

**INDIANA LAKES MANAGEMENT WORK GROUP**  
**Structures/Density/Recreation Subgroup**  
**IDNR Natural Resources Education Center**  
**Indianapolis, Indiana**  
**September 23, 2009**

**MEETING NOTES**

**Members Present**

Representative Dick Dodge  
Bob Meeks, CD-3  
Jed Pearson, DNR Fisheries  
Larry Coplen, Coplen Construction  
Dave Tyler, ILMS  
Maj. Felix Hensley, DNR Law Enf.  
Pete Hippensteel, new subgroup chair  
Bob Meyers, Simonton Lake  
Robert Madden, Lake Lemon  
Lee Bridges, IDEM

**Others Present**

Greg Biberdorf – DNR  
Angela Sturdevant – DNR, recorder

*Action Items are in red:*

**New Subgroup Chair**

Discussion of appointing a new subgroup chair. Pete Hippensteel proposed selecting a chair with knowledge and experience of technical aspects of structures/recreation issues. Rep. Dodge and Robert Meeks met with Ralph Taylor's wife Cheryl a few weeks ago to go through Ralph's files. Dodge has a filebox full of Ralph's LMWG files, including hard copies and CDs. Dodge will pass this on to the new chair.

Pete Hippensteel nominated Dave Tyler, Meyer seconded. Tyler proposed that Hippensteel would serve as a better chairman, with considerably more experience. Tyler nominated Hippensteel, Madden seconded. Hippensteel would be willing to accept nomination, provided he can rely on subcommittee members for assistance. Dave Tyler declined the nomination. Rep. Dodge called for a vote to approve Hippensteel as chair. Vote passed unanimously.

Chair of full committee will be Rep. Dembowski.

Will need to draft legislation for 2010 to extend LMWG. **Send proposed changes in wording of enabling legislation to Rep. Dodge.**

**LMWG Vacancies**

Pearson asked if Rep. Dodge has received any names to fill vacancies. Dodge has received one name (Sara Peel, Wabash River Enhancement Commission, lives in CD-3). Currently have 4 vacancies – 3 Congressional District seats and one at-large. Bob Madden suggested Nathan Long – works for Aquatic Control in Seymour, serves as chair

of ILMS Legislative Committee (lives in CD-9). Hippensteel suggested contacting ILMS for suggestions and will work on generating some names. He will forward to Dodge with short resumes, for forwarding on to Governor.

CD-4: White, Tippecanoe Counties (Lafayette, Logansport)

CD-6: Muncie, Anderson

CD-8: Terre Haute, Evansville

**Will resend color map of Congressional Districts and list of vacancies.**

### **Issues to Address from last LMWG meeting**

Whether to add “wildlife” to PFL legislation (SB 039 in 2008, did not pass). Agreed at this point to leave that on the back burner.

Hippensteel noted that as subgroup committee continues work members should keep in mind what issues should be addressed through rulemaking. Meeks disagreed – it’s easier to accomplish exactly what you intend through legislation, rulemaking gets too muddled up. Pearson – this group acts as good guidance for rulemaking.

LARE staff to report on disposition of funds for Manitou. Meeks appropriated \$500,000 for treatment at Manitou. Funds were never received by LARE. Treatment was done using LARE and Forestry CR&R funds. Nothing included in new budget, effective July 1. Treatment in 2010 will be done using LARE funds in Entomology account. May also have funding for AIS control through GLRI funds.

DNR will provide suggestions of properties that could be renamed for Ralph Taylor. Pearson mentioned that the Otter Lake access site has been one proposal discussed within the Fisheries section, but there could be other to consider. Recommendation will have to go the NRC for approval. **LARE staff will work with Chris Smith to develop list of sites to consider for discussion as agenda item for October meeting.**

Madden inquired about status of LARE staff. Neither Jim Ray’s nor Gwen White’s positions have been posted. Have support from DNR Executive Office to fill vacancies, needs to be approved by Governor’s committee for filling vacancies. Madden asked if there was anything the LMWG could do to voice support for staffing LARE. Suggested discussing at October meeting.

### **Proposed Topics for Structures Subgroup**

Hensley brought copies of Info Bulletin #56: Riparian Zones within Public Freshwater Lakes and Navigable Waters.

***Individual Piers*** (Item #11 in 8/4/09 Potential Discussion Topics document)

Hippenstell noted that past subgroup issues have focused on permits along shorelines. Recommended and supported establishment of emergency rule with group pier guidelines

passed last winter. Hensley and Pearson noted that there hasn't been any controversy since it passed. Mostly applies to new applications for group piers.

Hippensteel proposed that the subgroup may need to work on guidelines for individual piers (currently under general license). Pearson noted that we could look at different size or use categories for piers. Is this a topic that the subgroup should address? More and more large patios at the end of piers, and other toys on the water. Madden agreed that this was an issue the subgroup wanted to address, but recalled that Meeks had thought it wouldn't be politically feasible. Hippensteel noted that legislation may not be a viable solution in this situation – rulemaking may be more appropriate. Doing nothing is not a good solution. Pearson wouldn't want to spend a lot of time on developing recommendations that may not be supported by NRC or DNR. Pearson suggested discussing with DNR Law Enforcement, Ron McAhron, and Rob Carter to see if there's support for moving forward.

Bob Meyers is in full agreement that proliferation of individual piers should be addressed. Should develop a pamphlet/handbook to be given to new homeowners explaining what they can do on their lakefront. Current rules don't provide enough control/authority over what people can do. Pearson – education won't suffice until rules/legislation is changed. Hensley – agrees with Meeks – legislatively it will be difficult, but in his opinion that's the only way to do it. Seek partnership with DNR and interest groups involved with public trust issues to explain to legislature what's happening with PFLs. Hippensteel – someone needs to take lead to come up with ideas to propose and to nudge DNR.

Pearson – statutory authority was approved in 2000 to develop standards to regulate piers. Now need to develop rules. [Clarification from Pearson: Pier management would most likely be a rule matter and not a legislative matter, in that the Legislature granted sufficient authority to the NRC/DNR for pier rule making with the 2000 bill that was authored by Meeks and passed.](#)

#### Issues related to individual piers:

- Grandfathering
- Nonconforming uses

Hippensteel – does the subgroup want to address this or leave it as is and move on to other issues? Pearson – can the rule be interpreted that temporary piers, due to their temporary nature, cannot be grandfathered? Do we need a legal opinion?

[Hippensteel](#) pointed out that the top issue that's brought to the Steuben County Lakes Council board's attention each month is shoreline conflict (excessive use of shoreline, piers, toys, boats). Pearson – need to take broader look at whether there's support within DNR for discussing stricter pier rules before spending time to discuss the nitty gritty details.

The subgroup agreed that individual piers should be a topic for subgroup discussion over the next year. Hippensteel asked for a volunteer to make DNR contacts to determine receptiveness. Dave Tyler, Felix Hensley, and Bob Meyers volunteered. [Hippensteel](#)

will work on setting up meeting with Ron McAhron and John Davis and will contact Steve Lucas and Kari Evans (DNR attorney) to discuss legal issues. Larry Coplen volunteered to contact Steve Snyder if needed.

***Lowering of 10-acre lakes law*** (Item #3 in 8/4/09 Potential Discussion Topics document)

Lowering of 10-acre lakes law (IC 14-26-5) – need to change this to 5-acre lakes to be consistent with PFL definition (IC 14-26-2-1.5). Would require statute change. Threat to 5-9 acre lakes, county surveyors could lower lake level under current law without a permit. Mostly a housekeeping issue, wouldn't raise much controversy. Dodge didn't foresee any issues or concerns with pursuing this. **Will recommend to full group at October meeting to pursue legislatively.**

***Maintenance of Outlet Structures*** (Item #7 in 8/4/09 Potential Discussion Topics document)

Question of ownership and funding. Legally established lake levels, but outlet structures are independently operated. Currently legal lake levels are set by local circuit court judge, but may want to look at whether the NRC should have more authority. Debate over benefits and harmful effects of stable lake levels from ecological standpoint. **Need other expertise beyond subgroup, e.g. Dave Nance, Division of Water, to make presentation at a future subgroup meeting.**

***PFL List***

DNR developing draft PFL List, should be available for LMWG review before Oct. 21 meeting. Advisory Council to review list on Oct. 14. Expect some controversy surrounding which lakes are or are not on the list.

***Aerators*** (Item #22 in 8/4/09 Potential Discussion Topics document)

Preliminary rule adopted yesterday (9/22/09). Currently open for public comment.

Questions raised by NRC:

- If applicant expects to operate outside of general permit guidelines, then they'd have to get a special license. NRC asked DNR to create guidelines for what would be approved under a special license.
- Can this apply to all waters of the state? Lucas researching whether we have the authority to use the same kind of administrative rule on lakes such as Morse, Geist, Lemon, and state-owned reservoirs, not just on PFLs. May not be an issue on state-owned reservoirs, since most piers are placed by concessionaires or homeowners associations (number of docks are regulated).

Issues that were recommended by subgroup that weren't incorporated into this version of the rule:

- Prelim rule allows aerators extending 150 ft without permit, rather than 25 ft.
- No limit on fountains.

Is the language clear enough on who decides “undue restriction on recreational use”? Burden is on arresting officer to make the argument.

Law Enforcement was primarily concerned with winter placement of aerators (safety issues) – this preliminary rule will really crack down on winter use. Doesn’t provide much restriction on summer use (biological concerns, spray from fountains). Hensley’s recommendation will be to adopt an emergency rule for this winter, before permanent rule is adopted.

Hensley explained that it was LE’s interpretation that the definition of “aerator” included fountains by including structures used to “enhance audio or visual enjoyment by bubbling or spraying water.” Therefore fountains are covered by the preliminary rule.

Prelim rule does not specify the depth at which aerators can be placed. Too shallow poses navigational safety concerns. Too deep (directly on the bottom) poses biological concerns (stirring up sediments). Prelim rule does not specify how far out aerators can be placed, just how far out their effects are shown.

**Plan to bring this before full group at Oct. meeting to discuss recommended changes to preliminary rule.**

***Winter Removal of Temporary Structures*** (item #12 in 8/4/09 Potential Discussion Topics document)

Is this a separate issue from regulation of Individual Piers? No, will incorporate into discussion of Individual Piers.

***Rule for seawalls within 10 ft landward from shore***

Meeks - Were rules established to provide guidance? Pearson – no, but have general internal guidelines. Treat retaining walls within 10 ft in same way as seawalls, which seems to be sufficient. Sometimes it’s too restrictive, if a landowner has a steep lot where a retaining wall within 10 ft may be warranted.

***Public Access Sites*** (item #25 in 8/4/09 Potential Discussion Topics document)

LMWG has supported increasing public access in the past. Sometimes blocked by local zoning ordinances or requirements for state to buy more land than is actually needed to build access sites.

***Boating Endorsements***

Endorsement on driver’s license where operators have to pass a test to get the endorsement. Meeks tried to pursue this in the past, but it was not legislatively feasible.

Hensley had recommended a provision where people found operating while intoxicated will lose boating privileges.

***New Department for Water Issues***

Had discussed in past the possibility of creating a new Department to deal with all water issues. Meeks noted that there are too many other departments that already have an interest in water issues (ACOE, IDEM, IDNR).

Bob Madden will not be present at Oct. 21 meeting.

Adjourned at 2:00pm.

Rev. 9/25/09, aks