

DRAFT

Indiana Lake Management Work Group IDNR Northeast Regional Office, Columbia City, Indiana October 3, 2007 Meeting Notes

Present

Members:

Representative Nancy Dembowski
Senator Robert Meeks
Representative Dick Dodge
Bill Jones
ISGT Bill Snyder
Ralph Taylor
Paul Oakes
Mark Mongin
Bob Gross
Jed Pearson
Jim Hebenstreit
Jeff Krevda
Mike Baise
Tim Smith
Pete Hippensteel
Bob Madden
Lee Bridges

Guests:

Kathy Clark, Lake Maxinkuckee
Carol Skelton, Northwest Indiana HEC
Joe Skelton, Lake of the Woods
Jim Ray, coordinator
Gwen White, recorder
Angela Sturdevant, LARE
Dick Swennumson, Lake Maxinkuckee
Dave Heckaman, Lake Wawasee
Dave Tyler, Lake Tippecanoe
Kent Tracey, LARE
Doug Nusbaum, LARE
Stu Shipman, DNR Fisheries Section
Gerard Gaussein, Lake Wawasee
Lyn Crighton, Lake Tippecanoe

Notes

10:00 a.m. Welcome by Senator Meeks / Representative Dembowski

- Senator Meeks chaired work group last year
- According to legislation, chairmanship shifted to the House this year (Representative Nancy Dembowski)
- Self-introductions of members

10:15 a.m. Discussion of Lake Wawasee – Conklin Bay Ecozone

- Senator Meeks seeking general discussion by this group. Proposal for expansion of ecozone currently under review by DNR
- Several years ago, legislation enacted allowing for rulemaking to establish a 50 foot zone to keep high speed boats away from wetlands in Conklin Bay. DNR was to study the impact of high-speed boating on wetlands as a result. Jed Pearson spoke in that regard. Conklin is a large bay with tubing and skiing due to less wave action in that part of the lake.

- Currently a movement to close off more of the bay to anything except idle speed. Has raised concerns with some residents. There are more boats on Lake Wawasee than invasion of Normandy. As area of lake available to boating is condensed, affects congestion. Concern that the proposal could lead to further boating restrictions, including time limitations.
- Senator Meeks has been on the lake and is interested in general discussion about ecozone due to ramifications that may be far-reaching. Understand that there may be people here to speak on the issue.
- Jed Pearson – Handout photos that show degradation of wetland in Conklin Bay from 1938, 1951, 2000 when protection was put in place, and 2005. The dotted line on the 2000 image shows where the idle zone was in place. Since then, the consultant that studied the project indicated that much of the cattail zone will continue to erode and possibly disappear within 75 years.
- Resulted in a petition to increase the coverage of the zone with a counter-petition from a group wanted to leave it as is until more information is collected. Will ultimately be decided by NRC.
- The second page photo shows options:
 - The entire bay may be included as an idle zone
 - Only the west half of the bay (concerns with creating a safety hazard by narrowing area for boats to turn around); or
 - Moving the 50 foot buoys out to 200 feet (dotted line) which would still leave a portion of the bay’s west end open, but concern related to bottleneck and safety issues.
- The petition process will allow for public meetings and a hearing to gather input for a decision.
- Meeks: Were photographs from various years all taken at the same time of year to show that there is consistency?
- Pearson: All taken during “leaf-on” at some point during the summer.
- Meeks: Other photos taken in the first part of the year may change the picture. A lot of plant material may not get green and grow until temperature allows growth. Photo in early part of the year may not show full growth. Photos that Senator Meeks has show that there is no difference in extent of vegetation from year to year, contrary to assertions of petitioners who are requesting enlarged ecozone.
- Pearson: Photos show cattails which will be present during most of the year. Photos of lilies would change depending on season.
- Meeks: Recognize that there are two sides and information may taint the interpretation. If you start here, what is wrong with going to Johnson Bay to do the same thing? Then that could lead to regulation of boating hours and number of boats. Soon the public trust doctrine will be violated.
- Pearson: Conklin Bay was only designated for 50 feet whereas Johnson Bay was set at 100 feet
- Meeks: Have discussed with Ralph Taylor that these can be removed. If this becomes too great an issue to resolve equitably, it can be addressed by revoking the legislation that permits ecozone creation.
- Pearson: Boating law restricts to idle speed within 200 feet. In these areas, that legal protection is not there due to the location of the legal shoreline back in the wetlands.

- Meeks: Not arguing the case, but concerned that this is the start of something we don't want to do.
- Heckaman: Have lived on the lake for a long time and on the lake almost every day of the year. Have received calls, particularly from Harbor Side Condominium residents, who are downwind. Three times in the past years, some large boats came through the bay. I received calls to come remove some floating cattail islands that were as large as 30 feet in diameter. So actually the marsh by Wawasee Boat Company behind Pickwick has enlarged. Had to pull that island out and put it in another location. Have seen large hunks break out due to higher water. Where cattails are located in Conklin Bay was solid gravel before the dam was built on Lake Syracuse. Large boats are destroying the muck that builds a marsh. Water quality now stinks in summer time.
- Meeks: As a result of what?
- Heckaman: The IO (inboard-outboard) boats. Everyone who brought in an IO needed a new propeller by fall. Now boats have changed with 200 horsepower drawing 4 feet of water when setting still, let alone when they take off. Can't see the bottom of the lake now in 2 feet of water on the weekend because of the sediment that is stirred up.
- Meeks: Not a result of this though?
- Heckaman: The boats are riling the muck. The whole ecology of the lake is changing because the silt muck is allowing weeds to grow. Covering marl in the lake that used to only support the lilies. Wrote a letter to 700 people that the buoys be moved out to 5-6 feet of water. Am in a shallow area on the south shore. Once beyond my buoys, it's like walking on a large corrugated roof. Large deck boats, lots of horsepower, pulling inner tubes, and writing their name in the sand.
- Gerard Gausselin: Understand what he's talking about with boating and size. Not sure we can regulate that. If we enforce the 50 foot rule that we have for the ecozone, there is enough regulation in place to accomplish what we want to do. To keep on regulating something new, still have to enforce the regulations we have in effect.
- Jones: Clarify, Jed, that the DNR interest is due to the actions of the ILMWG in giving DNR authority to protect areas in lakes. This committee saw that this was an important thing to do, including protection of wild rice beds in Lake Manitou and other ecologically important areas that need to be protected from people recreating. Consistent with what we decided in 1999. When we recommended changing 200 foot shoreline area to idle zone, I argued for considering a depth restriction as an alternative. But the residents of Lake Wawasee came out in force because they were concerned about depth restriction. Now we see what happens when you have boats in shallow water stirring up sediments.
- Krevda: Did a dredging job in Lake Wawasee. There is now a type of boat that actually creates a wake for wakeboarders. Areas out of the wind such as Conklin Bay accommodate people wanting to use these boats. The high powered boats that were not available before will cause sections of the cattails to break off and float with prevailing winds. How you approach it is a matter of policy. Problem is as much of boats and seawalls with wakes repelling off seawalls. Power of boats is breaking the cattails away in the marsh.
- Taylor: Now I'm confused. In April 2002, the photographs seem to indicate less wetland than in 2003. The 50 foot ecozone rule was put in place in 2001 at Lake Wawasee. I remember the debate and that this group had great trepidation about ecozones. It's a balancing act with there being roughly 79 high speed boating locations in the state; issues

presented daily of balancing eco-philosophy and economics. Practical vs. impractical is no win for debate and consumer. LMWG talked about what we could do that made sense for the way in which DNR might react when there was a significant environmental issue. From enforcement point of view, the question was often, "Where is the shoreline?" When it comes to wetlands, theoretically a boat could run through it because it was far enough lakeward of the legal shoreline. Need to make sure the wetlands are included in the dimensions of the lake so that they could be protected by regulation. So putting the 50 foot rule in for the wetland area in Conklin Bay makes a great deal of sense so that DNR Law Enforcement could have a daily impact on what the public expected. They could not enforce the 200 foot rule. Now we have a 50 foot dimension. Philosophically on the same page as in 1999. Cannot go back to the public and give them a set of laws that they cannot understand while moving between different lakes and different counties. Can't subject them to too many instances of case-by-case. Concerns me that on one hand, we say that we need to do something about the shoreline, where "creeping normalcy" is overbuilding and over-utilization of shoreline. Need to protect wetlands to absorb shock from high-speed boating (compatible on one hand and incompatible on the other). Variation starts to become more complex in paradox of wetlands vs. overbuilt shorelines that can't absorb wave energy. Hesitate to start down this path of modifying relatively new ecozone rules, as the 50 foot rule has not been in place long enough at Conklin Bay to see effect and practicality. More viable option for lake users and stakeholders to leave it in effect and let some time pass. Would be devastating for people who live on lakes, use them, and economy from different kinds of recreation that takes place; would hesitate to move toward things that exclude activities without due process.

- Pearson: Comfortable that this is moving through the normal petition process, which gives an opportunity for all sides to express their views.
- Taylor: Yes, agree that what was done in 1999 LMWG report is valid. Stepping in line with North American conservation law, have biological issues that have technicalities that reach beyond minds of average layman, person on this committee, political system with finite details that require relying on other people's expertise. Gives DNR ability to look at situation where there is something very unusual. Need to go over and above for protection here. Still underlying philosophy that the DNR will protect the public trust. Don't want to get cart before the horse. Have something to present and react to today that goes into that. Ecozone rulemaking process has not reached conclusion. Don't know how they will react to that or final results. Would not want to see this move along lightly with a position a few years from now where boating public has rights taken away from them as political pressure from locals use this as a tool to stop high-speed boating in "their" bay. The 50 foot rule has a practical application. Would hesitate without a lot of data to move away from that.
- Meeks: Who was the report to be issued to that was in the 1999 legislation? They were to monitor the 50 foot zone's effects in Conklin Bay.
- Ray: That was never clearly established. Was an administrative rule process. As it was done, there were comments made about DNR interest in monitoring. Changes in personnel occurred. Never firmly established on what would be done.
- Meeks: Intent of this committee to monitor that 50 foot rule has never been exercised?
- Ray: Any monitoring was done by field biologists. Jed would recall what has been done.

- Pearson: Did little within DNR, but more recently a contractor did some monitoring and reporting.
- Ray: Legislation resulting from LMWG recommendation only said DNR should have the authority to establish site specific rules (for ecozones). There was no statutory requirement for reports. The reporting recommendation came out of the administrative rule hearing process specific to Lake Wawasee.
- Snyder: Comment about lake level – Wawasee has a fixed lake level controlled by Syracuse Lake control structure. Water level not raised or lowered by dam, but only by rainfall. Snyder and Major Felix Hensley toured Conklin Bay in boat. What concerns me as an enforcement officer is that along the shoreline, residents have put out orange buoys marking the shoreline. The buoys are all probably at 100 feet from the shore. Within the short time the LE officers were there, witnessed two boats go well within the 200 foot shoreline zone. Need to mark that shoreline with buoys at 200 feet. Have areas traditionally over the past 33 years where kids used to ski in Conklin Bay, but a lot of these areas are not big enough for a safe turn if they comply with the 200 foot limitation. But they have in the past, so enforcement is a daily process. People along the shoreline need to put the buoys out at a proper (200 foot) distance. Appears that by giving more room for boats with less than 200-foot buoys, there is room for turns, but it's a congested area. Giving extra 100 feet along the shoreline does not behoove the property owners. Those buoys are at 100 feet. Water level of the lake is fixed unless there is a lot of rain, so cattails are not being moved by someone manipulating the dam. May need to monitor the boat traffic.
- Heckaman: Spend a lot of time on front patio with view along the buoy line in a shallow area in another part of the lake. Have a few pictures of a jet ski pulling a skier and using buoys as a slalom course. In general, boaters do respect the buoys. One of the DNR buoys was onshore last spring and it looked as though someone was probably going to need a new propeller because there was a cut through the buoy's concrete. The 50 foot distance is not doing the job in Conklin Bay. All areas along points are bare with dead wash right against the cattails, which will eventually erode. Have pictures of wash at back of boat that was absolutely black water in a mucky area. Gravel where cattails are growing. But if you don't have the lilies, will lose the marsh.
- Dembowski: No action needed, but just discussion, so will move on.

10:30 a.m. Discussion of Oliver Lake Shoreline Issues

- Meeks: Developer trying to develop site with condominiums, boat slips along channel and go about 200 feet into lake through a marshy area, over and back with boat slips all the way around to accommodate the number of people expected to buy condominiums. Denied by plan commission. Then wanted to put campers in, close in some of the wetlands and put same kind of piers into lake. Property floods in spring during high water. By filling in, will send water to flood other property owners. Wanted to bring this to the work group as example of another way of invading the lake by going into it and denying the public trust. Would restrict people from using a good fishing area where bluegill and bass bed. Went to a public meeting on this issue with the DNR; people were agitated who live around there and use that part of the lake. Developer is proposing to put an additional 300-400 boats on the lake. Not particularly opposed to it in the channel where there is room but detracts from scenic beauty, affects fishing grounds and puts

more boats in the lake. Very issue that we have been arguing in subcommittee with some proposed legislation to bring back to whole committee to address some of this.

- Pearson: Where is that proposal in the DNR administrative process?
- Snyder: Not through permit process.
- Hebenstreit: Have comments and permit would be signed by designee of the DNR Director, which would be me.
- Meeks: Not trying to influence decision, but want to know how the committee feels about this. Have some good concepts in place that all have worked on to discuss. Have most of the freshwater lakes in the state in my district, so becomes more of a problem for me. Have to pay attention to what is going on in your area or these things will move to somewhere else.
- Hebenstreit: Reaction is not much different from similar proposals elsewhere. Now that there are sewers around many lakes, you can create multi-family residential areas. When I started with DNR in the 1970s, couldn't have done this due to septic system constraints.
- Meeks: Have to represent the people who live in that area.
- Hippensteel: Concur that this is a common issue that is taking place on several lakes. Not a great deal different from similar group pier situations that need to be addressed by shoreline development standards to address this constant conflict. Comparable to similar situations that will be coming before us in near future.
- Oakes: I hear arguments in defense of business use of the lakes because business restrictions will affect economic value. But in some lakes in Steuben County where funneling and extension of piers with million dollar property owner ending up with marina and excessive use of boats will also drive down the value of the lakes. The economic impact study that we are working on will point out how other states have addressed this.

10:45 a.m. Issues that LMWG Members May Wish to Raise

- Krevda: Docket today is full, but at a later date need to discuss a stated policy from DNR about dredging areas and sediment removal, including firm rules on what is considered lake bed and what can be dredged, as well as spawning [seasonal] restrictions on dredging.
- Meeks: Need to find out what those restrictions are and whether they are written. Need update on where we are on that issue.
- Hebenstreit: Division of Fish & Wildlife in process of developing guidelines. As of today, there is no formal nonrule policy or regulations specific to dredging. Have started that process. Right now goes on a case-by-case basis to determine where dredging is allowed.
- Dembowski: Just decision by biologist?
- Meeks: Manmade ditches are allowed to be cleaned by DNR. If natural watercourses need to be dredged, DNR will take care of it along with natural connection between lakes.
- Hebenstreit: Department doesn't have money for dredging, except for LARE funds. In manmade channels, the biologists would typically approve dredging.
- Meeks: Creates inconsistency for property owner and the dredger if there aren't guidelines.

- Ray: There has been an ongoing process trying to address the issue internally. Lots of discussions among staff. Just had a meeting on Friday to move this more quickly. Have had a draft document with a lot of discussion. Pushing quickly to have guidance that everyone is comfortable with.
- Meeks: Project that Jeff Krevda has with two channels, both used to collect the marl. Middle one was never used. Side channels got a permit but the middle one didn't because it was never mined for marl.
- Krevda: Lakebed keeps coming into discussions, along with eutrophication. Areas where the prevailing winds pile up the organic material, such as east side of lake or around a point. Organic materials are deposited. Basically trying to deal with people that want to pay for their own dredging where projects are not covered by LARE funding. Want to remove those materials so they don't have to extend their piers out further. Have done it in areas in Lake Manitou and Webster Lake, where areas were defined as in-lake channels to provide access away from shoreline. In Big Turkey Lake, the first area was a bay that had been previously mined with pictures to document. There's an island along east shoreline where all material is carried by wind and waves and have 4-5 feet of material, leaving only a foot of water. It's all organic material, not "lakebed", so lakebed dredging needs to be defined, how deep and if you can dredge that area. This definition would make what can be done very simple.
- Dembowski: Other issues from members or audience?
- Skelton: Lake of the Woods is dual level lake with level raised May 15 and lowered on September 15 each year by court decree. Have less than four months of recreational time as a result. Ready to go back to court to change the dates. Recreational season in Indiana is generally April 1 to November 1. Our issue is that one person can file a remonstrance which throws the whole thing into court even though there were 253 people who filed a petition to extend the higher lake level duration. We believe the law should be changed to make it 51% to file a remonstrance.
- Meeks: Clarified with Hebenstreit that this is in statute.
- Hebenstreit: Long complicated process that goes through county court. Method of filing a suit would have to be modified in statute. Create a group to review.
- Skelton: We just want to change the dates. Have the code cite. HB1762 allowed ditches to be dredged at lakes without getting permits. Think that 51% of the people should be required in order to file a remonstrance.
- Meeks: Clarified that this is the last meeting for this year, so not enough time to consider issue.
- Jones: The subcommittee can review the issue.
- Krevda: Can help explain circumstances to the subcommittee.
- Oakes: I was asked to head up the lake economic impact study for the state after a study was conducted for Steuben County. Went to Tri-State University and met with business department, found someone who would do this as a part of his dissertation. Would like the ILMWG to commission him to do this study without compensation. Would be much expanded.
- Jones: Subgroup will be discussing today.
- Meeks: Will follow the subgroup's recommendation.
- Meeks: Should the work group be re-established?

- Ray: Statute establishes ILMWG from July 2006 to June 30, 2008, with up to three meetings per year.
- Meeks: Would need to file legislation this session to extend the group up to two years. One of the legislators will file this to continue the committee.
- Pearson: Has been 10 years that the work group has been in place.
- Taylor / Meeks: Not authorized for a couple of those years.
- Madden: May look at how the process goes for appointment of ILMWG members. Have to speed up that process.
- Meeks: Last legislation was to reappoint former members to the committee. Those who didn't attend, asked Governor to make new appointments. Keeping track of who comes.
- Dembowski: No other issues? Break into subgroups.
- Ray: Bill Jones subgroup will go to Law Enforcement meeting room.

11:20 a.m. Initiate Sub-Group Discussions

Biology/Chemistry/Watershed Issues

- Recommendations to forward to the group as a whole, recognizing this was last meeting to forward recommendations for the next legislative session. Issues forwarded to the meeting, including the new issue of remonstrances. Obligated to follow original agenda first. Categories in order of consideration:
 - Bass fishing on beds
 - Aquatic invasive species education
 - Phosphorus ban
 - Economic impact on lakes
 - Increasing SWCD effectiveness
- **Largemouth Bass Fishing on Beds**
 - Pearson: Brought back during first meeting of reconstituted group. Was discussed years ago, but without a specific recommendation. Belongs in this subcommittee as biology of bass management. Developing some questions and focusing more on the issue.
 - Oakes: Fishing over 70 years in northern Indiana with perspective of declining fish population that disagrees with the DNR. Have put together documentation on closing the season to lift levels of bass and bluegill. Met with Jed and Neil Ledet. DNR will put together answers to 10 questions to determine whether to move towards closing season or not. Wanted subgroup to review questions.
 - Pearson: Will be working on a paper to summarize 25 years of regulation and bass management through upcoming winter. Will have document next spring to summarize information and what needs to be done in the future. Coincides well with Oakes' interests.
 - Jones: Indiana does not have a closed largemouth bass season. Bass can be fished while nesting, whereas some other states have closed seasons. Was one of the issues at Angola in 1996 that out-of-state anglers fish in Indiana when Michigan season is closed. Sounds like Pearson is going ahead. Doesn't require new funds or personnel, so any recommendation will not incur additional funds but ILMWG can tell DNR superiors that this is a good idea.

- Pearson: Will start writing technical report, but will also produce a more accessible style document. This group can review that.
 - Oakes: Will also touch on bass tournament issues, such as barbless hooks and/or eliminate weigh-in to reduce killing of bass.
 - Pearson: Group did originally develop a regulatory means to control tournaments on some lakes, such as Wawasee and Sylvan.
 - Oakes: Three bass per acre went to 14 bass per acre after instituting regulation.
 - Pearson: Not sure if the opportunity to regulate group activities such as tournaments on individual lakes has been publicized well.
 - Krevda: Need to include how the accumulation of unconsolidated sediment may affect reduction of spawning areas and effect on bass.
 - Pearson: That should be considered. DNR has not developed enough of our own information on impact of dredging, seawalls and piers. Don't have site specific data but this is an important aspect of future bass management.
 - Krevda: Unconsolidated sediment and activity of placing piers was taking beds out.
 - Pearson: Have dredging regulations that don't allow dredging during spawning season, but do allow fishing. Concern about inconsistency?
 - Krevda: More in regard to impact on habitat.
 - Pearson: Need to get more information on that.
 - Oakes: Bass fishermen use sight fishing, taking big female off nest, into bag, transport all day, take to weigh-in, cause stress.
 - Jones: If no objections, by consensus the group can encourage Jed to do the report.
- **Aquatic Invasive Species Education**
 - Mongin: My premise as President of ILMS is that while traveling around the state, ILMS brings in plants to educate on what exotic invaders look like. The low level of awareness is appalling with a lot of lake leaders totally ignorant on what the enemy looks like. They are concerned, aware, well-educated, passionate, but not informed about invasive species. Drafted proposed recommendation based on that experience. Looked at other states like Wisconsin, Minnesota, Illinois, Sea Grant and tapped people like Doug Keller, who is our only DNR invasive species person to address this issue. Became clear that not enough is being done for outreach to lake associations to make them aware of the real problems or what the plants look like. Good examples are where elodea or hydrilla was present for 4-5 years before anyone figured it out, then it became expensive to eradicate due to late identification or slow response. Not having efficient early detection, rapid response and cost-effective management. Learning the hard way.
 - Jones: Suggests that one approach is to pass legislation. Not the most knowledgeable about rules or regulation. Ask Gwen White what options there might be to address this with legislation.
 - White: Possible legislative approaches could include making it illegal to transport species as has been done in some states. Has been an ongoing effort spearheaded by State Chemist Bob Waltz to develop a statewide invasive species task force

through legislation. If the request is for more education, that would take money and would be a budgetary issue.

- Mongin: Need to get stakeholders to be more aware of recognition, reporting and prevention.
- Oakes: All lake associations look for speakers.
- Mongin: If there was a task force it would get out into the public. The task force would be valuable.
- Krevda: Spending millions at Lake Manitou for hydrilla. Need to do something to quickly educate public. While bureaucracy is putting together a task force, will have more lakes with hydrilla.
- Jones: Seem to be more publications, but need more than just publications; also need workshops and active outreach efforts.
- Mongin: All lake associations meet; have audiences. Technically, we can muster a suitable level of content. Expertise is high within the state. Task force could be source of expertise but need action to get information out to groups that meet.
- C. Skelton: HEC has divided up the state into districts. Am on the council for the north district with lakes in Valparaiso, Lake County, Lake Michigan. Need to get more from all over who are dealing with similar problems together to get information. Could coordinate with HEC. Meets every month. Could get information out to more people.
- J. Skelton: Have a seminar where a few people teach a lot. Each lake association sends more members. Too much bureaucracy where things get bogged down. Hoosier Riverwatch runs a seminar.
- Clark: Tina Hissong did a great job at Lake Maxinkuckee developing information. Have two boxes of cards on hydrilla, zebra mussels, new signs, discussion on kiosk at public landing. Will reach you to discuss how to get material out and get a kiosk built.
- Mongin: Programs show there is a lot more that needs to be done. Not sure that legislation is the right tool. Have to start somewhere with cost of real dollars.
- Clark: Question as new person on transporting species. Could set up aquarium that has one of each of those plants. Signs are not great. Could have a demonstration tank to train local kids in the summer.
- Oakes: Perhaps such as at West Otter lakes fair.
- Sturdevant: Can go to pet stores to buy the plants.
- Clark: Update on Manitou. Have heard an unfortunate rumor that hydrilla is in other lakes.
- Jones: DNR did look at other lakes and did not find it. How can we move forward? Notion is to better institutionalize AIS information and education. Have seen a lot of brochures. Signs and brochures alone will not do it. When sampling on Caldwell Lake, saw a boat trailer that was so covered with weeds that you couldn't see the axles. Brochures will not fix a violation like that. Are we talking about getting Doug Keller more resources for workshops, training sessions as one recommendation, along with support for an Invasive Species Task Force? What exactly are we talking about?

- Mongin: Endpoint for further workshops and task force would produce more education; that accomplishes what we need. Have to go forward with something. Starts with an initiative.
- Oakes: Money for television spot ads.
- Mongin: Not sure how much money is needed. Have Hoosier Riverwatch and others which can do a lot. Not sure how much money they would require.
- Gross: Do you believe that the average DNR officer recognizes these plants?
- Mongin: ILMS is putting together a dialogue with officers to recognize these plants.
- Jones: Clarify that some can recognize them.
- Oakes: Some officers are able to distinguish the exotic plants.
- Gross: Not sure whether all officers can identify the plants. Lake association people and property owners all change. In Cedar Lake, don't currently have invasives due to cloudiness of water in very shallow areas.
- Jones: Wave action is strong there, as well.
- Gross: Start with conservation officer who could identify invasive species and go to town or association. Some lakes don't have associations. How to reach them?
- Jones: There are many states, including Maine and Wisconsin, that have laws that regulate transport of invasive species. Boats on trailers are checked when driving into Maine with checkpoints that are inspected by officers. Can fine people with plants on the trailers; kind of extreme. Fascinating article in LakeLine newsletter where Minnesota has set up video camera at boat ramp that takes pictures of undersides of axles, including license plates. Find that people who know the camera is there are more likely to inspect their boats. Education alone will not do it. Must be some sort of threat that, "if you don't do this, you will be caught and fined". Sometimes need stick approach. Interested in following up. They have a warning sign posted. A dummy box might help, just like patrol car with no one there.
- Oakes: Information about Ball Lake *Cylindrospermopsis* spread like wild fire.
- Crighton: Wisconsin has a great volunteer ramp monitoring program with citizens who encourage people to clean their boats. Take shifts at ramps as a lake association project. Could have a statewide DNR coordinator to train people. Not a matter of identifying, but should be not plants on the trailer.
- Jones: To refine the recommendations, could forward this with more specificity about legislation to provide more resources to DNR AIS Coordinator for services including lake leaders and volunteer training as well as supporting the creation of a statewide Invasive Species Task Force. The task force could look at long-term regulatory issues. Quickest way of getting action will be through Doug Keller's office. Could involve getting an assistant, but don't want to micromanage.
- White: Correction that the state alone spent over \$1.3 million last year on herbicide treatment to control invasive species, not to mention the 10% or more cost-share provided by local residents. The associations are also treating invasives without state support. So a better estimate now would be \$1.5 to 2 million per year.

- **Phosphorus Ban**

- Jones: Indiana was first state in the nation to ban phosphorus in laundry detergents. However, there is still phosphorus, up to 8% by weight, in dishwashing detergent, which was not regulated. About a half dozen states have added a ban on phosphorus in dishwashing detergents to keep additional nutrients out of lakes. Detergents will work as well without the phosphorus. Manufacturers are working with the states to comply. Recommendation to pass legislation to limit phosphorus to no more than 0.5% by weight due to possibility of minor amount of phosphorus in manufacturing process. Have citations from IL, MD, MI, MN, VT and WA which the LSA could use as example language.
- Oakes: Steuben County has attempted to pass a ban on phosphorus in lawn fertilizer.
- Jones: Can consider the State Chemist's Office interests in the possible ban in a spring meeting. Wish to defer that issue. Recognize that counties and lakes are taking the initiative to limit phosphorus.
- Oakes: Why is phosphorus used in laundry detergent?
- Jones: Helps lift dirt off clothes and dishes, but there are enzymes and other alternatives available. In 1973, when the laundry detergent ban was passed, there weren't a lot of dishwashers so dishwashing detergent ban wasn't contemplated.
- Oakes: Do we have an idea of number of septic systems around lakes?
- Jones: Not just a septic tank issue, but also a concern that wastewater treatment plants do not remove the phosphorus. In Lake Champlain, 59 metric tons per year of phosphorus are imported into the lake. After wastewater treatment, still 2.6 metric tons are discharged into the lake.
- White: Would be instructive to have a figure for the relationship between a pound of phosphorus and the amount of aquatic plants that can be produced.
- Mongin: Is there quantitative data on impacts to water quality after a phosphorus ban?
- Jones: Have seen numbers after laundry detergent ban and the changes were small due to too many different things happen that affect the lake. Cumulative effect by removing all sources of phosphorus. This is not the main source of phosphorus, but is something that can be controlled and is economically feasible. The cost-benefit analysis is that it is far cheaper to eliminate the phosphorus from the detergent than to try to remove it in the treatment process.
- Dembowski: Makes no sense to ban it from laundry detergent but not from dishwashing detergent.
- Sturdevant: Because the ban in laundry detergents happened so long ago, didn't think about it in dishwashing detergent.
- Jones: Not sure if there are alternatives to the phosphorus in liquid soap and other products, but there are for automatic dishwashing detergents. May be phosphorus in shampoos and other products. By weight, dishwashing detergent adds up rapidly. Box of detergent is heavy. Will investigate to see if there are other products that should be included.
- Dembowski: Need to determine if there are other factors that we are not aware of, but seems like a worthy cause.

- **Economic Value of Lakes Study**

- Jones: Discussed in 1997-99. Value of lakes is grossly understated and not fully understood. Not just for recreation, but also property values. Other states have done limited studies, including Wisconsin, as a limited but interesting approach. VT and MN have done number of studies. Concern that we should have a better sense of the economic value of Indiana lakes. Paul Oakes mentioned idea of economic study to Tri-State University professor.
- Oakes: I am on board of lakes council in Steuben County. I spoke to Tri-State University, which developed an economic study for the county that measured against four other Indiana counties with similar university and population but without lakes. Differences between counties with and without lakes in terms of retail sales, employment, home value and other factors is dramatic. When talking about state study, Steuben County is limited with 101 natural lakes. In one county alone in MN or other states with high numbers of lakes, if Secchi depth (clarity) went down one foot, there would be a \$2.5 million loss to the county. Tri-State Professor will do a doctoral dissertation with university backing as a finished report. Will give legislators ammunition to do Invasive Species Task Force because will show that weeds, invasives, proliferation of piers and funneling will lower economic value. The increased number of piers and boats will cause the value of ski lakes to drop due to too many piers and overuse. Will help empower DNR and legislature to fight degradation of resources.
- Jones: Would like to see results. Don't need to give the professor permission. Is there an actionable item?
- Oakes: Tri-State will back the professor with time and ability to do this if he has backing from this group.
- Jones: Just need a good idea and someone to pay for it. No money that could come from this group. Minutes could show that we support this activity as another tool. Must add caution. This person is a business professor. I passed along some notes to a natural resource economist who was concerned that there were some economic flaws in how the multi-county study was done. Have to be honest with caution that a business professor may not be able to do an adequate economic study.
- Oakes: The multi-county report was put together by an economist at Fort Wayne.
- Jones: If we are going to commission anything, need to make sure that we are making decisions on the basis of good science. Want to encourage the study but also be assured that it uses proper publishable methods. If he can publish the report, will demonstrate that it is adequately recognized by peers.
- Oakes: Will refer the information provided from IU.
- Clark: My other job is as a property tax assessor. Tremendous impact on lake property values which stretch into community. Have smaller number of residents that support a large number of restaurants.
- Oakes: Average prices of same size residences on- or off-lake are affected by waterfront property.
- Jones: Have to compare same size lots.
- Gross: Water quality issues at Cedar Lake. Purchased property for \$500 per foot with seawall in 1987. An investor was able to sell one lot for almost \$6,000 per

- frontage foot. There is a \$4 million restaurant. Another developer wants to dig a cove by Hogpen Ditch (name has been changed).
- C. Skelton: Assessed valuation at Lake of the Woods doubled from \$48,000 to \$122,000. Issues are to raise money by forming a conservancy district due to muck and silt of lowered lake. Would like to get something for the money that is spent. Will pay the taxes but want some representation to help with that.
 - Clark: Look at lake lot prices on frontage foot basis with selling prices of \$21,000 per foot. Same property off-lake was \$3,000 per foot.
 - Jones: Need to compare on per foot or lot size basis.
 - J. Skelton: Assessed value on Lake of the Woods of over \$500,000 in taxes on L1 property. Large economic impact on businesses because of lake.
 - Clark: Study importance of targeting funds back into maintaining water quality. The ripple effect of a decline in water quality which affects community as a whole. Would need study to demonstrate that effect on a larger scale. Water quality decline won't just affect the lake property owners but the entire community.
 - Jones: Tool as an incentive to keep lakes clean.
 - Krevda: Important to look from ecological and economic perspectives. These two don't go together well. Policy must be somewhere in the middle. Look at ecological point of view rather than economic. Need some policies from DNR regarding sediment removal and spawning. If you look at economics, property values vs. lake eutrophication may be very competitive. Already looking at both sides.
 - Sturdevant: Would be interested in methods.
 - Oakes: Retail sales are key as a measurement of lake values.
 - Jones: Tourism contributes to sales.
 - Sturdevant: Look at from strict business sales as well as natural resource benefits. Can place a dollar value on lakes acting as sediment traps, filter, carbon sequestration. Need to be clear about what any economic study is looking at.
 - C. Skelton: Bought a small cottage at Lake of the Woods for \$27,000 and with no sewer system. Wanted to be able to do the things on the lake, swimming in clean water. Saw problems in 1981 and still trying to come up with means to pay for solutions. Now that prices have gone up, still need to pay. Most important thing to lake resident is good quality water. Hope to die there and pass property on to children.
 - Gross: The proposed dredging of Cedar Lake has received a \$2 million appropriation from the state.
 - C. Skelton: People would like to dredge at Lake of the Woods. In order to get federal money, want to get wetlands to filter inflow so it doesn't start up again.
 - Gross: Have been working in watershed for 15 years prior to dredging.
 - C. Skelton: Have a watershed plan for Lake of the Woods.
 - Gross: Two local manmade lakes dredged before they took care of watershed (Lake of Four Seasons, Lake Dalecarlia). Has not helped a lot because they didn't fix the inputs. Had to get state and local match first before the federal match. Congressman Visclosky is the chair of water appropriations in House. Cedar Lake is not in Great Lakes watershed, but in Kankakee River Basin.

- Jones: I started working in 1980 with Bob's father and uncle when they were involved with Cedar Lake. Bob heading up fifth committee to do something at Cedar Lake. Very successful. Not certain how to phrase economic study recommendation to entire LMWG. Should we encourage or endorse study? "Commissioning" the study implies that we are in charge of it or will pay for it. Sensitive to that part. Don't want to sound like this is LMWG's study. It is someone else's but look forward to reviewing and using it in further deliberations. So encourage it.
 - Dembowski: And that we may be able to do more with the results of the study.
 - Oakes: I provided Bill with name of assistant professor at Tri-State.
- **Cyanobacteria Work Group**
 - Jones: Many bluegreen algae produce potent toxins. Discovery of *Cylindrospermopsis* in Ball Lake. Jill Hoffmann, LARE Biologist, took lead on multi-agency task force to explore bluegreen algae issues to determine level of threat and protection of public health. Last time the task force met was when a report was given on a statewide study. Nothing has been done since then. Dr. Lenore Tedesco, IUPUI faculty, had a rash after swimming in Monroe Reservoir and found over 1 million cyanobacteria per milliliter. Monroe is largest recreational water body as a water source for city of Bloomington. We should reconstitute in an official way a Cyanobacteria Work Group with broad representation. Would meet and assess the risk of cyanotoxins in Indiana, recommend an implementable program to monitor Indiana lakes to protect public health and procedures to react to presence of toxin-producing cyanobacteria. Since Ball Lake, have discovered many lakes with far greater concentrations of *Cylindrospermopsis*. Ball Lake *Cylindrospermopsis* was discovered accidentally as a result of a LARE-funded study. Surrounding states all have regular cyanobacteria programs (WI, IA). Nebraska and Kansas regularly issue advisories about presence of cyanobacteria. Taking a "don't study, don't respond" approach is unacceptable. Shouldn't just state that the lakes are contaminated, so stay out of them. Scientists need data for public health purposes. Might require legislation similar to LMWG to provide per diem for support of work group members. The original group was informally supported. Had people from as far as Florida observe original work group's activities.
 - Clark: Is this a Lost Lake issue, where they have bluegreen algae?
 - Jone: Most algae form floating scums. *Cylindrospermopsis* does not form scums.
 - Mongin: Water looks murky with bluegreens. May or may not have toxins. Is the state of technology to assay toxins to the point where we can monitor? Do we have the technology?
 - White: By the time the toxin analysis results come back and you issue a swimming advisory, the toxin may no longer be in the water.
 - Mongin: So the group needs to determine the proper procedures for alerting the public.
 - Sturdevant: There are programs in other states. Once the lake is on the advisory list, there have to be a certain number of negative samples to lift the advisory.
 - Oakes: If there are wind and waves, the bluegreens may disappear.

- Jones: Scums get blown on the downwind side of the lake. If you swim there, then you have the problem. When Ball Lake happened, there was only one lab at Wright State University that could do the tests. There are now more labs with ELISA tests that can be quick screening tests with a sensitivity of 1 microgram per liter that are adequate for advisory purposes.
 - Mongin: They have developed enough assays to reasonably screen for these toxins – saxotoxin, anatoxin, cylindrospermopsin.
 - Jones: The test kits are commercially available.
 - Mongin: Then just need a group to work out the details of the advisory protocols.
 - Jones: Signs and symptoms to determine when and how to take samples. If positive results occur, what should the state response be?
 - Mongin: I live near Geist Reservoir where there were daily public announcements during August and September with recommendations on the news nightly that were not very helpful. A lot of people felt that they didn't know whether to get in the water or stay out. Everyone had a different opinion so they made choices.
 - Jones: Have no system to monitor or to tell people what it means.
 - Tracey: If there is an advisory but people decide to swim and don't get sick, they may not pay attention.
 - Mongin: Need to provide information on relative threat for different uses. Direction could come from group to help resource agencies develop this.
 - White: May need to include recognition that there are budgetary implications to assessment and program implementation. Expectations are not met when agencies are directed to do something without having adequate resources.
 - Jones: Can't set the level of funding at this point, but leave that for the group to consider (funding and staffing implications).
- **Lake Level Petition Procedures**
 - Jones: Issue raised by Joe Skelton of Lake of the Woods, Marshall County. The lake has a dual legal lake level. Lowered 12 inches on September 15 primarily to drain lands for agriculture.
 - J. Skelton: Originally, it was lowered to help drain septic systems. Have installed sewers around the lake since then, so no longer have that constraint. Agricultural landowners want to use the lower lake level to drain fields through seven ditches that flow into the lake. There are 260 acres affected. Lowers the groundwater levels to get the crops planted in the spring and harvested in the fall. Contention is that they can work the crops regardless. There was a petition in 1999 to keep the lake one level year-round. Want to file a petition to change the dates, which takes 20% of property owners within a quarter mile of shoreline. Issue is that if only one person files a remonstrance, automatically creates a review process. Other government petition processes require somewhere between 51% and 60% to file a remonstrance. Want to change law regarding how a remonstrance can be filed. Currently four ways: 1) DNR, 2) person named in petition, 3) county or 4) one person.
 - Dembowski: Want to leave the county commissioners and DNR with ability to file.

- J. Skelton: Need to amend Section 11.2(b) of the law so that the section doesn't apply if 51% don't file. Changed different law last year on dredging ditches by adding one part to disregard another part.
 - Dembowski: How the change would occur could be worked out, if the group agrees. Other remonstrances are set higher. Does the remonstrant have to be a property owner within a quarter mile?
 - J. Skelton: If this group approves a change, it is recommended to legislature.
 - Dembowski: Have to explain to LSA what we want.
 - Sturdevant: Would this affect only lake levels?
 - Dembowski: Yes, if statute speaks just to that.
 - Jones: Effect of the one person is that it goes to the court to decide. One person doesn't stop the process but delays it by making it go through the courts.
 - J. Skelton: There are four lakes that have dual levels, all of which have 6-7 months at higher level and one lake only has a 6 inch change. This year, didn't have any rains, so Lake of the Woods was low until month of June. If structure had been set at higher level in April, could have stored enough water to have gotten to normal level sooner.
 - Jones: Why change state law that would affect four lakes, in order to benefit Lake of the Woods? Would it be more effective to just recommend that the dual level period is lengthened for that lake?
 - Dembowski: Period of time is not in legislation.
 - J. Skelton: Still has to go to court. Lake of the Woods is being discriminated against in relation to the other three lakes. Don't have enough water to get the lake up to normal level.
 - Nusbaum: This could affect other lakes. Story Lake in DeKalb County didn't have a permanent structure. County drainage board dredged ditch and caused erosion that lowered lake level by four feet. Farmer who benefited from the project fought putting in a new lake level control structure at legal level. The lake had been naturally higher than legal level historically. As a result, lake residents knew the farmers had more ability to argue their case. Caused everyone to redo their piers and seawalls due to dropping of lake. Has more ramifications than just four lakes.
 - Dembowski: Who represents the lake?
 - J. Skelton: Representative Bill Friend will not support our proposal. He sponsored the legislation which removed a requirement to obtain a permit to dredge a ditch.
- **SWCD Recommendation**
 - Without Shannon Zezula present, will not review this proposal.

In-lake Structures/Watercraft/Density/Government Coordination Issues

Ralph Taylor led discussion of the recommendation package that had previously been drafted.

- Recommendation #1 is an effort to establish a clear definition of "lake" in the Lakes Preservation Act (IC 14-26-2). Taylor described the definition proposed in the

recommendation as essentially mirroring court rulings, with the exception of the proposed acreage limitation.

- Preliminary Draft 3106, created by the Legislature Services Agency for Senator Meeks, was reviewed. It was agreed that the date March 12, 1947 should be added to the proposed legislation draft, as indicated in the recommendation, to reflect the date upon which public lake law was first enacted in the state.
- It was noted that reservoirs constructed after that date would be purposely excluded from the proposed definition of “lake”. Madden expressed support for that notion, indicating that he didn’t believe it appropriate for reservoirs such as Lake Lemon to be subject to regulation under IC 14-26.
- It was also agreed that the acreage minimum in the bill draft should be changed from one (1) acre to five (5) acres.
- Recommendation #2 would add the word “wildlife” to the definition of “natural resources” in IC 14-26-2-2 to clarify applicability of the law and make the definition more uniform throughout statutes.
 - There was agreement to accept that proposal and request draft legislation to that effect.
- Recommendation #3 is intended to emphasize DNR’s role in applying the public trust doctrine – with respect to public freshwater lakes.
 - P.D. 3142 was an attempt to capture that intent, but it was determined at the meeting that changes to the draft would be needed in order to assure consistency with the actual recommendation.
 - There was discussion about a reference to IC 14-11-1-9 in the bill draft and whether the bill should be written to apply to waters other than just public freshwater lakes (pursuant to IC 14-26-2).
 - Senator Meeks noted that LSA’s bill drafting style is to include expiration dates in sections of bills that require specific time-sensitive actions, such as P.D. 3142’s requirement that the Natural Resources Commission adopt rules to clarify which of DNR’s divisions would have primary responsibility for public trust implementation. However, establishing a firm date might be potentially problematic for DNR and the NRC if something prevented final rule adoption by an arbitrary date.
 - It was agreed that Taylor and Senator Meeks would work with LSA, on behalf of the LMWG, to finalize proposed bill language.
- Recommendation #4 pertains to clarification of the term “acquiescence”, upon which the definition of “public freshwater lake” is based.
 - Taylor noted that DNR has expressed some concern about possible unintended consequences of defining acquiescence in statute, but the work group agreed that the perceived need for definition outweighed the concerns.
 - There was discussion about the term “recreational purposes” and whether it might be unintentionally exclusive, and ignore lake uses such as baptism.
 - It was noted that P.D. 3124 differed in some respects from the LMWG draft recommendation.
 - Snyder noted that recreational uses now can be vastly different from those decades ago when the lake statute was initially enacted or when lake access was based on entirely different uses.

- Taylor pointed out that “recreation” is defined elsewhere in natural resource statutes.
- It was agreed that Taylor and Senator Meeks would work with LSA to create a bill draft that more closely resembles the LMWG recommendation.
- Recommendation #5 is intended to eliminate unnecessary bureaucracy by allowing the Natural Resources Commission to establish lake-related permit durations that could exceed the current statutory limit of two years.
 - There was consensus to forward the recommendation by adding language to section 1 of P.D. 3151 to that effect.
- Recommendation #6 proposes to add language to IC 14-26-2-23 that would allow disputes regarding in-lake structures to proceed to civil court for enforcement, rather than being recycled through DNR and the Natural Resources Commission.
 - It was agreed that language from the recommendation package could be added to section 2 of P.D. 3151 to that effect.
- Recommendation #7 was described by Taylor as a partial means of addressing the “creeping normalcy” of ever larger and more numerous structures and devices installed in the nearshore areas of lakes. These uses are an encroachment on the public trust doctrine.
 - The recommendation recognizes probable future changes to rules for in-lake structures that will be more restrictive. As a result, many current structures (such as piers) might become unlawful. There would need to be provisions for such lawful nonconforming uses, but the recommendation envisions phasing those out when the owners transfer ownership of the property.
 - It was agreed that the language addressing this issue in P.D. 3151 is appropriate and should be supported.
- Recommendation #8 would add language to IC 14-26-2 stipulating that the NRC and DNR would create a non-rule policy list of public freshwater lakes.
 - The group agreed that this recommendation should be pursued through legislation.
- Recommendation #9 calls for an amendment to IC 14-26-2 that would allow the owner(s) of the shoreline of a lake to petition DNR to declare it to be a public freshwater lake and regulate it accordingly.
 - There was agreement by the work group that the idea should also be pursued legislatively.

1:30 p.m. Reconvene Entire Work Group

Subgroup Report: In-lake Structures/Watercraft/Density/Government Coordination Issues (Taylor)

- Taylor: Recognize contributions of subgroup. Had several meetings in person and on the phone to get something that could be acted upon for LSA bill drafting to meet deadlines.

Second draft of recommendation package (handout) with legislative changes described. Have not begun to explore rule changes, which remain on the table to be discussed. Legislative package is in a format for presentation. Exact wording in the statutes are subject to change during the process.

- **Recommendation # 1** – Synopsis of recommendation Number 1 talks about the legal term “lake” which is poorly defined in Public Freshwater Lake (PFL) law even though it is rather well-defined by the courts and application in Indiana.
 - DNR has struggled with whether there should be some limit put on what a PFL is in terms of minimum size. Definition does not relate to context of IDEM rules. Agreement that minimum size should be bodies of water at least 5 acres. The cite used in the recommendation is a logical place to put the proposal, but LSA will be the ultimate authority in determining that, so cite numbers could change.
 - Added language re lake being a “reasonably permanent body of water” existing March 12, 1947, when the PFL law was first enacted. Specific responsibility for this group to look at that act and its intent, evaluate how law has been applied by courts, and understanding that it was intended for natural lakes.
 - Does not mean that some of lakes are not protected in other areas of law
 - Definition is a housekeeping change. Meaning of PFL set forth in 14-26-2.
 -
- **Recommendation # 2** – Add “wildlife” to definition of natural resources.
- **Recommendation # 3** – Responsibility for public trust doctrine
 - Does not assign responsibility to a specific agency to carry out the overall public trust doctrine. Makes it the DNR responsible to implement public trust for PFLs. Not a major change, but makes public trust doctrine more transparent for the public with ability to follow accountability standard.
 - IC 14-26-2-5.1 added to PFL asking the NRC to adopt rules to identify at least one division with responsibility to carry out the public trust doctrine.
 - Once the rules are adopted by NRC, the portion of the statute that requires rule development will expire (becomes an unnecessary noncode cite).
- **Recommendation # 4** – Statutory definition of “acquiescence”
 - Modifies the definition of “acquiescence”.
 - IC 14-26-2-1.2 Section a.1-3 as Definition of acquiescence. Currently the standard but moved into statute.
 - Specifies what a court may review to accept as evidence in determining acquiescence. All lakes begin with assumption of being private; must go through transition from private to public (becomes designated as a protected shoreline). Before a lake can be considered a PFL, the essence of the whole deliberation lies within the term acquiescence, showing that the entire body of water can be used by those who are not property owners. Does not mean that the public can necessarily get to the lake, but that it is protected as a PFL.
 - Types of acquiescence evidence:

- Used for recreational purposes.
 - Operation by another person of a commercial enterprise that allows access.
 - Regulation of in-lake structures by agency.
 - Already adjudicated (declared private).
- **Recommendation # 5** – Permits issued under authority of PFL law only have a term of two years.
 - Permit duration should be allowed to vary depending on the type of construction activity. General classification of two years remains intact in recommendation, but give NRC authority to promulgate rules that allow for longer permit time.
- **Recommendation # 6** – Allowance for civil proceeding to prevent ongoing filing of appeals for administrative cause in dispute cases
 - Assuming due process has been followed, judge makes a determination, then the aggrieved party may use civil courts to force compliance.
 - Penalties may be in addition to DNR penalties.
 - Streamlines statute. Overall fabric of law that is more responsive to stakeholders so the law makes more sense
- **Recommendation # 7** – Temporary structure permit expiration upon transfer of ownership
 - Protection of existing uses for current riparian property owner with expiration of grandfathering for new landowner.
 - Make PFL law more responsive. Law written in 1947. Look at economic changes and “creeping normalcy” in which what seemed to be abnormal lake usage 20 years ago is now considered normal. Examples include perception of lake overcrowding by boats, increasing number of piers, increasing utilization of shoreline. Difficult to fix this without hurting the stakeholders. Want to improve the law, not too many changes, not hurting all the competing interests, more responsive to change, but still protecting the lakes. Creates backlash if new regulations don’t allow for existing norms. Need to protect riparian owners.
 - Need mechanism to protect use that was lawful when structure was installed for the current property owner. Need to have a window of review with a clause that once the property is sold, fee simple title changes, a new owner takes over the property and the past lawful uses may no longer be protected. Now have to bring that property into compliance with current law. Protection for property owner.
 - LSA drafted preliminary draft 3151.
- **Recommendation # 8** – List of public freshwater lakes
 - Add section to PFL law under authority in IC 4-22-7 for NRC to adopt a list of public freshwater lakes in Indiana as *prima facie* evidence for administration of the law.

- **Recommendation # 9** – Riparian owners can voluntarily petition for PFL designation of what had been a private lake
 - Assurances that the affected waters would be dedicated to the public. Standards high to ensure that lakes are not placed into public system simply as a means to obtain state funds for actions such as dam repair.
 - Recommendation requires 100% riparian property owner agreement. Need to explore verbiage in regard to who has the right to vote (for example, riparian owner whose property is upstream on an inlet).
 - Does not mean public access must be provided. Would be dedicated to public should access be granted by riparian in the future.
 - Not good public policy to allow taxpayer dollars to be utilized on private bodies of water. Could be millions of dollars spent on dams not owned by the state, but regulated by state.
 - Mechanism when it is appropriate that those who want the money will allow protection through state regulatory process.

Discussion:

- Jones: What all constitutes “public trust”? This recommendation seems to narrowly define public trust. Not just for the use of the public for recreation. Does assigning responsibility to DNR eliminate IDEM water quality responsibilities?
- Pearson: In PFL law, says “recreation and enjoyment.”
- Jones: Preservation in their natural state or as of 1947. Concerned that this removes lake functions from IDEM and gives them to DNR.
- Taylor: Need to make some agency specifically accountable to the public trust doctrine. No link in law to challenge it. DNR Deputy Director noted that the public trust is much larger and should affect everything the state does. ILMWG has not been given authority by legislature to go beyond Title 14. The DNR is the agency that carries out IC 14-26.
- Jones: Not implying that this is all there is to the public trust, but just as it relates to IC 14-26.
- Taylor: Allows a challenge when an agency is not living up to its responsibility. Important enough to articulate in Chapter 26. Look forward to seeing it in other places besides just the PFL act.
- Hebenstreit: DNR already charged with control of state’s navigable waterways. Not allowing fill, or removal of sand and gravel without compensation.
- Dembowski requested vote on full endorsement of second draft of recommendation package.
- Moved and passed.

Biology/chemistry/watershed issues (Jones)

- Looking at policy, rather than just legislative action. Made updates on two other issues that are saved to hand out.
- **Issue # 1: Bass fishing on spawning beds**

- Raised in original Angola in 1996 meetings regarding Indiana complaints about out-of-state anglers fishing on Indiana lakes during closed spawning seasons in other states.
 - Jed Pearson is in the process of developing a study that the ILMWG and DNR could use to better assess data on effect of removing bass from nests, comparing to fishing regulations in other states, effects of tournament fishing, etc.
 - No new funds or personnel needed but recognition and approval of action to study the issue.
 - Meeks: Takes legislative authority to change fishing restrictions?
 - Pearson: Can be done by rule.
 - Meeks: I hear a lot of concern about this.
 - Taylor: Michigan changed its law to open spring fishing season.
 - Oakes: Isn't it "catch and release" in Michigan rather than "take"?
 - Taylor: Biological data did not justify season there, but had political response through the Michigan Conservation Clubs. Moved forward one step by going to catch and release. There were frustrated early tournament fishers who want to fish without necessarily taking the fish.
 - Oakes: Tournament anglers say they save 95% of the fish, but there are actually bigger losses than the 5%.
 - Jones: These are issues that Jed will address in work over the winter. He will report back to this group. Looking for endorsement as a worthwhile study.
 - Madden: Any financial impact regarding fishing on the spawning beds during the season? Do the Michigan anglers spend money in Indiana when they fish here?
 - Snyder: Tournament anglers from Michigan buy gas in Michigan, bring their food with them, buy one day Indiana fishing licenses, and don't actually buy much in Indiana if they just come across the line for a day. Big tournaments have overnight stays. This district [that I work in] is right across state line from Michigan. They don't bring much money into the state.
 - Jones: Not discussion at this time, but will have more when the report is reviewed at a future meeting.
- **Issue # 2: Economic Value of Indiana Lakes**
 - Lakes are undervalued, considering economic value of properties, fish in lakes, tourism income. Having data on true economic value of lakes will support investment in lake protection.
 - Outlined a proposal that a professor at Tri-State University (John Stevens) will be working on a study over the next 6-12 months. Professor and Dean at Tri-State wants to have confirmation that this effort will be worthwhile. Looking for support and encouragement.
 - **Discussion:**
 - Meeks: Have heard discussion that reduced school year break from May to early August has affected revenue due to shortened tourism season. Narrowed recreational time for families to get to the lakes. Need to consider impact of shortened summer season. Have crafted a bill that school has to be out at end of May and not start until after Labor Day.

Need to look at impact on tourism industry. Everything closes after first week in August due to extended school year.

- Oakes: Tri-State has encouraged Professor Stevens to do this as a doctoral dissertation. Economic study would be expanded from just Steuben County to the entire state.
- Meeks: Need to check with marina associations that are working on related issues.

- **Issue # 3: Phosphorus dishwasher detergent ban**

- Phosphorus is limiting eutrophication nutrient and most managed in lakes. Legislature in Indiana in 1973 was first to ban phosphorus in laundry detergents. Other states have followed that lead. Automatic dishwashers were not widely used at that time. The heavy box of dishwashing detergent can be 8% phosphorus by weight. Not needed in detergent for it to work. Consumer Reports in 2004 showed enzymes worked without phosphorus.
- Economic study in Lake Champlain had 59 metric tonnes of phosphorus (from huge watershed). Far more economically feasible to remove phosphorus from detergent than to treat it afterward. Other states have instituted bans (IL, VT, MN, WA).
- Follow similar action as for laundry detergent to restrict household and commercial dishwashing detergent to limit of 0.5% phosphorus by weight (unreasonable to expect 0%) as other states have done.
- **Discussion:**
 - Madden: Does cost of phosphorus-free dishwashing detergent go up significantly because of manufacturing expenses?
 - Jones: What is significant? Less costly to remove it at the source. Cost at front end mitigates cost of removal. Not going to make lakes crystal clear, but due to phosphorus limitation, makes this feasible.
 - Dodge: What happened on Steuben County lawn fertilizer ban ordinance?
 - Hippensteel: State Chemist indicated that only his office has legal jurisdiction. He recommended using education to convince property owners not to buy phosphorus fertilizer. His office has never been requested to do this before. Working on this, but no resolution.
 - Dodge: Would that be appropriate for legislation? Appears that it is damaging to lakes.
 - Hippensteel: State Chemist unwilling to give exemption to enact a non-phosphate fertilizer law. He is responsible for labeling and licensing of fertilizers. The Steuben County ordinance is an impingement on that office's authority. Three governmental entities in Steuben County have passed ordinances to limit sale of phosphate fertilizers. Right away, got a response from State Chemist that only he can regulate and then refused to allow local ordinance. Could be enacted statewide.
 - Taylor: If lawn fertilizers do well without phosphorus, maybe should look at state law to limit lawn fertilizers.

- Jones: Subcommittee did not have a chance to consider it. Concept started in Minneapolis and spread to entire state of Minnesota. Have only had a chance to address dishwasher detergent, not lawn fertilizers. The group as a whole could forward a proposal to modify the State Chemist's authority so this could be done statewide. Could work on that next meeting. Narrow window right now for legislation. This proposal is expansion of 1973 legislation to dishwashing liquids.
 - Bridges: Did the State Chemist offer expertise to look at lawn fertilizer ban or just say no one could do this except him?
 - Hippensteel: Not sure of details as I wasn't present, but do know that State Chemist would not grant a waiver to the City of Angola, Clear Lake or Steuben County commissioners to allow them to implement their ordinances.
 - Jones: Can have a whole group discussion, but would like to stick to the prepared recommendations.
 - *Hippensteel moved; Snyder seconded; motion passed to approve recommendation.*
- **Issue # 4 – Aquatic Invasive Species Education**
 - Doug Keller talked about need for AIS education. Mark Mongin and ILMS have talked to groups in attempts to educate them. Lack of information and knowledge among public about AIS plants, animals, zebra mussels, ruffe, etc.
 - Lots of information available, but lack of knowledge and emphasis getting into right hands. More brochures and signs alone are not enough. Need more resources than the single DNR AIS person. Funding or redistribution of funds for an assistant to conduct workshops, train lake leaders on identification, etc.
 - Prevention could save \$1.5 million spent this past year in state money, not to mention private money to combat AIS.
 - Innovative ways to educate people could include trained volunteers to monitor boat ramps, looking for plants, talking to people launching boats to inform them of dangers of invasive species.
 - Need to recognize legislatively-based discussion to establish an Invasive Species Task Force that would include land and water.
 - Was not introduced as a bill but proposed.
 - Not just lakes at stake. At a lake fair at West Otter Lake, White had a nice display of invasive species from an aquarium shop. When people are done with their aquaria, they may dump them into a lake, which is likely how Griffy Lake got Brazilian elodea.
 - Encouragement from this task force for a task force may be warranted. In a short legislative session, legislators not inclined to look at items involving financing.
 - Meeks: Can create the task force though.
 - Jones: This group could encourage task force creation as an area of emphasis.

- Meeks: Last year's state budget had \$500,000 to eradicate hydrilla. Will cost \$500,000 annually for a minimum of three years. Discussed how taking it out of LARE fund would have deprived the rest of the lakes from using that money. Don't have any problem putting money in budget for education. If you can buy those exotic plants in an aquarium store and dump them into a lake, don't have any problem with education funding. Should money be put in budget for task force? Sometimes the money is misspent. The Indianapolis Star got on my case, calling funding for hydrilla a perk. They ought to get a copy of this proposal.
- Jones: So much need and not enough money to go around. Spending over a million dollars to remove an exotic organism. How many more lakes like that can we afford? An ounce of prevention is worth the pound of cure.
- Meeks: Someone has been going around talking to lake organizations about AIS.
- Jones: Doug Keller and ILMS have been doing this.
- Mongin: Keller is just one person; we're trying to augment that.
- Meeks: Hard to appropriate money to a nonprofit group to do this. Need direction to give funds to someone to do something.
- Jones: Need more than just Keller.
- Oakes: One product from economic impact study is to prove that if you keep the weeds out of the lake and keep the water clear, it is a good investment.
- Krevda: Creating the task force could give a means to get started.
- Meeks: Would take money to get organization started. DNR doesn't have excess funds. Does DNR or IDEM have problem with trying to control this? Wouldn't be hard to create the task force.
- Dembowski: Would need money to have meetings.
- Meeks: Could create task force legislatively or through a resolution.
- Ray: Think it was a resolution that slipped through the cracks. Not sure which legislators were discussing this. Groups outside the state agencies have also been involved. This group could endorse the idea of getting the task force created.
- Jones: Just an endorsement, not a commitment to spend money.
- Dembowski: Could develop an endorsement based on legislative resolution.
- Meeks: Could draft a bill. Would want resolution to say who should be on the task force. A resolution would not provide any authority to spend money but would study.
- Dembowski: Could look at guidelines and develop a proposal.
- Meeks: Would be two years down the road.
- How much of the problem comes from aquaria? Could problem plants be banned?
- Jones: Have been some bans. Hydrilla has been made illegal. Can have the laws but need to inform aquarium shops and mail order supply stores they can't sell the plants. Not sure if the worry is with aquarium shops.

Other problem pets and supplies can be mail ordered and brought in as pets or baits. Along with the orders come hitchhikers—bacteria, pathogens, others that are invasive. Pervasive problem.

- Dembowski: Not just plants but also zebra mussels.
- Jones: Internet good for some things but makes purchase from around the country an issue. With purchases comes invasive. How to emphasize that we need to get more resources? Spending a lot on control but need to work more on prevention.
- Meeks: Good idea to do something.
- Dembowski: Get an endorsement from this group.
- Jones: Willing to continue discussing this with you.
- Shipman: Not just plants are concern. Pathogens, such as VHS (fish disease). Dr. Waltz (as State Entomologist) had a task force that looked at issues related to AIS across terrestrial and aquatic systems.
- Jones: We talked about that previous effort and thinking that it got cut short when he moved to the State Chemist office.
- Shipman: Federal Farm Bill did have funding for VHS detection. Ballast water on oceangoing ships does move these species. Some states have restrictions on ballast water that were upheld recently by federal Supreme Court.
- Meeks: Just gave the DNR a lot of responsibility over public freshwater lakes. Could take on this issue. They are involved in lakes, must have some who can start on this.
- Jones: Have just one person (Doug Keller).
- Shipman: Salary of AIS Coordinator is primarily paid through a federal grant.
- Meeks: Need to see what kind of money it would take to address that.
- Dembowski: Could ask DNR to provide recommendations and costs.
- White: Can find the materials produced by Dr. Waltz with the previous task force, as well as the program recommendations and costs outlined in the ANS Management Plan that was signed by the Governor.
- Agreement to support recommendation for more AIS education and creation of task force.

- **Issue # 5 - Cyanobacteria Toxins**

- Eagle Creek and Geist reservoir advisories due to measurable levels of toxins this summer. Exceeded drinking water standard, but treatment does remove the toxins. Algae that are in virtually every lake in Indiana. Grow in abundance, die and give off toxins.
- Algae and toxins monitored by Veolia in reservoirs due to public water supply permit requirements. Dr. Lenore Tedesco (IUPUI) got a rash after recreating in Monroe Reservoir. Had over a million algal cells per milliliter. Tremendous numbers (1.5 million people per year) recreate there, but no one is testing water or monitoring public health (number of people getting rashes). Legislator's son got a rash at Geist Reservoir. Fairly continuous publicity in Indianapolis Star advising people not to use the water in the reservoirs.

- WHO recommendation is that at 100,000 cells per ml people not go into the water. Many of our reservoirs exceed that number.
- In 2001, had an invasive bluegreen alga (*Cylindrospermopsis raciborskii*) in Ball Lake. ISDH issued advisory. Created a toxic algae task force coordinated by Jill Hoffmann of IDNR.
- Monitoring added by IDEM/IU SPEA statewide (with no toxin analysis) and found *Cylindrospermopsis* around state. Extraordinarily high levels of the alga at Lake Lemon.
- Some other states (IL, IA, KS, NE) have regular testing programs for cyanobacteria. Indiana has no program. Cynical view: Don't study because if we don't know, it won't hurt us. Indiana needs to recognize and continue original work of toxic algae task force.
- Monitoring, state response, protection of public health. Don't know because no one is assessing it.
- *Recommend officially continuing work of Bluegreen Algae Task Force.*
- Original group required no funding. Met 5-6 times over several years. Need to have an official state program and response to investigate this issue. Threats to public health with dogs, cattle, 20-50 head of bison died at ranch in Canada. Never let dogs go into scummy water, much less the kids.
 - Meeks: Which should be the lead agency?
 - Jones: Would like to say ISDH, but they have not shown much interest. Not as active as people would have liked them to be. The issue bridges responsibilities of IDEM, IDNR and public health.
 - Meeks: Need to have a responsible agency to get something done.
 - Jones: ISDH was not as responsive.
 - Meeks: Because they didn't have staff, expertise, knowledge or desire?
 - Jones: Real concern was that there were no resources. Can do testing for toxins with quick analytical screening test, but not sure how the state should respond once data acquired. What level would require a particular advisory? A good rain will wash the organisms out of a lake. Hot dry extended periods in the summer create the problems.
 - Meeks: This task force would evaluate, examine, analyze and give warnings.
 - Jones: It would develop a plan for how state should respond. Not saying now that we need to spend money, but the group may see that we need to spend money.
 - Meeks: Is chemical treatment of the algae an option?
 - Jones: Treating with algaecide will release toxins. Prevention by keeping phosphorus out of lakes/reservoirs is big thing. Monitoring is important. Algae blooms are transient. There could be private or public testing. Company called Abraxis makes quick test devices.
 - Pearson: Would the test results have gone to the health department?
 - Jones: Right now, no one knows where to turn.

- Oakes: Would it help to expand volunteer Secchi disk monitoring program on lakes to include sampling?
- Jones: Volunteers could ship sample bottle to be tested. Task force could look at ways to develop a monitoring system. Must be looking for these conditions, not just routine sampling.
- Baise: Risk exposure through swimming?
- Jones: Can cause liver or nerve damage.
- Baise: Which agency is well equipped to provide the warning?
- Jones: Public health officers in counties. How many people are going to doctors with rashes, upset stomachs and diarrhea? Need to collect data through health departments and veterinarians to look for sick people and dogs to find out how big the problem is.
- Bridges: Livestock and dog problems go back to 1940s-50s. Problem is coming back for a different set of reasons. From a drinking water standpoint, the traditional treatment system neutralizes the toxins. The customer just experiences taste and odor. Veolia was monitoring and finding algae in Indianapolis area reservoirs. Required to monitor because they were doing herbicide applications to keep taste and odor down. Found bluegreen algae, which was part of the problem, but not the entire problem. There are a lot of other surface water supplies where they don't have a problem. Can combat with chlorine. If they don't have a recreational beach managed by the state, probably not monitored for bacteria, much less algae. Big lag time between taking the sample, getting the results and issuing a warning.
- Meeks: Could develop a resolution that would create a task force to establish a plan or create a group similar to this that would be charged with the responsibility and name who would be on it (biologist, IDEM, DNR, ISDH). Pull all those together and allow the governor to make appointments.
- Hippensteel: Appropriate to reactivate the task force?
- Ray: Can't speak on behalf of DNR but sense is that there is genuine staff interest in DNR trying to pursue this with other agencies. Senator Gard said she really wanted to see the agencies (ISDH, IDEM, IDNR and whoever else) act or she might become inclined to direct that something be done legislatively. Could get the right group of people together if there were legislative support to take that action. Wouldn't need money or legislation at this point. Just need support to bring the right people together.
- Dembowski: Support from this group?
- Meeks: Recommendation from a legislative study committee would have more impact, especially if Senator Gard is thinking of filing a bill to take action.
- Ray: Her statement was motivating.
- Hippensteel: This group should recommend that there be a multi-agency group to explore this issue.
- Ray: In conjunction with legislative interest.

- *Hippensteel moved; Madden second; motion passed.*
 - Jones: How will this get communicated to the agencies?
 - Meeks: The chair of this group (Dembowski) would send a letter to the director of each agency asking them to look into it and report back what they recommend.
 - Madden: Ray and Jones have a list of who was on the original task force.
 - Baise: Include Board of Animal Health (Dr. Marsh or designee).
 - Jones: List is available.
 - Krevda: Was the ACOE involved?
 - Smith: Got a bunch of phone calls about recent Indianapolis area reservoirs, but the issue was forwarded to the State Department of Health.

- **Issue # 6 - Lake level petition procedure** (raised by public comment)
 - Dembowski: Takes only one land holder to remonstrate. Could pursue legislation to change it to 51%.
 - Skelton: IC 14-26-8 is the statute.
 - Baise: Is it 51% of residents or acreage?
 - Skelton: It's 51% of residents within a quarter mile of the lake.
 - Baise: Each has one vote regardless of property size?
 - Pearson: Is that vote to formally go to court?
 - Oakes: Move to change it to 51% of riparian owners.
 - Snyder: Have existing law for lakes over 70 acres or under 300 acres to change water skiing regulations. The requirement is for 51% of riparian property owners. Could use that as an example.
 - Sturdevant: This is a remonstrance against a petition, not the submission of a petition?
 - Hippensteel: When you ask for a permit for a seawall, have to have at least 20 signatures to have that under judicial review?
 - Pearson: No, one adjoining landowner can appeal.
 - Meeks: That is a hearing on a judicial review for a permit. Only takes one dissenting vote to go to a court review. Takes time and legal fees.
 - Baise: Issue here is in raising and lowering water level.
 - C. Skelton: Only have four months of higher water level on Lake of the Woods for recreation. Want 6-7 months like other lakes.
 - J. Skelton: Current water level requirement cuts recreational season to 3.5 months for Lake of the Woods.
 - Snyder: Who controls dam on Lake of the Woods? In some lakes we had trouble with people moving boards in water level control structures. Now have solid fixtures.
 - J. Skelton: Would welcome a fixed structure at Lake of the Woods.
 - Snyder: How many people do you need to raise level sooner?
 - J. Skelton: Have to have 20% of residents within a quarter mile of water line, but one person can file a remonstrance to stop it. That person also has to be within a quarter mile.

- Krevda: Think this goes into a larger issue with lake property owners association and farmers at odds with each other over water levels because of water table. They were saying they couldn't do spring tilling because water level was too high.
 - J. Skelton: Lower water level originally for flooding and septic systems. Did not have to do with agriculture when level was set.
 - Baise: Uncomfortable with voting on this issue. Concerned about drainage. Important to farmers in spring and fall. A water body might have a handful of residents where interests that are very narrow would have advantage over interests of other segment of population.
 - C. Skelton: Want to still allow lowering of water level, but just change the length of the recreational season.
 - J. Skelton: Lake of the Woods residents are discriminated against compared to other lakes with longer recreational season.
 - Meeks: Can look at issue. Needs more discussion.
 - Dembowski: Did not come prepared with legislation proposal for this issue. Can develop that and bring it back. Too late already this year, as the season is over and the water lowered.
 - Meeks: Would like some action this year. Need to find out all the facts. Don't want to do something that would negatively impact the rest of the lakes. That one vote was done for a reason. Need to find that out. Laws are all connected. Need to look at all the aspects.
 - No action was taken.
- **Other Issues**
 - Baise: Motor fuel tax when you fill up car goes to road improvement. Does gas tax on boat motor fuel? Should gas tax for boat on the lake go to improvement for the water?
 - Gross: Marinas not making profit on fuel as there are a lot of things that have to be done. Tax money goes to roads. A lot of boaters get fuel at automotive gas stations anyway because the marina fuel is more expensive.
 - Meeks: Could look at the fuel tax.
 - Shipman: IDNR Division of Fish and Wildlife does get Sport Fish Restoration funds from offshore drilling tax. Have looked for alternative funding sources. Have looked at this as a revenue source that goes to InDOT rather than Fish and Wildlife.
 - Meeks: How many gallons or dollars are involved?
 - Shipman: Don't have specifics. Several million dollars, though.
 - Gross: Tax collected by marina goes to the fuel distributor. When marinas have to charge a higher amount for gas, it creates a big environmental issue. When people fuel boat at lake from gas can they filled at automotive gas station, spills into the lake.
 - Baise: Biodiesel could help with that issue.

- Meeks: Law establishing ILMWG expires on June 30, 2008. Need legislation in 2008 session to extend for two years. Keep reappointments and remove those who were not here. Consensus that this committee should continue to meet?
 - Agreement that there is much that the ILMWG can still address.
 - Dembowski: Senator Meeks can start bill for continuation of the ILMWG in the Senate. I would be glad to sponsor it in the House.
 - Meeks: I will prepare a bill.
- **Next Meeting**
 - Dembowski: Maximum number of meetings set by legislation.
 - Meeks: Can meet in spring because won't expire until June. Are Wednesdays the best?
 - Jones: Tuesdays and Thursdays are best for me.
 - Meeks: Legislature gets out March 15. Will be a trying year with property taxes. Can do it in April on a Tuesday.
 - DNR staff will work with ILMWG members to select a date in April 2008

3:53 p.m. Adjourned