topic: Indiana Classified Filter Strip Law

- Allows filter strips to be taxed at only \$1 per acre
- No one uses it, purportedly because preparing the paperwork is too onerous (requires a land survey)
- Could consider the possibility of overlapping with FSA enrollments
 - If you are enrolled in CRP, accept FSA's acreage determination (not an official survey, but good enough for federal programs)
 - Could be one more incentive for enrolling in CRP
- Could use county-level GIS or reinterpret the "survey"

Actions:

- White will find statutory language

Priority: Economic Value of Lakes

- Steuben County study was valuable, but limited
- If this important, needs to be done with standard publishable procedures

Develop subgroup recommendations:

- Bluegreen algae – Bill Jones
- Drain maintenance – Jeff Krevda
- Economic value of lakes – Bill Jones
- Ethanol and Confined Feeding Industry – Shannon Zezula
- Fertilizer ban – Bill Jones
- Indiana Classified Filter Strip Law – Gwen White
- Invasive species – Mark Mongin
- SWCD effectiveness – Shannon Zezula and Gwen White

In each set of recommendations, consider: Agency accountability and enforcement

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

Topic: Watercraft Concerns – Speed Limits, Education, Noise

- Based on the results of a regional multi-state survey – with respect to accidents or drownings – speed of watercraft is not a significant factor or an issue.
- Most drownings involve paddleboats
- Indiana is one of only a few states with a nighttime speed limit
- DNR Division of Law Enforcement is not seeking any statutory changes regarding speed limits
- 41% of drowning victims were in violation of existing law because they had no PFDs (personal flotation devices) on their watercraft
- Division of Law Enforcement district public information officers continually disseminate information about various watercraft-related topics, as do the individual conservation officers (to a lesser extent)
- Educational efforts are integral part of the division’s job
- Difficult to enforce a watercraft noise law based on “offensive to ears” being an illegal action
- There is widespread problem with sales of “Captain’s Choice” switch that allows boat owners to open or close engine exhaust system at will – it’s illegal but difficult to police
- A decibel rating system for noise control is also difficult to implement – not practical to apply the standard recommended by original LMWG (85dBA at distance of 50 feet)
- There is a national group working on noise regulation
- Major Felix Hensley oversees Division of Law Enforcement statewide public information initiatives
- Involved with various efforts to promote safe boating
- Considering advertising in movie theaters
- Senator Meeks suggested articles in lake association newsletters

Topic: Bioengineering Standards

- Definition and standards for shoreline bioengineering still being discussed by Pearson, Hebenstreit and Hippensteel
- DNR is developing informational brochure
- Should continue with notion of “standards” for all actions along lakeshores, not just bioengineering

Topic: Piers and Other Nearshore Structures

- There are so many structures/devices on many lakes that lake usage is being affected
- Taylor shared photographs of piers that are actually closing off sections of public lakes
- There are concerns about DNR’s ability to address violations
- Can a system be established to address issues before problems occur, rather than reacting after-the-fact?

- Perhaps DNR should establish new pier-limiting rules that affect only those structures installed after the date of rule adoption or when property ownership changes, thereby avoiding issues related to existing piers
- Senator Meeks indicated that the Public Trust Doctrine is an important consideration – that the lakes are for all the people to utilize and nearshore structures are affecting that usage. The difficulty, though, is determining how to deal equitably with historical problems regarding legally questionable piers if there is attempt to move forward with more regulation.
- Figure out how to gradually “repair damage that’s already been done” to lakes by installation of piers and other structures, but without being overly oppressive to citizens, i.e., there must be “lawful nonconforming use” considerations.
- Follow example of a home being required to meet current safety codes if it is repaired or added onto.
- Property owners need to readjust to a level of normalcy involving fewer/smaller structures in nearshore areas.
- Is it conceivable to work toward a concept of no piers, like certain federally-controlled reservoirs such as Dale Hollow?
- Everyone seems to agree that nearshore areas are getting to be overused.
- It’s acceptable to tell riparians that the Public Trust Doctrine takes precedence over landowner excessive use of nearshore area.
- Taylor requested approval to explore potential legal mechanisms to address the nearshore overuse issue.

Topic: Public Freshwater Lake Definition

- There are many lakes whose status is unknown with respect to the Public Freshwater Lake definition
- They’re generally considered to be “private” unless DNR can prove otherwise
- Two potential ideas: (1) Change definition of “acquiescence” or (2) Change PFL statute
- DNR has never treated reservoirs as Public Freshwater Lakes – only natural lakes have been considered to be PFLs
- DNR has never issued permits on reservoirs for activities that would require permits under auspices of Lake Preservation Act
- Activities on Geist and Morse reservoirs have been regulated by DNR under auspices of Flood Control Act
- Some statutory changes have been proposed previously that would protect lakes from being stolen from the public trust.
- Could add the phrase “meandered or meandered” to address cases that go beyond Natural Resource Commission decisions
- Could possibly change “lakes of natural origin” to “glaciated lakes”
- Could possibly add exclusionary phrase: “Lakes that have been declared private.”
- Would it not be appropriate to simply create a list of PFLs first?
- Courts would likely require statute as basis for any list of lakes
- Taylor agreed to work on development of possible statutory language

- Senator Meeks noted that any proposed statutory changes would need to be agreed upon at a meeting prior to autumn deadline for bill drafting
- Would it be appropriate to re-define “acquiescence”?
- The definition would probably need to be in statute, rather than just in regulation
- Could add clarity to definition, e.g., add examples of “acquiescence”
- Taylor agreed to speak with Steve Lucas, LSA attorneys and others to develop potential language for statute change and “acquiescence” definition

Topic: Funneling

- What exactly is “funneling”? How is it defined?
- There are state legal cases which have determined that lake access easements incorporated into backlot property owners’ titles are a valid part of the deed in perpetuity.
- Is there a need for a law stating that riparian rights of lake access can’t be transferred to non-riparians?
- Legislation enacted in 2000 may provide all the authority DNR needs to regulate problematic lake access, since it allows DNR to “develop objective standards”
- Again: As new rules are established for structures, stipulate that they are to be applied when property title is transferred?

2:30 p.m. Reconvene Entire Work Group

- Summarize sub-group discussions
- Future meetings or other actions
- Interim report submittal (July 1)

2:40 p.m. Presentation on shoreline-related permitting issues (Knotek)

- Staff attorney with department, works with issues in northern part of the State
- Rules going through the process including:
 - Lawful Nonconforming Use Rule - preliminary adoption (for second time); sparsely attended hearing with no members of the public; will be on Natural Resources Commission agenda on July 17 for adoption.
 - Lake of the Woods, Bremen, rule on pier lengths – has dual lake level; when lake is low, some problems with boat access; allows for increased pier length to 250 ft with additional 50 ft buffer for high speed watercraft use; rule patterned after the Bass Lake pier length rule; will be on agenda for NRC. Lake level control structure was locked with two keys held by a lake resident and a farmer; now operated by DNR because of disputes. Lake level re-established by several lawsuits in Marshall County and higher courts. New pier rule will help with boating access at low level during dry periods.
 - Wawasee Property Owners and Real Estate Development case – Group pier permit (19 piers on end of channel); 2-day contested hearing with

lawyers and citizens; remonstrators threw out every challenge to the DNR regarding decisions on pier applications; only sticking challenge was definition of “marina”; on oral arguments to NRC AOPA, the marina definition was taken out; need update from department. Rule captured the group pier as a marina related to importance of paying for docking. Department followed standard procedures, which held up (public notice, inspection by aerial map, whether channels could be treated differently) with the exception of the definition of a marina. Reputable private attorneys were involved. Well-reasoned decision by Judge Lucas.

- Meeks: Will meet with LSA on several things and interested in discussion of proposals in discussion.
- Taylor: May wish to have peripheral conversations with Ann Knotek.
- Taylor: Group in past had made a recommendation to DNR to enforce removal of temporary piers during winter for any piers longer than 5 feet (under the general license).
- Knotek: Discussion with law enforcement, Ron McAhron and division directors on topic of addition to general license requirements for temporary piers (removal of temporary piers in winter). Several lakes where piers are left in year-round.
- Pearson: Are there other recommendations in that general license discussion that also need to be considered?
- Knotek: Removal of aerators during the winter is also a safety issue.
- Taylor: Want to keep everything in the confines of temporary to remove likelihood of navigational problem on frozen surface of the water.

Actions:

- Jim Ray will check on status.

Subgroup Reports

A. Biology/Chemistry/Watersheds Subgroup

Chair: Bill Jones

The group will develop subgroup recommendations in the same format as the original ILMWG report for discussion at the next meeting:

- Bluegreen algae – Bill Jones
- Drain maintenance – Jeff Krevda
- Economic value of lakes – Bill Jones
- Ethanol and Confined Feeding Industry – Shannon Zezula
- Fertilizer phosphorus ban – Bill Jones
- Indiana Classified Filter Strip Law – Gwen White
- Invasive species – Mark Mongin
- SWCD effectiveness – Shannon Zezula and Gwen White

In each set of recommendations, consider: Agency accountability and enforcement

B. In-lake Structures/Watercraft/Density/Government Coordination Subgroup

Chair: Ralph Taylor

Topics for discussion were:

- Funneling - Legislation regarding bundled rights on easements and riparian ownership. Don't try to define it. Best way to handle it is in shoreline use standards under 312 IAC, which will continue to go through metamorphosis
- Local ordinances and aquatic toys - no action
- Bioengineering- will wait until next meeting
- Noise enforcement – LE requesting no change
- Definition of Public Freshwater Lake – possibly trying to bring in list of glaciated lakes; make sure shoreline alterations are in public trust; remove acquiescence from administrative code and move it into state statute; smaller group will meet (Taylor, Dodge, Meeks) with legislative services to explore with Judge Lucas and key players in DNR to determine which route is the best to bring forward to the entire group. Ready to meet this challenge, which will have a big impact.

Next steps:

- Will reconsider after we start public hearing phase of these meetings
- Will prepare a package to bring for consensus.

Process for interactions between subgroups

- Should information from each subgroup be sent to the entire group or just within the subgroup?
 - For most working discussion, could send the information only to the subgroup or just to the chairman of the other subgroup
 - Could list the topics for the whole group to see if there is particular interest
 - In the past, subgroups came back to the main group and had a general discussion on recommendations for approval or general study.
 - May help to know the priorities within the subgroup
 - Will e-mail the notes from both subgroups to all of the participants.
 - Will have one more meeting and need to know what legislation may want to propose; Legislative Services will want to start drafting bills at that point.
 - Have only two legislator members present, one from the House and from the Senate. Not sure why the others are not involved. Need to think about who will forward any bills with only two legislators present.
- Requests for legislation drafts by middle of October
- Interim report is due July 1. Concluded two meetings with general description of items that have been discussed. Jim Ray will draft the text and send it to Gloria Schroeder for Senator Meeks to file.

Next meeting

- Wednesday, October 3, 10:00 a.m.- 4:00 p.m., DNR office in Columbia City.

3:00 p.m. Adjourned