Final Report

Actions of the Indiana Lake Management Work Group

2000-2012

June 2012

Table of Contents

I. Preface…...……...…….….…....3
II. Executive Summary……...……...4
III. Membership Roster……..……6
IV. Statutory Directive……...….8
V. Status on the Recommendations from December 1999 Report…12
VI. Results of Legislation Supported by the Work Group……..…56
VII. Unresolved Issues and Areas of Concerns……..60
VIII. Final Recommendations……...61
IX. Appendices

A. Notes from Lakes Management Work Group Meetings from 2000-2012 includes notes from the work group meetings for the years 2000-2012, both the legislatively- authorized and the ad hoc versions of the Lake Management Work Group. (Where available, the sub-group meeting notes are included to provide documentation of the discussion and efforts for future reference.)

B. List of Lake Management Work Group Members 1999-2012 This includes members of legislatively-authorized and ad hoc groups from 2000-2012.

C. Organizations attending and supporting Lake Management Work Group efforts 2000-2012.

D. Lists of Attendees at Lake Management Work Group Meetings 2000-2012.

I. Preface

This report is presented to the Legislative Services Agency
June, 2012 by

Dick Dodge, Chairman
Lake Management Work Group

On behalf of the citizens of Indiana who love and cherish our Hoosier Lakes, I want to thank the members of the Work Group for their dedication and service and especially acknowledge the outstanding leadership and tireless efforts of the late

Lieutenant Ralph Taylor (1947-2009)
Division of Law Enforcement,
Indiana Department of Natural Resources (Retired)

II. Executive Summary

Indiana Code 2-5.5-3 established the Lake Management Work Group and includes this charge: "Issue a final report before July 1, 2012."

This report is presented to fulfill this charge and is a summary of the actions of the Lake Management Work Group in the years of its existence both as a legislatively-authorized study group and in the years when various members operated informally and covers the time period following the release of the Report of Recommendations in December 1999 to the end of the Work Group on June 30, 2012.

Background:
In the mid 1990's, State Senator Robert Meeks of LaGrange, and David Herbst, Deputy Director of the Indiana Department of Natural Resources had received communication from many lake users with concerns from lake users who were interested in addressing a myriad of lake-related issues affecting citizens.

To address these concerns, a public meeting at Tri-State (*now Trine*) University in August 1996 attracted nearly 300 persons, and an additional 150 people showed up at a follow-up meeting in October. Following commitments from citizens and agency personnel, Senator Meeks initiated several actions.

Meeks introduced legislation (Public Law 239-1997) that established the Lake Management Work Group (LMWG) with this primary charge: "A work group is established to develop solutions for the problems affecting the lakes of Indiana."

Four legislators and 22 agency and lay members were appointed by the Governor Frank O'Bannon. Following monthly meetings from November 1997 to November 1999, a Final Report was published with 48 recommendations in 12 categories. These recommendations and subsequent actions in response are summarized in this report in the section entitled: Status on the Recommendations from December 1999 Report

---

In 2000, SEA 46 (P.L. 65-2000) was passed to reconstitute the Work Group until June of 2002. After this time, since additional legislation did not pass to continue it, many of the members met informally on an ad hoc basis until the DNR director administratively created a non-statutory group that met from 2003 until 2006.

SEA 94 (P.L. 35-2006) reconstituted LMWG for two years beginning July 1, 2006. Meetings were held in November 2006, March 2007, June 2007, October 2007, and April 2008.

SEA 88 (P.L. 7-2008) extended LMWG for two years beginning July 1, 2008. Meetings were held July 2008, November 2008, March 2009, May 2009, August 2009, October 2009, March 2010, and June 2010.

HEA 1040 (P.L. 59-2010) extended the LMWG to July 1, 2011. Meetings were held September, 2010, November, 2010, and June, 2011.

HEA 1097 (P.L. 181-2011) extended the LMWG one more year, with a final report to be issued before July 1, 2012.

In the 2012 session of the Indiana General Assembly, LMWG Chair Rep. Dodge authored HB 1064 which would have extended the LMWG to July 1, 2014 which was co-authored by LMWG Member Rep. Dembowski and Rep. Heuer. In the Senate the bill was co-sponsored by LMWG members Sen. Buck, Senator Arnold and Senator Glick. The bill passed the house by a vote of 96-0; however it was not given a hearing in the Senate Committee on Agriculture and Natural Resources and did not pass this year. As such, the Work Group must cease activities as an officially-sponsored Temporary Legislative Study Committee (IC 2-5.5) and issue a final report on the work group before July 1, 2012.

This summary is presented as the final report to the Natural Resources Study Committee by June 30, 2012 as per the requirements of the 2011 legislation. It is a summary of the major issues, recommendations, and resultant changes in legislation or administrative rules on which the Lakes Management Work Group provided input, including legislation proposed or supported.

Technology has changed much since 2000, and the growing expense in providing printed materials, paired with the exponential growth in the use of internet-based documents is why this document has been produced in digital format. As such, many of the reference documents are hyperlinked directly to web pages in this document. With the recognition that over time, web addresses change, are updated, or are abandoned, it is possible that many links will become orphaned over time. However, the increasing dependence on sophisticated internet search engines makes it reasonably easy to find current status of laws, programs, and organizations. In short, if you can’t find the current information linked directly in this report: just “Google “it! Whatever search engine and parameters you choose, it should be possible to find current information related to the issues and results outlined in this report.

III. Membership Roster

Name, Affiliation (Town)
Chair, Representative Richard Dodge, House Republican (Pleasant Lake)
Representative Nancy Dembowski, House Democrat (Knox)
Senator James Buck, Senate Republican (Kokomo)
Senator James Arnold, Senate Democrat (LaPorte)

C. Lee Bridges, Section Chief, Office of Water Quality, Indiana Department of Environmental Management, (Indianapolis)
Lawrence Coplen, Coplen Construction, Inc., At-large member (Warsaw)
Robert Gross, Pine Crest Marine, Congressional District 1 (Cedar Lake)
James Hebenstreit, Assistant Director, Division of Water, Indiana Department of Natural Resources (Indianapolis)
Peter Hippensteel, Professor Emeritus, Trine University, At-large member (Lake James)
William Jones, Professor Emeritus, School of Environmental and Public Affairs, Indiana University, Environmental organization (Bloomington)
Jeffrey Krevda, Dredging Technologies, Congressional District 5 (Marion)
Robert Madden, Lake Lemon Conservancy District, Congressional District 9 (Unionville)
Robert Meeks, Retired State Senator, Congressional District 3 (LaGrange)
Robert Meyers, Simonton Lake, Congressional District 2 (Granger)
Douglas Nusbaum, Program Specialist, Lake and River Enhancement Program, Division of Fish and Wildlife, Indiana Department of Natural Resources (Columbia City)
Major Michael Portteus, Law Enforcement Division, Indiana Department of Natural Resources (Indianapolis)
Deborah Snyder, U.S. Army Corps of Engineers (Indianapolis)
David Tyler, Indiana Lakes Management Society (Leesburg)
Shannon Zezula, State Resource Conservationist, U.S.D.A. Natural Resources Conservation Service (Indianapolis)
Darci Zolman, Program Administrator, Kosciusko County Soil and Water Conservation District (Warsaw)
Vacant, Agricultural Organization
Vacant, At-large member
Vacant, 4th Congressional District
Vacant, 6th Congressional District
Vacant, 7th Congressional District
Vacant, 8th Congressional District

Valuable assistance has been provided during the entire existence of the Lake Management Work Group by Stephen Lucas, Director, and Division of Hearings for the Natural Resources

Commission. Much of the historical record and results compiled here are as a result of Steve's careful attention to details for many years of the Group's existence.

A large part of the records of the minutes of the groups through the years was provided by Dr. Gwen White, both as a contractor employed by D. W. Case, and during her employ as LARE Biologist for the IDNR.

Additional notes through the years were recorded by Angela Sturdevant, Jim Ray, and Greg Biberdorf as part of the LARE staff assistance provided by IDNR.

Ashlee Haviland of the LARE staff compiled the many lists in the appendices and provided valuable assistance in creating the draft document.

Additional staff assistance through the years was provided by these current and former IDNR Employees: Rod Edgell, Cecil Rich, Jill Hoffmann, Jed Pearson, Chris Smith, Kent Tracey, and Doug Nusbaum.

Compilation of the recommendations and results was a collaborative effort of many staff members and Lake Management Work Group members.

Greg Biberdorf coordinated efforts to compile the finished report for presentation to the Indiana Legislative Services, as well as to the appropriate Legislators with interests in the final report.

Many thanks go out to the persons who assisted in this effort over the last 12 years, too numerous to list without potentially offending those inadvertently left off!

Cover photo is from Marsh Lake near Fremont, Indiana, the location of the Ralph Taylor Memorial.

In photo: Lake Management Work Group members Doug Nusbaum, Dave Tyler, Chair Dick Dodge, Pete Hippensteel, and Lee Bridges with Cheryl Taylor, Widow of Ralph Taylor at the dedication of the memorial, October 1, 2010.

IV. Statutory Directive

The statutory directive for the Lake Management Work Group is found in Indiana Code in Title 2, Article 5.5 addressing Temporary Legislative Study Committees.

IC 2-5.5-3
Chapter 3. Lake Management Work Group

IC 2-5.5-3-1
Lake management work group established
Sec. 1. The lake management work group is established.
As added by P.L.16-2009, SEC.9.

IC 2-5.5-3-2
Work group charge
Sec. 2. The activities of the work group must be directed to problems and issues associated with lakes that meet the definition of a public freshwater lake under IC 14-26-2-3.
As added by P.L.16-2009, SEC.9.

IC 2-5.5-3-3
Membership
Sec. 3. (a) The work group consists of twenty-six (26) members appointed as follows:
(1) Four (4) members of the general assembly consisting of:
(A) two (2) members of the house of representatives who may not be members of the same political party, appointed by the speaker of the house of representatives; and
(B) two (2) members of the senate who may not be members of the same political party, appointed by the president pro tempore of the senate.
(2) Three (3) representatives of the department of natural resources, at least one (1) of whom must be an officer in the division of law enforcement, appointed by the governor.
(3) The commissioner of the department of environmental management or the commissioner's designee.
(4) One (1) representative of the Indiana Lake Management Society or a similar organization of citizens concerned about lakes, appointed by the governor.
(5) One (1) representative of the Natural Resources Conservation Service of the United States Department of Agriculture appointed by the governor upon the recommendation of the Natural Resources Conservation Service.
(6) One (1) representative of soil and water conservation districts organized under IC 14-32 or IC 13-3-1 or IC 14-32-3 (before their repeal), appointed by the governor.
(7) Ten (10) members appointed by the governor, each of whom is:
(A) a participant in lake related recreational activities;

(B) a resident of a lake area;
(C) the owner or operator of a lake related business; or
(D) interested in the natural environment of Indiana lakes.

(8) One (1) representative of the United States Army Corps of Engineers appointed by the governor upon the recommendation of the commander of the Louisville District of the United States Army Corps of Engineers.

(9) One (1) representative of an agricultural organization, appointed by the governor.

(10) One (1) representative of an environmental organization, appointed by the governor.

(11) Two (2) other individuals appointed by the governor as at-large members.

(b) When appointing two (2) members of the house of representatives to the work group under subsection (a)(1)(A), the speaker of the house of representatives shall appoint one (1) representative to serve as chairperson of the work group beginning July 1, 2009, and ending June 30, 2010.

(c) To fill the positions created by subsection (a) (7), the governor shall appoint at least one (1) resident to represent each congressional district in Indiana. Each individual who was appointed by the governor as a member of the work group under P.L.65-2000 (before its expiration) is appointed to serve on the work group until the governor appoints a successor.
As added by P.L.16-2009, SEC.9.

IC 2-5.5-3-4
Work group meetings

Sec. 4. The work group shall meet at the call of the chairperson but may not meet more than four (4) times each year.
As added by P.L.16-2009, SEC.9.

IC 2-5.5-3-5
Work group duties

Sec. 5. The work group shall do the following:

(1) Monitor, review, and coordinate the implementation of the work group's recommendations issued under P.L.239-1997 and P.L.65-2000.

(2) Facilitate collaborative efforts among commonly affected state, county, and local governmental entities in cooperation with lake residents and related organizations.

(3) Conduct public meetings to hear testimony and receive written comments concerning lake resource concerns and the implementation of the work group's recommendations.

(4) Develop proposed solutions to problems concerning the implementation of the work group's recommendations.

(5) Review, update, and coordinate the implementation of new and existing recommendations by communicating with the public, the general assembly, and other governmental entities concerning lake resources.

(6) Review and coordinate the development and maintenance of an Internet web site that includes information on the management of lake and watershed resources.

(7) Issue reports to the natural resources study committee when directed to do so.

(8) Review all funding that is used for Indiana's waterways, including potential funding sources that could be used by the general assembly to correct funding problems.

(9) Issue a final report before July 1, 2012.

As added by P.L.16-2009, SEC.9. Amended by P.L.59-2010, SEC.1; P.L.181-2011, SEC.1.

IC 2-5.5-3-6
Reports

Sec. 6. The work group shall make its reports available to:

(1) the natural resources study committee;

(2) the department of natural resources;

(3) members of the house agriculture, natural resources, and rural development standing committee and the senate natural resources standing committee; and

(4) the public.

As added by P.L.16-2009, SEC.9.

IC 2-5.5-3-7
Work group directed by department of natural resources

Sec. 7. The work group is under the direction of the department of natural resources. The department may contract with a facilitator to facilitate the work of the work group. The department of natural resources shall staff the work group.

As added by P.L.16-2009, SEC.9.

IC 2-5.5-3-8
Member per diem; expense reimbursement

Sec. 8. (a) Each member of the work group who is not a state employee is not entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). The member is, however, entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(b) Each member of the work group who is a state employee but who is not a member of the general assembly is entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(c) Each member of the work group who is a member of the general assembly is entitled to receive the same per diem, mileage, and travel allowances paid to legislative members of interim study committees established by the legislative council.

As added by P.L.16-2009, SEC.9.

IC 2-5.5-3-9
Payment of work group expenses

Sec. 9. (a) Except as provided in subsection (b), per diem, mileage, travel allowances, and other expenses paid to committee members shall be paid from appropriations made to the department of natural resources.

(b) Per diem, mileage, and travel allowances paid to committee members who are members of the general assembly shall be paid from appropriations made to the legislative council or the legislative services agency.

As added by P.L.16-2009, SEC.9.

IC 2-5.5-3-10
Expiration of chapter

Sec. 10. This chapter expires July 1, 2012.

As added by P.L.16-2009, SEC.9. Amended by P.L.59-2010, SEC.2; P.L.181-2011, SEC.2.

V. Status on Recommendations from the 1999 Report of the Lake Management Work Group

After being formed by the General Assembly in 1997, the 26-member Indiana Lakes Management Work Group produced an 80-page document providing background on 48 topics and 113 recommendations for actions that could be taken to improve conditions of Indiana lakes and reservoirs in December 1999.

The following summary provides information on actions taken since the 1999 report and provides contact information for further information and action. This is a working document and should not be considered a comprehensive review of all actions taken in response to each recommendation. An index indicating the status of each issue and need for further action is provided at the end of the document.

For additional information on the background and recommendation, consult the document "Final Report of the Indiana Lakes Management Work Group: December 1999" which is available on the internet, along with other lake related information, at:
http://www.in.gov/dnr/fishwild/files/fw-LARE_ILMWGFinalReport_Dec1999.pdf

Recommendation #1:

The Indiana Lakes Management Work Group recommends that:

a. The federal government funds the Environmental Quality Incentives Program (EQIP) at a minimum of $500 million per year nationally.

b. The state government fund CWI at $10 million per year.

c. The state government should begin funding the Nonpoint Source Program (NPS) at IDEM at a minimum of $1 million per year to enable the program to continue supporting the efforts of the Indiana Clean Lakes Program, as well as lake-related watershed projects.

d. The Administration take the necessary steps to make State Revolving Fund (SRF) loans available to address nonpoint source problems in Indiana watersheds–including efforts to protect lakes and reservoirs from upstream sources of nonpoint pollution; clean up NPS-related problems which linger in and affect lakes; and remove or control sediments, nutrients, and other contaminants which could act as a future source of pollution to downstream waters.

e. State agencies utilize the Indiana Conservation Partnership to help farmers, urban dwellers, and others develop plans to manage nutrients, pesticides, and other nonpoint source pollution.

Results:

a. The 2012 Budget for USDA-Natural Resources Conservation Service (NRCS) includes $1,408,000,000 budgeted for EQIP (http://www.obpa.usda.gov/budsum/FY12budsum.pdf)

b. HB 1662 (2001) would have appropriated $12 million for the Clean Water Indiana (CWI) Fund for the biennium, but the bill received no hearing.

   HB 0001 (2001) was enacted with $2 million appropriated for the biennium. Half of that amount was allotted.

   HB 1976 (2003) would have imposed a tax on bottled water to fund CWI. HB 1875 (2003) would have provided funding for CWI through an increase in state landfill dumping fees by $2.40 a ton, to $3; part of the revenue would have been available for CWI. Neither bill was enacted.

   HB 1001 (2005) was enacted with $3.75 million appropriated to CWI for the biennium. However, the money was essentially a large percentage of the budget allocated to the DNR Division of Soil Conservation in previous biennia so, as a result, the division's budgets for 2005-06, 2006-07, 2008-09 were reduced accordingly.

   In 2006, the State Soil Conservation Board (SSCB) granted $609,257.00 in 42 CWI grants.

   In 2007, the SSCB granted $533,662.50 in 45 CWI grants.

   In 2008, the SSCB granted $210,500 in 23 Projects for Sediment and Nutrient Reduction Grants.

   Also in 2008, the SSCB granted $164,000 to 82 SWCD's for Conservation Marketing Initiative Grants.

   Also in 2008, the SSCB granted up to$138,000 for District Training Grants.

In 2009, the SSCB granted a total of $284,887 to 31 SWCDs for Sediment and Nutrient Reduction Grants.

In 2009, the SSCB granted a total of $265,113 to SWCDs for Emergency Conservation Assistance Program (soil and water conservation recovery efforts from flood disaster).

In 2010, the SSCB granted a total of $584, 409 to 88 SWCDs for CWI grants.

In the Budget passed by the General Assembly in 2011, there is $500,000 allocated to Clean Water Indiana annually.

c. HEA 1329 (2002) allows political entities to receive state revolving loan funds for nonpoint source pollution reduction projects. However, no state funding has been provided for the NPS program at IDEM. The current federal Section 319 funding level is approximately 4.5 million dollars per year. Lake-related projects/activities received approximately 15% of the pass-through funding from 2003 through 2009.

d. The State Revolving Fund website notes that the SRF funds non-point source projects that are tied to a wastewater loan.

e. USDA NRCS, another partnership member, actively works with local watershed organizations to address NPS issues. In June, 2011, a website was provided to the public that details the the Indiana Conservation Partnership's Accomplishment in a searchable data base. The link is www.in.gov/isda/icpreports/

Recommendation #2:

The Indiana Lakes Management Work Group recommends that:

a. IDEM revise existing water quality standards to include parameters that are indicative of lake eutrophication, to be adopted by the Indiana Water Pollution Control Board (WPCB) beginning in 2000.

b. Furthermore, it is recommended that the WPCB begin to develop new lake eutrophication standards beginning in 2000.

Results:

a. Existing nutrient data for lakes are being examined and additional lake data collection is also planned by a task group in the IDEM as of April, 2012. In addition to chemical and

biological data on lakes, user perception surveys may also be utilized to gather information on lake impairment due to nutrients.

b. The Water Pollution Control Board was merged with several other boards into the newly formed Environmental Rules Board with the passage of HEA 1002 (Public Law 133) in 2012. As of January 1, 2013, it will not exist as a separate board.

Recommendation #3:

The Indiana Lakes Management Work Group recommends that:

a. The 10 MPH speed limit within 200 feet of lake shorelines should be changed to idle speed.

b. An educational campaign should be initiated to inform boaters of the problems associated with sediment re-suspension and aquatic plant damage due to motorized watercraft, including the steps boater must take to reduce these impacts.

c. Boating restrictions be considered in lake areas that are susceptible to sediment re-suspension by motorized watercraft or where important rooted aquatic plant beds exist.

Results:

a. HEA 1075 (2000) changed the speed limit from 10 MPH to idle speed near shoreline. Idle speed is defined as the minimum speed necessary to maintain steerage not to exceed five mph.

b. The IDNR Division of Law Enforcement coordinates boater education courses, which now include references to water quality impacts of high speed boating in shallow and effects of personal watercraft in vegetated areas.

c. In 2000, the Natural Resources Commission was authorized, by rule, to impose restrictions on watercraft usage for ecological protection in lakes and streams. Ecozone rules were later adopted for Lake Tippecanoe, Lake Wawasee, and Lake Manitou.

Recommendation #4:

The Indiana Lakes Management Work Group recommends that:

> The IDEM's field inspectors continue their aggressive oversight program to ensure that sludge materials are applied to agricultural lands in accordance with applicable guidance, laws, and regulations. It is also recommended that the Water Pollution Control Board adopt environmental rules for proper application of livestock wastes.

Results:

> WPCB established a standard for handling and storage of manure and the utilization of manure as a crop nutrient. Inspections of confined feeding operations (CFOs) have been a priority resulting in 14 inspectors that conducted 949 inspections at 782 active CFOs in 2001.
>
> The Water Pollution Control Board was merged with several other boards into the newly formed Environmental Rules Board with the passage of HEA 1002 (Public Law 133) in 2012. As of January 1, 2013, it will not exist as a separate board

---

Recommendation #5:

The Indiana Lakes Management Work Group recommends that:

a. The State Department of Health should develop the capability to perform testing for source identification of bacteria, such as DNA typing and coli phage identification.

b. Local health departments, in cooperation with the ISDH, issue full body contact advisories for impaired waters of lakes which exceed bacterial water quality standards.

Results:

a. Test options currently include Test for Total Coliform, Fecal Coliform, and E. coli, but not DNA typing as of April, 2012.

b. The IDEM has a task group as of April 2012 dedicated to developing nutrient standards for Indiana lakes which would include a standard for chlorophyll and total phosphorus, but not bacterial standards. IDEM maintains information on their website related to beaches and fecal coliforms.

Recommendation #6:

The Indiana Lakes Management Work Group recommends that:

a. Runoff control best management practices (BMPs) for pesticides should be coordinated and implemented in watersheds of lakes used for public drinking water supplies.

b. Economic incentives to implement pesticide runoff control BMPs should be supplemented with available state funds.

Results:

a. In Indiana, pesticide use is regulated by the Office of the Indiana State Chemist (OISC). All pesticide application is to be done according to the label, which may include special precautions or requirements when applied near a surface water or drinking water supply. The principal controls for agricultural pesticides are USEPA regulation of their use in proximity to waters and the fact that their high cost may preclude overuse. Water supply utilities conduct monitoring to determine the presence of pesticides. In many cases additional treatment is necessary to ensure standards are not violated.

b. The Lake and River Enhancement (LARE) Program in the Division of Fish and Wildlife in the Indiana Department of Natural Resources provides financial assistance through watershed land treatment grants to landowners for conservation tillage, riparian buffers, grassed waterways, and other practices that prevent or reduce pesticide runoff to streams and lakes. Additionally, there exist numerous programs through the USDA's Natural Resources Conservation Service to implement best management practices for land owners throughout the state. These programs are voluntary and do require a financial commitment from the landowner.

Recommendation #7:

The Indiana Lakes Management Work Group recommends that:

a. The State Department of Health should evaluate the risk of blue-green algal toxins to citizens who recreate in or drink water from lakes.

b. Public water supplies initiate a routine screening of their surface source waters for algal toxins.

c. The Department of Health should investigate the advisability of developing algal toxin standards for drinking water and body-contact recreation.

Results:

a. Increasing concerns of blue green algae since 2010 have caused more examination of this issue by Indiana State Department of Health and IDEM and IDNR. The standard warning issued by ISDH via their website is: "The Indiana State Department of Health cautions Hoosiers of possible high levels of blue-green algae, also known as Cyanobacteria, at many of Indiana's reservoirs and lakes. Swimmers and boaters should be careful in all recreational waters during this time of the year. Precautionary measures include avoiding contact with visible algae and swallowing water while swimming. Take a bath or shower with warm, soapy water after coming in contact with untreated water in ponds and lakes, especially before preparing or consuming food. Pets and livestock should also not be allowed to swim in or drink untreated water from these sources. Exposure to a blue-green algae during recreational activities such as swimming, wading, and water-skiing may lead to rashes, skin, eye irritation, and other uncomfortable effects such as nausea, stomach aches, and tingling in fingers and toes. If you should experience any symptoms after water recreational activities, please contact your doctor."

b. IDEM initiated testing of blue-green algae for toxins in 2010 and 2011 and proposes continuing these tests in 2012 for beaches at IDNR-owned lakes. Information regarding this testing is on their website. The cost to the state for testing (both in terms of human resources capable of performing the analyses and cost of the sampling and testing) has precluded more widespread testing as of April, 2012. A list of private labs providing testing for blue-green algae was created by IDEM in 2012. Currently, no standards exist for blue-green algae toxins in drinking water in the US. World Health Organization has developed guidelines, found here in this 2002 publication: http://www.who.int/water_sanitation_health/dwq/chemicals/cyanobactoxins.pdf

c. At this time, the Indiana State Department of Health is coordinating education and information efforts on blue-green algae with IDEM and IDNR, but no independent development of standards is proposed as of April, 2012. IDEM has developed a fact sheet to inform the public about issues with potential toxic blue-green algae found here: http://www.in.gov/idem/files/factsheet_bluegreen_algae.pdf

Recommendation #8:

The Indiana Lakes Management Work Group recommends that:

a. County drainage boards and the IDEM clarify or establish and exercise their authority to prevent livestock from violating state water quality standards in lakes and streams.

b. The NRCS, Clean Water Indiana, and IDEM's NPS program promote the allocation of cost-sharing monies to livestock producers for installation of fencing to limit livestock access to water bodies, development of stable watering access points, innovative watering systems, etc.

Results:

a. IDEM employs inspectors for compliance with Agriculture and Solid Waster rules as well as a staff of five dealing with Confined Feeding Operations permits.

b. Cost-share funds are available for livestock exclusion fencing through the Lake and River Enhancement Program of IDNR in watershed land treatment projects. Additionally, there are practices that are cost-shared through NRCS in cooperation with other members of the Indiana Conservation Partnership.

   IDEM's NPS program uses Section 319 funds to cost-share with livestock producers for installation of fencing to limit livestock access to water bodies and for alternative watering access points and watering systems. In cases where needed, an alternative water supply was also installed in addition to exclusion fencing.

   The ISDA Division of Soil Conservation provides technical assistance for Lake and River Enhancement program watershed land treatment grants to landowners for installation of equipment that protects water quality in livestock operations, including fencing livestock away from streams, providing stabilized stream crossings, off-site watering facilities.

   The federal EQIP program provides several million dollars per year for livestock related cost-sharing.

Recommendation #9:

The Indiana Lakes Management Work Group recommends that:

Existing federal, state, and local governmental programs be strengthened to ensure that BMPs are encouraged for all livestock operations and that producers properly collect, treat and/or dispose of livestock wastes and runoff.

Results:

IDEM's NPS program uses Section 319 grant funds to cost-share with livestock operations for BMPs, including those for nutrient/waste management. From 2003 through 2009, over 1.3 million dollars in cost-share funds was utilized specifically for livestock-related NPS management activities statewide.

Recommendation #10:

The Indiana Lakes Management Work Group recommends that:

a. IDEM should continue sampling fish tissue from lakes each year, and that a greater percentage of their sites would be lakes not previously sampled, and that species sampled reflect those of interest to lake anglers.

b. IDEM increase the efforts of its mercury awareness programs to educate the public and to collect, for proper disposal, mercury that might otherwise end up in the environment.

c. IDEM work to clean up sites contaminated by PCB wastes.

d. The Indiana Interagency Workgroup for Fish Consumption Advisories should be more proactive and creative in the use of media and methods to continue providing accurate information to the public.

e. The FCA workgroup consider issuing "clean bill of health" advisories for species and/or locations showing little risk of contamination from PCBs, mercury, or other chemicals.

f. The FCA workgroup focus adequate attention on developing risk assessment models for various pesticides of concern in Indiana.

g. The administration support, to the fullest extent possible, the funds requested by the three member agencies for fulfilling their FCA-related tasks.

Results:

a. IDEM performs the Fish Tissue Community Sampling Program according to the Fact Sheet on the IDEM website. The March, 2011 Fish Consumption Advisory fact sheet from the Indiana State Department of Health is also online.

In information compiled from three years of fish tissue contaminants monitoring (2000 through 2002), lakes made up approximately 24% of all targeted sites for contaminant monitoring to support Indiana's fish consumption advisory (FCA). Over those three years 23 lakes (including Lake Michigan) were sampled. Six of these (25%) were lakes never before sampled. The IDEM Assessment Branch makes a point of working in new waterbody sites every year (this includes rivers and streams). Because of the Assessment Branch's Surface Water Monitoring Strategy rotation, some years will not have a very high proportion of lakes sampled because of the region of the State. During the years in which the Great Lakes, Kankakee, and Upper Wabash basins are sampled, IDEM can target a higher proportion of lakes into the sampling plan. In total, lake-derived fish tissue samples made up about 18% of all fish tissue samples analyzed. Analytical costs for the tissue samples were approximately $74,000 over the three years. This was about 14% of the total analytical budget for fish tissue and sediments analyses. If sediment analysis costs are subtracted out first, then this percentage goes up significantly.

IDEM's analytical budget is $300,000 - $400,000 per biennium divided into several areas of contaminant monitoring emphases. These include sediment contaminants monitoring, fish tissue from lakes, fish tissue from targeted river/stream sites, recurring monitoring at known contamination sites, fish tissue contaminant analyses on samples collected from sites of a stratified probabilistic design, fish tissue samples collected annually from Lake Michigan.

IDEM periodically considers monitoring for additional contaminants of concern. Mirex is another organochlorine-based pesticide which has been recommended by U.S. EPA to be monitored in the Great Lakes states. Also recommended was monitoring of polybrominated diphenyl ethers (PBDE) (historically and commonly used as a fire retardant). Recent studies have shown PBDE compounds to now be rather ubiquitous in aquatic systems and to be bioaccumulative. In fact, even as PCB levels are generally going down with time, PBDE levels are increasing, as seen in Great Lakes fish. PBDEs are thought to have dioxin-like toxicity. PBDEs have also been found in humans, air, and human umbilical cord blood. EPA has committed to adding PBDEs to its list of target compounds for monitoring in its Great Lakes Fish Contaminants Monitoring Program. IDEM-OWQ has considered extensive monitoring to evaluate the extent and level of PBDE contamination of fish from Indiana streams and lakes. IDEM has also been analyzing for congeners of PCB rather than just total PCB by aroclor determination methods. Congener determination help to better understand toxic equivalents or relative toxic risk in relation to dioxins. IDEM also retains dioxin monitoring capability.

IDEM is participating in a National Study of Chemical Residues in Lake Fish Tissue. The National Lakes Fish Contaminants Monitoring Project is a continuation of a 1987 screening level investigation and is designed to expand on the scope of the 1987 study. Results of the 1987 study indicated that target analytes were present in fish tissue at many of the sampling sites, and some of the contaminants occurred at levels posing potential human health risks. This is a very worthwhile research project in that it is a design which will allow EPA to be able to ask nationally- as well as regionally-based questions regarding the health of lakes and risks associated with eating fish caught from them. Results from this study will directly benefit knowledge on contaminants in fish from Indiana lakes.

This study is providing information on the national distribution of selected persistent, bioaccumulative, and toxic chemical residues in gamefish and bottom-dwelling fish in lakes and reservoirs of the coterminous United States (excluding the Great Lakes). Including lakes and reservoirs were selected according to a probability-based design. It involved the collection of fish from the randomly selected lakes and reservoirs over a four-year survey period (2000-2004).

Lakes and reservoirs were chosen as the target population because they:
- Are accumulative environments where contamination is detectable,
- Provide other recreational (nonfishing) access and opportunities, and
-Occur in agricultural, urban, and less-developed areas, so that associations with each primary use may be determined.
-Fish consumption advisories represent 15.8% of the Nation's total lake acres (plus 100% of the Great Lakes), compared to 6.8% of the nation's total river miles.

The Water Quality Assessment Branch is responsible for assessing the quality of Indiana's surface waters. This includes obtaining data on, and furthering knowledge on, the fate of bioaccumulating contaminants in the biota that occupy Indiana waterbodies (Environmental Performance Partnership Agreement). The information from this national study will also aid efforts to develop indicators of environmental successes and failures through long term trend monitoring based on a scientifically sound sampling design in support of EnPPA goals (for example mercury reduction programs).

b. A large amount of information from IDEM regarding Mercury programs is available on their website including:

Fish Consumption Advisories The Indiana State Department of Health (ISDH), Indiana Department of Natural Resources (DNR), and the Indiana Department of Environmental Management (IDEM), with support from Purdue University, collaborate to produce an

annual Indiana Fish Consumption Advisory based on the statewide collection and analysis of fish samples for long-lasting contaminants found in fish tissue, such as polychlorinated biphenyls (PCBs), pesticides, and/or heavy metals (e.g., mercury)

Mercury Switch Program Indiana law requires each motor vehicle recycler to remove all mercury switches from each end of life vehicle when it is received. IDEM will pay you $3.00 for each mercury switch and $5.00 for each ABS G-force sensor or other component containing more than 10 mg of mercury that you recycle through End of Life Vehicle Solutions (ELVS).

Mercury Reduction Outreach for Publicly Owned Treatment Works (POTW) This program provides materials and resources to help you develop and implement a mercury pollutant minimization program plan.

Mercury Thermostat Reduction and Recycling Pledge Program Heating, Ventilation, and Air Conditioning (HVAC) contractors can participate in this voluntary program for the free recycling of discarded mercury-containing thermostats.

c. Indiana made steady progress in its efforts to clean up polluted sites in 2002, but more sites still need evaluation. In the 2003 Commissioner's Bulletin, 56 sites listed as being tainted by substances from heavy metals to PCBs were being cleaned up under IDEM's purview. While four sites were removed from the 2002 Commissioner's Bulletin because cleanup was deemed complete, one was added in 2003. The agency will continue to assess hundreds of other sites to determine whether they qualify for future listing on the Commissioner's Bulletin.

   A fee is levied to finance the oversight fund. The fee generates about $2 million in revenue per year.

   Aquatic organisms in the natural environment obtain their PCB burden from both water and food which has been contaminated via water and air deposition. The guidelines for PCBs in fish and sediment are used for the assessment of existing water quality. PCB listings on Indiana's 303(d) list means IDEM's monitoring data shows the concentrations of PCB in fish tissue exceeds the level for healthy aquatic communities and human consumption.

   The 2011 budget includes $19.420 annually for PCB inspections.

d. The Indiana State Department of Health maintains a webpage for Fish Consumption Advisory information.

e. In recent years much more information has been gathered on contaminants in "panfish" species. These include fish such as the sunfish (*Lepomis* spp.), crappie (*Pomoxis* spp), and yellow perch (*Perca flavenscens*). These types of fish are highly desired sport fish from lakes. They are also the least "contaminated" of lake fish species. The Indiana State Department of Health currently recommends eating smaller-sized fish within legal fishing limits. "Panfish" such as bluegill, perch, and crappie have fewer contaminants than larger fish like carp, catfish, and bass. However, it must be emphasized that even if a fish were to be deemed an FCA Group 1 (unlimited consumption for the general population), it should still be treated as Limited Consumption (no more than one meal per week) for the special at-risk populations (women who are pregnant or breastfeeding, women who plan to have children, and children under the age of 15).

f. IDEM has been monitoring a number of organochlorine pesticides in fish from Indiana lakes for over two decades. Although sometimes detected in small quantities, these contaminants overall do not appear to be at levels that would drive any consumption advisory in any of the lakes or reservoirs. IDEM staff has looked into developing "risk assessment" models utilizing established reference doses. What is evident from river and stream fish tissue data is that concentrations of these contaminants have been slowly but surely decreasing in the fish over the years. From a risk assessment model perspective, these organochlorine pesticides, which used to cause advisories for some river and stream locations, today would not do so.

   In 2001 a risk assessment analysis of DDT, chlordane, heptachlor + heptachlor epoxide and dieldrin was performed on IDEM fish tissue contaminants data to determine how they would play affect a fish consumption advisory. Although there were some samples flagged that would have placed them in Group 2 (one meal per week), none of the samples were from lakes or reservoirs. Total PCB and mercury continue to cause advisories in the state. IDEM is working to stay at the forefront of monitoring for new and emerging bioaccumulating contaminants of concern.

g. IDEM's current analytical budget is roughly $300,000 to $400,000 per biennium, divided into several areas of contaminant monitoring emphases. These include sediment contaminant monitoring, fish tissue from lakes, fish tissue from targeted river/stream sites, recurring monitoring at known contamination sites, fish tissue contaminant analyses on samples collected from sites of a stratified probabilistic design, and fish tissue samples collected annually from Lake Michigan.

Recommendation #11:

The Indiana Lakes Management Work Group recommends that:

a. IDEM's field inspectors continue their annual visits to both major and minor dischargers and that they respond promptly to serious complaints about problem discharges to lakes.

b. Representatives from lake associations acquaint themselves with the IDEM inspector having jurisdiction over the discharges into their lake(s) and that they communicate their concerns or problems to the inspectors in a timely manner.

c. Local governments and entities make the necessary investments to properly maintain wastewater treatment facilities in operating order and to hire, train, and retain qualified personnel to operate the plants.

d. Permitted facilities commit themselves to the CSO control requirements outlined in their permits, in accordance with Indiana's CSO strategy.

e. IDEM's Operator Assistance and Training Section should be diligent in providing help to minor dischargers, where needed.

Results:

a. The IDEM Wastewater Inspection Section covers 100% of the major dischargers and 80% of the minor dischargers every year and promptly responds to complaints.

b. IDEM Wastewater inspectors are assigned to specific geographic areas. They work with the residents in their assigned areas. Their names, phone numbers, and the geographical boundaries of their individual service area are available to the public on IDEM's website.

c. SB 225 (2001) would have allowed for creation of "regional onsite waste management districts" with authority to inventory, inspect and monitor onsite disposal systems. Would have promoted seeking solutions for disposal of septage and encouraged education about onsite systems. This bill was not passed. However, legislation (Public Law 161-2002 and Public Law 172-2002) in 2002 established County onsite waste management districts.

d. IDEM's website includes their strategy for compliance by CSO communities in a document from 2005 on their website.

e. The IDEM Operator Assistance & Pretreatment Section's (OAPS's) technical assistance staff recommends to local communities the importance of local investment in their facilities and hiring and retaining qualified personnel. The OWQ's biannual Operator Examiner newsletter is sent to all certified wastewater treatment plant operators, training course providers, and posted on the IDEM website. OAPS staff produced an article

entitled "Back to Basics - The Maintenance Management System." The article provided excerpts from the Water Environment Federations Operation of Municipal Wastewater Treatment Plants, 5th edition, 1996, Chapter 3. The article clearly noted the importance of personnel, good plant operation and maintenance, well-trained employees, written standard operation procedures, spare parts, planning, budgeting and engineering support. This WEF publication has also been included on reference study lists for Indiana's wastewater certification exams.

f. There are over 100 CSO communities in Indiana. Almost all have permit or agreed order requirements for full implementation of the Indiana CSO Strategy. As of January 15, 2003, Long Term Control Plans for 60 communities had been received and were in various stages of review and/or approval.

Recommendation #12:

The Indiana Lakes Management Work Group recommends that:

a. Education on the Indiana spill rule, runoff control, fueling practices, and emergency telephone numbers be emphasized and promoted further by IDEM around Indiana lakes.

b. Lake and watershed management plans be written to include emergency response resources and runoff control strategies identified by communication and coordination with local emergency planning committees.

Results:

a. The Lakes Program at IDEM has worked with staff from other agency programs (OWQ/NPS, OLQ/ER, OWQ/Operations, etc.) to prepare information packets, brochures, or articles to be disseminated to lake groups around the state. Distribution was through state lake and watershed newsletters, handouts and discussion at lake meetings, additions to the lake display booth, etc. These programs, as well as the Clean Vessel Act Pump-out Program are now covered on IDEM's website, brochures, and various newsletters.

   IDEM had emergency responder positions assigned to all three regional offices in Gary, South Bend, and Evansville. IDEM staff members are encouraged to perform these types of outreach activities whenever possible.

b. The watershed management plans funded with Section 319 funds are currently not required to include these items.

Recommendation #13:

The Indiana Lakes Management Work Group recommends that:

a. Septic system design and operating condition be added to the real estate disclosure process.

b. Septic system inspections should be required prior to the transfer of property.

Results:

a. HB 1359 (2000) would have required the Indiana real estate commission to provide in its residential real estate disclosure form for the disclosure by the owner of the known design of the septic system contained on the owner's property. The bill did not receive a hearing.

b. HB 1359 (2000) would have required that a residential septic system located on property adjacent to a public freshwater lake be inspected for system failure every two years by the local health department. The bill did not receive a hearing.

   The Rules regarding the use of on-site waste disposal systems are under the authority of the Onsite Sewage Systems Program of the Indiana State Department of Health and normally enforced by local health departments. These rules were updated in 2011 and are on their website.

Recommendation #14:

The Indiana Lakes Management Work Group recommends that:

a. IDEM and other appropriate agencies implement policies that stress the need for separation of combined sewer systems.

b. IDEM and other appropriate agencies provide funding for repairs of existing systems to the communities that have a workable plan to meet water quality standards.

c. The Commissioner of IDEM ensures proper staffing of the NPDES permitting programs, to include permit issuance, CSO strategy implementation, and stormwater program implementation.

Results:

a. There have never been requirements in any policy or strategy that requires separation of combined sewer systems. The Indiana CSO Strategy, NPDES permits, and Indiana CSO Guidance requires CSO communities to abate the impacts of CSOs so Indiana water quality standards are achieved. The Long Term Control Plans required of all CSO communities will specify how the CSO community will achieve the goals of the Clean Water Act**.**

b. The Indiana SRF program will provide funding for development of Long Term Control Plans. Communities throughout the state have already received loans for projects that would reduce or eliminate CSOs.

c. Staff numbers of IDEM have been reduced in all programs due to ongoing budget concerns of the state of Indiana. Individuals in IDEM have duties encompassing the programs listed in the recommendation.

Recommendation #15:

The Indiana Lakes Management Work Group recommends that:

a. Centralized wastewater collection and treatment, rather than individual on-site systems, be the recommended course of action when alternatives for repair or replacement of aging, failing septic systems are exhausted.

b. Lake area septic systems should be required to undergo periodic testing and/or certification by local health departments to guarantee adequate performance as an integral part of an operations and maintenance program.

c. The Indiana legislature should provide the necessary technical and financial resources to the state Department of Health and to local health departments to implement Recommendation 15. b.

Results:

a. SEA 461 (2002) was written to allow the Allen County Health Department to establish a permit program for treated discharges from residential onsite disposal systems if they can attain water quality standards. Enacted as Public Law 172.

b. SEA 99 (2002) would have allowed for the establishment of regional onsite waste management districts. Public Law 161 enacted in 2002 did make possible the establishment of County Onsite Waste Management Districts. HB 1359 (2000) would have required maintenance and inspection of lakeside septic systems every two years. No

legislative action. As of 2002, onsite or septic management districts may be established in Indiana which would allow for testing and certification.

c. SB 236 (2001) would have provided state grants for local programs to establish education programs and conduct surveys related to sewage disposal systems. The bill passed the Senate, but not the House. However, SEA 43 in 2002 established a system for county funding of private onsite disposal systems (presumably to address inadequate systems and allow for 10-year repayment by owners) which was enacted as Public Law 7-2002.

Recommendation #16:

The Indiana Lakes Management Work Group recommends that:

a. Legislation be enacted to strengthen enforcement of 327 IAC 15-5 ("Rule 5"), including stop work action at the local level.

b. Legislation should be enacted to increase funding to implement and enforce Rule 5 and provide education.

c. Legislation should be enacted to encourage counties to adopt erosion and sediment control ordinances.

Results:

a. When the erosion and sediment control regulations in 327 IAC 15-5 were revised in 2003, the revisions did not specifically allow for stop work orders at the local level. However, the Indiana Department of Environmental Management (IDEM) has this authority through statute. While 327 IAC 15-5 does not address this issue, 327 IAC 15-13 is a newer rule that designates Municipal Separate Storm Sewer Systems (MS4s) based on population. These areas have been designated by IDEM because they are typically in the more highly developing areas of the state. The MS4s are required to develop and implement their own stormwater quality program. One requirement of the local program is to have a construction site runoff component in place that includes plan review, inspection, and enforcement procedures. One method of enforcement that has been recommended to MS4s are stop work orders. MS4s will be required to have an ordinance in place to address this issue.

b. A $100 fee is collected for each project that is submitted to IDEM. The accumulated funds have been used for a variety of purposes, and at one time included re-distribution to SWCDs involved with Rule 5 implementation. The funding thereby has reinforced implementation and education efforts at the local level.

d. As stated in item 16 a., one requirement of 327 IAC 15-5 is to have a local process in place to implement and enforce a construction site runoff program within each designated MS4. MS4s will be required to develop ordinances for the construction site runoff control minimum control measures.

Recommendation #17:

The Indiana Lakes Management Work Group recommends that:

a. Drainage boards should implement all possible BMPs as indicated in the Indiana Drainage Handbook.

b. The Water Resources Study Committee should develop and implement a process for revising and updating the 1965 drainage code (IC 36-9-27).

Results:

a. SB 256 (2002) would have nullified aspects of the "common enemy doctrine" regarding water diversion. Would have made a person liable for damages if that person's actions undesirably increased quantities of diffused surface water on another person's land. No legislative action.

   SB 439 (2002) would have amended the "Lowering of Ten-Acre Lakes" statutes to state that a permit application from a county drainage board is considered approved by the IDNR if official action is not taken within 150 days. This bill would have removed language from "Flood Control" statutes that requires an IDNR permit for activities involving streams greater than ten miles in length. It would have removed IDNR from certain aspects of pre-permit drainage project review and establishment of permit requirements for drainage projects. The bill was passed by the Senate but not the House.

   Partly in response to 2002 proposed legislation, the IDNR provided a series of regional workshops for county surveyors and drainage boards to discuss use of the previously developed Indiana Drainage Handbook and permitting issues. The handbook is available on the state website.

b. The Drainage Code is nearly the same language as adopted in 1981. The 2011 Annual Report of the Water Resources Study Committee does not note plans to implement a process for revising and updating the drainage code of IC 36-9-27.

Recommendation #18:

The Indiana Lakes Management Work Group recommends that:

a. The Soil Conservation Board should develop criteria/policies for use of LARE money for limited dredging projects in public lakes, and decide upon a reasonable annual expenditure for such dredging projects.

Results:

In 2005, Indiana Code 6-6-11-12.5 established that the Lake and River Enhancement fund should be administered by the director of the department of natural resources instead of the Soil Conservation Board. The program is part of the Division of Fish and Wildlife. Policies for dredging projects were established and are on-line in the LARE program web pages. IC 6-6-11-12.5 was amended in 2011 noting that one half of the Lake and river enhancement fund is to be used by the department of natural resources to pay for lake or river projects to remove sediment, control exotic or invasive plants or animals or remove logjams or obstructions.

Recommendation #19:

The Indiana Lakes Management Work Group recommends that:

a. Joint application and point of contact for construction permits between agencies.

b. Reduce overlapping public notice requirements for permits from IDEM, IDNR, and the ACOE.

c. Statutes to increase effectiveness of public hearings by ensuring timely response to public hearing requests for IDNR and IDEM.

d. Provide adequate resources to efficiently manage the permitting process.

Results:

a. Since 1998, a group of representatives from IDEM, IDNR, and the ACOE has regularly met to discuss joint applications and other coordination and streamlining aspects of permitting. Statistics indicated that only 9 percent of permits overlapped between the three agencies. Areas where coordination between the agencies occurs include: wildlife damages and spill investigations; landfill inspections and erosion control plans; wetland,

floodway, and lake permits; country drainage board projects; water use, well construction, and aquatic plant control in public water supplies; spill response, remediation, waste management, and groundwater impacts in the oil, gas, and mining industries; and watershed management, Lake Michigan coastal zone management, volunteer monitoring, and education programs. The IDNR Division of Water instituted additional training and a tracking system to improve responsiveness to questions regarding permits.

The Department of Environmental Management in 2002 completed a set of informational materials designed to inform the public on agencies to contact for permits, the types of activities regulated, and how to effectively navigate the permitting processes. IDEM has devoted web pages to information about permitting including water permits and land permits and a Permit Guide.

SB 282 (2000) would have addressed water resource permit-related issues in an effort to consolidate permits administered by IDEM, IDNR, and the USACE. No legislative action.

b. Since 1998, a group of representatives from IDEM, IDNR, and the ACOE has regularly met to discuss joint applications and other coordination and streamlining aspects of permitting. Statistics indicated that only 9 percent of permits overlapped between the three agencies. Public notice may run concurrently for all three agencies, where necessary.

   In 2008, Public Law 84 authorized consolidation of hearing requests to review related DNR and IDEM licensing decisions for water quality, water quantity, or both. At a party's request, hearings by administrative law judges at the Natural Resources Commission and by the Office of Environmental Adjudication would be combined. The NRC and OEA later adopted rules to help implement PL 84.

c. The IDNR Division of Water has initiated internal procedures to ensure timely responses to public hearing requests provided a permit application is on file with the Division. The Division has also developed a short PowerPoint presentation to be shown at all public hearings. This presentation provides a short overview of the applicable statutes and the requirements for permit approval. The presentation also includes information about other regulatory agencies that may have permit authority including contact phone numbers. There has been no legislative action regarding statute changes.

d. Due to state budget constraints, the Division of Water budget was reduced by 15 percent over the years 2001-2002. Despite these cuts, the division has improved management of permitting by organizing staff around major regions of the state to improve staff's understanding of region-specific permitting issues, and instituting a computerized tracking system for permits.

Recommendation #20:

The Indiana Lakes Management Work Group recommends that:

a. Increase the number of full-time conservation officers in areas with public lakes by 25%

b. Provide funding to the IDNR Division of Law Enforcement for waterway enforcement.

Results:

a. In 1997 the DNR received a Law Enforcement Assistance Fund (LEAF) grant from the governor to hire 10 new conservation officers. Four of these positions were assigned to the public freshwater lakes region. Since the LMWG published its recommendations the Law Enforcement Division has emphasized "saturation patrols" and used overtime monies to patrol public freshwater lakes. In July 2003 the LED will host a training academy for conservation officer recruits so that vacant positions can be filled. HEA 1336 was enacted in 2003. It provided for an increase in fees used to fund the LARE program, as well as funding for lake patrols. The Division of Law Enforcement has instituted a process for local acquisition of money from the fund to pay for increased patrols.

b. HEA 1336 was enacted in 2003. It provided for an increase in fees used to fund the LARE program, as well as funding for lake patrols. The DNR Division of Law Enforcement has instituted a process for local acquisition of money from the fund to pay for increased patrols. Some Indiana counties are participating in this program.

Recommendation #21:

The Indiana Lakes Management Work Group recommends that:

Amend public freshwater lake law in IC 14-26-2-5.5 to provide objective standards for licensing of temporary or permanent structures and establish a process under IC 4-21.5 for mediation of disputes among riparian owners or with the department.

Results:

SEA 44 was enacted as Public Law 64 in 2000 to clarify DNR was to regulate most construction activities in public freshwater lakes, including temporary structures such as piers. A narrow interpretation of the Lakes Preservation Act in *DNR v. Town of Syracuse*, 686 N.E.2d 410 (Ind. App. 1997) was corrected and broadened. In response to SEA 44, the Natural Resources Commission adopted new rules to use mediation for dispute resolution and later strengthened standards for group piers and marinas in 312 IAC 11

Recommendation #22:

The Indiana Lakes Management Work Group recommends that:

a. Periodically review legal authority to protect lakes.

b. Clarify legal definitions where necessary to improve implementation of lake statutes.

c. That IDNR develop a booklet and web site that outlines statutes and regulations applying to lake management.

Results:

a. The Indiana Lake Management Work Group will cease to exist as of June 30, 2012. There is no entity charged with this responsibility. This is an unresolved issue.

b. A work group of IDNR and Natural Resources Commission staff has met for several years to discuss and propose clear definitions for various lake-related terms (e.g., public freshwater lake, acquiescence, timber seawalls as bulkhead structures).

c. Printed booklets have been replaced by websites since 1999. IDNR, IDEM, and the Natural Resources Commission all have various web pages that touch upon aspects of this recommendation. The IDNR Lake and River Enhancement Program website in particular is updated by IDNR staff to publicize issues in regard to state laws and regulations applying to lake management. This is an unresolved issue for the most part since there is no one entity charged with the management of lakes, however, with the growing trend of social media as an outlet of information, new ways of informing the public are becoming and in all likelihood, will become, an avenue for information regarding lake management.

   The IDNR Division of Water has developed an on-line manual to assist in the application for water-related permits.

Recommendation #23:

The Indiana Lakes Management Work Group recommends that:

a. A maximum decibel level for boat noise should be established.

b. Require a written boat driver's license test for certification with endorsement on driver's license.

c. Establish point values for moving violations in watercraft to be applied against the driver's license (IC 14-15-11-13).

d. Update the Personal Floatation Device equipment requirement to the national US Coast Guard standard.

Results:

a. After study of the complexities involved, no particular action was recommended at the state level. Noise ordinances may pertain to boat traffic at a local level.

b. After study of the complexities involved, no particular action was recommended at the state level. IC 14-15-11-16 notes that if a person's Indiana driver's license is suspended due to conviction of a crime relating to the operation of a motorboat, that they should complete a boating education course.

c. IC 14-15-11-17, Assessment of Points for motorboat violations under the Point System for Indiana Traffic Convictions was enacted in 1995. The Point Value Table in 140 IAC 1-4.5-10 was amended in 2008 to include operating while intoxicated and dangerous boat (and personal watercraft) violations. The law regulating outlining this is IC 14-15-8 Operating a Motorboat while Intoxicated.

d. 312 IAC 5-13-2, Personal Floatation Device Mandatory Wear Requirement on Waters of Concurrent Jurisdiction was adopted in 2003 and readopted in 2008. This change requires children under age 13 to wear a PFD, but only applies to Lake Michigan, the Ohio, Wabash and Great Miami rivers (waters of concurrent jurisdiction).

   Personal flotation devices are required for anyone operating, riding on, or being towed by a personal watercraft on public waters.

Recommendation #24:

The Indiana Lakes Management Work Group recommends that:

> The state should continue to acquire, develop, and maintain public access to public freshwater lakes.

Results:

> Approximately one million dollars is spent each year on the development and maintenance of existing sites and the construction of new sites, of which approximately 75% consists of federal aid matching funds. Since publication of the lakes report, many new sites have been acquired statewide. Availability and cost of lakefront property continues to be a challenge. As of 2012, there are at least 221 state-operated public access sites on natural lakes and impoundments creating popular public lakes.

Recommendation #25:

The Indiana Lakes Management Work Group recommends that:

a. Increase statewide availability of boater education courses.

b. Provide more ethics training in boater education courses, as well as providing more information through media and publications to boaters on ethics.

c. Develop mechanisms to deliver better understanding of lake laws to the public.

d. Provide additional funding for boater education programs.

Results:

a. The Indiana Boating course is available online through an arrangement developed by the IDNR Division of Law Enforcement. These courses are designed for Indiana residents.

b. The Handbook to Indiana Boating Laws and Responsibilities is available online through the IDNR Division of Law Enforcement. As part of the Boating basics, specifically for Personal Water Craft it includes topics such as “Courtesy When Encountering Other Vessels” and “Environmental Considerations. Additional topics for boating basics include Traffic Rules and Navigation Rules.

c. The Handbook to Indiana Boating Laws and Responsibilities is available online through the IDNR Division of Law Enforcement. All lake laws are available on-line.

d. A portion of the lake and river enhancement fee paid by Boat owners annually to the Bureau of Motor Vehicles is dedicated towards grants for better enforcement of maritime safety on lakes. In 2011, this fund amounted to approximately $1 million annually.

Recommendation #26:

The Indiana Lakes Management Work Group recommends that:

a. Amend statutes to establish ecological protection zones where watercraft use is limited.

b. Amend statutes to provide a permit system for watercraft engaged in group, organized, or tournament activities.

Results:

a. Certain provisions of HEA 1075 (2000) were incorporated into a rule package recodifying watercraft rules in December 2000, including authority for delineation of protected ecological zones. Requests have subsequently been received for zone establishment on a few lakes including Lake Manitou and Lake Tippecanoe and Lake Wawasee.

b. Indiana Code (IC14-15-7-3) was amended in 2000 and gives authority to the DNR to adopt rules related to the regulation of watercraft engaged in group or organized activities or tournaments. The Natural Resources Commission adopted rules in 2001 and subsequently received request from residents of Lake Wawasee and Syracuse Lake for establishment of restrictions related to fishing tournaments on the two lakes. A rule specific to those two lakes was adopted in 2003. A similar rule was adopted for Sylvan Lake in 2005.

Recommendation #27:

The Indiana Lakes Management Work Group recommends that:
The regulation of Personal watercraft recommendations is included in **Recommendations # 3, 23a, 20, 25, 26.**

Results:

Personal Watercraft regulations are noted in IC 14-15-12 as passed in 1995 and amended in 2000. For example, Personal flotation devices are required for anyone operating, riding on, or being towed by a personal watercraft on public waters.

Recommendation #28:

The Indiana Lakes Management Work Group recommends that:

a. Encourage managing entities to place restroom facilities at public access sites.

b. Provide funding to DNR to place restroom facilities at public access sites.

Results:

a. No specific actions regarding sites that are not owned or funded by the IDNR.

b. By 2002, the DFW was supporting installation and maintenance of portable toilets at 40 lake and stream sites in northern Indiana. The extra costs of maintenance and providing even portable restroom facilities have prevented more widespread utilization of this option however. Increasing costs for everything from fuel to labor costs make it cost-prohibitive to maintain portable restroom facilities at all public access sites.

Recommendation #29:

The Indiana Lakes Management Work Group recommends that:

a. Technical assistance should be structured along geographic watershed boundaries.

b. Base management decisions on geographic watersheds and in agreement with locally developed watershed plans.

c. Obtain local costs for watershed management through drainage assessments or other appropriate methods.

d. Give priority to state funding in watersheds where a watershed plan has been developed and accepted by the funding source.

Results:

a. A Watershed Planning Team consisting of five Watershed Specialists and staff from the NPS/TMDL Section all work to provide technical assistance on a watershed level.

b. The IDEM Section 319 program funding is given out largely based on watershed groups completing and implementing watershed management plans (in watersheds with waterbodies on the 303(d) list) which meet the criteria of the program.

c. Several LARE projects have been sponsored and cost-shared by county drainage boards or surveyors. No state or local actions have been taken to specifically encourage or require drainage assessments to fund watershed management approaches to erosion and sediment control.

d. IDEM distributes federal funds, but has no state funding for nonpoint source pollution. Federal Section 319 funds are distributed with priority given to watersheds where a watershed plan has been developed (and meets the IDEM WMP Checklist) or where a plan will be developed and there is a 303(d) listed waterbody in the watershed. LARE projects typically require the completion of a watershed management plan or a watershed diagnosis study as the first step in providing management funds to carry out construction or implementation of measures to address sedimentation or nutrient input into lakes and rivers.

Recommendation #30:

The Indiana Lakes Management Work Group recommends that:

The economic and ecological value of public freshwater lakes and publicly owned reservoirs should be assessed through a study funded by the state.

Results:

No action has been taken by state lake programs at IDEM or IDNR to assemble a proposal for funding or solicit proposals from pertinent state university programs (i.e., in environmental or resource economics) to conduct a study of the economic value of lakes in Indiana. An informal presentation on the economic value of lakes was developed by LARE staff in IDNR and provided to the members of the Lake Management Work Group and other organizations in 2010.

Recommendation #31:

The Indiana Lakes Management Work Group recommends that:

a. The Indiana Land Resources Council (ILRC) and other organizations should provide assistance to local units of government in developing county planning and zoning, ordinances and building codes that protect lake shore lands.

b. Local communities and county planners promote development that utilizes existing infrastructure rather than new infrastructure in undeveloped areas.

c. An educational effort by IDEM and IDNR to support local planning and regulation that protects lake resources.

Results:

a. The ILRC has not addressed this issue according to minutes from their meetings in 2009-2011.

b. No known actions specifically related to locally-driven efforts.

c. Grants funds (either Federal 319 or State LARE grants) are sometimes made available for such uses as education and outreach to local lake communities, promoting lake associations, reducing boating impacts, addressing watershed issues, promoting volunteer monitoring, and other efforts related to water quality improvements. Groups were also encouraged to develop and implement watershed management plans in watersheds that include lakes. The Indiana Lakes Management Society provides a venue for networking between those interested in lake management issues from government, private lake-related commercial firms, and associations of lake residents or users. Issues of planning in lake watersheds sometimes is part of the programs, mainly in terms of presentations at conferences, and monitoring of state proposed legislation that may impact lake users.

Recommendation #32:

The Indiana Lakes Management Work Group recommends that:

The Indiana Lake Management Work Group should be continued.

Results:

In 2004, the Director of DNR administratively recreated the work group which then met on six occasions (as of October 2005). The most recent legislation was HEA 1097 (P.L. 181-2011) which requires the final report of the Work Group to be submitted before June 30, 2012. House Bill 1064 would have continued the Lake Management Work Group. This bill passed the house but did not pass out of the Senate Agricultural and Natural Resources committee in March 2012. This meant the current iteration of the Lake Management Work Group will cease with the production of this final report by June 30, 2012.

Recommendation #33:

The Indiana Lakes Management Work Group recommends that:

Review consolidation of lake management functions in a single unit of government.

Results:

In July of 2011, the Director of the Department of Agriculture, the State Health Commissioner, the Executive Director of Indiana Department of Homeland Security, the Director of the Department of Natural Resources, and the Commissioner of IDEM called together a group of senior managers from each of the agencies that have responsibilities related to the management of activities that impact water quality or water quantity. This Water Issues Group was tasked with develop proposals for consolidating programs to reduce the confusion and difficulty of obtaining permits or permissions for water activities. The Water Issues Group released a 33-page report on December 16, 2011 entitled: Recommendations for Re-Alignment of State Water Programs: A Preliminary Evaluation.

Many of the issues this Work Group addressed are reflected in issues and concerns that the Lake Management Work Group has been wrestling with for over 12 years including algae, freshwater lakes, grants, watershed planning to name just a few.

This report will not go into detail on the results of the Water Issues Work Group report, other than to note that they found there is no single approach towards reorganizing water programs to meet every program need, and that improved communications, including improved websites are important. The report as a whole was very preliminary in nature.

Recommendation #34:

The Indiana Lakes Management Work Group recommends that:

The Lake Enhancement Fee should be increased from $5 to $15 to be allocated by thirds to: 1) the existing LARE program activities; 2) sediment removal and exotics control; and 3) law enforcement.

Results:

HB 1232 (2001) and HB 1221 (2002) would have increased LARE boat fee from $5 to $15, divided among the indicated activities. No legislative action was taken in 2001. In 2002, the bill passed out of House and died in Senate. HEA 1336 was enacted as Public Law 233 in 2003. It provided for an increase in fees used to fund the LARE program, as well as funding for lake patrols. The fees are based on the value of the boat when new, from a boat valued at less than $1,000 with a $5.00 annual fee to one with a value of at least $10,000 having a $25.00 annual fee. The fees are paid to the Bureau of Motor Vehicles during the annual registration of the boat by the owner. These fees are then divided with 2/3 of the money going to the lake and river enhancement fund established in IC 6-6-11-12.5, and 1/3 of the money being deposited in the Conservation Officers Marine Enforcement Fund established by IC 14-9-8-21.5. The Lake and River Enhancement Fee generates approximately $3.4 million annually as of 2011.

The Lake and River Enhancement fund is used with ½ to pay costs incurred by IDNR in implementing lake and river enhancement projects, and ½ to pay for lake projects to remove sediment or control exotic or invasive plants or animals.

In 2011, Public Law 207 amended the Lake and River Enhancement fund to include projects on rivers, and project to remove logjams or obstructions. With no additional funding added, this had the effect of potentially reducing the amount available for projects on lakes alone.

Recommendation #35:

The Indiana Lakes Management Work Group recommends that:

a. Increase Indiana Heritage Trust funding over the current $5 million per biennium.

b. Provide funding for payment in lieu of taxes on DNR land acquisitions.

c. Reorganize the Heritage Trust purchase process to allow rapid purchase of special properties, including pre-selected or prioritized properties.

Results:

a. SB 48 (2000) called for appropriation of $2.5 million annually to Indiana Heritage Trust Fund. No legislative action.

   The Indiana chapter of The Nature Conservancy proposed bill language for the 2003 legislative session that would provide funding for the Heritage Trust through an additional fee on solid waste. The Conservancy proposed an increase in state landfill dumping fees by $2.40 a ton, to $3. The proposal would have raised $31.2 million, divided between Heritage Trust and other land and water conservation programs. The estimated cost the average Indiana household $1.25 a month ($15 a year) in higher trash disposal fees.

   The budget bill passed in 2011 allows for $1,000,000 per year in the fund.

b. No current legislative action. However, SB 120 (2000) proposed that DNR and other organizations make payments in lieu of taxes for all lands purchased with Indiana Heritage Trust funds. HB 1875 (2003) would have provided funding for the Heritage Trust through an additional fee on solid waste. The bill proposes an increase in state landfill dumping fees by $2.40 a ton, to $3. Under the bill, 10 cents of the increase would have raised $1.3 million a year to be used to help make up property taxes that are lost when the state buys land.

c. The average time for closing an IHT project, once the signature from the Governor's office has been received, has been reduced to 60 to 90 days.

Recommendation #36:

The Indiana Lakes Management Work Group recommends that:

Expand and fund the Wetland Reserve Program (WRP) above current levels.

Results:

a. The Wetland Reserve Program is a federal program managed and financed by the USDA Natural Resources Conservation Service. Started in 1990, it provides technical and financial assistance to eligible farmer to promote conservation on American wetlands. Easements are 30-year or permanent. An NRCS-produced document in 2011 detailed the

success of the program: Restoring America's Wetlands: A Private Lands Conservation Success Story. The 2008 Farm Bill expanded maximum enrollment cap from 2.275 million acres to 3.041 million acres. Enrollment in the program has steadily increased since 1992, with over 2.3 million acres enrolled by more than 11,000 landowners by 2011. However, federal budget concerns have placed the WRP as potentially a federal program that will not be funded after 2012.

In Indiana 58,184 acres have been enrolled in the WRP as of April, 2012. $5 million dollars was allocated for enrollment and $5 million dollars was allocated for restoration for WRP general for NRCS in Indiana.

Recommendation #37:

The Indiana Lakes Management Work Group recommends that:

Establish coordinated wetland regulations to provide uniform protection, better public information, and higher rate of compliance.

Results:

SB 169 (2001) would have directed IDEM and IDNR to conduct a highly detailed inventory of all wetlands. This bill passed the Senate but not the House.

The Water Pollution Control Board preliminarily adopted proposed wetland water quality standards and procedures to implement the Section 401 Water Quality Certification Program and a Surface Water Modification Permit (needed for "isolated" wetlands no longer under federal jurisdiction as a result of the "SWANCC" decision). This rulemaking was delayed awaiting EQSC action in 2002.

Significant attention has been focused on wetlands since the SWANCC decision made by the courts in 2001. HB 1097 (2002) would have excluded ephemeral streams, intermittent streams, and any wetlands not subject to federal jurisdiction from the definition of "waters" for purposes of state environmental management. Concepts from the bill were partially incorporated into HEA 1306 (2002). That bill would originally have established statutory definitions for "isolated private wetlands" and "private pond" in order to exclude them from IDEM jurisdiction. SB 141 (2002) would have established a wetland study committee to evaluate and make recommendations on wetland policy and administration. The latter bill's language was merged into the House bill, whose original language was stripped. The House bill was then enacted as Public Law 183. EQSC, in response, established three subcommittees to consider various wetlands regulatory and conservation issues. A final meeting was held on October 18, 2002, with recommendations for 2003 legislation. There was considerable debate over various bills

related to wetland regulation in the 2003 General Assembly. HEA 1798 was passed by both houses, but vetoed by the Governor, who established a wetlands task force to debate the regulatory issues. HEA 1277 was enacted in 2004 as Public Law 52, stipulating the extent of IDEM's authority to regulate "isolated" wetlands.

The Water Pollution Control Board subsequently adopted rules that reflected the language of P.L. 52.

The IDEM wetlands section regulates through two permitting programs: Clean Water Act Section 401 Water Quality Certification (WQC) and State Regulated Wetlands Permitting program. The WQC program covers federally jurisdictional wetlands, while the State Regulated Wetlands program covers the non-exempt "isolated" wetlands. Information about this can be found in an IDEM Factsheet on Wetlands that was produced in 2007.

Recommendation #38:

The Indiana Lakes Management Work Group recommends that:

a. Development and implementation of stormwater drainage plans under IC 36-9-28.5.

b. Provide financial assistance to SWCDs and local government for technical assistance in implementing stormwater management plans.

Results:

a. SB 431 (2002) would have amended existing statutes regarding establishment of stormwater management entities in municipalities to allow for similar departments in county government. HB 1442 (2003) would allow a municipality to adopt an ordinance providing for the control of any or all of its stormwater facilities by the board that controls the municipality's municipally owned utilities. No legislative action on either bill.

   IDEM produced a sample Storm Water Pollution Prevention Plan that is online, as part of the entire Storm Water Quality Manual that is also on the IDEM website. Chapter 3 of the Manual deals entirely with construction plans. This manual was produced to provide guidelines and specific storm water quality measure for controlling soil erosion; controlling and treating the nonpoint source pollution association with sediment-laden runoff; and the management and treatment of pollutants association with post-construction land uses. The IDEM Storm Water Program includes 5 Storm Water Specialists, a Permits Specialists and an MS-4 Coordinator who are tasked specifically with the inspection and training aspects of storm water management in Indiana.

b. SEA 236 (2001) appropriated $30 million from the Build Indiana Fund for Supplemental Assistance for Wastewater and Drinking Water projects, to provide financial assistance for the preparation of CSO Long Term Control Plans, and for financial assistance in the preparation of Stormwater Management Plans. Due to State budgetary constraints, however, the funds to be made available for those purposes were redirected to meet more pressing budgetary needs.

   Some SWCDs are able to receive funding from county government through imposition of storm water fees in some municipalities.

Recommendation #39:

The Indiana Lakes Management Work Group recommends that:

a. A review of authority to temporarily close lakes and update as needed should be made.

b. No seasonal changes in water level where runoff storage capacity is insufficient.

c. No changes made to code governing legal lake levels.

d. Additional funds to IDNR for repair, removal or replacement of dams and inspection of water level control structures.

Results:

a. No action needed. 312 IAC 5-12-1 provides adequate authority for the director to modify or close public waters to boating. A non-rule policy, Information Bulletin #51, posted 11/29/2006 by the Legislative Services Agency was created to establish criteria for lake closures.

b. No action needed.

c. No action needed.

d. In 1999-2001, $10 million was appropriated to the IDNR for engineering review and repair of dams on state-owned property or which are partially owned by the state. As of September 2002, engineering studies, design, construction, and emergency repairs were conducted on more than 30 dams statewide. Estimated costs for completing all repairs or removals recommended by the studies would be in excess of $20 million.

SB 508 (2002) modified Indiana's dam statute (IC 14-27-7) regarding inspection, enforcement, and permitting of dams in Indiana. Due to budget reductions, the IDNR no longer inspects non state-owned high hazard dams and requires the owners of non state-owned high hazard dams to have licensed professional engineers inspect their dams and submit reports to IDNR once every two years. Additionally, SB 508 lengthened the interval between inspections to three years for significant hazard dams and five years for low hazard dams. General guidelines for dams and improvements to existing dams are available in an online handbook; the Indiana Dam Safety Inspection Manual was updated in 2007.

Recommendation #40:

The Indiana Lakes Management Work Group recommends that:

a. Increase the number of professional fisheries biologists employed by the IDNR by a minimum of 25%.

b. Sufficient state funds should be made available to encumber all federal matching funds appropriated to Indiana through the Sportfish Restoration program.

c. Form partnerships to enhance fisheries research and fish community management efforts.

Results:

a. Budget constraints required IDNR in 2010 to reduce the number of District Fisheries biologists to 6 with 3 biologists assigned to special programs (Lake Michigan, Big Rivers, and Nongame Fisheries). Two research fisheries biologists and additional assistant fisheries biologists are employed. Staffing losses due to retirements and delays in hiring started to turn around in 2012, with the employment of several new fisheries biologists. As of April 2012, a total of 22 fisheries biologists work as District Fisheries Biologists or Assistants, Research Fisheries Biologists, and two Regional Supervisors (who are also Fisheries Biologists). 15 other fisheries biologists are devoted to work at the various state fish hatcheries, also.

b. In 2001, license fees were increased by the Natural Resources Commission to obtain additional state funding for federal cost-share fish and wildlife programs. Due to budget restrictions, the increase of spending required to avoid reversion of federal funds continues to be challenging.

c. Several private fishing organizations have contributed private funds and worked with the division to increase stocking of walleye and muskellunge in order to increase fishing opportunities in selected public waters.

Recommendation #41:

The Indiana Lakes Management Work Group recommends that:

The IDNR Division of State Parks and Reservoirs regulation of tournament fishing should be modified to allow summer tournament opportunities on all reservoir waters.

Results:

On October 6, 2000, the department director signed an emergency rule to provide the recommended tournament opportunities (312 IAC 8-3), which was repealed effective January 1, 2002. The permanent rule was implemented 312 IAC 2-4, which was readopted in 2003 and 2008. The limitations on the number of boats allowed on various lakes for fishing tournaments at lakes administered by the division of state parks and reservoirs are noted in 312-IAC 2-4-12, version a of which is effective until January 1, 2013, and version b of which is effective after January 1, 2013. The rules do not preclude summer tournament opportunities on all reservoir waters, just limits the number of boats on any one reservoir as part of the fishing tournaments.

Recommendation #42:

The Indiana Lakes Management Work Group recommends that:

Support for the legal, effective, and appropriate hunting and trapping for nuisance wildlife control be expressed.

Results:

No action needed. Information about nuisance wildlife is available on the IDNR Division of Fish and Wildlife's website. The Division maintains a listing of Nuisance Waterfowl Control Operators online. A CD entitled "Got Nuisance Waterfowl? Techniques for Problem Solving" for Nuisance Waterfowl is available by contacting the local District Wildlife Biologist. The website includes Frequently asked questions as well as information about permits. A listing of Nuisance Wildlife Control Operators is also available online.

Recommendation #43:

The Indiana Lakes Management Work Group recommends that:

a. The State should provide public funds for control of exotic invasive plants.

b. Require an aquatic plant management plan prior to application of herbicides in public lakes.

c. Expand state jurisdiction over plant control to include physical, mechanical, biological, and chemical methods.

d. Limit treatment of waters without a permit to 25 feet along the shoreline and 6 feet deep.

Results:

a. HEA 1336 was enacted as Public Law 233 in 2003. It provided for an increase in fees used to fund the LARE program. The additional monies were specifically designated for sediment removal from lakes and the control of exotic plant or animal species in lakes. The law was amended in 2011 by HEA 1343 (Public Law 207-2011), to add the removal of logjams or obstructions to the list of projects for which the fund can be used.

b. Funds can be used for the development of an aquatic plant management plan. Such a plan is a prerequisite for eligibility to obtain LARE funds to perform actual invasive plant control.

c. SEA 230 (Public Law 19-2002) amended and made corrections to existing statutes regarding aquatic plant management. It expanded the IDNR permit authority from just chemical control to include biological, physical, and mechanical methods of removing aquatic plants from public waters.

d. SEA 230 (Public Law 19-2002) amended and made corrections to existing statutes regarding aquatic plant management. It limits removal of aquatic plants from public waters without a permit to areas not larger than 625 square feet, and not more than 25 feet along the shoreline or 6 feet deep.

Recommendation #44:

The Indiana Lakes Management Work Group recommends that:

a. The State should fund a coordinator to develop a state aquatic nuisance species management plan.

b. Develop an educational campaign to raise awareness of exotic nuisance species.

c. Enlist volunteer organizations in recognizing and reporting occurrences of exotic species.

d. Conduct a cost-benefit study on use of biological controls in public lakes.

Results:

a. The Indiana Aquatic Nuisance Species (ANS) Management Plan was completed in 2003, and approved, making funding available for an Aquatic Invasive Species Coordinator employed in the Division of Fish and Wildlife.

b. The IDNR Division of Fish and Wildlife works with Illinois-Indiana Sea Grant to produce and distribute resource materials on invasive aquatic species, including purple loosestrife, Eurasian watermilfoil, round goby, and other species. Bait bucket stickers, bait shop posters, signs at boat ramps, and increasing information on the state website have been provided. The state management plan will also guide future efforts in this area. The Aquatic Invasive Species Information is available on IDNR Division of Fish and Wildlife's web page.

   The Aquatic Invasive Species Coordinator position was vacated by the promotion of the incumbent in 2011, but a new AIS Coordinator is scheduled to start work for the IDNR Division of Fish and Wildlife in May, 2012.

c. Implementation of the state Aquatic Nuisance Species (ANS) Management Plan will likely result in additional attention to use of volunteer monitors for detecting and reporting exotics.

d. The Riverwatch volunteer monitoring program and Project WILD distribute information on identification and reporting of exotic species. An updated list of zebra mussel infested waters is maintained on the DNR website. The IDEM and IU/SPEA encourage the training of lake volunteer monitors in their program so they can recognize and report occurrences of exotic species.

e. In 1999, the Lake and River Enhancement (LARE) program funded a study of the use of milfoil-eating weevils at three lakes across the state. Results of the three-year research project were not markedly conclusive.

   In March of 2012, a LARE grant was awarded for a project in Kosciusko County to determine effectiveness of weevils in a new project.

Recommendation #45:

The Indiana Lakes Management Work Group recommends that:

Nuisance geese should be controlled by

a. Making lakeside environments less attractive to nuisance geese.

b. Extending hunting seasons or alter times, bag limits and other control methods for nuisance geese.

c. Distributing educational materials on management of nuisance geese.

Results:

a. The IDNR Division of Fish and Wildlife maintains information about Nuisance Canada Goose Management on their website. The conflicts between those who encourage and feed Canada Geese at lakes and those who consider them a nuisance provide some disagreement in attempts at control. The solutions are available, but it is up to individual lake residents and lake associations as to how or if they are implemented locally.

b. New rules went into effect in September 2006. The IDNR Division of Fish and Wildlife will still issue permits for agricultural depredation and trapping activities concerning resident Canada geese, but now landowners and managers of public lands can register online directly with the US Fish and Wildlife Service to receive permission for egg and nest destruction activities.

   For information on hunting seasons and regulations for Canada Geese in Indiana, the IDNR Division of Fish and Wildlife maintains information on their website. In 2011 the daily bag limit was 2 Canada Geese in the three zones. Additionally, the Indiana Late Goose Hunting Permits provide additional opportunities to reduce Canada Geese population through hunting in certain areas. In 2012, that late season was February 1-15.

c. Educational materials have been distributed periodically through lake association newsletters. All DNR district wildlife biologists answer questions and there are materials on the IDNR website related to nuisance geese.

Recommendation #46:

The Indiana Lakes Management Work Group recommends that:

IDNR should work with Purdue Extension, USDA NRCS, and Soil and Water Conservation Districts to develop and publish a fertilizer and pesticide management brochure for non-agricultural areas.

Results:

Development of a brochure targeting fertilizer and pesticide use around lakes has not occurred, but the issue is being addressed in several other venues. It is at the forefront of discussion due to an increasing occurrence of blue-green algae blooms on some lakes which has been blamed, at least in part, on increased phosphorus inputs into lakes from runoff water in the watershed. The reduction of phosphorus in lawn fertilizers (except in the instance of newly established lawns) would be one step towards reducing potential phosphorus inputs into lakes.

Legislation was proposed in both the General Assembly both in 2011 and 2012 by legislative members of the Lake Management Work Group to limit the use of phosphorous in lawn fertilizers. This legislation failed to garner enough support for passage in both cases. Concerns by the lawn care industry and agricultural organizations on potential impacts prevented the legislation from moving forward.

Purdue Extension has developed a brochures including: Pesticides and Pest Prevention Strategies for the Home, Lawn, and Garden and Pesticides and Water Quality Principles, Policies and Programs.

Additionally, The Indiana Wildlife Federation also maintains information on their website related to reducing Phosphorus in Lawn Fertilizer and had been active in promoting this concept for several years.

The Clear Choices Clean Water campaign developed by the Tippecanoe Watershed Foundation, The Upper White River Watershed Alliance and the IUPUI Center for Earth and Environmental Science is working to address this issue with a program to encourage people to voluntarily pledge to reduce the use of phosphorus in fertilizer.

Recommendation #47:

The Indiana Lakes Management Work Group recommends that:

> The state should develop a comprehensive interagency database of lake information within a larger geographic information system (GIS).

Results:

> On July 1, 2007, the state Geographic Information Office was created by Indiana Code 4-23-7.3 to coordinate GIS activities statewide, and specifically to:
>
> 1. Facilitate GIS data cooperation among units of the federal, state, and local governments; Integrate GIS data and framework data developed and maintained by state agencies and political subdivisions into the statewide base map;
> 2. Acquire, publish, store, and distribute GIS data;
> 3. Coordinate with state educational institutions to promote formal GIS education opportunities and informal GIS learning opportunities throughout Indiana.
>
> The state departments of Natural Resources, Environmental Management, Transportation, and Homeland Security create, maintain, and provide access within a shared inter-agency geodatabase to more than 300 statewide GIS-based datasets. Many of these are related to lakes, other surface waters, and ground water. Among these datasets are:
> 1. aquifer systems (DNR)
> 2. bathymetry for 60 freshwater lakes (DNR)
> 3. fish access sites (DNR)
> 4. flood mapping data (DNR)
> 5. ground water availability (DNR)
> 6. high-resolution (1:24,000) NHD waterbodies, areas, and streams (USGS)
> 7. Hydrologic Unit boundaries (2, 4, 6, 8, 10, 12, and 14 digit)
> 8. impaired lakes and streams (IDEM)
> 9. legal and average normal water levels for public freshwater lakes (DNR)
> 10. surface water withdraw and water wells (DNR)
> 11. surface water intakes (IDEM)
> 12. wetlands (NWI)

Some of these data are used in internal (DNR Natural Resources Map) and public (IndianaMap, Indiana Flood Mapping Portal, Where to Fish, and the Water Wells Viewer) web applications.

The IDNR Fisheries Section is working on development of a fisheries database that would have information on fish communities, along with limited data on aquatic plants and water quality. As of April, 2012, development of this data base is ongoing with plans to migrate the custody of that data base to Indiana.gov servers from servers at Virginia Tech in Blacksburg, Virginia where it currently resides.

The State and the Indiana Geographic Information Council are in the midst of upgrading the National Hydrography Dataset for Indiana to local resolution (1:2,400 or 1:1,200). This will lead to a significant increase in the number of mapped water bodies, as well as alignment matching 2005 or better orthophotography.

Additionally, the IDEM has the GIS Services section that provides a variety of GIS-based maps and applications for departmental use.

Likewise, IDNR employs a GIS Coordinator and several employees in various divisions are tasked with GIS responsibilities. The Division of Water maintains many map files regarding water resources in GIS format including water wells, a listing of the legal and average normal water levels for Public Freshwater lakes, and dozens of other maps and publications.

The Division of Fish and Wildlife maintains a "Where to fish" searchable data base that highlights public access sites statewide on lakes as well as rivers.

The IDNR Fisheries Section is working on development of a fisheries database that would have information on fish communities, along with limited data on aquatic plants and water quality. As of April, 2012, development of this data base is ongoing with plans to migrate the custody of that data base to Indiana.gov servers from servers at Virginia Tech in Blacksburg, Virginia where it currently resides.

Recommendation #48:

The Indiana Lakes Management Work Group recommends:

Development of a booklet and short course on land and water management practices for realtors, lake-related business, and residential lake front property owners.

Results:

Lakescaping for Wildlife and Water Quality, an Indiana Addendum to a guide developed by the State of Minnesota was developed and is available online. A workshop was conducted on August 1, 2009 on Lakescaping with 27 participants. The workshop was held at Merry Lea Environmental Center at Wolf Lake, Indiana.

VI. Results of Legislation Supported by the Work Group

Through the years, items of discussion by the members of the work group have included statutory and administrative changes regarding boating safety, creation of ecologically protected zones on lakes, organized activities such as fishing tournaments, placement of structures on lakes, mediation of shoreline disputes, guidelines for dredging activities, established state funding for dredging and exotic weed control, and creation of the listing of Indiana Public Freshwater lakes which determines DNR authority and jurisdiction for activities on lakes.

Currently the LMWG is the only legislatively-authorized body tasked with addressing issues related to Indiana's lakes. Nearly every issue tackled by the LMWG involved numerous meetings, discussion, and follow-up on requests for information by various agency personnel. In some instances, the members of the LMWG were actively involved in the drafting of statutory or rule language and then testifying before legislative committees or the Natural Resources Commission to promote the statutory or regulatory changes. The succinctness of the accomplishment summaries below belies the effort involved and complexity of achieving consensus on controversial topics. The LMWG's willingness to tackle many issues over a long period of time resulted in gradual progress towards addressing, and in some cases resolving, issues identified in 1999. The persistence of issues such as invasive species, blue-green algae concerns, and development pressures on lake use, demonstrate a continuing need for a forum to address lake issues. The framework of such a forum may be different from the current iteration of the LMWG.

Listed below are specific legislative bills or administrative rules in which the LMWG provided input, support, and/or recommendations:

1. The Lake Management Work Group made considerable contributions to what became PL 64-2000, the Lakes Preservation Act. In particular, this legislation formed the basis for IC 14-26-2-23. This statutory section in the Lakes Preservation Act clarified legislative intent that the LPA was intended to apply to *temporary* structures, following a 1997 decision by the Court of Appeals of Indiana that it was not so intended. IC 14-26-2-23 has since been amended at least three times and is now the cornerstone for permitting activities under the Lakes Preservation Act. The LMWG had a role in most or all of these amendments.
2. HEA 1336 (P.L. 233-2003) established the Lake and River Enhancement fee between $5.00 and $25.00 with two-thirds being deposited in the Lake and River Enhancement(LARE) fund and one-third being deposited in the conservation officers marine enforcement fund. The LARE fund is used for projects to remove sediment,

control invasive species and Lake and River Enhancement projects including design, construction, and watershed land treatment projects.

3. LMWG recommended passage of SB 40 in 2008 that would have allowed the Natural Resources Commission to provide for more than two-year duration for certain shoreline-related permits on public freshwater lakes, however, the bill did not pass. The concept was revisited in 2009 in HB 1381. The legislation passed as P.L. 25-2009 and is now codified in IC 14-26-2-17.

4. LMWG recommended passage of SB 39 in 2008 which would have required DNR to implement the public trust doctrine with respect to Public Freshwater Lakes and would have added "Wildlife" to the definition of "natural resources". This bill passed the Senate but died in the House after first reading.

5. LMWG strongly supported the passage of HE1120 (P.L. 25-2008) which was introduced and sponsored by LMWG Members Rep. Dembowski and Senator Meeks, signed into law 3/3/2008 and went into effect on 7/1/2010. This law banned the use of detergents containing phosphorus in dishwashing machines (excluding commercial dishwashers). This contributed to a lowering of the amount of phosphorus entering sewers, septic systems, and ultimately lakes and rivers, resulting in probable positive effects on water quality through reducing nutrients that feed algal blooms.

6. LMWG supported the passage of P.L. 6-2008, which established a new statutory definition for "lake" that is now codified in the Lake Preservation Act at IC 14-26-2-1.5. The NRC then amended 312 IAC 1-1-21 to accommodate the enactment of IC 14-26-2-1.5 to keep the regulatory definition consistent with the new statute.

7. For years, the LMWG advocated for a definitive list of Indiana Public Freshwater Lakes. This process moved forward in 2008 when the Indiana General Assembly enacted legislation to authorize the Natural Resources Commission to adopt and maintain, as a nonrule policy document, a listing of public freshwater lakes (IC 14-26-2-24). With much input, suggestions, and encouragement from the LMWG to DNR and the Advisory Council, the listing of Public Freshwater Lakes was released in Information Bulletin #61 on January 1, 2010. The PFL list was amended by the NRC in October 2010 to incorporate new information provided by affected citizens. This list provides the public and DNR professionals with guidance concerning which lakes the DNR administers under the Lakes Preservation Act and the Indiana Administrative Code. This listing was amended again in June 2011 to incorporate additional new information and includes 426 named lakes in the portion of Indiana north of State Road 26.

   The list is available online

8. The LMWG provided much input and support for the development of Dredging Guidelines for reviews of permits in public freshwater lakes, Administrative Cause No. 09-045W. The Natural Resources Advisory Council accepted it on April 8, 2009. The Natural Resources Commission adopted it as a nonrule policy document, effective June 1, 2009. It is posted in the Indiana Register as NRC Information Bulletin #60, Dredging of Public Freshwater Lakes, at this link: www.in.gov/legislative/iac/20090610-IR-312090385NRA.xml.pdf.

9. LMWG provided input, recommendations, and support for the development of rules regarding the placement of temporary structures and group piers on public freshwater lakes. The NRC adopted the rules that agreed with the recommendations of the LMWG as amendments to 312 IAC 11, Administrative Cause No. 08-065W. This was published in the Indiana Register 9/22/2010 as LSA Document #09-856(F) and was effective January 1, 2011. The final rule is posted at this site: http://www.in.gov/legislative/iac/20100922-IR-312090806FRA.xml.html.

10. LMWG provided input, recommendations, and support for amendments to 312 IAC 11 regarding the placement of aerators. Although the LMWG did not agree totally with the rules as adopted, they were part of the discussion all along. This rule was published in the Indiana Register as LSA Document #09-806(F) and was effective January 1, 2011. The link to this rule is: www.in.gov/legislative/iac/T03120/A00110.PDF.

11. LMWG's Recommendation #21 was written in response to a narrow interpretation of the Lakes Preservation Act in *DNR v. Town of Syracuse*, 686 N.E.2d 410 (Ind. App. 1997). Legislation was sought to clarify DNR was to regulate most construction activities in public freshwater lakes, including temporary structures such as piers. The Natural Resources Commission would adopt objective standards for licensure and establish a process to mediate disputes among riparian owners. SEA 44 was enacted in 2000 (P.L. 64-2000) to affirm DNR authority over temporary structures, and the Commission was directed to adopt rules to implement mediation and provide licensure standards. The Commission immediately began rule adoption for mediation and later amended existing rules to strengthen licensure standards, particularly for group piers and marinas.

12. LMWG's Recommendation #26a was to amend statutes to establish ecological protection zones where watercraft use is limited. Certain provisions of HEA 1075 (P.L. 38-2000) were incorporated into a rule package recodifying watercraft rules in December 2000, including authority for delineation of protected ecological zones. DNR received requests from residents of Lake Wawasee and Syracuse Lake for delineation of protected zones at particular locations on the two lakes. NRC directed DNR in June 2001 to develop a proposed rule for establishment of such zones. The public hearing was held August 5, 2002, and final adoption was given on November 19, 2002 (312 IAC 5-6-6). Requests have subsequently been received for zone establishment on a few other lakes and

ecozones have been established on Lake Tippecanoe (312 IAC 5-6-9 passed April 18, 2008) and Lake Manitou (312 IAC 5-6-5.5 passed May 25, 2005; 312 IAC 5-6-5.6, filed June 16, 2009).

13. LMWG's Recommendation #26b was to amend statutes to provide a permit system for watercraft engaged in group, organized, or tournament activities. Certain provisions of HEA 1075 (P.L. 38-2000), www.in.gov/legislative/bills/2000/HE/HE1075.1.html) were incorporated into a rule package recodifying watercraft rules in December 2000, including establishing a process for permitting of "watercraft engaged in group or organized activities or tournaments" (312 IAC 2-4). Before the NRC adopted the rule in May 2001, the DNR had no authority to regulate tournaments on natural lakes because they are not technically "state-owned property" that can be managed with property rules. Subsequently the NRC received requests from residents of Lake Wawasee and Syracuse Lake for establishment of restrictions related to fishing tournaments on the two lakes. A rule specific to those two lakes was adopted in 2003 (312 IAC 2-4-13). A similar rule was adopted for Sylvan Lake in 2005 (312 IAC 2-4-14). These are the only three lakes that have thus far utilized this rule, linked at: http://www.in.gov/legislative/iac/T03120/A00020.PDF.

14. LMWG's Recommendation #41 was to modify the DNR Division of State Parks and Reservoirs' regulation of tournament fishing to allow summer tournament opportunities on all reservoir waters. The LMWG strongly recommended that the Division of Parks and Reservoirs relax their limits on summer tournaments (even bans) at reservoirs to allow more tournaments. This, it was suggested, would help to reduce summer tournament pressure on natural lakes. Natural lake users had complained that the old rule drove more tournaments to the northern lakes during the summer and were creating user conflicts, over-crowding at ramps, etc. at natural lakes. On October 6, 2000, the department director signed an emergency rule to provide the recommended tournament opportunities (312 IAC 8-3). This rule was repealed and the permanent rule was implemented the following year (312 IAC 2-4-12). Amendments approved by the NRC in September 2010 were designed to further liberalize the opportunities for fishing tournaments at lakes administered by the Division of State Parks and Reservoirs, to become effective January 1, 2011. Additionally, the DNR Division of Fish and Wildlife is utilizing opportunities to glean research information from the tournament participants, to assist in fish management strategies, an example of using information not normally available at low cost.
15. The LMWG had urged the DNR to establish an appropriate memorial to be created to honor the services of Work Group member and retired Conservation Officer Ralph Taylor. In October, 2010, members of the Work Group, fellow conservation officers and staff of the IDNR met at Marsh Lake Wetlands Conservation Area near Angola Indiana where a memorial marker was unveiled in Ralph's honor.

VII. Unresolved Issues and Areas of Concerns

As this report is produced in 2012, the Lake Management Work Group chooses to note the following unresolved issues and areas of concern. These items are worthy of discussion and strategies for how they should be addressed. The details of who is responsible, how they are to be tackled, and how the solutions are to be implemented and more importantly paid for are all the realm of future groups, organizations, agencies or individuals to tackle.

They are not listed in any particular order:

1. The need to reduce phosphorus inputs into lakes and rivers that flow into lakes, to address the ongoing concerns of accelerated lake eutrophication and the associated problems of blue-green algae blooms.

2. The increasing need for funds to address aquatic invasive plant control, as well as the spread of other aquatic invasive organisms.

3. The increasing concern with dam deterioration, expense to repair or replace dams, and the need for the establishment and maintenance of legal-lake levels.

4. Increased crowding on lakes and the issue of “funneling” dramatically increasing the number of users on many of Indiana’s lakes.

5. Ongoing disputes over the size, location and length of placement of temporary piers and other structures within public freshwater lakes.

6. The increased need and expense of sediment removal on public freshwater lakes.

7. The need to protect and enhance critical wetland areas along undeveloped shorelines and within lake watersheds.

8. The need for on-going public education related to lake ecology and lake stewardship.

9. The continuing need to obtain public support for and compliance with rules and regulations dealing with lake protection.

VIII. Final Recommendations

In analyzing the successful result of a large majority of the 48 recommendations put forth in 1999, the current members of the Lake Management Work Group issue these final two recommendations:

1. There is still a need for the existence of an organization or entity that is tasked with the responsibility for education and advocacy on lakes-relate issues at the state level, with the legislative support to accomplish viable results.

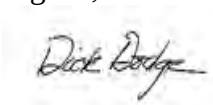
   Potentially, this could be addressed through the creation of a permanent sub-committee on lake issues reporting to the Natural Resources Study Committee in the Indiana General Assembly.

   The effectiveness of the Lake Management Work Group from its first inception in the 1990's, has been in part due to the forum it provided for members of the General Assembly, staff professionals from federal and state agencies with responsibilities that impacted lake management, and a variety of non-governmental organizations, associations, and industries that had an interest or impacts on Indiana's lakes. The support for addressing the issues related to lakes is dependent on a strong and passionate advocacy for Hoosier lakes. Who will be that strong and passionate advocate is the question that no one can answer as the Lake Management Work Group hereby concludes its legislative mandate.

2. The economic value of Indiana Lakes must be better explained to those in the Legislative and the Executive Branches of Indiana, as well as to the residents and users of lake resources and the public in general. Without recognition of the actual benefits and intrinsic values brought to the state's economy from the presence of healthy lakes, the need to fund solutions to lakes issues will face tough competition in an era of shrinking governmental funds. The importance of showing that money is not spent, but invested on solving lake issues will be the prime challenge to those who carry on with the discussion on the issues highlighted in this report.

   This report is submitted on behalf of the Lake Management Work Group June 30, 2012

   Signed,

   Representative Dick Dodge, Chair
   Lake Management Work Group

IX. Appendices

A. Notes from Lakes Management Work Group Meetings from 2000-2012
This includes notes from the work group meetings for the years 2000-2012, and includes notes from the legislatively- authorized and the ad hoc versions of the Lake Management Work Group.

Where available, the sub-group meeting notes are included to provide documentation of the discussion and efforts for future reference.

B. List of Lake Management Work Group Members 1999-2012
This includes members of legislatively-authorized and ad hoc groups from 2000-2012.

C. Organizations attending and supporting Lake Management Work Group efforts 2000-2012
This demonstrates the diversity of organizations that supported the Work Group activities through the years.

D. Lists of Attendees at Lake Management Work Group Meetings 2000-2012
This list details attendees present at the meetings from 2000-2012.

Appendices to

Final Report
Actions of the Indiana Lake Management Work Group
2000-2012

June 2012

Appendices

Appendix A includes notes or minutes from the work group meetings for the years 2000-2012. It includes notes from both the legislatively authorized and the ad hoc versions of the Lake Management Work Group through the years. Where available, sub-group meeting notes are also included to provide documentation of discussion for future reference.

Appendix B includes the list of Group members of both legislatively authorized and ad hoc groups from 2000-2012.

Appendix C shows the diverse group of organizations that supported the Work Group activities through the years.

Appendix D is a list of attendees present at the meetings from 2000-2012.

A. Notes from Lakes Management Work Group Meetings from 2000-2012

Date
September 14, 2000
October 10, 2000
October 4, 2001
November 15, 2001
October 30, 2002
June 21, 2004
August 5, 2004
September 2, 2004
November 10, 2004
August 25, 2005
October 20, 2005
December 15, 2005
February 16, 2006
April 6, 2006
November 13, 2006
March 16, 2007
June 22, 2007
October 3, 2007
April 24, 2008
July 10, 2008
October 13, 2008
November 25, 2008
March 4, 2009
May 4, 2009
August 6, 2009
October 21, 2009
March 24, 2010
June 9, 2010
September 10, 2010
November 18, 2010
June 15, 2011
September 15, 2011
December, 15, 2011
March 29, 2012
June 14, 2012

Indiana Lakes Management Work Group

September 14, 2000
1:00 PM – 4:00 PM
Indiana Government Center South
Conference Center Room 2

MEETING SUMMARY

Members Present

Sen. Robert Meeks	Dale Pershing	Robert Madden	Holly LaSalle
Rep. Claire Leuck	Gwen White	Donald Seal	Jeffrey Krevda
Rep. Dennis Kruse	David Herbst	Charles Gill	Lt. Ralph Taylor
Robert Eddleman	Stephen Cox	R. Jan Henley	

Members Absent

Sen. Katie Wolf	Richard Kitchell	Jed Pearson	Garry Tom, Sr.
Lisa Barnese-Walz	William Jones	Anne Spacie	Brian Daggy
Mark GiaQuinta	Thomas McComish	JoEileen Winski	

The meeting was called to order by Chairman Leuck shortly after 1:00 PM. LMWG members and persons in the audience introduced themselves.

Herbst raised a general question regarding LMWG-oriented legislation introduced in the last General Assembly. He wished to know whether anyone could explain why some of the bills were unsuccessful. No one could provide a definitive answer.

Taylor spoke about SEA 44, which directs the Natural Resources Commission to adopt rules to clarify DNR's authority over the placement of piers and other temporary structures in lakes. He noted that a correction is needed for the new law to be properly cross-referenced to other sections of Indiana Code.

Taylor also spoke about HEA 1075, which makes various changes to boating laws. There was discussion about different aspects of the bill. There is controversy over language that would require specific types of flotation devices in canoes and kayaks. Taylor presented proposed language changes that would make the law consistent with federal requirements. There was discussion about idle zone requirements and elimination of language from the bill regarding sound levels.

Jim Ray, of the DNR Division of Soil Conservation, noted that SEA 1075 includes language regarding the establishment of zones in lakes where the use of watercraft may be restricted. Some of those zones could be delineated to protect fish, wildlife, or botanical resources. Ray indicated that a general "notice of intent" to initiate rulemaking was to have been published in the September 1, 2000 Indiana Register. The rulemaking will include actions related to the site-specific restricted zones. There was discussion over how zones would actually be established and who would be allowed to request creation of such zones. Ray explained that those details will be part of the rulemaking process.

Jim Gerbracht, of the DNR Division of State Parks and Reservoirs, spoke about fishing tournaments in state-managed reservoirs. He noted that Monroe Reservoir currently allows some tournaments. His Division has prepared a proposal regarding advance

reservations for tournaments. The proposal contemplates opening several reservoirs for tournaments from Memorial Day until Labor Day; tournaments are already allowed in the spring and fall. Mississinewa Reservoir is closed indefinitely to tournaments because of its low water level (attributable to problems with the dam). Numbers of permissible boats will be based on availability of parking. Once the proposal is implemented, the new system will be monitored to determine its effectiveness.

Gary Hudson, of the DNR Division of Fish and Wildlife, spoke about out-of-state anglers fishing in Indiana in the spring, prior to the opening date of the adjacent states' fishing seasons. He indicated that DNR does not consider such fishing to be a concern from a biological perspective. Michigan's late opening date for the season is based on tradition, not on scientific necessity. Hudson indicated that rulemaking discussions could address the possibility of changes to season opening dates in Indiana.

Meeks inquired about the status of rulemaking to implement the portion of HEA 1075 concerning regulation of watercraft engaged in organized activities or tournaments. There was discussion about scheduling of tournaments, including opinions about the relevance of the number of boats involved and multiple, simultaneous tournaments on the same lake. No one present at the meeting was able to state whether the rulemaking process had formally been initiated, although it was noted that a "notice of intent" for rulemaking was to have been published on September 1, 2000. [Ed. Note: It was subsequently determined that the notice was published on that date in the Indiana Register.] Taylor recommended that ample time be allowed for the rulemaking process to occur, to assure that the best possible rule can be developed.

There was discussion about HB 1076, which related to the drainage statutes and use of the Indiana Drainage Handbook. Leuck expressed disappointment that the bill died in the Senate after passing almost unanimously out of the House of Representatives. Meeks explained that the Water Resources Study Committee would not have had the ability to carry out the bill's mandate for evaluation of the drainage statutes, therefore preventing the bill from receiving Senate consideration.

Discussion ensued regarding the LMWG's future activities. It was asked whether DNR could provide a facilitator for the next meeting so that the group could clearly establish what actions it might choose to pursue. Meeks indicated that the group could probably only meet three times each year, unless specific approval could be obtained for additional meetings.

It was decided that at the next meeting a facilitator would lead a full group discussion in the morning, followed by an opportunity for the three subgroups to meet, and that the full group would then reconvene later in the afternoon. Ray agreed to procure a facilitator.

The next meeting date was established as October 10, 2000, beginning at 9:00 AM. Ray agreed to obtain a room somewhere in Indianapolis.

LAKES MANAGEMENT WORK GROUP
October 10, 2000
Flip Chart Notes

General Considerations Regarding Future Work Group Actions

What is the political climate regarding funding of actions?
What would be the work group's priority funding issues?
How much money could realistically be pursued?
Are the original subgroups appropriate for considering future issues, or would a different structure be better?
What is the timeline for pursuing legislative actions?
It might be best to determine new subgroup roles and reorganize accordingly.
There will be a need to determine who will track agreed-upon actions and report back to the entire work group – a systematic approach will be needed.
What role will the general public play in future actions and how will they be involved?
There will be a need to work with the soil and water conservation organizations to secure funding for Clean Water Indiana.
There is no need to reinvent issues to pursue; the information is available already; it will simply be necessary to identify the approach needed.
Should the same subgroup structure be retained since effective group dynamics have already been established?
Should issues be addressed by the entire work group, rather than as subgroups?
There will be an ongoing need for a liaison between the work group and affected agencies so that implementation of the recommendations can be encouraged.
The recommendations should be evaluated in order to determine what action should be pursued for each of them.
Should the work group be focusing first on actions requiring legislation, since the session will soon begin?
The members should work closely with DNR to assure understanding of the work group's goals.
There will be considerable pursuit of funds in the upcoming legislative session, so there won't be substantial funds available for all of the work group's recommended actions. The state budget surplus is diminishing.
There should be efforts to increase awareness of the economic values of lakes and the fact that they generate income. This is an important argument in favor of providing funds to protect lakes.
Investigate and consider alternative sources of funding for recommended actions, such as the Build Indiana Fund. Perhaps approach lake region legislators to pool BIF funds that might be available to each of them.
A matrix should be constructed to track activities related to all of the work group's recommendations.
If money isn't available for implementation of specific recommendations, will their priority be diminished?

Existing subgroups should meet to review their own recommendations, prioritize them, and identify any funding needs associated with them.

Biology, Chemistry, and Shorelands Subgroup
Highest Priority Recommendations

1. #15 On-Site Septic Systems Inspection/Certification
1. #30 Assessment of Economic and Ecological Value of Indiana Lakes
3. #33 Consolidation of Lake Management Functions in State Agency
4. #31 Land Use Planning in Lake Regions
5. #47 Consolidation of Lake Information
6. #17 Increased Sedimentation Associated with Legal Drains

Watersheds Subgroup
Highest Priority Recommendations

1. # 1 Fund Clean Water Indiana
2. #14 Separation of Combined Sewer Systems
3. #35 Heritage Trust Funding and Payment in Lieu of Taxes
4. #16 Enforcement of Erosion Control at Developing Sites
5. #38 Stormwater Runoff from Developed Real Property

Recreation Subgroup
Highest Priority Recommendations

1. Technical Corrections to SEA 44 and HEA 1075
2. #20 Increased Enforcement of Lakes-Related Laws
3. #28 Restroom Facilities at Public Access Sites
4. #34 Expansion and Use of Lake & River Enhancement Funds ($15)

Discussion Regarding Future Actions on Specific Items

Recommendation #20

The most appropriate way to gain additional conservation officers is probably for the DNR Director to incorporate a request into the Department's biennial budget proposal.

Would it be more practical to provide funding to hire reserve officers than seek approval for new state conservation officers? That would allow funds to be targeted at counties with the most lakes.

It was agreed that the Chairperson would send a letter to Director Macklin asking that he prepare a budget request for additional funding, in a manner consistent with the Final Report Recommendations, i.e., funding both for additional full service conservation officers and for sheriff's reserves. [Ed. Note: This could be linked to Recommendation #34b action.]

Recommendation #28

Portable toilet rental cost is $60-70 per month. Needed eight months per year. There are about 150 approved public access sites. Total of $36,000+ per year.

Use of Pittman-Johnson funds is probably not appropriate.

It was agreed that the Chairperson would send a letter to Director Macklin asking that necessary funding be requested as part of the department's operational budget.

Recommendation #34

There has been concern expressed by citizens about some uses of LARE funds.

If Clean Water Indiana receives funding, #34a may not be required since CWI could potentially address watershed conservation activities currently funded by the LARE program.

Ignore #34a. Increase LARE fee to $15, allow $5 to be used as is done presently, divide remaining $10 between #34b and #34c.

Add language to #34b to allow funds to be used for portable toilets (per #28).

It was agreed that legislation needs to be introduced to increase the LARE fee from $5 to $15. One-third ($5) would be used as it is now, an additional $5 would be provided to the Division of Law Enforcement (#34b), and a third $5 would be used for sediment removal and control of exotic, invasive plants and animals (#34c).

Recommendation #30

An economic/ecological assessment would be valuable in justifying expenditures for lakes.

A rough estimated study cost would be $150,000 to $250,000.

There would be a critical secondary need to market the study results.

M. GiaQuinta will obtain a more accurate cost estimate for a study. Similar studies conducted by DNR Division of Outdoor Recreation for other purposes may provide some guidance.

It would be useful to seek guidance and assistance from organizations such as tourism agencies, chambers of commerce, the Department of Commerce, etc.

It was agreed that after Mr. GiaQuinta obtains cost information, funds will be sought to commission a study.

Recommendation #31

Land use planning dovetails with the idea of land acquisition for conservation purposes (#35).

Funding is needed to allow for additional local planning.

It could be helpful to develop "model" zoning ordinances, possibly utilizing expertise from Purdue and Ball State.

Legislation is needed specifically to address the issue of "funneling". Does SEA 44 provide some authority by allowing for control over pier placement?

Steuben County is developing new lake-related zoning authority.
Funding should be made available for local governmental units to contract for necessary planning assistance.
Perhaps designate SWCDs as initial point of contact for assistance and guidance related to lake-related land use issues.
Can universities such as Purdue and Ball State provide guidance for development of local ordinances, etc.?
Will the Indiana Land Resources Council be able to provide assistance?

Recommendation #47
There is a need to hire staff (1 or 2 people) to develop and maintain a lakes database.
It was agreed that the Chairperson would explain this need in a letter to Director Macklin, asking that he request necessary funding and personnel in the Department's operational budget proposal.

Recommendation #33
It was determined that it would be appropriate to re-introduce Senate Concurrent Resolution 9, which asks that the Governor initiate efforts to consolidate lake-related activities into one department.

Recommendation #1
The Watersheds subgroup expressed that securing funding for the Clean Water Indiana initiative was its highest priority recommendation. If funded, CWI could assist in addressing several of the subgroup's other recommendations.
It was agreed that a letter of support from the work group should be sent to the CWI advocacy coalition, expressing the need for funding.

Recommendation #14
The Watersheds subgroup indicated that support of funding for the elimination of combined sewer overflows (CSOs) was a high priority.

Recommendation #35
The Watersheds subgroup indicated that 1) a funding increase for the Indiana Heritage Trust and 2) funding options to offset property tax losses from public lands were high priorities.

Recommendation #16
The Watersheds subgroup indicated that the construction-related sediment and erosion control portions of SB 282 were a high priority for implementation. This would include 1) increases in funding and personnel to enhance enforcement capabilities for Rule 5, 2) increased funding for E/SC education, and 3) efforts to encourage adoption of local E/SC ordinances. CWI funding could provide some assistance for these efforts.

Recommendation #38

The Watersheds subgroup indicated that implementation of local stormwater management plans was a high priority, along with provision of funding for necessary related technical assistance. CWI funding could provide some assistance for this effort.

Recommendation #13

It was noted that real estate disclosure forms now have a section pertaining to the condition of on-site disposal systems, it conformance with Recommendation #13.

Recommendation #15

It was agreed that the Environmental Quality Service Council's Septic System Subcommittee should be contacted so that its members would be aware of the work group's recommendations regarding on-site disposal systems.

Discussion Regarding Future Meetings of the LMWG

Another meeting probably will not be scheduled until after the 2001 legislative session.

It would be helpful for someone to provide periodic legislative updates to the work group members.

It would be appropriate for someone from DNR to provide a status report at the next meeting on lake-related rulemaking.

LAKES MANAGEMENT WORK GROUP
October 4, 2001

MEETING NOTES

Members in attendance: Senator Robert Meeks, Senator William Alexa, Lee Bridges, Brian Daggy, Robert Eddleman, David Herbst, Holly LaSalle, Robert Madden, Thomas McComish, Jed Pearson, Dale Pershing, Lt. Ralph Taylor, Gwen White

Members absent: Rep. Dennis Kruse, Rep. Tiny Adams, Lisa Barnese-Walz, Stephen Cox, Mark GiaQuinta, Charles Gill, William Jones, Richard Kitchell, Jeffrey Krevda, Donald Seal, Anne Spacie, Garry Tom, JoEileen Winski

Senator Meeks opened the meeting by describing the evolution of the work group, beginning with public meetings at Tri-State University in 1996 and peaking with the submittal of the Final Report in December 1999.

The first agenda item was a discussion of IDNR rulemaking related to issuance of permits for organized boating activities, particularly with regard to fishing tournaments. On behalf of the Recreation subgroup, Lt. Taylor explained the historical process through which Recommendation #26 developed, leading to the enactment of legislation that amended Indiana Code, allowing for rulemaking to permit the activities. He stated that the subgroup thought it would be inappropriate to directly regulate tournaments by statute and that it would be better to do so by rule. He emphasized that it was believed the process should be directed at all types of organized boating activities, not just fishing tournaments.

Steve Lucas, Director of the Natural Resources Commission Division of Hearings, then spoke about the development of 312 IAC 2-4, the procedural rule adopted by the NRC in May to establish a process for permitting of organized boating activities on designated public waters. He first described the general rulemaking process and then explained specific aspects of 312 IAC 2-4 and the philosophy underlying its structure. He stated that development of the rule was simply an initiating step in the permitting process, and that the “hard work is yet to come” in terms of evaluating any petitions and determining what language would actually be developed for a specific licensing rule. 312 IAC 2-4-12 is directed specifically at fishing tournaments at lakes administered by the Division of State Parks and Reservoirs.

Madden asked about selection of 15 as the number of boats that would trigger need for a permit, stating that there could be several smaller tournaments whose total number of boats could substantially exceed 15, yet would not be subject to regulation. Lucas indicated that the number 15 was a compromise on the part of

NRC members, and that any number would be arbitrary. That led to discussion about ownership of land surrounding lakes and extent to which property owners could control access and number of non-resident fishing boats. Lucas pointed out that 312 IAC 2-4 does not itself govern access to a lake, and that the NRC can't override control that a landowner, such as the Lake Lemon Conservancy District, has over boater access.

Taylor expressed concern, citing information from a newspaper article, that groups such as lake associations might petition for tournament licensing and specifically request conditions that might be considered unreasonable, biased against tournament fishermen, and thereby indirectly dictate who might use public waters. Discussion ensued regarding whether 312 IAC 2-4-3 (b) (5) might encourage untenable conditioning of licenses. Lucas stated that the rule would still be functional without Section (5) and that the NRC could be asked to strike the section if that was desired.

Meeks indicated that DNR has the professional capability and expertise to ascertain what specific conditions would be necessary for licenses for tournaments on particular lakes, thereby making it unnecessary to solicit the type of information referenced in Section (5) from lake associations. Lucas noted that clause (5) merely reflects the fact that people can ask for certain conditions, but doesn't state that they will necessarily be granted. He further noted that the rule simply establishes a process for issuance of licenses and does not in itself establish any limitations on numbers of boats.

Further discussion about Section (5) resulted in Meeks calling for a vote to ask the NRC to strike the section from the rule. The vote was unanimously in favor of doing so. Meeks indicated that if the NRC is not amenable to the idea, it was something that could alternatively be accomplished legislatively.

Ken McIntosh, a former professional tournament bass fisherman, expressed an interest in commenting on the tournament permitting issue. He was concerned that the DNR might be misled into proposing unwarranted conditions in tournament fishing rules, particularly with regard to a petition submitted to DNR to impose limits on tournament fishing at Lake Wawasee and Syracuse Lake. His research and experiences had led him to question why permits are even needed for fishing tournaments. He indicated a belief that persons associated with particular lake organizations had misled the LMWG about detrimental effects of tournament fishing on natural resources. He also provided information regarding the positive economic benefits afforded by fishermen. His associate listed benevolent activities sponsored by fishing organizations. LaSalle indicated disagreement with McIntosh's inference that lake associations were universally opposed to tournament fishing. Meeks noted that no particular group or individual was responsible for providing information to the LMWG that would have singularly caused the group to formulate an opinion about the fishing tournament issue. He further noted that one of the work group's principal goals

was to protect public lakes so that they could be available for more users in the future, not to limit their usage to any group of users.

Paul Hollabaugh, president of the Indiana B.A.S.S. Chapter Federation, thanked the work group for recommending removal of Section (5) from the rule. He indicated that DNR has expressed some good ideas relative to tournament fishing and that he has worked with Deputy Director Ehret on the issue of overcrowding of lakes. He noted that many people wish to limit tournaments to reduce the number of boats on lakes, but there should also be consideration of the number of resident boats that may contribute to crowded conditions.

Bill Hathaway, a resident of Big Long Lake in LaGrange County, also expressed thanks to the work group for efforts to eliminate Section (5). He noted that some of his neighbors may complain about the number of boats associated with a fishing tournament, yet display inconsiderate behavior themselves by hosting parties that cause large numbers of boats to congregate at particular locations, impeding access to other residents' docks.

Dick Mercier, Executive Director of the Sportsman's Roundtable, expressed thanks to the work group for discussing the tournament permitting issue. He noted that public lakes belong to all the citizens, including the members of his organization, many of whom are fishermen.

Jill Hoffman, Biologist for the DNR Division of Soil Conservation, introduced the second agenda item. She spoke at length about the creation of an *ad hoc* aquatic plant management work group involving employees of several DNR divisions and DEM, Lake & River Enhancement program consultants, academicians and researchers, herbicide applicators, and herbicide manufacturers. The overall goal of the work group is develop and implement optimal statewide aquatic plant management strategies and methods. There are many different actions that the group can undertake. The focus is presently on development of a standardized plant sampling methodology which, among other things, will contribute to a statewide inventory. Some other actions include review of permitting protocols, development of management plans for individual water bodies, public outreach, and control of exotic/invasive species. She described a pilot project that is underway to create a highly detailed inventory of plants in Lake Webster and its watershed. There was discussion about potential sources and relative amounts of funding needed for control of undesirable aquatic plants, with specific references to the Lake & River Enhancement program.

Jim Ray, Chief of Land & Water Resources in the DNR Division of Soil Conservation, spoke about a third topic, the establishment of ecological protection zones in Lake Wawasee and Syracuse Lake. He explained that HEA 1075, enacted in 2000, allowed for such zones. DNR received a request for designation of zones at specific locations in the two lakes and the Natural

Resources Commission directed the agency to pursue rulemaking to that end. DNR has tentatively proposed establishment of idle speed zones adjacent to the areas in question, to protect aquatic vegetation, and will be working over the next several months to develop a specific rule and its scientific justification.

Jill Hoffman presented information related to the final agenda topic, toxic blue-green algae (cyanobacteria) in lakes. She noted that a LARE project consultant discovered an algal species in Ball Lake in Steuben County that was previously not known to be present in the state. The alga, *Cylindrospermopsis raciborskii*, can produce a toxin potentially dangerous to animals, including humans. The discovery led to an advisory against contact with or consumption of the water until more was known about the alga's presence. Sampling revealed low numbers of algal cells and minimal toxicity, so the advisory was lifted. Presence of the alga further led to the establishment of an ad hoc work group consisting of representatives of DNR, DEM, Department of Health, USEPA, universities, water utilities, and lake consulting firms. Hoffman spoke about cyanobacteria generally, explaining that there have been at least three species known for many years to be present in Indiana waters that can produce toxins. She then described *Cylindrospermopsis* and potential risks/effects related to its presence. The cyanobacteria work group will be meeting periodically to discuss issues related to potentially toxic algae, including monitoring, treatment and risk analysis. Hoffman pointed out that LMWG Recommendation #7 called for investigation of matters related to potentially toxic algae.

The conversation shifted to discussion about actions that had been taken in response to LMWG recommendations. Meeks mentioned that HEA 1233 was enacted, clarifying statutory language related to personal flotation devices (PFDs), and that SCR 25 was approved by the Senate but not acted upon in the House. The latter would have encouraged the Governor to investigate consolidation of all lake-related functions into one agency. Madden asked about the appropriateness of seeking introduction of bills in the next legislative session. Meeks indicated that in the current economic climate, re-introduction of bills involving funding actions, such as one that would increase the Lake and River Enhancement fee would probably not be viewed favorably.

Madden expressed interest in pursuing the idea of consolidating lake-related functions into one agency, but McComish and Taylor indicated it might be difficult to gain support for such action because of current budgetary concerns.

Meeks stated that he would be willing to introduce a bill to again re-constitute the Lakes Management Work Group so that it could continue to function after June 30, 2002. McComish indicated that there is value in having the group in existence to consider lake-related issues that arise. Meeks said that if the work group is re-established, he would be willing to request that the Governor appoint new members to replace those who no longer seem to be interested in participating. Madden declared that he did not wish to see the work group

expire. There was discussion about having another work group meeting in the near future in order to determine whether there were topics that might be pursued legislatively. Madden suggested that the work group re-visit the Final Report recommendations and request appropriate bill drafts for the 2002 General Assembly.

It was agreed that another meeting would be held on November 15, 2001 from 10:00 AM until 3:00 PM.

LAKES MANAGEMENT WORK GROUP

November 15, 2001
Indiana Government Center South

MEETING NOTES

Members in attendance: Senator Robert Meeks, Representative Tiny Adams, Representative Dennis Kruse, Lisa Barnese-Walz, C. Lee Bridges, David Herbst, Jeffrey Krevda, Holly LaSalle, Robert Madden, Thomas McComish, Jed Pearson, Gwen White

Members absent: Senator William Alexa, Stephen Cox, Brian Daggy, Robert Eddleman, Mark GiaQuinta, Charles Gill, William Jones, Richard Kitchell, Dale Pershing, Donald Seal, Anne Spacie, Garry Tom, Lt. Ralph Taylor, JoEileen Winski

Senator Meeks opened the meeting by briefly recounting the evolution of the work group. He then explained that the basic purpose of that day's meeting was to consider actions that might be taken to implement the Final Report recommendations.

Meeks mentioned the discussion of the "tournament fishing rule" at the LMWG's October 4, 2001 meeting and that Section 5 of the rule was thought to afford too much latitude to lake associations that might petition for fishing tournament regulation. He clarified that, aside from Section 5, he did not object to the rule.

Gwen White explained that the role of DNR employees on the work group was to provide technical expertise in an advisory capacity. They would be placed in a potentially awkward position if asked to become advocates of actions contemplated by the Final Report. For that reason, they would probably not be able to vote on some matters, particularly those involving legislation.

Meeks indicated, and McComish concurred, that the DNR contributions to the work group had been significant and did not want DNR staff involvement to be compromised.

Herbst and Madden spoke about the frequent absence of some work group members and contemplated their replacement. Meeks stated that he could contact the governor's office about that possibility.

Major Sam Purvis of DNR Law Enforcement was asked about the status of efforts to remove Section (5) from 312 IAC 2-4, the "tournament fishing rule". Purvis noted that a Notice of Intent to change the rule had been published in the Indiana Register. That will lead to action by the Natural Resources Commission. Purvis indicated that removal of the section will not affect the integrity of the rule. Meeks stated that he did not wish to hamper DNR's ability to properly regulate

organized boating activities, but wanted to assure that rulemaking for individual lakes did not become biased toward petitioners. He mentioned that he would be interested in seeing a sampling of such petition at some time in the future.

Meeks then led a discussion about bills that the work group thought should be introduced in the General Assembly. He indicated that in the last session SCR 9, which would have urged the Governor to consolidate lake-related activities into one agency, was endorsed by the Senate but died in the House of Representatives. He suggested that re-introduction of the resolution might be more successful if initiated in the House. McComish opined that it seems to be increasingly difficult for the agencies to accomplish all lake-related work now, so consolidation might introduce factors that would further impede performance. Meeks asked if DNR has a central point of contact for lake information. Deputy Director Paul Ehret responded that there are monthly permit/enforcement meetings among the divisions of Fish & Wildlife, Water, and the legal staff to coordinate their efforts. There is also a publicly accessible web site that provides permit-related information. Madden stressed that it is important to pursue consolidation, which is probably inevitable anyway because of budgetary problems. Herbst agreed with Madden, pointing out that consolidation is not something that should be expected to occur overnight, but that there is a need for the affected agencies to initiate discussions about same. LaSalle indicated that she was personally familiar with some of the difficulties that might be ameliorated by consolidation. Krevda noted that the Division of Water has developed a good permit tracking system and that difficulties may arise with other divisions. He expressed concern that an entirely new lakes unit might result in some forms of confusion, but, if created, must be organized on a watershed basis. There was general agreement for Representative Adams to re-introduce the resolution.

LaSalle indicated interest in increasing the Lake and River Enhancement fee, stating that boaters who pay the fee would not find the increase objectionable. Madden suggested that fee increase legislation be re-introduced, even if it might not have a good chance of passage, simply to keep the issue alive and make the public aware of the need. Pearson asked if the increase could be accomplished by the Natural Resources Commission, if not legislatively. Meeks indicated that he did not believe the legislature would wish to relinquish its authority in that regard since he considers it to be a type of “tax”. Meeks inquired about current usage of the fund, which led to Herbst suggesting the need for limited dredging in some circumstances; a fee increase could provide monies for that purpose. Krevda added that many lakes have become sediment traps for eroded soil from poor upstream land use and drainage practices. He said that all of the needed dredging work would simply be unaffordable, but agreed that projects of limited scope could be appropriate. White reminded the group that there’s also a demand for money to eliminate exotic plants. McComish offered that if upstream watershed problems are addressed, then dredging is the ultimate answer to remove deltas of sediment at the mouths of streams discharging into lakes. Madden asked how the Soil Conservation Board might be influenced to consider

the funding of dredging projects with LARE monies. Meeks replied that, as a legislator, he would be uncomfortable dictating how the board implements the LARE program, but indicated that he could re-introduce 2000's SB 43 if that was the desire of the work group. (That bill would have required 75% of the LARE fund to be applied to work directly involving lakes or streams, rather than their watersheds.) Discussion continued regarding 2001's HB 1232, which would have increased the LARE fee from $5 to $15. Madden expressed a need to also consider 2000's SB 282, which would offer more regulatory control of aquatic plant management, since some of the additional LARE funding could be used for that purpose. White indicated that there should be more control over homeowner herbicide applications so that desirable plants are not needlessly eradicated. Krevda noted that the majority of the dredge material he deals with is the organic remains of aquatic plants. McComish stated that repeated annual herbicide applications are just a stopgap measure and not a permanent solution whereas dredging, under the proper circumstances, can provide a one-time resolution to a problem. White added that preventative actions are the best use of current limited available LARE funding, but that additional funds could be used for other actions such as dredging or exotic plant eradication. Meeks expressed concern that the Soil Conservation Board might choose to use all of the money generated from the initial $5 portion of the fee for watershed activities if the fee were to be increased. Herbst suggested that the Soil Conservation Board pursue Recommendation #18, developing a policy for the expenditure of certain LARE funds for limited dredging actions. McComish thought it appropriate to require matching funds for any LARE grants that might be dedicated to dredging. Madden pointed out that current policy requires a 25% match for LARE construction projects, so that amount - or even 50% - might be appropriate for dredging. LaSalle noted that her lake association was unsuccessful in its request for LARE funds to perform dredging, so was forced to use its own money. Ehret stated that the Soil Conservation Board was somewhat nervous about "opening Pandora's Box" relative to dredging because of the enormous cost potentially associated with such projects. The board granted serious consideration to the Lake Tippecanoe request because necessary upstream remediation work had already been performed in the watershed, but the request was ultimately disapproved. Meeks noted that he had authored a bill creating a fund for additional law enforcement on lakes, but that no money had ever been placed into the fund. He wondered whether a portion of an increased LARE fee could be used for that purpose. Purvis stated that legislation was proposed by the Natural Resources Study Committee that would generate income from out-of-state boats docked in Indiana during the recreational season, and that some of that money could possibly be utilized for Meeks' enforcement fund. There was general agreement that Meeks should determine how best to re-introduce a bill to increase the LARE fee, as had been contemplated by HB 1232. Madden reiterated his interest in also legislating changes to aquatic plant control statutes, as in SB 282. Meeks asked White to indicate to his office what specific elements of that legislation should be re-introduced to accommodate the interests of the work group, which she agreed to do. Meeks indicated that he was reluctant to

incorporate specific matching fund language into a new version of HB 1232, preferring to allow the Soil Conservation Board to establish policy in that regard that would permit exceptions due to unusual circumstances.

Madden spoke about the need for legislation to control eroded soil from county drainage activities, citing his experiences with Lake Lemon's sedimentation, which led to development of a watershed management plan. Meeks related that the issue was difficult to address and that the Water Resources Study Committee had been reluctant to do so, leading to the demise of HB 1076 in 2000. Meeks and Kruse decided that it might be more productive to introduce a concurrent resolution, rather than a bill, to direct the WRSC to evaluate the drainage statutes. Kruse asked for examples of drainage project-related problems. Madden mentioned that stream and ditch channels become more susceptible to erosion when drainage boards enhance the flow of stormwater through them. Krevda noted that, as a matter of fiscal responsibility, drainage boards attempt to perform maintenance work as cheaply as possible, but that leads to erosion and other environmental problems.

Division of Soil Conservation Biologist Jill Hoffman reported on the status of the *ad hoc* aquatic plant management work group, the Lake Webster aquatic plant study and management plan development, and the toxic algae work group.

White pointed out DNR's concern about an increasing number of instances in which lakeshore property owners are circumventing the intent of the law by installing seawalls a few feet shoreward of the shoreline, thereby negating the need to apply for a DNR permit. By doing so, though, they create a situation whereby the shore erodes away. Meeks said that if DNR would prepare a written explanation of the problem, he would be willing to request an opinion from the Attorney General regarding the legality of the practice.

Following discussion about septic system-related concerns, Bridges stated that he would be willing to share the LMWG's Final Report recommendations with the Environmental Quality Service Council, because of its interest in septic system management.

Pearson noted that a DNR internal work group is striving to develop a definitive list of all public lakes in the state, which is a considerable challenge. He had read that the EQSC, in its deliberations about wetlands, was interested in clarifying the legal definitions of "private pond" and "waters of the state". He wondered whether it might be appropriate to consider, at the same time, how statutory definitions related to lakes might also be clarified. Meeks indicated that he would be willing to prepare a letter to be sent to the EQSC in that regard if Pearson could provide a written summary of the issue.

The work group agreed that another meeting should be held sometime in May 2002, after Primary Election Day. DNR agreed to schedule a meeting.

LAKES MANAGEMENT WORK GROUP
Unofficial Meeting
October 30, 2002

Meeting Notes

In attendance: Senator Robert Meeks, Representative Dennis Kruse, Carol Newhouse, Lee Bridges, Jed Pearson, Lynn Stevens, Don Seal, Jeff Krevda, Sam Purvis, Gwen White, Bob Madden, Dan Mathis, Bob Eddleman, Ralph Taylor, Jim Ray

Purpose of meeting was to compare the work group's recommendations with legislative efforts to determine whether action would be warranted in 2003 legislative session. Any proposals for legislation would need to be presented to LSA by mid-December for preparation.

HB 1221, which would have increased the LARE fee to $15, was discussed. Taylor explained the portion of the bill that addressed funding for law enforcement. The Division of Law Enforcement is comfortable with the wording of the February 19, 2002 Senate version of the bill. It was noted that the funds would not be used for "courtesy patrols" but for actual police enforcement of boating laws. Madden asked if the bill would allow for a conservancy district, such as his, to avail itself of funding for patrol officers. He was told that the controlling statute would be IC 14-9-9-5, which was thought to allow for conservancy districts eligible. IDNR would have to develop policies regarding distribution of any monies that became available if the legislation were to be enacted in the future. The statute could be amended, if necessary, to accommodate conservancy districts.

A letter previously sent by Krevda to Senator Meeks was discussed. He provided ideas for ways in which the dredging/plant control portion of a LARE fee increase might best be utilized. There was agreement that specific guidance regarding expenditure of the monies should be developed through an open public process by IDNR, rather than via statutory language. It was unanimously agreed that a bill identical to Meeks' version of HB 1221 should be re-introduced. Meeks stated that he intends to "stand fast" on a $15 value, rather than some other fee amount. Ray agreed to send a copy of the bill to everyone on the LMWG mailing list to assure a widespread awareness of its existence.

Senator Meeks spoke about the need for a single point of contact or clearinghouse in state government for lake-related issues, particularly with regard to permitting. He expressed concern about the difficulty in contacting someone who can knowledgeably respond to questions about lakes, wetlands, and related permitting issues. There was discussion about the topic with explanations offered about particular agency initiatives that have been initiated to help address the issue. Newhouse described efforts to develop a joint IDEM/IDNR website specifically for lakes.

Madden expressed interest in reconstituting the LMWG, even if the members would not receive any payment. He stated concern about the ongoing need for the group's oversight to track issues such as legislation that was enacted to require dam owners to pay consultants to inspect their dams. Meeks noted that the Governor's veto of SEA 154 was overridden by the Senate and could still be overridden by the House of Representatives. He expressed willingness to discuss such an action with the next Speaker of the House. In addition, he agreed to introduce a similar bill for the 2003 session that would not having any funding associated with it, which the Governor would presumably not feel compelled to veto. He'll modify the bill to include the statements from Page 56 of the Final Report (excluding "d") that identify the LMWG's charges.

Newhouse pointed out the need to review all of the final report recommendations, not just those that could be addressed by legislation. White and Ray volunteered to review all of the recommendations, summarize their status, and identify needed actions.

Madden asked if there was still interest in pursuing a concurrent resolution encouraging the Governor to consolidate all lake-related functions into a single agency. Meeks did not believe it would be necessary to repeat the effort since he felt the agencies were very aware of the issue.

White noted that, despite enactment of SEA 44 in 2000, there is remaining uncertainty about IDNR's authority to regulate "seawalls behind shorelines". On behalf of the LMWG, Meeks had requested an opinion on the matter from the Attorney General; that did not resolve the question. The most rational solution would be to modify statutory language to specifically address the issue. Meeks said that if IDNR would provide potential language to him, he would have LSA review it and draft appropriate legislation.

White mentioned that there may be lake-related issues that were overlooked by the work group in its previous deliberations. One example would be matters related to dams, such as their removal.

Stevens noted that there is an apparent inability by the state to legally address abandoned structures in public lakes, citing a situation in Webster Lake involving a failed seawall. She suggested that might be an additional issue for the work group to discuss.

Madden expressed an interest in hearing from the Division of State Parks and Reservoirs about their experience with fishing tournaments this past summer, which was a new situation for them.

Madden inquired about the future availability of Build Indiana Funds. Meeks responded that in the current economic climate availability of the monies will be very uncertain.

LAKE MANAGEMENT WORK GROUP
June 21, 2004

MEETING SUMMARY

The Lake Management Work Group established by IDNR Director John Goss met in the Syracuse Community Center on June 21, 2004 from 9:30 AM until 3:00 PM. Members in attendance were John Goss, Senator Robert Meeks, Ralph Taylor, Robert Eddleman, Tony Cunningham, Major Sam Purvis, Jeffrey Krevda, Peter Hippensteel, Jill Hoffmann, James Hebenstreit, Robert Madden, Jed Pearson, Art Garceau (for Carol Newhouse), Richard Kemper, William Jones and Bart Culver. Julia Wickard was absent. Others in attendance were Paul Ehret, Matt Hopper, Ann Knotek, Jim Ray and Cecil Rich from IDNR, and three residents of Lake Tippecanoe.

IDNR staff had prepared a list of potential discussion topics, based on input from IDNR and from LMWG members. Since there were more topics than could be thoroughly addressed in the few meetings that the group would likely conduct, it was agreed that the topics would be prioritized to determine which of them warranted the most immediate consideration. The morning was spent briefly discussing each of the topics to assure that everyone understood each one. (A summary of the issues is attached, including some of the comments made about each of them.)

The next action was individual "weighted" voting to determine which issues the members considered to be the highest priority. The five issues receiving the greatest number of votes were to be discussed in greater detail.

The issue receiving the greatest number of votes was actually multiple related topics whose voting scores were combined. The broad issue was that of "funneling" and associated controversy related to the proliferation of inappropriate piers on some lakes. There was considerable discussion regarding the manner in which "funneling" is perceived. Shoreline property residents tend to view the practice differently than non-riparians who are desirous of gaining direct access to a lake. Some planning/zoning entities have begun to evaluate the practice to determine how it might be equitably regulated. Since DNR-enforced lake laws generally provide jurisdiction only over activities in the lake proper, and local zoning authority ends at the shoreline, it was thought that it might be useful to evaluate the laws to determine whether they could be adjusted to complement one another with respect to certain lake access issues. It was noted that DNR has initiated rulemaking to amend the Public Freshwater Lake Rules (312 IAC 11) by adding language regarding licensure of group piers.

The topic receiving the second greatest number of votes was the uncertainty regarding what water bodies should actually be considered "public freshwater lakes". It was stated that it would be helpful to more clearly decide how "acquiescence" should be determined, since that is an important criterion for establishing whether the State has any form of jurisdiction. It would also be useful to establish greater consistency between the various statutes related to the public nature of lakes, since some are within lake law while others

are in fish and wildlife law. It was suggested that it might be appropriate to establish basic statutory protection for small lakes, even if they might be considered "private" in some respects, in order to preserve their collective natural resource value, e.g., their importance to wildlife. Concern was expressed over potential threats to small natural lakes through legislation that might eliminate any regulatory control over activities that could adversely affect them as a group. It was suggested that a different approach might be taken to establish which lakes should be managed as public resources, perhaps by defining them in terms of the date on which Indiana became a state.

The subject receiving the third greatest number of votes was also a compilation of related topics. They were: developing informational programs, establishing communications with local entities and updating the Indiana Lakes website. Although a website was created at the behest of the original Lakes Management Work Group in 1999, it has been only sporadically maintained since then. The Indiana Lake Management Society is developing a new website of its own to provide even more information to lake enthusiasts. ILMS is seeking input from others with ideas about useful information that might be added to the website. It was suggested that information from other states be reviewed to determine whether it might be used in some way in Indiana. It was mentioned that it would be useful to seek opportunities to share information with county surveyors and county drainage boards whose activities might affect lakes.

The meeting was concluded with suggestions regarding a second meeting of the group. It was agreed that another meeting would be held somewhere in Indianapolis on August 5, 2004. Items to be discussed would include the topics receiving the fourth and fifth greatest number of votes, which would be destruction of lake shorelines via seawalls and development (#4) and acquisition of technical knowledge and promotion of bio-engineered alternatives to seawalls (#5). It was also agreed that the group would "brainstorm" a list of educational topics about which informational materials could be prepared for lake users.

LAKES MANAGEMENT WORK GROUP
Fort Harrison State Park – The Garrison
August 5, 2004

Meeting Summary

In attendance: John Goss, Pete Hippensteel, Tony Cunningham, Bart Culver, Bob Madden, Jill Hoffmann, Dick Kemper, Ralph Taylor, Jim Hebenstreit, F/SGT Bill Snyder, Jed Pearson

DNR staff present: Paul Ehret, Matt Hopper, Janet Parsanko, Ann Knotek, Cecil Rich, Jim Ray

The June 21 meeting was reviewed. Topics to be brought forward from that meeting were listed and decisions were made regarding which matters were of most immediate concern. It was agreed that topics possibly requiring legislative action should be addressed first so that recommendations could be presented to the Natural Resources Study Committee on September 14 at Culver.

It was agreed that discussion on how to determine which water bodies are "public freshwater lakes" would be postponed until a later meeting.

At the June 21 meeting it was decided that the fourth- and fifth-ranked topics would be discussed at the August 5 meeting. The fifth-ranked topic was bioengineered shoreline protection. It was agreed that discussion of the topic would be postponed until there could be internal DNR discussion in the fall and winter, after which DNR staff could provide information and ideas to the LMWG for its discussion.

The fourth-ranked topic was the impact of development and seawalls on shorelines. There was considerable discussion of the subject following a short PowerPoint presentation by Ray that focused on concrete bulkheads being constructed immediately landward of the shoreline in order to circumvent prohibitions against seawalls at the sites. A staff-generated proposal was presented for possible changes to IC 14-26-2-9, which grants authority to DNR for the issuance of permits to change a lake's shoreline or alter its bed. The proposed changes would attempt to address actions landward of the shoreline that could adversely affect lake resources. Some of the points that were raised in the discussion included:

- Do the proposed statutory changes address dredging/re-dredging of manmade channels and augmenting stone that slumps in along the channel banks?

- Is placement of fill on the landward side of the shoreline addressed in the proposed changes?

- Is there a "takings" issue associated with attempts to regulate activities landward of the shoreline?

- With respect to a possible "taking" argument: The proposed 10-foot zone of regulation, landward of the shoreline, would be somewhat analogous to zoning ordinances that stipulate setback distances for building construction.

- Should the phrase "affecting the natural resources, scenic beauty, or contour of the lake" be reinserted in the proposed change to the statute to add clarity and preclude concern about actions such as playful digging in the sand?

- Should the entirety of proposed subsection (1) be returned to its original verbiage (and should the word "location" be added after "natural resources, scenic beauty, or contour")?

It was agreed that staff would consider the suggestions regarding statutory changes and develop a new draft for the next meeting.

Parsanko and Knotek presented thoughts about seawall installation contractors who mislead clients about the need for, or acquisition of, necessary permits prior to the installation of certain types of seawalls and similar structures. Certain contractors have been able to evade responsibility for their inappropriate actions, so it would seem proper to identify some means of dissuading them from continued similar activity and/or holding them responsible when necessary. The attorneys' review of IC 14-26-2-9 led them to believe that certain amendments could enhance the statute's clarity and better enable DNR to accomplish its intent. A rough draft of proposed changes was presented to the work group. After some discussion, it was determined that additional work on the draft would be desirable, so it was agreed that further discussion would be postponed until the next meeting when the staff could present a revised version.

The group then discussed problems associated with piers placed in public freshwater lakes. It was noted that previous public discussion of the topic had led to proposed changes to the "Lakes Preservation Act" rules (312 IAC 11-2-11.5), adding language regarding "group piers". Hebenstreit presented a rough draft of additional possible rule changes to address individual piers that would not be considered "group piers". There was considerable discussion of possible rule language changes, including input from persons other than work group members. Some of the comments were:

- Should there be further consideration of the utility of having a "group pier" category? In some respects, allowing for group piers could promote greater housing density adjacent to a lake. On the other hand, if a pier is to cross a nearshore wetland, it might be beneficial to promote the group pier concept.

- There was lack of agreement on the concept of limiting pier size on the basis of surface area for piers to be eligible for a general license.

- There was consensus that no pier should be allowed to encircle or isolate any part of a lake or affect navigability if it is to be eligible for a general license.

- There was no agreement on the notion of pier width or the potential number of berths for piers that would be eligible for a general license.

- There was discussion about the notion of basing pier size on the length of each property's shoreline frontage (for piers to be eligible for a general license), but no agreement on the concept.

- There was consensus that for piers to be eligible for a general license they would have to be removed from the lake each year for an as yet undetermined period of time.

- There was consensus that for piers to be eligible for a general license they could not "obstruct free flow of water or include any features which trap or accumulate aquatic plants or sediments".

- There was general conceptual agreement, but not agreement on details, that for piers to be eligible for a general license they (and any moored watercraft or appurtenances) would have to be located some minimum distance from the lakeward extension of the landowner's property lines.

- The question was raised whether (8) in the existing rule language should be changed to state that "permission" be required from a riparian owner, rather than simply "acquiescence" by the owner. This comment was based, in part, on a requirement in previous rules that precluded a general license if a neighbor objected to a pier placement.

- There would probably have to be provisions for group piers if the rules do not impose size limits (based on square footage) on individual piers.

It was agreed that staff would consider the suggestions regarding rule changes and develop a new draft for the next meeting.

Finally, it was agreed that in order to provide proposals to the Natural Resources Study Committee at its September 14 meeting in Culver, it would be appropriate to have another meeting of the work group prior to that date. Thursday, September 2 was selected, with the meeting to be held at the Salamonie Lake Interpretative Center. The meeting is to begin at 9:30 AM.

Topics to be addressed at the meeting will include:

- Determining whether the group pier concept is appropriate

- Proposed changes to the pier rules

- Understanding how it is determined whether a lake is a "public freshwater lake"

- Seawall contractor responsibility

LAKES MANAGEMENT WORK GROUP
Salamonie Lake Interpretative Center
September 2, 2004

Meeting Summary

Members in attendance were John Goss, Jeff Krevda, Julia Wickard, Jill Hoffmann, Bart Culver, Dick Kemper, Sam Purvis, Jed Pearson, Pete Hippensteel, Bill Jones, Carol Newhouse, Ralph Taylor, Jim Hebenstreit, and Bob Madden. Those absent were Senator Robert Meeks, Bob Eddleman, and Tony Cunningham.

IDNR staff members in attendance were Paul Ehret, Cecil Rich, Stu Shipman, Ann Knotek, Bill Snyder, and Jim Ray. Steve Lucas, of the Natural Resources Commission's Office of Hearings, was also present.

John Goss noted that because representatives of three lake organizations had displayed avid interest in the proceedings of the work group, he had invited them to participate as members. They are Tina Hissong (Lake Maxinkuckee Environmental Foundation), Dave Tyler (Tippecanoe Environmental Lake and Watershed Foundation), and David White (Sylvan Lake Improvement Association).

The IDNR staff had developed another draft of proposed changes to the Lakes Preservation Act (IC 14-26), based on discussion at the August 5 meeting and staff review of the current law's shortcomings. Steve Lucas described the proposed changes and explained the rationale for them. Changes proposed at previous meetings had focused on preventing the installation of bulkhead seawalls landward of the shoreline which seemingly circumvent existing law. Changes to that effect were proposed, as were a number of changes intended to clarify other aspects of the law. While most of the proposed changes could be considered in that latter regard – as clarifications of existing principles – one proposed change would be a departure from current philosophy. That is the proposal to extend the DNR's authority ten feet landward of the shoreline in situations where activities could have deleterious effects on lake resources.

Questions have been raised about the extent to which seawall installation contractors are currently responsible, legally, for statute or rule violations related to improper seawall installations. There was discussion about language that could clarify their level of responsibility. It was agreed that the proposed language should be acceptable, i.e., "(f) A contractor or agent must comply with this section and the rules adopted under this section."

With regard to the proposed language that would grant regulatory authority to DNR for activities landward of the shoreline, if they would impact a public freshwater lake, the question was raised about that possibly being a "takings" issue. Ann Knotek explained that she and Janet Parsanko had conducted an extensive case law review of the issue and determined that the "takings" argument is not relevant or valid.

There was considerable discussion about appropriate language for the portion of the statute addressing activities landward of the shoreline. The group agreed on the proposed language, with these changes:

Sec. 9(b)

(1)(C) placing, modifying, or repairing a temporary or permanent structure

(2) Within ten (10) feet landward of the shoreline or waterline, measured perpendicularly,

(A) placing a permanent structure, or

(B) conducting an excavation

where the lowest point of the structure or excavation would be below the elevation of the shoreline or waterline.

(3) Changing the water level, area, or depth of a public freshwater lake or the location of the shoreline or waterline.

It was agreed that the proposed statute changes should be recommended to the legislative Natural Resources Study Committee at its meeting in Culver on September 14.

The work group then discussed proposed changes to 312 IAC 11-2 and 11-3 which would add language regarding "group piers". A formal proposal has been preliminarily adopted by the Natural Resources Commission and a public hearing on the proposal is to be conducted on October 4, 2004 at 10:00 AM in the County Justice Building in Warsaw. Considering that other possible changes to the rules may address the same issues that were intended to be remedied by the group pier proposal, it is unclear whether the group pier language will ultimately be necessary. The work group agreed, though, that since it could require many months, if not a year or more, to adopt more comprehensive rule changes addressing piers, it would be appropriate to support the current group pier proposal. This would serve as the first step in the process required to effect all necessary rule changes.

The work group next continued a discussion from the previous meeting of other changes to 312 IAC 11-3-1 regarding placement of piers and other temporary structures. Wisconsin's current and proposed rules, which are much more stringent than Indiana's in some respects, were brought into the conversation several times. There was discussion about appropriate water depths and pier lengths necessary to gain access to various depths. The question was raised whether access to a six-foot target depth is a greater depth than necessary for most boats, but there was no consensus for a specific recommended change. The origin of the six-foot number is unknown. There was discussion about proposing rule language that would grant approval of existing piers, even if some of them might violate future rules that might be adopted ("grandfathering"). As part of that discussion, there were questions raised about transfer of property ownership and whether any grandfather provisions would/should transfer to relatives who might become the new property owners (as in the proposed Wisconsin rules). Pete

Hippensteel showed aerial photographs of selected lakes in Steuben County on which he was able to count and determine the length of piers that are currently in place. As an example, he counted 238 piers on Lake Gage, six of which were greater than one hundred feet long. It was noted that Lake Tippecanoe residents recently inventoried that lake's piers and motorized moored watercraft. The work group concluded that it might be difficult to gain agreement on all aspects of the proposed rule changes. It was agreed that it would be sensible to determine which proposed changes would be most likely to gain approval by the NRC and to therefore propose only those changes for rulemaking. Other proposed changes could be discussed and debated at future meetings of the work group and subsequently submitted as separate rule changes. There was consensus that subsections (1), (2), (3), (4), (5), (6), (7), (8), (9), (11), (13), and (14) of the "August 30, 2004 Working Draft" should be incorporated into a proposed rule change to be submitted to the NRC for consideration. Subsections (10), (12), and (15) were thought to be sufficiently controversial to require further discussion before attempting to include them. While there had been discussion at the August 5 meeting about appropriate dates for the removal and installation of piers, the conclusion of that discussion had not been properly recorded in the draft proposed changes. It was agreed that subsection (13) should state that piers, "*Be removed from the waters of the lake from December 1 to March 1*". It was also agreed that a subsection omitted from the August 30 draft, numbered (13) in the August 5 draft, should be reprised for additional consideration. That language was, "*(13) Shall provide no more than____berths or moorings (total of all watercraft at piers, lifts, shelters, buoys, etc.) for the first _____ feet of riparian homeowners frontage and no more than _____additional boat slip for each additional full _____ feet of shoreline frontage*."

Steve Lucas then spoke about another issue that had been raised at previous meetings: What is a "public freshwater lake" that is subject to regulation under the Lakes Preservation Act (IC 14-26-2)? The subject originally arose at the work group's June 21, 2004 meeting at which it was indicated that it's not clear whether many of the state's smaller natural lakes are "public" or "private". There is, therefore, uncertainty about the extent to which the state can or should attempt to regulate activities that might adversely affect them. Lucas explained the manner in which it is determined whether a lake is subject to the Lakes Preservation Act, either administratively or judicially. Pearson noted that he has created lists of known natural lakes, indicating the type of access that is available, *i.e.*, public or private. He concluded that, based solely on accessibility, there is uncertainty about the "public freshwater lake" status of more than half of his list of 452 natural lakes. Taylor stated that being able to determine the status of the natural lakes is of "paramount importance". He added that there is a need to evaluate the role of the term "acquiescence" in determining whether a lake is subject to the Lakes Preservation Act. It was noted that staff members from various divisions had met several times in the past two years, in part to try to create a comprehensive list of all lakes in the state and determine their status relative to the Lakes Preservation Act. ~~Hoffmann inquired about the feasibility of establishing a list of lakes in statute. Lucas opined that might be difficult, but that an option might be for the legislature to statutorily direct DNR to create a list. He also suggested consideration of refining the definition of "acquiescence" in statute. There was discussion about linking fishing and boating statutes to the~~

~~determination of which lakes should be subject to the Lakes Preservation Act, but nothing was concluded.~~ Hoffman asked Lucas about the feasibility of establishing a list of lakes by statute. He responded that this approach seemed acceptable from a legal perspective, but he expressed the opinion it would be very challenging within the General Assembly. Lucas offered other approaches the work group might also consider. The DNR could complete a process already begun to identify an informal list without it having binding legal effect. The work group might recommend that the General Assembly require the DNR to develop and the NRC to approve a list, with inclusion being prima facie evidence a lake was a public freshwater lake. By rule, the NRC could help clarify the meaning of "acquiescence" and further define the meaning of "lake". Pearson suggested linking the concept of whether a water was a public freshwater lake to agency regulatory authority for fishing. Lucas responded that regulatory authority over a watercourse need not be dependent upon its "public" character, with examples being §401 water quality certification and authority over floodways. Making this change for public freshwater lakes would be a fundamental policy determination, however, and he said the state regulates fish because of its authority over wild animals, a concept unrelated to whether a lake is public. Hoffman asked if the agency could develop a list of options for refining the regulation of public freshwater lakes, indicating advantages and disadvantages to each approach. Goss charged the staff with the development of a proposal to be presented to the work group. The proposal would provide various options for addressing the issue, with anticipated benefits and detriments of each. Newhouse suggested that it might be beneficial for ~~a process to be established whereby DNR could coordinate with IDEM to establish a category of "exceptional lakes" that would receive special status in environmental regulations.~~ the work group to consider proposing that some of the lakes warranting the most protection be afforded protected status under the procedures established in the state's water quality standards (327 IAC 2). The lakes could potentially be designated for "exceptional use", as "outstanding state resource waters", or "high quality waters".

It was agreed that the work group would meet again at the Salamonie Lake Interpretative Center on Wednesday, November 10 at 9:00 AM.

Goss encouraged as many members as possible to attend the September 14 Natural Resources Study Committee meeting in Culver. Hippensteel and White indicated that they would both attend and be willing to speak in support of the proposed changes to IC 14-26.

LAKES MANAGEMENT WORK GROUP
Salamonie Lake Interpretative Center
November 10, 2004

Meeting Summary

Members in attendance were Paul Ehret (for John Goss), Jeff Krevda, Dave Tyler, Bart Culver, Carol Newhouse, Ralph Taylor, Dick Kemper, Jack Dold, Pete Hippensteel, Jed Pearson, Bob Madden, Sam Purvis, Jill Hoffmann, Bill Jones, Tony Cunningham, and Tina Hissong.

IDNR staff members in attendance were Ann Knotek, Cecil Rich, Mike Reeder and Jim Ray.

Paul Ehret stated that John Goss regretted not being able to attend the meeting and that Goss expressed his strong support for the group's activities.

Ray and Ehret described the legislative Natural Resource Study Committee's reaction to the LMWG's proposed changes to the Lakes Preservation Act (IC 14-26), with respect to the "seawalls behind shorelines" issue. Senator Weatherwax and Representative Pond expressed concern at the October 5 meeting that the proposed changes would not address issues related to piers. DNR staff attempted to clarify for the legislators that the proposed changes were not intended to address pier issues, which would be addressed by other means. Senator Weatherwax further stated that rules were insufficient and a statutory change would therefore be necessary to validate DNR's jurisdiction over pier placement.

The preliminarily adopted "group pier" rule change was addressed (312 IAC 11-2 and 11-3). The hearing officer's report and his recommendations to the Natural Resources Commission were discussed. The work group agreed that the recommendations were appropriate, with the exception of number one, which would lead to a five-year moratorium on the rule change adoption. It was agreed that LMWG members who might attend the NRC meeting on November 16 would speak in opposition to such a moratorium.

There was discussion regarding differing opinions on the need for statutory changes to the Lakes Preservation Act to strengthen DNR authority over piers. Knotek provided information relative to that debate. DNR executive staff will maintain contact with interested legislators regarding the issue.

A spontaneous discussion ensued regarding the desirability of continuing the operation of the LMWG, with several people expressing support for the idea since the myriad lake-related issues are not going to "go away" and therefore need to be resolved. Some audience members suggested encouragement of lake associations to express their support of the LMWG to the new governor.

The group then continued a discussion from previous meetings on the question of what is a "public freshwater lake" subject to regulation under the Lakes Preservation Act and whether uncertainty about the status of individual lakes is acceptable. Carolyn McNagny of Acres, Inc. presented information about a group of lakes in Steuben County referred to as the "Seven Sisters". Her organization has concerns about the uncertain regulated status of some of the lakes. Acres, Inc. owns property upon which some of the lakes are located. Another of the lakes, Failing Lake, is on adjacent property owned by a church organization which has an apparent interest in either further developing its property or selling it to another entity interested in development that could subject Failing Lake to potential ecological risks. There is apparent disagreement whether Failing Lake is a "public freshwater lake" subject to the Lakes Preservation Act and attendant DNR regulatory control. The point of her presentation was that lakes of current high quality may be at risk because it's not known whether they qualify as "public freshwater lakes". Ehret indicated that there is a process utilized by DNR to determine the status of lakes. McNagny was under the impression that the DNR Division of Water had incorrectly issued a letter indicating that Failing Lake is not subject to the Lakes Preservation Act. She pointed out that there can be both benefits and detriments to a lake being a "public freshwater lake" (PFL).

It was indicated that in order to proceed with the discussion about what is, or is not, a public freshwater lake, it would be beneficial to compile all existing lake-related legal definitions.

Pearson noted that the purpose of the discussion about public freshwater lakes was to 1) remove uncertainty about individual lakes' status, 2) remove the public/private decision-making process from the courts and 3) protect the ecological quality of lakes.

There was considerable discussion about the subject. A question arose about the manner in which other states regulate lakes. Knotek explained some of the differences between Indiana laws and those of other states, such as the lack of a navigability test for lakes in Indiana that avoids the "takings" issue. Ehret noted that any change in Indiana law that based the "public" nature of a lake on a particular minimum size, such as two acres, would almost certainly face a "takings" challenge by current land owners whose property surrounded a lake that they had considered to be their private property. Cunningham suggested that Indiana might follow Minnesota's lead and protect lakes by regulating particular activities that could affect them, rather than declaring the lakes to be "public". Ehret suggested, and Newhouse concurred with, the creation of a list of known "public freshwater lakes", then dealing with all others on a case-by-case basis. Taylor stated that he's not a proponent of a comprehensive "yes/no" list of PFLs. He believes there's a need to evaluate the definition of "acquiescence" which is the basis for PFL determinations. He noted that "permission" is quite different from "acquiescence". He's concerned that under the current system, Indiana's glacially-created lakes are in serious jeopardy. Jones stated that Indiana, unlike other Midwestern states has failed to comply with the 1787 Northwest Ordinance that requires holding lakes in the public trust. Pearson and Cunningham suggested broadening the "acquiescence" test to include fishing and to assure protection of fish and wildlife interests. Krevda noted that from his

perspective lake regulation is "a mess" and that the work group needs to focus on issues that are relevant to the protection of lakes. Newhouse reminded the group of the possible utilization of 327 IAC 2, the IDEM rule that allows for the designation of water bodies as "exceptional use", thereby affording them greater than ordinary protection.

The group reviewed a matrix (attached) of possible alternatives for clarifying the PFL issues. Hoffmann suggested elimination of alternatives #1 ("Do nothing") and #7 ("Ask General Assembly to establish a list of lakes by statute") for being unrealistic. Jones suggested changing #4 to indicate that the NRC should be asked to clarify the use of the terms "lake", "public" and "freshwater". Hoffmann further suggested two potential paths that might be pursued. One would be to create some sort of lake list, either by statute, by the NRC, or otherwise. The second path would be to pursue options #3 and #4, "cleaning up the language" of the Lakes Preservation Act to make it more definitive. Purvis noted that there is a non-rule policy list of navigable waters that has proved quite helpful, and that a similarly prepared list of PFLs might be useful. Ehret offered that it will become increasingly difficult to verify acquiescence as historical lake users or witnesses to acquiescence become unavailable to testify regarding historical lake usage through acquiescence. Pearson indicated that most inquiries to DNR result in the determination that DNR cannot document that a lake is a PFL. Hoffmann suggested that a subcommittee be established to further investigate the general topic, applying a process she outlined with a diagram. Her idea was that the subcommittee's first step must be to improve the statute's language. Then, criteria such as whether a lake is natural, its relative size, or other measures would be identified that could help in a sorting process. Finally, once those criteria were selected, the subcommittee would decide whether it would be more appropriate to have a list of lakes established by statute or by DNR. Pros and cons of each of those two options would be identified and evaluated in order to make the decision. Tyler noted that there is considerably more concern about glacially-formed lakes than for manmade lakes. It was agreed that a subcommittee should be formed that would consist of Taylor, DNR Division of Water, DNR Office of Legal Counsel, Newhouse, Pearson, Jones (tentative) and Hoffmann (tentative).

The group next continued discussion about additional changes to 312 IAC 11-3-1, the rule that establishes what types of temporary structures are permitted under a general license. It was noted that a four-foot width restriction on piers should allow for the additional width of appurtenances such as boat lifts. Ehret suggested limiting the main pier width to four feet, not limit its square footage, but establish a square footage limit for appurtenances, regardless of the pier's length. In other words, don't punish pier owners who require a long pier to reach an adequate water depth by limiting combined total square footage of the pier and appurtenances. The question was raised as to whether perpendicular secondary pier sections ("tees") should be considered to be appurtenances or portions of the pier itself. There was apparent consensus that the rule should include a statement such as number (12), i.e., "Have a maximum width of four feet along a single lakeward access", but the question was raised as to whether this would adequately limit each riparian resident to one pier. There was discussion about the possible need to establish a permit duration for temporary piers. Some wondered whether pier owners should be required to renew permits periodically, such as every two years, but some

thought such a requirement might be onerous. The question was raised whether a resident's second pier should be permitted separately. Another question was whether a change in property ownership should nullify any existing permits. There was discussion about current general licensing being such that the only apparent limit to permit duration is a dissatisfied neighbor complaining about the ongoing circumstances. There was concurrence that Section 1.(a) should be revised to read, "The placement and maintenance of a ***single pier, or other*** temporary structure***s***….". Taylor expressed concern about establishing an equitable fee structure in cases involving more than one pier, and it was noted that any permit fee changes would have to be addressed in statute.

There was agreement that a subcommittee should be established to continue discussion of the pier rule issue and that the subcommittee should evaluate:

- (10) Have a total surface area of less than ___ square feet.
- (12) Have a maximum width of ___ feet.
- (13) Shall provide no more than ___ berths or moorings *(total of all watercraft at piers, lifts, shelter, buoys, etc.)* for the first ___ feet of riparian homeowner's frontage and no more than ___ additional boat slips for each additional full___ feet of shoreline frontage.
- (16) Must be located lakeward of the riparian owner's property and a minimum of ___ feet from the lakeward extension of either property line.
- Whether multiple piers owned by the same riparian should be eligible for a general license.

Ehret noted that any effort to change the pier rules must involve the citizenry to be successful. The persons selected for the subcommittee were Madden, Dick Swennumson (Lake Maxinkuckee), Gus Duehmig (Syracuse Lake), Nat Noland (Lake James), IDNR Division of Water, Snyder, Knotek, Hippensteel, Neil Ledet (IDNR Division of Fish & Wildlife), and Tyler (tentative).

It was agreed that both subcommittees should meet and develop initial products that could be distributed to the LMWG by January 7, 2005. At that point a decision would be made about convening the entire group for a meeting.

LAKES MANAGEMENT WORK GROUP

Salamonie Lake Interpretative Center
August 25, 2005

Meeting Summary

Members in attendance were Ron McAhron (for Kyle Hupfer), Jim Hebenstreit, Bob Madden, Jeff Krevda, Tina Hissong, Sam Purvis, Pete Hippensteel, Dave White, Bart Culver, Ralph Taylor, Dick Kemper, Dave Tyler, Jill Hoffmann, Jed Pearson and Carol Newhouse.

IDNR and NRC staff members in attendance were Bill Snyder, Stu Shipman, Ann Knotek, Steve Lucas, Cecil Rich and Jim Ray.

Other participants included Mike Lattimer, Dick Swennumson, Kay Young and Holly LaSalle.

McAhron expressed gratitude to the group, on behalf of Director Hupfer, for participating in the process of developing lake-related policies. Director Hupfer was attending a shooting range opening at Huntington Lake and hoped to be able to stop by the LMWG meeting sometime during the day.

Senator Robert Meeks had a conflict that prevented him from attending the meeting, but sent a letter expressing his ongoing interest in, and support of, the LMWG's activities.

Ray provided a brief review of discussions and action items from the previous meeting in November 2004.

Ray then introduced the first topic for discussion, which was proposed changes to 312 IAC 11-3-1, general licenses for temporary structures, i.e., piers. The group had discussed several possible changes during the November 2004 meeting, and a subcommittee had subsequently met to further discuss potential changes. A draft was presented to the group for review. There was little discussion about the proposed changes, with the exception of the requirement that a pier be removed in the non-recreational season in order to be considered a temporary structure. It was noted that such a requirement would be difficult to enforce, particularly on small lakes. Some members wondered whether it was necessary to require removal of piers from channels. It was noted that the number of piers along channels is so great that the existing pier companies would not have the capability to remove all the structures every year. Snyder pointed out that any rule requirement would need to be equitable, which would mean that if some piers were required to be removed, the rule would have to apply to all piers. Taylor suggested that it might be acceptable to allow portions of piers to remain in place throughout the year if they did not extend more than four feet lakeward. Tyler agreed and suggested the number be increased to five feet. It was noted that it would not be politically viable to propose absolute removal of all piers. Newhouse proposed adding a phrase to subsection 11 of the rule so that it would state that, "Excepting the nearshore

five feet, be removed from the lake from December 1 to March 1". There was agreement by the group on that recommendation. ***There was then agreement to forward the proposed rule changes to the Natural Resources Commission with a recommendation that they be adopted.***

Lucas introduced the next topic, proposed amendments to 312 IAC 11-5-2, which deals with lawful nonconforming uses ("grandfathering") of structures or facilities placed in public freshwater lakes. An internal IDNR work group had prepared the proposed amendments in order to address situations associated with pier rule changes. The amendments would provide more definitive guidance regarding establishment of, maintenance of or modification to, and removal of nonconforming structures. There were questions and discussion about lawful nonconforming status and whether it should be linked to the property owner or the parcel of land. Some states allow the lawful nonconforming status to be retained as long as the property is owned by the same family, with the status being lost when the property is sold to someone outside the family. Shipman indicated that that issue was discussed by the IDNR work group, but that addressing it would be complicated and difficult. Purvis noted that in most cases, whether or not the land was being transferred within or outside of a family would not be relevant. He pointed out that the issue is whether a nonconforming use is lawful at a particular point in time. If a certain pier is a problem, IDNR will attempt to deal with the problem regardless of the land's ownership. If the structure is determined to be a lawful nonconforming use and is not deemed a problem, it won't matter who the ownership might transfer to. There was discussion regarding the extent to which maintenance should be addressed in the rule. It is unclear what constitutes simple maintenance that would not warrant application for a permit. As an example, Pearson asked whether a pier post consisting of a section of telephone pole could be replaced with identical material as a maintenance task, or if such action would require an individual permit because it would be construed as a modification. Lucas noted that attempting to definitively address maintenance was "adventurous territory". ***It was agreed that the proposed amendments should be forwarded to the NRC with a recommendation for adoption, with the need to adjust the dates in subsection 2.(b)(4) to reflect time periods appropriate to the date upon which the changes would take effect.***

The next topic, introduced by Hebenstreit, was proposed amendments to 312 IAC 11-2-25, dealing with sockets used as a base for posts that support piers. The amendments would include sockets in the definition of temporary structure, even though the sockets would typically not be removed from the lake bottom for many years. The need for possible amendments was precipitated by recent questions about the relatively permanent nature of sockets. It was noted that sockets used in muck can have flanges as large as two feet in diameter that collectively cover significant areas of lake bottom. Sockets can protrude upward as much as two feet from the lake bottom, creating a potential hazard for boaters. Other related matters were discussed such as the fact that boat lifts typically have four foot by four foot squares of plywood under their legs for support. It was mentioned that buoys, swim rafts and similar structures are typically anchored with concrete blocks that are potentially problematic components of temporary structures. There was discussion about the use and permitting of "weed rollers". It was indicated

that sockets can be used by DNR representatives to determine historical locations of pier posts. Sockets are less disruptive that some other pier installation methods. It was asked whether there should be a requirement to remove sockets when there is no longer any intention of using them, i.e., when they are no longer part of a permitted structure. Since socket protrusions can be a potential problem, it was suggested that limits be established on the distance they can project upward, perhaps as a percentage of water depth at that location. ***It was decided that IDNR staff would gather more information about sockets by communicating with pier installers and then re-draft the proposed rule amendments.***

The next discussion topic was whether the State should require watercraft operators to have an endorsement on their BMV-issued driver's license certifying their capability to properly operate watercraft, as is currently required of motorcycle operators. Senator Robert Meeks had expressed interest in the work group's opinion on the issue. Purvis explained current Indiana requirements related to licensing and education of watercraft operators. He pointed out that violations of boating regulations can result in points being applied to the operator's driver's license; 23 operators lost their automobile driving privileges in 2004 because of watercraft violations. He indicated that Indiana is the only state that links watercraft violations to the driver's license. Taylor stated that what's really needed is a focus on boater ethics and that boating statistics do not support the need for a license endorsement. Tyler indicated that everything that supports the need for a motorcycle endorsement applies to boat operation, too. Culver noted that the statistics do not demonstrate that boating is as dangerous as motorcycle operation. Snyder expressed amazement that, because of the relatively poor way in which watercraft are operated; there are not more boating accidents. ***The group determined that it would be appropriate to notify Senator Meeks that there was not consensus on the issue and that IDNR should provide information to him regarding current programs/activities that may serve essentially the same purpose as a license endorsement.***

The final discussion topic was the creation of a list of "public freshwater lakes" that would be subject to IC 14-26-2 ("Lakes Preservation Act"). It was explained that the legal status of many lakes is not known. A subcommittee had met in December 2004 to advance discussion of the issue. That group decided that it would be reasonable to begin development of a list that could be adopted by the Natural Resources Commission as a non-rule policy document to be used for reference purposes. Pearson described the rationale for the compilation of a particular list that was shared with the group. It began as a list of lakes of natural origin and included information about public access to each lake. The list was reviewed by other divisions within IDNR and IDEM to determine whether there was additional information available that would be indicative of "acquiescence" to public usage or if permits had been issued at any time pursuant to IC 14-26-2. There was discussion about possible establishment of a definition of acquiescence in 327 IAC 11-2. ***It was decided that the next LMWG meeting should focus on the meaning of acquiescence and on the refinement of a lakes list.***

The group chose October 20, 2005 for its next meeting date. It was suggested that, time permitting, there should be discussion about the status of recommendations made by the work group in the past.

LAKES MANAGEMENT WORK GROUP

Salamonie Lake Interpretative Center
October 20, 2005

Meeting Summary

Members in attendance were Bob Madden, Pete Hippensteel, Bart Culver, Ralph Taylor, Dick Kemper, Dave Tyler, Jill Hoffmann, Jed Pearson, Bill Jones, Jack Dold and Carol Newhouse.

IDNR staff members in attendance were Stu Shipman, Ann Knotek, Cecil Rich and Jim Ray.

Other participants included Dick Swennumson, Dave Heckaman and Holly LaSalle.

Ray opened the meeting by explaining that IDNR Deputy Director Ron McAhron had wanted to and planned to attend the meeting but was called away on another agency matter at the last minute.

Ray explained that he had attended a legislative Natural Resources Study Committee meeting on October 4, 2005 at which he described the LMWG's rationale for the proposed statutory changes related to "seawalls behind shorelines". The committee plans to re-introduce a bill in the 2006 General Assembly utilizing the LMWG's recommended language.

He also explained that the work group-endorsed rule language vis-à-vis "lawful nonconforming uses" for licensing of piers had been preliminarily adopted by the Natural Resources Commission on September 20, 2005 and was undergoing fiscal review by the Office of Management and Budget.

Ray continued by relating that the work group-endorsed rule language for general licensing of piers and other temporary structures was being evaluated by the chairman of the NRC prior to its introduction to the commission for possible preliminary adoption.

He reiterated the conclusions of the previous LMWG meeting, regarding specific topics the group had stated it wished to discuss further, then noted that some of the members had subsequently suggested discussion of other issues that were significant to them.

That led to a discussion about the LMWG's priorities.

Taylor stated that he had entered into a discussion with Senator Weatherwax at a September Natural Resources Study Committee meeting. The senator had indicated there was considerable pressure on the legislature to address the "funneling" issue, and that he was hopeful the LMWG could provide assistance. Taylor said Representative Pond, who was at the same meeting, indicated that DNR should be responsible for such lake-related issues, rather than local governmental entities. Taylor noted that the Court of Appeals is

a third element that is generally missing from discussions about funneling. The other two elements are the State and local entities. He believes the "bottom line" is the need to provide shoreline resource protection.

The group agreed with Taylor that a list or summary should be prepared that describes all that has been done with respect to funneling so that the information could be presented to legislators and others who have an interest in the subject – perhaps compiling the information as an "interim report" from the LMWG.

Swennumson, who also attended the NRSC meeting, noted that Representative Pond realizes the funneling issue cannot be resolved at the local level. He indicated that Senator Weatherwax is seeking ideas from the LMWG for appropriate legislation. He added that septic systems are another issue that warrants discussion by the group, and that the systems should ultimately be banned from the vicinity of lakes.

Hippensteel pointed out that while there are, indeed, inadequate septic systems in many locations, there are other related matters that should be considered. For example, in areas with soils that are inadequate for septic systems, the installation of central sewer systems opens the areas for intensive development.

Jones noted that science does not support the notion that septic systems are always as detrimental to lake ecosystems as might be believed. The problem with the systems is not their physical characteristics, but the manner in which they are operated and maintained. Education of the users must be addressed.

Pearson pointed out that there were three recommendations in the 1999 LMWG Final Report that would address most issues raised in the discussion about septic systems.

Tyler suggested that it would be appropriate to develop an interim report summarizing all of the LMWG's activities. Perhaps update the previously published list of actions that have occurred with respect to the 1999 recommendations.

Ray agreed to prepare a draft document attempting to describe the funneling issue and actions that have been taken to address it.

Tyler said that public perception of lake-related concerns boils down to three issues: weeds, powerboats or development.

Hoffmann noted that many lake residents want to "close the door" to other potential lake users.

Hippensteel opined that cumulative effects of lake-related activities must be considered. He indicated that once a shoreline is fully developed, it can never be "natural" again.

Pearson indicated that lake protection is all about appropriately limiting riparian rights.

Jones suggested that the LMWG should define the need for pursuit of statewide shoreland zoning. The State could then provide necessary legal "tools" to local governmental units.

Pearson asked if, in that vein, the work group should revisit Recommendation #31 (Land Use Planning in Lake Regions) and explore the issue further.

Hippensteel pointed out that most legislators do not have lakes in their districts, since most lakes are in only nine counties in northern Indiana. As a result, it can be difficult to gain sufficient legislative support for new statutes to address lake issues. He suggested that it is therefore easier to develop rules to deal with the issues.

Hoffmann stated that if funneling is something that is manifested landward of the shoreline, it can only currently be addressed by local governments. If, on the other hand, it is manifested at the shoreline, then it is a state government issue. She then asked what everyone considers the actual issues to be, with respect to funneling.

Hippensteel stated that funneling needs to be addressed by concentrating on shoreline issues.

Swennumson offered that it can sometimes be difficult to gain support of local public officials on lake issues, so reliance on local ordinance adoption will not necessarily allow for accomplishment of lake-oriented goals.

Pearson wondered whether the State Constitution would allow for the prohibition of reassignment of riparian property usage to other persons, i.e., could a riparian landowner legally be prohibited from selling lake access rights to other users who did not reside on the shoreline property. Such would seem to be a transfer of usage rights for profit.

Hippensteel asked whether it might be possible to more definitively address cumulative effects in statute. Knotek opined that the state has not had great success in dealing with the cumulative effects issue.

Newhouse suggested that the work group should review the 1999 report and pursue unfulfilled recommendations. She thought there should be efforts initiated to contact relevant entities and encourage them to implement recommendations over which they might have influence.

Madden asked if there was a need to discuss the status of the LMWG, i.e., whether there was a need to justify its existence and re-solidify its clout.

Hoffmann wondered about the possibility of obtaining a grant to provide administrative support to the group.

Newhouse offered that there is still a need to pursue funding to conduct a study that would establish the economic value of lakes in Indiana.

Taylor indicated that he did not believe there are any new lake-related issues; they have all been rather well described in the 1999 report. He was not comfortable with the idea of obtaining financial support for the group if it came from an entity that could influence the group's deliberations. He worried about an agenda-driven sponsor. He indicated that DNR should be the group's partner in its endeavors.

LaSalle noted that the group has evolved over time. While its members were originally offered nominal payment for their services, it is now a volunteer group.

Madden pointed out that the new governor and his administration are scrutinizing all existing boards, committees and work groups – as they should, since it is the responsible thing to do. The LMWG is now placed in the position of justifying its ongoing existence.

Jones suggested that the group therefore would benefit from a governmental sponsor that would reaffirm the group's legitimacy.

Hoffmann wondered if that should be a legislative sponsor. She suggested that the work group might think about shifting into an "implementation" role to assure that previous recommendations were acted upon. The group could be an advocate for the recommendations.

Hippensteel suggested a two-pronged approach: 1) Present a progress report to interested legislators such as Senator Weatherwax and 2) identify a work group member to meet with Director Hupfer to discuss the group's potential for future contributions.

Tyler thought the group should focus on "developing solutions to problems affecting Indiana's lakes", as was stated in the 1997 legislation creating the first LMWG.

Dold offered that LMWG members are closest to lake interests and have the best understanding of the issues, thereby placing them in the best position to determine how to address the issues.

There was discussion about possibly establishing a new or revised mission statement for the group. The vision and mission statements of the original work group were reviewed and discussed. The group listed three statements that reflect the members' intent, but decided that the statements did not comprise a mission statement, *per se*:

- Provide recommendations to the Natural Resources Study Committee on lake issues (when directed to do so)
- Respond to lake-related issues raised by IDNR, IDEM, and the public
- Continue to develop solutions to the issues identified in the 1999 LMWG report

Jones indicated that it is much easier to argue for continuation of the group if there is no cost associated with it.

There was considerable additional discussion about the members' strong desire to continue to function as a group, and the manner in which the case for doing so should be presented to DNR management staff and legislators.

Madden suggested creation of a letter the group could send to Director Hupfer, briefly explaining the group's history and accomplishments, as well as outstanding needs, then soliciting his support for its continued existence.

There was also discussion about soliciting support from the legislature.

The group agreed to develop a letter and then determine how best to present it to Director Hupfer.

There was agreement to plan on meeting again in Indianapolis on December 15, 2005.

Taylor and Knotek had a brief discussion about the implications of the Miller case, with respect to the issue of acquiescence.

LAKES MANAGEMENT WORK GROUP
Indiana Government Center South
December 15, 2005

Meeting Summary

Members in attendance: Bill Jones, Bob Madden, Jill Hoffmann, Dick Kemper, Carol Newhouse, Dave Tyler, Tina Hissong and Jeff Krevda. (Inclement weather prevented several members from driving to the meeting from northern Indiana.)

DNR and NRC staff present: Ron McAhron, Burgess Brown, Gwen White, Cecil Rich, Steve Lucas, Ann Knotek, Greg Biberdorf, and Jim Ray.

Others in attendance: Holly LaSalle (Lake Tippecanoe), Ted Schenberg (Lake Maxinkuckee), Dave Heckaman (Lake Wawasee), Dan Richards (Kosciusko County), and Larry Coplen (Kosciusko County).

DNR Director Kyle Hupfer welcomed everyone and spoke about DNR's interest in the work group. He had spoken with Senator Robert Meeks and they agreed on supporting the group's continued deliberations. He said that the group should develop recommendations by sometime around May so that the issues could then be available for presentation to interim legislative study committees for consideration.

Ray reviewed the previous meeting's results, which led to discussion about priority topics for consideration. The group agreed to begin with further discussion of the "funneling" issue. Ray spoke briefly about a short document he had drafted in an attempt to define funneling.

Tyler explained that concerns by residents of Lake Tippecanoe led to development of a survey of all lake residents in Kosciusko County to determine if they shared the same concerns. The survey included simple questions such as whether the respondent believed lake quality was being threatened by development or greater numbers of motorboats, if lake environmental quality was a major concern, and if there should be governmental action to protect lake quality. The survey results are being utilized to support efforts to provide lake protection.

Tyler described how Kosciusko County lake organizations have approached county government officials about the prospect of amending the zoning ordinance to include provisions for a new "lake residential" zoning classification that would limit the types of new development in an area proximal to a lake. The area plan commission has established a subcommittee to explore the idea.

Dan Richards, Director of the Kosciusko County Area Plan Commission, explained that it is prudent to begin contemplating how the next "ring" of development around lakes might begin to evolve and whether there should be anticipatory consideration of controls that might need to be imposed to assure appropriate development.

Tyler noted that there is general concern about all substantial development in the vicinity of lakes, not necessarily just the type of development attributed to "funneling". He indicated that there is such a thing as "overdevelopment" and that high density development can be detrimental.

Madden explained that Lake Lemon is able to address development issues through use of ordinances. An environmental overlay zone is being created to establish the types of development that will be permissible.

Jones opined that the broad discussion is actually about "shoreland zoning", which is the approach utilized in states such as Maine and Wisconsin to manage development surrounding lakes. Desired results can be obtained through the use of overlay zones, such as what's been done around Lake Monroe. This can include, among other things, setback requirements – even along perennial inlet streams. Jones wondered whether the "transfer of property rights" attributable to funneling was legal.

Schenberg noted that there are two principal issues related to funneling. One is the adverse effects on shorelands and the second is resulting high density boating. He asked if it would be appropriate to consider limiting the number of boats, limiting pier sizes, or to perhaps establish aggregate watercraft horsepower limits.

Newhouse referred the group to the original LMWG's Recommendation #31 which spoke to land use planning in lake regions. She reiterated some of the specific ideas captured in the recommendation, such as providing support and guidance to local governmental entities.

Kemper pointed out that group pier regulation is currently the only meaningful way to limit the number of new development-related watercraft on a lake. He inquired about DNR's process for review of group pier applications and asked what the basis was for denial of an application.

Knotek spoke about the permit application review process. She noted that there are considerations by the Division of Fish and Wildlife as well as the Division of Law Enforcement. She pointed out that manmade channels connected to lakes are a form of funneling. Such channels are not evaluated on the same basis as natural shorelines. Each application is reviewed on a case-by-case basis.

Madden asked who the typical legal owner is of the lakeshore lots used to funnel off-lake residents to a lake. Lucas stated that the owner can be virtually every possibility imaginable.

Madden asked how county governments would feel about state-mandated lake area zoning. Richards thought acceptance of the idea would be mixed, depending on the county. Kemper did not believe that state-mandated zoning would be workable.

Heckaman, a pier installation contractor with decades of experience observing and being involved in lake development, expressed belief there should be a minimum of twelve feet of lakeshore frontage for each housing unit utilizing "funneling" to gain lake access. He stated there should be a "grandfathering" provision for existing access through easements. He recommended that pier size be limited to whatever length is necessary to reach a four-foot water depth for at least twenty feet into the lake.

Tyler asked if guidelines were to be developed for review of group pier applications. Knotek responded that, among other things, one possibility is that guidelines may simply evolve from decisions rendered in the legal appeals process. She said that some cases are just now developing. Lucas said that he would not recommend development of guidelines; amending appropriate language into existing rules would be preferable.

Hoffmann offered a method for attempting to address funneling in a rational manner. She suggested that there are at least four specific issues that can be teased out of the broader subject of funneling, and that discussion could be focused on each of them, in turn, to identify remedies to perceived problems.

- The number of watercraft, congestion and water quality
- Shoreline and littoral zone impacts
- Development: density, land use, etc.
- Transfer of riparian rights

(See attached table for detailed summary of the concept with associated strategies and actions.)

LaSalle asked if there was not a fifth issue, i.e., the economic value of land around a lake increasing and providing potentially greater tax revenues as it is developed more intensively. Tyler offered that land value is based on scarcity, not specifically on the value of potential improvements. Hoffmann noted that water quality of a lake is relevant to surrounding to land values. Jones indicated that in some locales, such as Bloomington, land use decisions are made on the basis of quality of life, rather than potential tax revenues.

Newhouse noted, with respect to water quality, that development in some areas is occurring with no consideration for the fact that stormwater is being redirected from one watershed (14-digit HUA) into another. Kemper stated that requiring or promoting the installation of curbs, gutters and storm drains that direct runoff into lakes from new development is detrimental to water quality; use of swales should be promoted instead.

Krevda offered that financial concerns are very relevant with respect to development issues. Consideration should be granted to whoever is affected by development proposals. Emphasis should be placed on the economic value and benefits of high quality lakes.

Lucas indicated that transfer of riparian rights vis-à-vis funneling did not seem to be an issue of concern to the courts. He expressed belief that local governmental entities could impose some restrictions on projects in ways that would affect rights to specific uses of the properties.
White pointed out that the state Lake Preservation Act (IC 14-26-2) establishes that the public of Indiana has a vested right in the preservation, protection, and enjoyment of all the public freshwater lakes, based on their condition during the time prior to the statute's enactment.

Hissong stated that Lake Maxinkuckee residents have become sufficiently aware of the importance of maintaining the lake's quality that many of them no longer apply phosphorus fertilizer to their lawns. The demand for zero-phosphorus fertilizer in the lake's vicinity has become great enough that commercial lawn care companies now offer zero-phosphorus services. Jones noted that the state of Minnesota has banned the use of phosphorus in lawn fertilizer in lake regions.

Additional comments included:

- Boats being used on lakes are becoming too large, with too much draft, creating too much wake, resulting in adverse impacts to the lake bottom.
- It might be worthwhile to consider limiting boats on the basis of their weight.
- There are water quality impacts associated with watercraft.
- Congestion of lakes is an issue.
- There are equitability issues associated with lake access, e.g., access by riparian residents vs. non-residents.
- Do publicly-owned access sites constitute a form of funneling?
- What is the "carrying capacity" of individual lakes? Can that be used as a criterion for resolving the funneling debate?
- Should the number of piers be limited by the amount of available shoreline?
- Can local planning entities regulate pier numbers, sizes and number of boats using them?
- Can local planning/zoning requirements be contrary to DNR regulations?
- How much legal authority could DNR cede to local entities? Is it a question of ceding authority, or do local entities already have the authority?
- It would probably be possible for a statute to be written that would allow local entities to have certain authorities within a lake, such as in the Flood Control Act.
- Perhaps local entities could share authority via state regulations.
- Home Rule provisions are trumped by state agency statutory authority.
- Could pier size be limited on the basis of the percentage of water surface covered by piers, e.g., 16%?
- Perhaps there should be a minimal amount of shoreline mandated for each pier, e.g., 12 linear feet of shoreline.
- Perhaps local planning entities could require a specified amount of shoreline for multi-family residential units, designated as common area, in order to limit the number of piers and/or watercraft.

- Culver has an "anti-funneling" provision in its ordinances for Lake Maxinkuckee. It does not allow a single riparian lot to be used for lake access by multiple off-lake property owners, but there are shortcomings to the provision.
- Kosciusko County is considering the limitation of new development to specific uses.
- Perhaps funneling can be made less attractive by reducing its economic benefits.
- Culver is providing economic incentives for development with TIF districts to generate funds for new sewers and tax abatements for selected lakeside residences.
- There is a need to protect the existing economic value of lakes by preserving water quality.
- Many safeguards are already in place to protect water quality through various laws, regulations and ordinances.
- An element of the funneling issue is the change that can occur to neighborhood economic and social status.
- It is difficult for DNR to address the cumulative effects of individual lake-related activities, in the context of permit issuance/denial.
- Seawalls are part of the overall funneling issue.
- There are problems associated with glacial stone usage along shorelines.
- The transfer of riparian rights, in the context of funneling, is difficult to address.
- Local planning entities can impose shoreland protection requirements if the subject is addressed in the comprehensive plan and is supported by local public officials. The zoning ordinance can be the vehicle for accomplishing desired protection.
- Action item: For the next meeting, consider how piers can be regulated to assist in addressing funneling.

Kemper asked to have the most recent version of the proposed rule changes for temporary structures (piers) forwarded to him.

Staff was asked to check with other states to determine how they may be attempting to address the funneling issue.

Knotek was asked to research the issue of ceding regulatory authority to local governmental entities.

It was suggested that it might be helpful to obtain a copy of the environmental overlay zone ordinance for Monroe and Griffy reservoirs.

Madden expressed his ongoing concern about safety on lakes if watercraft operators are not adequately regulated. He understands the rationale for not requiring special licensing but believes some measures should be taken to address the overall concern. A possible alternative requirement would be to require watercraft operators to pass the Indiana boater safety course. He suggested that the topic be considered for further deliberation at the next meeting.

It was agreed that a meeting will be held on February 16 at 9:30 AM at Salamonie Lake.

INDIANA LAKES MANAGEMENT WORK GROUP

Salamonie Lake Interpretive Center, February 16, 2006

-- Meeting Notes --

Attendance

Group members present:

C. Lee Bridges, IDEM Office of Water Quality
Bart Culver, Bart's Watersports
Jim Hebenstreit, DNR Division of Water
Peter Hippensteel, Steuben County Lakes Council
Tina Hissong, LMEC (Lake Maxinkuckee)
Bill Jones, Indiana University
Richard Kemper, Kosciusko County Surveyor
Jeff Krevda, Dredging Contractor
Bob Madden, Lake Lemon Conservancy District
Jed Pearson, DNR Division of Fish & Wildlife
Samuel Purvis, DNR Division of Law Enforcement
F/Sgt. Bill Snyder, DNR Conservation Officer, District 2
Ralph Taylor, Sportsmen's Roundtable
Dave Tyler, TELWF (Lake Tippecanoe)
Jim Ray, DNR Lake and River Enhancement Program, facilitator

Guests:

Holly LaSalle, TELWF (Lake Tippecanoe)
David L. Heckaman, Sudlow's Pier Shop
Ann Knotek, DNR Legal
Steve Lucas, NRC Division of Hearings
Ron McAhron, DNR Deputy Director
Dan Richard, Kosciusko County Area Plan Commission Director
Dick Swennumson, LMEC (Lake Maxinkuckee)
Kay Young, WPOA (Lake Wawasee)
Gwen White, DNR Lake and River Enhancement Program, recorder

Agenda

- Welcome and introductory remarks
- Report: Status of proposed statutory changes for "seawalls behind shorelines" – SB 253
- Report: Status of proposed reconstitution of LMWG – SB 94
- Continuation of "funneling" discussion
- Possible future meetings
- Other items?

I. Summary of Actions and Decisions

This section summarizes the time and agenda for the next meeting, status of pertinent bills in the legislature, discussion of funneling, and lists handouts provided at the meeting. Additional detail on dialogue during the meetings is provided in the next section.

Agenda for next meeting

- Next meeting is scheduled for Thursday, April 6 at 9:30am-3:00pm at Salamonie Lake Interpretive Center. Lunch can be provided for a small donation ($5 per person).
- Meeting discussion will focus on littoral zone activity within 150 feet of the lake shoreline
    - Members are encouraged to prepare numbers or recommendations for in-lake carrying capacity or regulation of temporary piers/structures and boats.
- Future meetings - continue to compile and summarize guidance for local authorities to use land use planning and zoning tools.
- Issues requiring legislative attention would need to be prepared in time for summer study committee. Currently, the LMWG discussion has focused on rule-making actions and does not include statutory proposals.

Status of pertinent bills currently in the legislature:

- SB 253 ("seawalls behind shorelines") - passed out of senate 42:8; passed out of House Natural Resources Committee on February 13; House floor vote not scheduled yet.
- SB 94 (reconstitutes LMWG) - Passed out of Senate at 50:0; assigned to Natural Resources Committee but has not had a hearing yet.

Summary of funneling discussion

- Reviewed and accepted "**matrix**" of strategic approach to various related issues
    - Need to acquire expertise on economic impact of lake development (possible representative on the work group)
    - Broaden issue entitled "Number of Boats" to include number, size, type, and use of boats, as needed

- **Definition of funneling** - The group decided to proceed with discussion of effects of funneling without a precise definition of the term itself
    - Focus on guidance for legislators and state agency actions, in accordance with the original request to the LMWG.
        - Congestion in the lake and along the shoreline is the end problem, including number of piers and boats.
            - Local zoning relevance to funneling is a land use issue that is not really pertinent to state jurisdiction.
        - Home rule – Legal authorities cannot be transferred from state to local governmental units and work group does not recommend changes to this approach.
            - Can local units be more restrictive than state standards?
                - Local authorities can restrict use on a particular parcel as part of development approval within the condition or covenant for that specific site.

- State conservation officers cannot enforce "illegal" town ordinances that affect lake uses (type of boats, piers) if they do not violate state laws.
- Local authorities cannot impose tighter restrictions lake-wide to control the number of piers, because that is within the state jurisdiction.

- Land use restrictions are under the jurisdiction of local authorities, not the DNR.
  - The state may not be able to enforce local ordinances.
  - Tighter control over land use will assist with control of lake use.

- DNR has a responsibility to regulate in-lake shoreline congestion through regulations and to provide guidelines regarding uses and impacts for local authorities and other entities.

- It would be helpful to compile and summarize examples to develop guidance on planning and zoning mechanisms for local authorities (counties and municipalities) to protect lakes and reservoirs.

- **Pier regulation amendments** - Approved by the group in November 2004 and subcommittee in December 2004.
  - Recommended changes from 2004-05 work group efforts (handouts) include:
    - Two options for rule amendments. One handout has only one change – winter pier removal; other set has all changes but not winter pier removal.
    - Removal in the winter was considered to be potentially contentious enough that it be considered separately from the other changes. So, this will be a sequence of separately considered proposals.

  - First document is only single change to require winter removal
    - Only change is in bold-face near the bottom of the first page (number 10).

  - Second document - Several changes to modify pier regulations, i.e.,
    - Multiple wording changes for consistency in rule language (conformance)
    - Diagrams relocated to directly follow their appropriate captions
    - Expand phrase to "acquiescence **or permission**" – more easily understood than the term "acquiescence," but does not require permission where the landowner is unidentified, and neighbors are not disputing pier placement.
    - Maintain a sentence to distinguish the need to address acquiescence or permission for the property where a structure (pier) is attached to the shore and not just anchored lakeward.
    - Note that rafts anchored to the bed also need to be within the 150 feet.
    - Place amendments in order to reinforce requirement that ALL structures must have acquiescence or permission, not just piers.

  - Consensus to forward both documents to the Natural Resources Commission.

        - LSA requires that one of the documents be submitted first. Whichever document goes second would amend language that was given preliminary adoption at a particular time and location in the regulations.

- **Carrying capacity, planning and zoning**
    - The group reviewed numerous handouts with examples of planning and zoning tools for lake protection.
    - Agreed to acquire and use a scientifically-based method for estimating carrying capacity, similar to examples from other states.
    - Members were directed to review handouts and be prepared to discuss numbers or recommendations for in-lake carrying capacity or regulation of temporary piers/structures and boats.

Handouts

1) Matrix of issues and strategies for LMWG action

2) Pier regulation – two documents on proposed changes

3) Carrying capacity, zoning ordinances and lake districts – multiple examples and discussion for
- Lake Maxinkuckee
- Kosciusko County
- Steuben County
- State Planning and Zoning Center in Lansing, Michigan
- Funneling ordinance examples from Michigan
- Lake Access and Overcrowding (Michigan State Supreme Court)
- Managing Piers and Wharves (Wisconsin)
- Keyhole Development Fact Sheet (Wisconsin)
- Lake Ripley Watercraft Census and Carrying Capacity Analysis (Wisconsin)
- Griffy Lake, Indiana
- Zoning Overlay, Brown County / Lake Monroe, Indiana

4) Economic and ecological value of Indiana lakes
- Table of studies on funding (from Carol Newhouse, IDEM)

II. Detailed Meeting Notes

The following notes are not intended to be an actual transcript of the discussion, but provide additional detail from dialogue at the meeting. ***These notes are considered draft until they have been confirmed by participants.***

Welcome and introductory remarks

- Couple of bills had origins in recommendations of work group
- Report: Status of proposed statutory changes for "seawalls behind shorelines" – SB 253
  - SB 253 modifications to Lakes Preservation Act "seawalls behind shorelines" moving along well; passed out of senate 42:8; passed out of House Natural Resources Committee on February 13.
  - If adopted, probably will be a need for additional rules to address the 10 foot landward concept.
- Report: Status of proposed reconstitution of LMWG – SB 94
  - Officially reconstitute LMWG in a form closer to the original group
  - Passed out of Senate 50:0; assigned to Natural Resources Committee but has not had a hearing yet.

Continuation of "funneling" discussion

- Activities relative to legislative actions
  - Need to make recommendations in time to coincide with legislative schedule
  - Recommendations relative to funneling should be made to allow a legislative study committee opportunity to consider during summer and fall to determine if it will lead to legislation.
  - Would be good to make recommendations within the next 2-3 months.
  - Need to move the issue along soon to make this timeline.

- Handouts on copies of the matrix as a basis for discussion
  - Discussion will go through it point by point to assure that all topics associated with broad issue are addressed.
  - Review the handout and determine whether it is a comprehensive, right approach to pursue issues.
  - "End goal" assumes that each of these is a brief description of the problem (e.g., water quality)
  - Anything to add to first column "Issues"
    - Perhaps need to add a person to work group who does municipal financial work (e.g., accounting firm, to help understand the financial impacts); implication is that communities are losing potential tax dollars; Culver hires a financial person to project the impacts of development
    - Implication is that there is tax revenue associated with economic development; no professionals here who can speak to tax situation of counties and towns.
    - First item says "Number of boats" but should probably be type of boats and use (e.g., horsepower, speed, training and education, type of boat relative to body of water it's on)

            - If these are referring to funneling, some issues relative to unsafe operation may not be as relevant; third column does reference type of boats
            - Need to keep thinking of these as funneling-related issues to stay on track
            - Can keep size and type of boats in mind during discussion
    - Can take these issues one at a time as logical progression
        - Brought a number of handouts related to these issues; none pertain to boating, have handouts on piers, development (Lake Monroe, Maxinkuckee, and Kosciusko); therefore, may start with piers rather than boating.
- Piers
    - Proposed amendments that had been approved by the group in November 2004 and subcommittee in December 2004; due to changes in administration had not been moved forward to Natural Resources Commission
        - Looking at a long-term issue; have not seen a definition of what funneling is; need to decide this before we can move forward (overview drafted by Jim Ray)
        - Funneling is providing lake access for non-riparian users; however, most people are riparian owners, not about lake access (walking to shoreline), but much more complex; public freshwater lake law is about providing access to lake, not secluding the lakes from public use; need to resolve the issue by giving DNR tools they need and public the assurance they need with a definition of the problem.
        - Can talk about zoning and county rights, but bottom line is lake front property that may be owned by a farmer in the back. Whether it is any person's personal property, need to know how much an individual can put out as piers. Need to become effective in restricting the percentage of water area an individual can cover. Then it becomes a moot point, if a person knows they are restricted in what they can put out as piers. Affects anyone who owns lake property. A single individual can put out an immense pier that affects use without being a case of "funneling." Need to enhance ability to control what is on the lake, then funneling will be solved. If anyone can get to the lake, they can put out immense piers and fight over it. Funneling on the land is not our (DNR) issue, if it is just about development that does not affect what is actually in the lake.
        - Can address the amount of piers as a process point, but may need to have philosophical discussion first.

- Define funneling as the sharing of riparian rights among non-riparians?
    - The issues are ramifications of sharing.
        - In most cases, backlot development has riparian rights because all residents of the overall property are part owners of the shorefront lot. So that definition does not completely address the issue.

- Using a broad definition of non-riparians might be way to define funneling. Riparian rights are with the shoreline real estate. Shared ownership of the real estate should be part of a precise definition.
- If you control the piers, you may not control the development. At Maxinkuckee, have had attorneys say that development could not be approved because of the way the zoning ordinance was written, but it happened anyway. Need to have both approaches as layers to control development.

- Can we move ahead with discussion of effects of funneling without a precise definition? Everyone has attempted to describe the issues.
  - Definition of a "lake access lot" is lot abutting body of water that is used by multiple property owners or parties.
  - Need to state "what is wrong with funneling" before we can move forward.
  - A funneling definition may have property rights issues that may not make it through legal appeals process.
  - Need to make recommendations to legislators by thinking of this from the larger perspective, including issues of funneling, lake laws, piers and DNR having the charge to carry those rules. Have a tendency to overlook the courts and how they play into these decisions. Need to protect the rights of those who own that property. Example of a lot that was inherited. Inheritor puts in a cottage and piers, like a typical riparian owner. The law may be more complex if the lot is divided between multiple inheritors and they establish a common lot along the lake with houses behind and in front. This is funneling several related families through one lot.
  - Using definition of multiple property owners, there may be a landowner with 20 foot access strip but as one owner with several children moving through the strip, we don't think of this as deleterious funneling.
  - Need to think about bottom line issues of property rights. The main issue may be related to shoreline zoning. Whether I own land in common or as an individual, I have the same riparian rights. The problem may be in local zoning differences.
  - Baseline question in anything DNR has had to do as a common denominator is whether the riparian owner has made a "reasonable intrusion" into the public's lake. DNR has to address concept of fairness to everyone. Are the piers, boats, etc. a reasonable taking of the public's lake?
  - Not sure when we are trying to determine what funneling is whether we are trying to come up with legal definition that will stand up to court challenges.
    - Comes down to issue of riparian rights. Thought staff attorneys at DNR were going to provide a better definition of legal basis for riparian rights.
    - Define: Sharing riparian rights among some number of property owners who are not family members? How many people can share

the property rights before it gets to be too many? Is there a lower limit? What about extended family? Is it strictly related to "family" or just a number of people? If they are "nonfamily" members, should they share the property?

- If everyone wants to work toward a definition, need to agree first what the concerns and issues are. Need to determine <u>what is wrong with funneling</u> first to guide us toward definition.
  - Definition must be geared to numbers and congestion. Cannot make decisions about who is and isn't an owner, walking shoreline. Need to decide what is too much rather than who gets to water.
  - Are we here to look at lake management or to set public policy for zoning? Need to determine best way to use and protect the lakes. Funneling issue is more public policy than management of resources. If we create a situation where we deal with DNR jurisdiction in the lake (number of piers), then this group does not need to be concerned with "funneling" issues related to construction of housing landward of the shore.
  - Need to reach some understanding of what we are talking about when we use the word funneling. Funneling is the sharing of lakeshore property rights among non-lakeshore property owners. The rights run with the land. For the purposes of this group, we need an understanding of the topic, not a perfect definition. Most people think of funneling with a negative connotation, but the definition itself does not need to be negative. We are talking about rights that go with a lakeshore property.
  - If we control the on-lake congestion, density of piers and other effects of property development, there may not need to be a strict definition of funneling. But need to watch for loopholes. Need a more legal definition of what a riparian can do (piers, reasonable use and access). Can perhaps control size of boats, but are we infringing on riparian rights if we control number of boats, will the courts disagree?
  - Funneling seems to be acceptable unless we infringe on adjacent landowners. There are cases where numerous relatives put a lot of piers out, which did not affect anyone until the adjacent property owner built a large house and became irritated by the neighbors' existing uses. Problem with funneling is when neighbors don't get along. Only person that can legally put something in state waters is either a riparian or someone that the owner allows to put a structure in the public water. The immense amount of piers that some are putting into a small area is the problem.

- At what point are you legally infringing on other riparians legally?
  - Is there a single riparian right associated with a lakefront property; a right per parcel? Are multiple families sharing a single right?
  - Real estate is unique in how the law treats it. Riparian rights run with the land. Public freshwater lake laws are only concerned with where the land touches the lake. Riparian rights are a bundle of rights.

- Easements are an old-fashioned kind of funneling. In property, a landowner can only give away the rights he has, nothing more. With an easement, are you giving just the right to reach the water, to put out a pier? In contemporary times, we are thinking of piers and boats. But it used to be swimming and wading only in the past.

- Really talking about two different situations. (Ann Knotek)
    - Competing rights of riparians to share the space at the lake front. Some claim "squatter's rights" regarding who has the right to use the waterfront.
        - How far you have to stay from neighbor to not infringe.
        - What you control is proportional to how much frontage you own.
        - At what point does everyone trying to maximize their rights exceed what is laterally acceptable (how wide and how far out)?
    - Public rights get lost in the shuffle. We try to deal with them in regulations (how far out you can build a pier). Public rights go out into the lake.
        - If neighbors aren't fighting over their respective use of the lake, how far out can they go with piers, etc., without infringing on public rights to use the lake?
        - Key right being considered was navigational access when the area was originally platted. Now, in this era, do the rights extend beyond use of a rowboat or canoe to include the latest technology (trampolines, rafts, power boats, etc)?
    - We have to keep in mind other influences such as sewer systems that have changed the limitations on what and where you can build. Sewers now allow building on lots that were not appropriate for septic systems.
    - Legal aspect will only carry you so far. Need to determine what impact that translates to.

- Court decisions (Steve Lucas)
    - Considered preparation of primer on recent court decisions, but decided it may not be as helpful for the group. Speaking in general terms covers most of the basis.

- Rights included:
    - "Improvements" such as boating, hunting, fishing, water withdrawal.
    - Correlative rights – "fair share" is balanced by other owners.
    - In 1947, the law indicated that you are not just sharing with other riparians (left and right) but also with the public (vertical – shoreline to lake).

- Limitations to rights in parcels off the lake can always be circumvented.
    - The riparian rights can be shared with an unlimited number of people.
    - The issue is how that shoreline is affected. You didn't get an unlimited resource, but still have the same amount space.
    - So the issue is how you allocate the space that is there.
    - May not be able to limit the rights that have been there in the past. Courts look at plat to determine what the rights were (alleys gave right to access the water but deed may be written not to provide for piers). Depends on how deed was written. Cannot take away the rights retrospectively to give unfair bias for one person, but can control the impact on the lake.
    - Every person may have the same "legal right" to place multiple piers, but that doesn't mean it's physically possible.
    - Lots of mechanisms to determine what a fair share is regarding use of the lake. There is not an infinite share of uses.

- Department has been "funneling" by putting in public access sites. How do we determine where that use becomes a "problem"?

- Lake Lemon has been dealing with the issue for about a year.
    - Solution that will work is with the city attorneys to control through a local shoreline ordinance. Determined the number of docks on the lake. There is a berm owned by the city. May have a shorefront property but not own all the way to the shoreline. Determined that there would be one dock per 50 feet of shoreline up to maximum of 3 docks at a distance of 60 feet with up to one "T" on it.
    - Came to same conclusion after all discussion that there must be control of the shoreline to determine what is fair.
    - Grandfathered anyone who currently had more than what would be allowed in the future as new improvements.
    - Too early to make proposed ordinance public.

- Numerous issues and concerns related to funneling
    - Anything already on the lakes must be grandfathered to avoid lawsuits.
    - Direct water access is becoming scarce on northern lakes with more people. Developers buy one cottage with farmland or property behind.
    - Most lakes are out of town, so they fall within county zoning. Lot size is limited (setbacks from lake).
    - Lakes are in public trust for everyone.
    - Public ramp at Wawasee brought zebra mussels and spread them to other lakes because signage was there on flushing engines, but was not enforced.

        - Can change zoning laws.
        - Bass Lake is shallow, so staying within 150 feet for pier length was not practical. Pier size restrictions affected the amount of access for multiple property owners.
        - Example: Narrow easement beside house that was there since the land was platted. Lost in court ruling. Wanted to buy a house and get rid of an easement. Judge ruled about pier. Don't pay attention to easement and effect of more boats. Should have thought about that ahead of time, instead of going to judge to get rid of neighbor's riparian rights.
        - To stop funneling in future, use zoning (amount of frontage per house) so that it is not economical to try to get enough frontage for a large number of houses.

- Guidance for legislators – original request or assignment for the work group.
    - Legislators are hearing about funneling and want some guidance.
        - Analogous to pornography (know it when you see it, but can't define it).
        - How do we describe this issue to be responsive to legislators? Do they need help with zoning or shoreline use?

    - Congestion in the lake and along the shoreline is the end problem
        - Number of piers and boats per pier.
        - Local zoning is land use issue that is not really pertinent to state jurisdiction.
        - Some lakes have funneling ordinances.
        - Sharing DNR authority with local governments. Fair share for the developer. Does the DNR have to solve the developer's problem, if he built too much and wants too much access for the size of the lakefront lot? If he knows the guidelines, the developer knows what the limits are. Steuben County has tried to develop its own ordinance for piers because the state did not have adequate limits. Need the state to determine the lake restrictions. Leave the rest up to the county.
        - Fair share question is the local responsibility or judicial ruling. The DNR can set limits on the maximum amount of use, but would how that share is allocated be a local decision? If the buyer knows what the total available amount of use is, then he can't argue with the DNR that the share must be increased relative to the number of riparians that are trying to share a single lot.
        - Local zoning entities want guidelines from the water side to provide legitimate limits for use.
        - Everyone will challenge a specific guideline, but there is still a need for a solid base to start with that specifies limits.

- How do we focus the discussion to move ahead on these issues?
    - State and local jurisdiction
        - Take care of the DNR jurisdiction first.

    - Lake work group could facilitate discussion between state and local jurisdictions to provide guidance and joint action to deal with funneling OR should the group just look at DNR's role specific to what happens in the water, not landward of the shoreline?
    - Would like to see ways for state and local government to work together. Counties are struggling to manage these issues. Local government has jurisdiction over zoning. Mandate for lake-bound issues is within DNR. Those are the two avenues we can explore. Makes sense to continue to understand and tweak law that regulates shoreline. Difficult to discuss how local government deals with shoreline before we know what the issues are.

- May need to just talk about lakeshore congestion. More likely to make progress on this narrowly focused issue.
    - Kosciusko County presented information last meeting on whether the DNR should cede some of its authority in the water to local zoning. Prospects for pursuing that avenue can be addressed by Kosciusko officials present at this meeting.
    - Also have some information available today on shoreland zoning in other states and from the attorneys.
    - Easier to review definitions of funneling from other states than to craft something at this time. Could postpone conversation on definition of funneling and proceed to other things on the matrix.
    - Do need a common understanding on what funneling effect is, or come back to basic issue to talk about shoreline modifications.
    - Will eventually need to educate the public on these issues and will then need to be clearer about definitions.
    - Funneling is the transfer of riparian rights, but the problem is in-lake congestion.

- Can DNR cede some jurisdiction over lakes to local authorities?
    - Legal impediment is the "home rule act."
        - Indiana Supreme Court has indicated that governmental (state) unit <u>cannot</u> transfer regulatory authority to other (local) units.
            - Therefore, Steuben County cannot provide pier permits if the law provides that authority to the state under current law.
    - Developers coming before the BZA or planning commission sometimes say they will place restrictions on the number of piers within the approval for the development. But, how can they regulate use of the public freshwater lake within their zoning?
        - A developer can place limits within their covenants.
        - DNR cannot agree to be bound by whatever the local authorities and developers work out, if it does not comply with state law.
        - Can a local authority assure a developer that they can have access or use which may not be legally or physically possible?

        - Lots of local pressure on local governmental units to approve developments, and then ask DNR to "save" them by enforcing limits where the local authorities would not or could not.
        - Pressure works both ways. DNR needs local authorities to control the development because law says everyone has the right to be on the lake.
        - If the DNR does not have clear guidelines on shoreline pier density, then the DNR has difficulty related to first-come-first-served. This group must guide the DNR on shoreline use.
        - Lateral push of riparian vs. riparian vs. public rights vertically into the lake.

- Issue of transference or joint jurisdiction between state and local authorities was discussed by legislators at the last legislative study committee meeting in fall 2005.
    - Prevailing sense was that sharing authority was not good public policy at that time.
    - Expectation was to continue working with DNR to create common regulation across the counties rather than having differences between the counties.
    - Local government control will result in situations after the Town of Syracuse case. Home rule principle stands in the way of DNR ceding authority to local governmental units.
    - There is a lot of productive ground to work on together so everyone doesn't try to skirt zoning laws because they have a DNR permit. Or people saying we already promised access, so the DNR needs to provide permits.
- DNR has responsibility to protect ecological resources. These impacts are the same for every shoreline regardless of ownership. Objectives are not just a development issue, but makes sense for every piece of shoreline.
    - Set up objective standards to be applied universally across the shoreline to do what is right for the resource.
    - Addresses congestion and the symptoms.

- County planning perspective
    - Kosciusko County has not had the same pressure as Steuben County.
        - Glad that DNR is grappling with it from the lake side to handle these issues.
        - However, developer who has obtained group pier permits for proposed developments (Huffman Lake) already crafting deeds to try to get around the state regulation.
        - Need to see copies of zoning in other counties. Developers do play state and local authorities against each other (e.g., "…health department gave us enough septic permits, so county needs to approve development").

- Can Board of Zoning Appeals (BZA) approve within the criteria that are established? They can impose conditions so that project meets the threshold of criteria. BZA has more authority than Planning Commission.

- Options for local authority
    - Can have a local ordinance to set standards for land use, including restrictions on how the owner uses access to the lake. Cannot establish a standard for entire lake itself, because that is within the jurisdiction of the state. However, state and local authorities can work in tandem cooperatively. Can write site-specific rules to address concerns regarding individual property. Natural Resources Commission also can adjust to site-specific situations, such as pier length and depth at Bass Lake.
    - Conservation officers cannot issue tickets for violations of local zoning ordinance. Appeals must come through appropriate venues relative to what laws are being violated.

- Need guidance from DNR to document problems related to congestion
    - Encourage local units so that county is not accused of picking sides, but that there really is a quantitative problem related to health of the lake.
    - Provides authority and credibility to decisions that are made locally.
    - Town of Culver represents 15-20% of lakeshore. The town's motivation is to get property tax revenue, so it allows funneling. Have specifically said that town's authority only goes to the lake. Developer used claim of having permit from DNR to get approval of a development, although the DNR permit had actually not been acquired.
    - Regulate the number of piers per property and boat slips per pier. This would provide guidance for amount of development and use that is acceptable.
    - Changes from one generation to the next can result in
        - Multiple owners per property
        - Maximizing size of structure – local regulation
    - Need some consistency from lake to lake. Cannot predict future development, but can limit lakeshore use.
    - Models are available
        - Wisconsin has shoreland zoning that provides guidance to local governments. Maine takes similar action, but dictates more. (Handouts provided from Wisconsin, Michigan, Monroe Reservoir)
        - In Monroe Reservoir, used guidelines from those states as guidelines.
            - Monroe was not a public freshwater lake and was not yet developed.

            - Created environmental constraints overlay zone.
            - Minimum of 100 feet of shoreline per lot, restrictions on tree removals, access to lake and other restrictions were passed by the county. Have not noticed any legal challenges.
        - Would be useful if DNR could develop recommendations regarding use and impacts.

    - Difference between DNR and local authorities
        - DNR has mandate to protect resources
        - Counties may vary among each other and have different motivations, such as tax revenue.
        - Group could create a template as guidance to counties regarding an environmental overlay for protecting lakes.
        - Should not leave it up to the counties to determine ecological impacts. Ecological issues may not be fairly matched with other local concerns such as school funding.
        - Should not have different rules for different property owners.
        - Concern for DNR is impact on resource, not the social impact.
        - Must be science-based to have a legitimate backing for actions.
        - Cannot be discriminatory.

- Consensus from today's discussion regarding the LMWG approach to funneling
    - Home rule –authorities cannot be transferred from state to local authorities and do not recommend changes to this approach.
        - Can locals be more restrictive than state standard?
            - Local authorities can restrict use on a particular parcel as part of development approval within the condition or covenant for that specific site.
            - State conservation officers cannot enforce "illegal" town ordinances that affect lake uses (type of boats, piers) if they do not violate state laws.
            - Local authorities cannot impose tighter restrictions lake-wide to control the number of piers, because that is within the state jurisdiction.

    - Land use restrictions are under the jurisdiction of local authorities, not the DNR.
        - The state may not be able to enforce local ordinances.
        - Tighter control over land use will assist with control of lake use.

    - DNR has a responsibility to regulate in-lake shoreline congestion through regulations and to provide guidelines regarding uses and impacts for local authorities and other entities.

<u>Pier regulations</u>

- Recommended changes from 2004-05 work group efforts (handouts)

- Two options for rule amendments: One handout has only one change – winter pier removal; other set has all changes but not winter pier removal.
- Removal in the winter was considered to be potentially contentious enough that it be considered separately from the other changes. So this will be a sequence of separately considered proposals.

- Single change to require winter removal (first document)
  - Only change is in bold-face near the bottom of the first page (number 10). Adds words to existing rule – "except for a structure or a portion of a structure located within five feet from a shoreline or waterline be removed from December 1 to March 1" – which requires any structure longer than five feet to be removed from the lake and channels. Most piers in channels are five feet or shorter and would not have to be removed.
  - These are rules for a general license, which allows structures in the lake without applying for an individual permit. Can apply for a permit to leave the piers in.

- Several changes (second document)
  - Subsection 1.b.2 – strikeout for consistency in rule language (conformance change) to remove the words "public freshwater." Does not change the intent.
  - Subsection 1.b.3 – Add words "or public use"
  - Subsection 1.b.5 – conformance change to "not extend more than 150 feet from shoreline or waterline"
  - Group of changes to clarify what is allowed using diagrams and captions – diagrams that currently exist are relocated to directly follow their appropriate captions.
    - Language in Subsection 1.b.6 changed because it is repetitive with the caption language. Strikes "not extend over water that is continuously over 6 feet to not extend more than 150 feet from legally established waterline" but adds "if a pier conforms with the following descriptions and illustrations."
    - Relocation of captions and existing diagrams in Subsections 1.a, b & c

  - Subsection 1.b.9 – strike word "acquiescence" due to confusion over meaning and replaced with the word "permission" to "be placed by or with permission of the riparian owner."

  - Subsection 1.b.9, second sentence "if a pier *[is to extend from the land of another riparian owner]*, permission must be obtained from the riparian owner of the land from which the pier extends."
    - Question about permission from riparian owner regarding another structure, such as swimming raft, boat lift, etc., if it is not a pier.
    - If a person wants to put a swimming raft away from the shoreline, it is an issue between DNR and that person regarding where the raft goes. But if the pier extends from the land, must get permission from

riparian owner. If you don't have riparian rights, you cannot put in an anchored structure offshore.

- Need to clarify the specifics of the second sentence regarding "from which the pier extends."
    - Possibly there to set boundaries laterally.
    - Lots of people don't own property on the bottom of the lake where structures are anchored.
    - Cannot install a pier extending from another person's property without permission from the property owner.
    - Specific class of what has been generally described in the first part of (9), but additionally requires that a pier must have permission from the landowner from which the pier extends.
    - Allows piers placed by people who do not have riparian rights, but who do have permission from the riparian owner.
        - A lot of times the issue is *who is the riparian owner* because the access (street, easement may be owned by county or all parcels may have been constructed decades ago).
            - If that is the question, how do we know who has permission?
            - Where there is no conflict, the DNR is not anxious to deal with it.
            - Will this language change mean that these pier owners will <u>have to ensure</u> that they got permission from whoever the owner is? If so, if the legal owner is unknown, the pier cannot be placed.
            - Why have we gone from "acquiescence" to "permission"? Showing proof of permission could be problematic in cases where the legal owner is unknown. Currently, the DNR does not address a situation where no one is complaining.
            - If locally the property owners work it out, it's not a dispute. If they don't work it out, it becomes the DNR's responsibility to deal with the dispute.
            - The courts have addressed the question when the language in the easements specifies riparian rights (e.g., piers, lake access). Need to look at "parole evidence" regarding how people have treated the rights that went with this property or the original intention of the author when the document was written.

- Current rule says the pier must be placed by *acquiescence* of the owner.
    - Sets the bar low in terms of approval, so that as long as people living around that pier were not dissatisfied with pier placement, it was not a legal issue (other than environmental or safety reasons, when the DNR could get involved).
    - But, if there was a situation where there was a dispute about placement of a pier interfering with riparian rights, the DNR could go through a process to require an individual permit.

- Could word it to state "acquiescence <u>or</u> permission" which would solve the problem of DNR requiring people to remove piers just because they could not prove that they had gotten permission from the legal property owner.

- Format concerns
    - The original recommendation moves language around to keep acquiescence in section that mostly addresses piers.
        - Does moving "acquiescence" to the section addressing piers change the force of dealing with newer structures, such as large swim rafts?
    - Need to reinforce that ALL structures must require acquiescence, not just piers.
        - Most rules are designed to go from general to more specific. Needed to move part 1.b.6 to be with 1.c. However, you could accomplish that by making it 1.b.11 so that the pier section would be at the end rather than in the middle of Subsection 1.b.
        - Subsection 1.b.9 was intended to apply to all structures. Therefore, not sure that the second sentence in 9 adds to meaning and may potentially detract from it.

    - Amend recommended language:
        - Considered, but rejected option of deleting second sentence in Subsection 1.b.9 and moving all up and moving Subsection 1.b.6 to the end.
            - Only need to state once that acquiescence or permission is required.

        - Or, maintain second sentence "to distinguish that this is a structure attached to the shore" (not anchored lakeward).

            - Include "acquiescence or permission" and make it a separate number.
            - Could make it one sentence stating "be placed by or with the acquiescence or permission of landowner."

        - Move all sections up and move Subsection 1.b.6 to the end.

        - New statement number 9 would put "acquiescence or permission" throughout.
            - Leads people to get permission if they do not understand what acquiescence means, but allows acquiescence as a requirement.

    - Note that rafts anchored to the lakebed also need to be within 150 feet. All temporary structures within that distance are regulated. No structure can be anchored more than150 feet into a lake without a permit.

- Subsection 1.b.10 – not encircle shoreline

- Subsection 1.b.11 – not obstruct free flow of water or trap plants or sediments (netting down side of pier)

- Diagrams in their original placement within document crossed out – deletes placement in document of original diagrams and captions. That text and the illustrations were moved as a whole within the document.

- Subsection 1.c.5 – letter change due to placement changes. Placement of word "water line" is changed for conformity to "extend no more than 150 from shoreline or water line" which is a defined term in the Lakes Preservation Act (matches the statute).

- Subsection 1.c.6 – same change "landward of the shoreline or water line"

- In the digest at the beginning of the document, the reference to retention in a lake during the winter should be removed because that is not addressed in this version.

- Consensus to forward both documents to the Natural Resources Commission.
    - LSA requires that one of the documents be submitted first. Whichever document goes second would amend language that was given preliminary adoption at a particular time and location in the regulations.

<u>Examples of Zoning Ordinances and Lake Districts</u>

- Two handouts from Lake Maxinkuckee on zoning ordinances.

- Kosciusko County consideration by a study committee of the Area Planning Commission
    - More restrictive code than other residential districts
        - Three public meetings, up to 100 people at most recent meeting
        - Dialogue in public and local papers
        - Committee is being reduced to smaller number of people (dozen) who will finalize the proposal for the plan commission to consider
        - Proponents of establishing a lake district as a different approach to landward issues that the group discussed. Hope that Kosciusko County can be a leader.

    - To what extent is there agreement on aspects of the proposal and effect the ordinance change would have on zoning?
        - One residential district is defined. This would create a second district.
            - As it is presently drafted, would include the area that is currently residential.
            - Permitted uses would be significantly less commercial use than is permitted.
                - First half mile outward from a lake would become light residential
        - Can e-mail proposal and brochure with more detail.

        - Why focus on commercial aspect as opposed to building restrictions on slopes, soils or stormwater management?
            - Topography in Kosciusko County is quite flat. There are some things initiated to tighten the erosion control ordinance with regard to small construction sites.
            - Recognized that lake shore areas have developed or are most desirable as residential areas. Have no objection to commercial development, but it tends to be problematic at water's edge (manufacturing, retail). Could be within walking distance or slightly farther away.
            - Characterized as "commercial" but need to read the detail of what is in the proposed ordinance.

        - From an ecological point of view, to maintain the functions of shoreline and riparian zone, need to maintain native vegetation and trees. Are there any land-clearing restrictions?
            - Not currently. Hoping that once the lake residential district has been accepted, want to consider additional factors. Don't want to make it so complicated at the beginning that it does not pass.
            - Suggest looking at Monroe County restrictions to consider other factors.

- Steuben County has a proposal on how to measure shoreline, particularly the normal shoreline relative to the channels.
    - Restriction on how much lake frontage is needed. If area involves a narrow channel, this allows a lot more shoreline frontage. So, should be a different way of measuring frontage due to pier problems.
    - If the channel is an average of 100 feet wide or more, can count. If between 50 and 100 feet wide, measure only half of shoreline to restrict number of homes. If channel is less than 50 feet wide, the distance across the mouth of the channel is the lake frontage.
    - Addresses concerns along "artificially-created" channels.

- State Planning and Zoning Center in Lansing (handout)
    - Have evaluated the "carrying capacity" of a lake to determine what a lake is capable of supporting as sustainable use.
    - Use this type of analysis as a foundation for developing regulations for individual lakes on type of shoreline development that occurs.

- Funneling ordinance examples from Michigan (handouts)
    - Local government in Laketon Township, North Muskegon, Michigan
        - Ability to enact local ordinance based on state law referred to as "Township Zoning Act"
        - Funneling standards
            - One dwelling unit per 100 feet of lake or stream frontage and some footage for common area.
            - Not more than one dock space for each 100 feet of common water frontage.
    - Another township (Independence) in Clarkston, Michigan pursuing an ordinance and conducting an analysis

- "Lake Access and Overcrowding" (handout)
    - Appendix that summarizes carrying capacity study
    - Cites court cases in Michigan that led to State Supreme Court confirming that townships have ability to regulate boat docking under two state laws and can control number of boats on a particular lake in accordance with a carrying capacity study.

- "Managing Piers and Wharves" (handout)
    - Wisconsin state law on piers; municipalities are allowed to enact ordinances for piers.
    - Enforcement is done locally.

- Keyhole Development (Funneling) Fact Sheet (handouts)
    - Property development on "back lots" that are not shoreline riparian property
    - Options available in Wisconsin to manage development
        - Require shoreline frontage equivalent to property width

    - Establishing minimum width of access lot in Price County, Wisconsin, and cannot provide access for more than four back lots (off lake)

- Carrying Capacity
    - Lake Ripley Watercraft Census and Carrying Capacity Analysis, Wisconsin (handout)
    - Means of approaching the longer term concern of when to restrict number of piers and boats on lake.
    - Close the access when boat capacity is reached
        - Similar done at Griffy Lake, Indiana, to maintain aesthetics by controlling number of boats.
        - Easier to manage where there are no riparian owners and a public entity owns the land and water.
    - DNR public access sites are self-limited by only allowing a certain amount of parking.

- Utility of documents and information to LMWG
    - Could use this material to develop guidance for local authorities (counties and municipalities).
    - Pier and boat numbers
        - Reference the capacity numbers in these documents as starting points for number of piers and boats that could be used in DNR regulations.
    - Average frontage for home owner
        - Estimated at 40 feet or more. Easements can be much smaller.
        - Town of Hamilton, Indiana in Steuben County proposed a shoreline limitation on Hamilton Lake for condominiums.
        - Did a survey and determined that average resident had 60 feet of shoreline. First home required 60 feet, second at 30 feet and additional at 20.
        - Steuben County required 100 for first home, 50 for second home and 25 for each additional.
        - Reduces average to 30-35; inadvertently created motive to create bigger developments to squeeze more into frontage.
    - Central sewage allows larger homes to cover more of the lot.
        - A 50-foot wide home with only a few feet of setback.
        - Does not allow room for outdoor activities on their lot, so they put in larger piers and patios on the pier.

Piers

- Expand to all temporary structures or just piers?
    - If the issue is space in the lake, should include piers, rafts, trampolines, boat lifts, patios, etc.
    - If the focus is land-based, then piers are the primary issue to limit "funneling" access.
    - If you control all riparian issues, you do control funneling. Should direct LMWG discussion to total usage by any riparian in front of their property.

        - Limiting to funneling can create undue bias. One property owner could put out a number of large structures that have a significant impact on the lake through overuse and congestion.
        - Two approaches are closely linked.

- Cumulative effects
    - Should look at cumulative effects of these issues on the lake. Difficult to say where the cumulative impact has affected the lake. Ultimately, may allow large piers in some situations but cannot continue to allow that everywhere without undue impact. Need some guidance.
    - Beach areas or limits on areas not requiring permit for aquatic plant control as 625 square feet or 25 feet along the shoreline.
    - Need logical or legal precedent to determine restrictions.

- On what are restrictions based?
    - Consider
        - Science
        - Economics
    - Could Monroe County zoning be imposed on lake fronts?
        - The land owner has access to the lake.
        - May not be able to develop the same level of restriction on public freshwater lakes.
        - Quality of life and reservoir is important. County commissioners charged the group to protect the reservoir as a significant resource.
        - Maine has wonderful legislation, but many of the regulations are protecting lakes that are not built out yet. Price County, Wisconsin ordinances have authority through state enabling legislation.
    - Shoreland zoning affects private property to protect the public trust and natural resources. There are benefits and responsibilities of living on the lake shore. Didn't have an existing group of residents on Monroe. Did have to grandfather existing uses.
        - Effect of changes on the lakes since the 1970s is overwhelming, but the next stage of development may not have such a significant effect.
        - Does rezoning change the use? Need to draw a line someplace.
        - Shoreline redevelopment can be affected by zoning. Allow some percentage of greenspace that is not built out throughout the whole lot. Preventing them from doing more harm than the public good.
        - Planning and zoning are not going to be able to create setbacks along lakefront, but identify natural functions that can be maintained by keeping vegetation.
        - Separate issues from in-lake congestion.

    - Riparian rights
        - Only give them access as "fair share"

        - What is a "reasonable use" has changed over time – originally used for navigation. Now the primary use is for recreation, which is a moving target.
        - People who are coming onto the lake have an increased expectation of desirable uses of waterfront.
        - Restrictions based on proportionality – square footage, number of piers.
    - Could obtain methodology to determine how to judge capacity.
        - Physical disturbance of most critical part of water resources.
        - How to quantitatively, scientifically measure that impact as opposed to a measure of "reasonable" use
        - Fights are about divvying up space between two owners, not actually a disagreement over what is "reasonable" or "harmful" as opposed to just drawing a line in the sand.
        - The amount that is scientifically defined as harmful may be significantly less than what currently exists or is allowed.

- Reduce the issues that complicate the matter
    - Density – how many boats are parked per square foot of lake?
    - Funneling provides lake access, but access is not really the issue. Legal principle of public access to the lakes, first and foremost. Access and capacity for recreation sets up a scenario to let the baseline argument shift to carrying capacity and human capacity.
        - Need to keep focused on shoreline capacity, not nonriparian lake users.
            - Public trust doctrine is about providing nonriparian access to the lake.
            - Doesn't matter if there are 500 houses leading to one lot or 500 houses along the lake; the issue is impact on the lake not where they live.
            - Need to focus on impact to the littoral zone.
    - Group agrees on the need to address impacts to lake, not off-lake land use.

- Carrying Capacity
    - Analysis in Michigan does take everything into account as a step-by-step process to establish a maximum number of boats accommodated before water quality and safety are seriously threatened. Allocation to riparians or nonriparians with lawful access.
        - Public ramps
        - Boating regulations
        - Boat ownership by riparians

    - Need to calculate carrying capacity.
        - May find a sustainable number across the lake, but higher percentage in one particular area may not be sustainable.

    - Part of carrying capacity can include specific aspects (e.g., boats in shallow water).
    - Have rules now that zone lakes for carrying capacity (e.g., Prairie Creek speed restrictions; Sullivan Lake site-specific regulations on boat use).
    - Different legal standards for reservoirs than for public freshwater lakes that add to complexity.

- Notion that there exists a scientifically-based method for estimating carrying capacity is new. Challenge to determine that analysis. Kosciusko County watershed coordinators could get a study done on the lakes to determine where that leads the overall discussion.
    - Directly related to the number of boats on the lake, relates to where the boats are stored or moored and what types of boats.
    - Piers and boats are related, but not the same thing. Could suggest reasonable maximum right to temporary structures placed under a general license.
    - Maximum pier length is 150 feet with nominally 4 foot wide pier. This is 624 square feet. Could express as maximum number of square feet then let the pier owner arrange it however they wish. Then regulate the number of piers as reasonable.
    - Not just an issue of piers and square footage. Need square footage of littoral zone per lineal foot of shoreline. Raft, floating islands, etc., can block out all light into water in front of a property. Controlling number of boats would include area shaded by boat itself.
        - Need to address damage to littoral zone due to shading caused by piers in Wisconsin study.

- In-lake zoning parallel to existing regulations

<u>Economic and ecological value of Indiana lakes</u>

- Table of studies on funding (handout from Carol Newhouse, IDEM)

Future meeting and agenda

<u>Timing of next meeting</u>

- Preparation of any statutory changes needed for Natural Resources Study Committee before May. No statutory changes are currently under consideration by LMWG. Rule-making could be done on any schedule.
- If bill to establish LMWG passes, then per diem would only be provided for meetings up to three times per year (every four months). The group could meet in addition to that, but without per diem.

- Next meeting on **Thursday, April 6 at 9:30am at Salamonie Reservoir**.

Agenda for next meeting

- Focus on littoral zone activity within 150 feet of the lake shoreline
    - Members encouraged to prepare numbers or recommendations for in-lake regulations

Indiana Lakes Management Work Group
Meeting Notes

Salamonie Reservoir Interpretive Center
April 6, 2006

Group members present:

Pete Hippensteel
Jill Hoffmann
Richard Kemper
Jeff Krevda
Bob Madden
Jed Pearson
Ralph Taylor
Dave Tyler

Guests present:

Ann Knotek, DNR attorney
Jim Sweeten
Dave Heckaman
Holly LaSalle
Ron McAhron
Jim Ray, facilitator
Gwen White, recorder

Handouts:

Senate Enrolled Act (SEA) 253
Senate Enrolled Act (SEA) 94 – Indiana Lake Management Work Group (ILMWG)
Natural Resources Commission Agenda Item # 11 – Lawful Nonconforming Uses
Matrix on Funneling – Issues, End Goal, Strategies, Actions

Workgroup Member Actions:

Communications with lake users

- If the administrative rules pass the final signature processes in the Attorney General's and Governor's offices over the next few weeks, lake residents would have until January 2009 to register structures that are lawful nonconforming uses. This does **not** mean that all temporary structures would have to be registered.
- DNR requests input on methods of communication and questions that the department needs to address new statutes and rules on seawalls behind shorelines, piers, and registration of lawful nonconforming uses.

Governor's appointments as ILMWG members

- Recommend that anyone who wishes to be appointed or reappointed to the ILMWG either contact DNR staff to indicate interest.

Prepare resources for reconstituted ILMWG use

- Identify resources needed for developing a foundation to determine lake carrying capacity for boats and temporary structures based on science and social factors:
  - Records of current boating uses (boat registration, excise tax), information from department staff; other expertise; surveys of users; approaches from other states.
  - Studies from other states on impacts of restoration or alteration (literature on impacts of temporary structures and boats; scientific connections between lake use and ecological impacts).
  - Literature review of various boating and carrying capacity techniques (report will be forwarded by Jill Hoffmann).
  - Consider conducting a lake capacity assessment in Indiana.
  - Prepare this information by July for the reconstituted workgroup.

Approach to developing limits on boats and temporary structures

- Narrow guidance to 3-5 major critical factors for ease of understanding and administration.
  - Consider using categories currently in regulations that already have scientific basis (lakeshore construction; lake size limits on boat speed; septic/sewered conditions).
  - Develop specific proposals for rule changes and method of enforcement.
  - Pursue scientific data to justify proposals to the public.

Next meeting: Thursday, June 8, 2006, 9:30am, Salamonie Reservoir Interpretive Center.

Notes

SEA 253: Seawalls behind shorelines and other issues

(Presentation by Ann Knotek, IDNR attorney)

- Goes into effect July 1, 2006.
- Need to get word out to contractors, agents, and landowners; contractors and agents have more responsibility than in the past, given the way the statute is worded.
- Some issues with language in areas of special concern.
- Assist in administration and provide objective standards, including for piers, platforms, shore stations, interests of landowners, and provision for general licenses.
  - Puts more responsibility on DNR to take action in this area.
  - Will need to adopt rules to administer the statute.
    - Can impose a solution in cases where there are disputes on location and common use of piers.
    - DNR will primarily address situations where a dispute has been brought to the department's attention.
    - May be getting an agreement between the adjacent landowners, but the result may not be acceptable to others who are using that region of the lake.
    - When criteria are placed on a case-by-case basis, it may not adequately take into account cumulative effects.
      - When to draw the line to avoid losing the major natural qualities of the lakes.

    - May need to develop some overall criteria to mitigate the impacts of individual decisions.
    - This is one part of a broader picture; how much of that broader picture can be addressed within the authority of this statute.
    - Standards may provide for common use where the standard is needed for individual landowners.
- Public trust is the anchor of the original lakes preservation act statute; usually public trust is involved at higher levels; within resolution of the cases, the department attorneys always try to introduce an element of the public trust.
    - Sometimes there are situations where many parties get involved in a case; when those issues are sorted out, the department may be brought in to approve a solution to determine what will go where.
    - This statute is good law that puts DNR in a better position to accommodate public trust issues.
    - Public has a right to use the lake shoreline to shoreline; lots of uses beyond just high speed boating in open areas of the lake; public trust must include the linear space along the shoreline.
    - Need to find common ground and make as many happy as possible; lots of situations where several people commonly using one larger pier is better than for each to have a smaller pier.
    - Have taken steps to develop line of authority to say that there needs to be navigational access to the shoreline between structures, such as allowing 10 feet between; may be enough for smaller boats, but not for access of larger boats; need to determine guidance from the judges.
- The concept is not new that DNR has authority to resolve disputes.
    - Mediation process historically happened off to the side; lots of aspects of the disputes did not involve the department until the middle or end of the case when property issues had been sorted out; then the property owners asked that the DNR be enjoined to provide input on resolution of the case.
    - A lot of these cases are decided in circuit court.
    - Brought before the Natural Resources Commission (NRC), then mediators from the Shared Neutrals Program get involved as attorneys who work for the state, but not necessarily from the DNR; these mediators are free to the people, so they do not need to hire attorneys.
    - A lot of this is already in place, but this gives an indication that in a dispute, more weight will be given to involvement by the department.
        - Specifically allows for DNR to establish a rule allowing for common usage of piers and impose sharing on the landowners rather than having to allow multiple piers.
    - Question from audience:

        - DNR did not allow a concrete seawall because there was no evidence of a seawall being there on Tippecanoe; a year ago, a concrete seawall was placed there.
        - Nothing in the law states that a concrete seawall could not be put in if there was not a seawall there in the past.
        - Worker's compensation for pier contractor tripled because of a situation with glacial stone; need to have a minimum size to avoid tripping and breaking an ankle or rolling and crushing a finger.
        - Interested in finding out what laws address placement and materials for seawalls.
    - Staff answer:
        - These particular statutory changes do not affect questioner's concern; it is under a prior section of the law; could address this in conversation with DNR attorney.

- Rules on retaining walls within 10 feet of the shoreline may be needed to administer the statute, especially to address areas of special concern.

SEA 94: Re-establishes Indiana Lakes Management Work Group

(Presentation by Jim Ray) – handout

- 26 members, including 4 legislators (one from each party, each chamber)
- Other 22 members appointed by Governor as indicated in the bill
    - Nine are representatives of people interested in lakes
    - Others appointed based on affiliation
    - Couple of at-large members.
- Not sure how process will work for appointments.
    - Staff would like to encourage each person to request an opportunity to be re-appointed; DNR may be able to suggest names to the Governor's office; suggest either contacting staff or directly contact the Governor's office.
    - Appreciate this group participating on a volunteer basis during recent meetings.
    - Not sure what the timeline will be for Governor's appointments.
- Legislation calls for the Senate to appoint a member as the ILMWG chair by July 1.
    - Existing group can continue meeting in the interim.

Rule change recommendations

- Two rule packages were forwarded by this group on placement of temporary structures and general licensing requirements.
    - Two approaches
        - One required removal of certain structures in the winter months.
        - Other rule proposal presented various changes.
    - Both went to NRC in March.
        - Need financial impact and small business impact to be written.
        - Public hearings will be scheduled several months from now.

- Rule on lawful nonconforming uses ("grandfathering" structures) - handout

- Final adoption by NRC of rule package submitted previously.
    - Fairly extensive report on public hearing that was in Syracuse this past winter.
    - Handout information is also located on NRC website.
- Submitted to the Attorney General's office for its approval; some caution that they have sent back rules recently.
    - After AG's approval, will go to Governor's office for approval.
    - Published in Indiana Register.
    - Becomes effective 30 days after publication.
    - Would have until January 2009 to register structures.

- Confusion about what this means among landowners on lakes.
    - Need to get information out to contractors, landowners, ILMS, etc. to deal with the questions before the clock starts ticking, so that no lake owner will be surprised by this rule.
    - Don't want to see a mad rush in December 2008 to register structures.
        - Need to clearly describe nonconforming uses, both obvious and less clear cases.
        - Will be 150 feet for new people; older cases with structures longer than 175 feet will also be included.

- Need input from LMWG and others on methods of communication and questions that the department needs to address.
    - Condensed written version in lay terms to present this to the public; need a synopsis with the DNR interpretation, so local groups do not need to try to figure it out.
        - Press release for local newspapers.
    - Must distribute during summer months.
    - Posted to department and association websites, newsletters
        - Implement through existing communication tools used by lake associations; associations disseminate information to large numbers of lake residents.
        - Need mailing lists of officers, which change frequently, in order to distribute this information through those contacts.
    - Real estate professionals
        - First point of contact for people who want to buy lake property; realtors get paid when the sale is made and may not want to say things that could interfere with the sale.
    - People who are not members of lake associations
        - Brochure for people who do not get association information or who do not have access through computers, especially during summer when they are at the lake.
        - Majority of people who may violate the provisions are unlikely to be members of their associations.
    - County government
        - Information link on local government websites.

        - Law enforcement
            - Need to get word out through whoever administers the program.
            - May not have the staff and expertise to provide the communications vehicles; need to work with the department communications staff.
            - Need to provide input on content.
            - Officers may present information as they meet with lake associations or other local groups.
            - Guest comment: DNR doesn't keep a daily log sheet on complaints of violations.
        - Contractors
            - Could put information in billing statements for customers of pier-removal businesses.
            - Need to provide clear information, not just a copy of the rule.
            - Pier contractors could help their customers fill out applications for nonconforming uses (e.g., piers over 150 feet long).
        - Need to communicate that this does NOT mean everyone needs to register their piers.

    - Database
        - Department doesn't have a database on previously grandfathered structures when the department tried to bring people into compliance; existing information is in a file cabinet in Law Enforcement District 1 headquarters, copy to Division of Water and Attorneys
        - Records need to be held locally, not just in central office in Indianapolis.
        - Internet can make everything local, but the department still has field offices that do not have computer/scanning capability (problem for DNR).

<u>Funneling</u>

(Summary by Jim Ray - matrix handout)

- Agreed to not necessarily define funneling but look at effects of the activity.
    - Not addressing activities landward of the shoreline, but focusing on perimeter of lakes.
    - Impacts of activity that affects the overall quality of life for lake users and ecology.
    - Solutions to problems in that 150 foot zone.
    - Provided approaches from other states at previous meetings.
    - Did not settle on particular ideas, but asked members to contemplate issues and return with suggestions for solutions.
    - Continue discussion in this meeting; additional materials are available, but staff does not want to steer the group in any particular direction.

- Approach to dealing with these issues
    - Almost impossible to eliminate linkages between lake use and local zoning
        - Jurisdictions come into conflict with each other.

    - Continued legal action because there is no clear linkage between administration of these two areas; should not assume these are never going to be linked
    - At least need cross-communication between zoning and lake use.
    - Developers obtain state permits, and then use those as leverage with local planning or vice versa (e.g., have approval for development, and then request large pier space to accommodate residents' use).

- Agree that the land/water connections can't be ignored, but at previous meeting, the group agreed that the ILMWG would focus on control of actions occurring within the lake.
    - The group has more authority to provide suggestions for DNR and state jurisdiction rather than local administration.
    - Must realize that land issues play a role and will ultimately have to be linked back together.

- Start with state-level guidance
    - This group can provide the "engine" through the broader view of state jurisdiction, which can be followed by the "train" of local authorities; shouldn't get the caboose ahead of the engine.
    - The group could provide the context by defining state authority.

- County planning commissions
    - May be far from informed about lake environmental issues and may not be prepared to accept the link between land activities and lake ecology; parochial or simplistic view.
    - Much to be done with regard to rules and procedures relating to the littoral zone.
    - Every structure or invasive species put into the lake by humans tends to be disruptive to the natural lake environment; they all have a price.
    - Cannot fail to communicate the importance of what happens landward in development and utilization with a profound effect on the lake environment.
    - Two facets of the same problem that do not have a well-established link.

- Not prepared to take a broader view now, but cannot lose track of that link.
    - The ILMWG could say some things about the link between shoreline activities and lake ecology.
    - Don't just focus on pier configuration, but also tell local authorities why these issues are important and how they relate to local decisions.
    - Local authorities need to understand purpose of state jurisdiction, even if they don't directly regulate it.

- Environmental overlay for Lake Lemon currently under review and proposed shoreline ordinance in Monroe County.

- Dock length, number of boats on a dock, how many docks based on lineal footage of shoreline.
- Do not currently have a funneling problem, but interest on land development adjacent to lake is there.
- Property values have quadrupled, so it's just a matter of time for multi-family dwellings.
- Need to anticipate the problems in order to solve them most effectively.
- Shoreline controlled at Lake Lemon
    - One 60 foot dock with 4 boats for first 50 feet of shoreline.
    - Another dock for every 50 feet
    - Maximum of 3 docks and 12 boats
    - About 220 new single-family dwellings around the lake.
    - Includes provision for nonconforming use.
- Must control the shoreline to manage the issue.
- Will find out in hearing process what the public thinks.

- Two different philosophies:
    1) Water side is addressed within public trust doctrine.
    2) Landward, the landowner's rights (fee simple title holder) take precedence.
    - Due to financial interests, will not stop condominiums; practical reality is that public trust can be protected only by regulating how the shoreline and lake are used regardless of land development.
    - Lake property expectations are defined differently today than they were 30 years ago; have moved closer to understanding the issues and working toward the same goals.
    - Effective communication with local authorities is an element that the group has not adequately addressed.
        - Collaboration to get more effective bang for resource dollar.
        - Can draw the same parallel to recommend that the department, universities or others be assigned to provide information on the shoreline and drawing together the two competing philosophies.
            - Local authorities need to understand the differences in basic philosophies and why the DNR does what it does.
            - Need to put together a presentation to transfer that information to the average decision maker in the relatively few counties that have public freshwater lakes.
            - Will provide a better working relationship and understanding of the public needs.
    - Regulation of authority will come through giving tools to the department.

- Community interest vs. public trust
    - Lake Lemon is working with property owners who are members of the conservancy district, so they can agree to regulation that is in their mutual interest as a community.
    - Public freshwater lakes present a different situation because there may be a perception of competition between the lake residents and the public trust.

        - People do not want other people to come to "their" lakes and invade their area; however, this area is a state area that belongs to the public.
        - Need to look at what is best for longevity and maintenance of the lakes.
        - Lots of issues with large homes on existing septic systems; huge issue compared to funneling.
        - Bolster existing laws; define shoreline issues and protect the lakes; then counties would have to follow suit; otherwise, group is just being used as pawns to work on behalf of property owners rather than public in the state of Indiana; current discussions are saying that they are taking an approach to make water quality better, but in reality the approach is to protect interests of local lake residents that limit use of lakes by the public.

    - Guest comments: Linkage between land use and water quality
        - There is a back lot limit proposal in Kosciusko County and elsewhere
        - Do the proposals that base regulations on amount of linear shoreline make small lots nonconforming uses?
        - State law on structural and lake habitat requiring an amount of linear shoreline per lot or unit.
        - Local zoning issues and view in line with the other homes; only can expect a view straight out; had a nice park where homes were built back.
        - Conservancy districts were formed to put sewer systems in, which allows a bigger home on smaller lot or more homes in given area and funneling.
        - Lake lot owners put in a big house then want a big pier.
        - Developers building condominiums had 500-1,000 feet, which allowed a lot of units.
        - Hamilton Lake had a lot of marsh on the north end.

    - Septic systems and sewers
        - Biggest detrimental effect to have septic systems.
        - Sewers do bring lots of development; need to anticipate and control impacts.
        - Need to determine how to control new docks and boats with new standards for shoreline control.
        - Sedimentation and bad septic systems are major problems; need remote package plants or something to deal with failing systems.

- Logical and feasible approaches for Indiana
    - Literature review of various boating and carrying capacity techniques (report will be forwarded by Jill Hoffmann later).
        - Calculation differs by lake lake-specific characteristics
            - Carrying capacity started as an ecological concept
                - How many animals could be sustained by an area.
                - But with humans, social perceptions may make calculation of the number more complex.
                - Need to determine the use of the calculated number.
                - What if the lake is already at a maximum?

- Factors
    - Subtracting no-wake buffer and beaches to get boat capacity
    - Shoreline development factors – bays and coves.
    - Shallowness ratio – some areas that are too shallow for boating could be subtracted; more shallow lakes have more chance for ecological impacts; shoreline capacity before ecological damage occurs.
    - Parking area
    - Social factors
- Zoning or buffering of activities that caused the capacity problem

- What would be the foundation for determining the carrying capacity?
    - Ecology or other social bases
        - Impact on human perceptions of the quality of recreational activities would be a very different discussion than
        - Basing determinations on damage to shoreline ecology.
    - Need to consider feasibility of enforcement
        - Idle zones imposed by lake depth
        - Limit areas that could be used by particular watercraft
            - Use of personal watercraft
            - Huge boats with deep draft
    - Enforceability determined by one key factor – strongest or weakest link in the chain.
        - Navigational issues as central focus for approval of piers
        - Multiple bases – weed control (square feet per individual shoreline); pier space allowed per lineal foot of frontage.
            - What are the 3-5 factors that should be in the development standard for shoreline regulation?
            - Understood by the public and regulatory agency
            - Simple and straightforward.
            - Balance between what is enforceable and commonly know with what we are trying to accomplish.

- Factors for standard regulation
    - Consistency across lakes or individualized lake-by lake
        - Could the same standard be applied across all lakes or is it feasible to individualize it for each lake (availability of information)
        - Be consistent with seawall regulations that are the same from lake to lake, based on sensitivity of the area (significant wetland or developed shoreline).

    - Lake depth – impact of power boats
        - Lake Ripley (Wisconsin) study deals with boat carrying capacity; issue is almost always power boats.

        - If all lakes were great depth with little littoral zone, safety issues would create a self-regulating situation.
        - Link between power boats, speed, size and horsepower related to ecological impact in shallow water.
        - Have technological capability to measure water depth.

    - Lake size – already a precedent
        - High speed boating based on lake size ("ski lakes").
        - May assume larger lakes have greater depth; may need to refigure the area of the lake by taking shallow depth into account.
        - May need to expand this to other types of recreational use.

    - Congestion can be self-regulating
        - Manages itself – not fun to ski or use a personal watercraft when the chop is high; people go back to idle zones in coves for quieter activities.
        - Regulate area to affect the activity going on in the lake.
        - Regulate shallow zones to reflect harm and effect on the lake.
        - Boat characteristics may limit use
            - Number
            - Type
            - Size
            - Won't run a large boat on a small lake
            - More typical to run boats on a holiday

    - Process
        - Identify what characteristics could be the basis of regulation; take some considerations off the table.
        - Existing and new mechanisms - use existing concept of ecozones; consider adopting new approaches.

- Basis for justifying the steps that are proposed
    - Determination of the formula based on science and social factors.
        - Need to have a rationale, such as a study showing what point has been reached.
        - Constituents on public freshwater lakes are all users in Indiana, not just lake or conservancy district residents.
        - Relatively easy to understand and can be quantified.
            - Data show water depth, horsepower, and shape of the boat.
            - Speed limits based on water depth.
            - Marking the areas with buoys would be difficult, but could develop charts to show where particular activities are permitted.
            - Enforcement would have to be approximate.

    - Lake Lemon as example to determine the carrying capacity

    - Have not done a study.
    - Control capacity by parking spaces at public ramps.
    - Know number of private docks.
    - Number of annual resident boat stickers sold.
    - Observation of busiest Saturday in July appears to indicate there's still room for more boats, based on safety.
    - Trying to anticipate and implement preventative measures for the future rather than waiting until there is a problem.

- Shoreline situation is different than congestion on open water.
    - Immediate concern of impact on shoreline.
    - Can issues related to open water boating and shoreline structures be separated? Yes, first is related to all users and second is primarily lake residents.

- Trends over time
    - Channeling is a type of funneling curtailed during the 1960s.
    - Tremendous change in amount of shoreline impact within individual lots that may exceed what is happening by funneling in some cases.
    - Therefore need criteria for each citizen.

- Vulnerability to lake and land use affects
    - Lake Gage example
        - Entire shoreline converted to some kind of recreational use; no natural shoreline left for at least 30 years.
        - Need to determine what the ecological damage is; the lake is one of the top four lakes by water quality,
        - Need to know how lake use affected water quality
            - Over what time scale
            - Kettle lake with steep shoreline
            - Fishery differs (supports trout)
            - Watershed land uses
        - Vulnerability to effects
            - Some lakes with higher development have better water quality; other lakes are less developed and severely affected.

- Relation of boat capacity to funneling
    - Impacts in shallow waters is not as closely related to original charge of looking at impacts of funneling.
    - By limiting lake use, effects of funneling may be controlled.
    - Focus on long-term impact to lake resource, rather than particular activities of shoreline users.

- Information sources

- Records of current boating uses
    - Boat registration
        - Bureau of Motor Vehicles (BMV) has records on all boat ownership and address (may be primary residence not address of cottage); not sure if the data can be sorted and provided to the ILMWG.
        - Could use boater registration information to determine user and residence.
    - Surveys on the lake, such as creel surveys
    - State excise taxes – county loses township collection information when the county gets the funds back.
- Boats are mobile – where they are registered is not necessarily where the boat is used.
- How would the information be used for decision-making?
    - Formula to compare impact on resident and non-resident boaters.

- How to address what is occurring in near-shore area?
    - Impacts due to surface area and shading
    - Broader issue of protecting the lakes and public trust doctrine.
        - Human inputs to lakes – temporary structures and power boats (ignore non-motorized).
            - Use of power boats.
            - Progress on temporary structures – piers and playthings.

- Need to establish stringent limits on temporary structures?
    - Target
        - Environmentally, want no boats or temporary structures, but won't get that.
        - Everything short of that has an ecological price.
    - Started with easier rule changes, now need to struggle with difficult issues.
        - Respond to the charge to address funneling, given that the legislature gave approval to the group to continue.
            - What tools does the group need to act – information from department staff; other expertise; surveys of users; approaches from other states.
            - Have between now and July to obtain this information.

- Information needs
    - Two kinds of information
        - Ecological information
        - Shoreline alteration
    - Would have had to tease out all factors to determine the cause and effect of these impacts.
        - Need to determine if there is a way to document improvements where there has been restoration.
            - Small case study on Wawasee

- Studies from other states on impacts of restoration or alteration
    - Shoreline alteration – correlate with ecological impact
    - Watershed impacts – sewage treatment
- *Action needed*
    - Review all literature on impacts of temporary structures and boats.

- Need guidance on criteria for controlling impacts
    - Review criteria for group pier permits
    - County funneling ordinances – need something from the state as guidance or support for local controls; rationale for describing the problem; relationship between lake quality and development around the lake.
    - ILMWG role
        - Should be someone besides DNR producing the guidance because everything is blamed on the department; the DNR is only enforcing what the people or legislature said.
        - The ILMWG could get more accomplished because there are no political ramifications.
        - Can brainstorm about issues and come up with good reasons.
        - Lakes are all different, so studies may not apply universally.

    - How to define limits for impacts.
        - Problems are perceived symptoms.
        - Transfer of riparian rights to non-riparians covers it.
        - Use Indiana Trophic State Index (ITSI) to correlate with lake use.
            - A lot of lakes have improved due to land use, so difficult to make the connection.
            - Could identify lakes where water quality hasn't improved in spite of land use (soil conservation) improvements.
        - Need to compile and analyze the data.

- Criteria
    - In-lake measurements - lake-based criteria
        - Showed nutrient impacts, so central sewage was installed; removed restriction on house size because leach fields were not needed;
        - Have nothing new to replace septic systems as a limit on shoreline development.
        - Management plan that sets limits on what can be done.
        - Lake-specific factors, such as sediment type and nutrient levels.
        - Based on ecological concerns – fishing, wave action, water clarity, aquatic plant management, weed drift onto beaches.
        - Includes cumulative effects.

    - Narrow it down to 3-5 major critical factors for ease of understanding and administration.
        - Scientific basis to start reducing structures along shoreline.

            - Tie into existing history, such as differences in sensitivity of areas used for seawall construction.
            - Need for literature search
                - Correlations difficult to prove immediate damage of each structure (e.g., between lots of piers, lily pads and measurable ecological impact).
                - Develop specific proposals for rule changes and method of enforcement.
                    - Then pursue scientific data to support proposals.

- Need capacity assessment in Indiana
    - Funneling issue became a concern due to overcrowding and congestion.
        - Limit number of docks and boats around shoreline.

    - Selling these limits to the general public will require justification.
        - Goes back to carrying capacity assessments; some scientific justification but not completely tied to ecology.
        - If development is limited, better have an assessment that proves the case.
        - Need to determine cost to put together an assessment like Lake Ripley.
        - Would grandfather in most existing structures; have to start with going forward.
        - Selling limitations to a constituency that limits growth.
        - Must justify rule-making with hard data from an assessment to prove that there are too many boats per surface acre; prevent future increase.
        - Relation of number of boats owned versus boats used.

    - Crowding is based on perception
        - Capacity may vary lake-by-lake in relation to expectations of people (3,400 acres per boat in the Boundary Waters would be one boat on Lake Wawasee).
        - How to account for social expectations – opinion surveys.
        - Perception has already divided lakes into categories
            - Some think the "ski/party lakes" are too congested and want to live on the "fishing/quiet lakes"
            - The 80/300 acre limit on boat speed was not based on science.

    - Ecological evaluation of temporary structures
        - Spawning beds and fisheries

- Lots of categories are currently in place that already have scientific basis
    - Lakeshore construction – significant wetland, etc.
    - Boat size – acreage limit on boat speed hours.

        - Septic/sewered lakes – indirect limit of growth on lakes.

- Drive and limits to growth
    - Address social drive for bigger things – houses, boats, piers, etc.
    - Build a larger house on the lot, and then want to put permanent pier out over the lake to provide more "yard" space.
    - Tearing down cottage under shade trees to a massive house with air conditioning.

- Connection between lake use and quality
    - Septic systems had a clear connection to coliforms.
    - Nebulous issue with perceptions that are difficult to measure – direct nexus between structure in the lake and tie back to ecological impact.
    - Review Wisconsin rule to limit nearshore development – ahead of Indiana in thought process on lake work; graft that approach into what could be done in Indiana.
    - Can't show direct impacts, so need to recognize that we want to control growth.
        - Seawall rules passed because enforcement didn't happen.

- Why duplicate ideas that are already out there?
    - Little documentation on phosphorus getting into the lake and producing weed growth.
    - Septic systems may only be 5-10 percent of the phosphorus impact on lakes, but that has provided justification for a large investment into sewers.
    - May not have a problem now, but need to avert a future problem due to rapid changes.
    - Packet of models - Wisconsin as best model because its process is going through the legislature; started with restrictive package of 3 foot depth for pier rule.
    - Political dilemma is that lakes are concentrated in a few counties in Indiana; so many legislators from other parts of state do not have an interest in lakes. However, there are persuasive legislators who can carry legislation that others will not vote against.

- Proof of relation between factors or preventive approach
    - Take a preventive approach, rather than waiting to prove harm
        - Safety – limited number of boating accidents do not support more control; preventing accidents.
        - Environmental – can't prove there are impacts, but preventing them.
        - Public trust – everyone has a right to use the water; preventing riparians from taking over the use of the lake to the exclusion of the public.

        - May not be able to prove what steps are needed at a particular time for preventive maintenance (analogy to need to change the oil in the car).

Next steps for ILMWG

- Bridging between the existing and new group
    - Issues and constituents will be the same
        - Funneling issue will continue to be important.
        - Same legislators will continue to be interested in ILMWG responsiveness to their constituents.
        - DNR staff and the current members could prepare a package for the new workgroup as a starting point for a smoother transition.
        - Continue the process without having to start over.
    - Appointments will take time
        - Meet in June before the new group is formed.
        - Continue looking at safety, environment and public trust.
        - DNR staff can prepare reviews on Wisconsin and other approaches.
        - Members can prepare some proposals for boat capacity and temporary structures.

- ***Next meeting:*** Thursday, June 8, 2006, 9:30am, Salamonie Reservoir Interpretive Center.

Note: No meeting was held on June 8, 2006. The next meeting held was November 13, 2006

Indiana Lake Management Work Group
November 13, 2006
IGCS Conference Room 17, Indianapolis, IN
Meeting Notes

ATTENDEES

Members present:

Senator Robert Meeks, Chairman – District 13, DeKalb, Kosciusko, LaGrange, Noble & Steuben counties
Representative Richard Dodge – District 51, Steuben & DeKalb counties
Mike Baise (Agriculture) – Indiana Farm Bureau, Inc.
Larry Coplen (At-Large) – Contractor, lake resident, Kosciusko County
Bob Gross (C.D. 1) – Cedar Lake Enhancement Association, Lake County
Jim Hebenstreit (IDNR) – Division of Water Assistant Director
Pete Hippensteel (C.D. At-Large) – Steuben County Lakes Council
Bill Jones (Environment) – IU School of Public & Environmental Affairs
Jeff Krevda (C.D. 5) – Dredging contractor, Marion, Indiana
Mark Mongin (Indiana Lakes Management Society) – ILMS President
Bob Madden (C.D. 9) – Lake Lemon Conservancy District
Paul McFeaters (C.D. 8) – Martin County
Carol Newhouse (IDEM) – IDEM Lake assessment program
Paul Oakes (C.D. 3) – Ball Lake, Steuben County Lakes Council
Jed Pearson (IDNR) – Division of Fish and Wildlife District Fisheries Biologist
Tim Smith (U.S. Army Corps of Engineers) – Louisville District
1Sgt Bill Snyder (IDNR) – District 2 Conservation Officer
Ralph Taylor (At-Large) – Allen County
Gene Weaver (Soil & Water Conservation Districts) – IASWCD President, Ohio County
Shannon Zezula (NRCS) – State Resource Conservationist

Members absent:

Senator Earline Rogers – District 3
Representative Earl Harris – District 2
Orval Huffman (C.D. 2)
Kim Linkel (C.D. 6)
Mike Rutz (C.D. 7)
No appointee (C.D. 4)

Guests:

Jim Ray, coordinator – IDNR Lake & River Enhancement
Gwen White, recorder and facilitator – IDNR Lake & River Enhancement
John Davis – DNR Deputy Director, Land Management Team, including Division of Fish & Wildlife

Lee Bridges – IDEM Office of Water Quality, Biological Studies Section
Tom Flatt – IDNR Division of Fish and Wildlife, Aquatic Habitat Coordinator
Ann Knotek –IDNR staff attorney
Ron McAhron – IDNR Deputy Director, Regulatory Team, including Division of Water
Sam Purvis – IDNR Division of Law Enforcement, Boating Law Administrator
Angela Sturdevant – IDNR Lake & River Enhancement Biologist

NOTES

10:00 a.m. Welcome by Senator Robert Meeks and self-introduction of members

10:15 a.m. Overview of original LMWG (Jim Ray)

- **History and accomplishments**
  - August 1996 first meeting in Angola, Indiana
  - October 1996 – Follow-up meeting
  - Total of 450 people presented over 250 issues
  - Led to statutory establishment of original LMWG in 1997
  - Creation of "Final Report" with recommendations in 1999
  - Many recommendations subsequently implemented
  - Some recommendations remain to be addressed

10:30 a.m. Statutory (SEA 94) charge for current LMWG

- Determine exactly what is to be studied by the group
  - Issues associated with IC 14-26-2-3 (public freshwater lakes)
- Allows for three productive meetings per year
- Two year duration with interim and final reports
- Subgroups may report back to full body
  - Recognize time limitation
  - Will not lose any issues (increasing)
  - May assign issues to various entities
  - May develop subgroups (task teams)

10:45 a.m. Potential topics for consideration

- **Review and clarify known existing topics**
  - Obtaining funding is part of implementation for several topics
  - Organization of issues - lump or split topics?

- **List and describe additional topics**
  - Public trust doctrine
  - Public access to lakes
  - Boat operator's license
  - Enforcement of lake shoreline regulations
  - Water quality
  - Loss of wetlands

- **Prioritize topics within subgroupings**
    - Preliminary voting with 3 stickers (green, yellow, red) on posted lists

- **Grouping of issues**
    - Legal jurisdiction
        - Define "public freshwater lake"

    - Construction along shoreline
        - Funneling
        - Model local ordinances
        - Pier numbers and design
        - Dispute resolution (piers)
        - Shared use of shoreline improvements (e.g., group piers)
        - Seawalls
        - Bioengineering
        - Aquatic toys (trampolines, signs, etc.)
        - Rule 5 erosion control

    - Aquatic plant management
        - Control of invasive species (Hydrilla, Eurasian watermilfoil, etc.)
        - Toxic bluegreen algae

    - Watercraft use
        - Speed limits
        - Boating capacity limits for individual lakes
        - Noise pollution

    - Education
        - Determine economic value of lake resources (conduct a study)
        - Information programs (outreach)
        - Inter-organization communication for implementation (state and local government)
        - Update statewide lakes web site

11:00 a.m. **Facilitated discussion regarding strategic approach to identify and address critical topics**

- Number of whole-group meetings?
    - Law specifies 3 per year

- Break membership into subgroups?

- Assignment of issues for elaboration
    - Legislative issues

- State agency issues
- Local agency issues
- Citizen groups (lake associations, etc.)

- Process
  - Two years and 6 meetings are provided for in legislation
  - Original (1997) LMWG had three subgroups
  - Most difficult issues remain for the group to tackle; several simpler issues have already been addressed. Could approach this by:
    - Prioritizing major issues
    - May take a slower pace. These complex issues may require more debate
    - May limit issues to statutorily defined "public freshwater lakes" or include some reservoir issues, as appropriate
      - Need to clarify the regulatory definition for "public freshwater lake", as determined in statute
      - May require additional legislation or agency rulemaking
  - Meetings will be professionally facilitated by IDNR staff
  - Bulk of work may occur between meetings
    - Will need to define tasks and deadlines
    - E-mail communication may be effective
  - Expect a learning curve for some more complex issues
  - Given the limited time available, expect to develop 1-3 substantial products which will include:
    - Thorough discussion and review
    - Solid recommendations

- Possible LMWG Subgroups
  - Environmental
  - Law Enforcement (Recreation)
  - Watersheds
  - Water Quantity / Demand / Supply –Possible need for new reservoirs
  - Shoreline Structures and Density
  - Biology – Algae, fisheries, aquatic plants
  - Government Coordination – To be combined into the two subgroups below

- Brainstorm specific topics for three subgroups
  - **Shoreline Structures / Density Subgroup**
    - Piers – Number and size
    - Dispute resolution among multiple users
    - Shared use of improvements (such as piers)
    - Enforcement of seawall regulations
    - Bioengineering
    - Aquatic toys (e.g., trampolines, signs)

        - Jurisdiction – Legal definition of "public freshwater lake"
        - Funneling
        - Development of shoreline use standards
        - Model local ordinances

    - **Biology / Chemistry / Watersheds Subgroup**
        - Aquatic plant management
        - Aquatic nuisance species (invasive species)
        - Watersheds
        - Wetland protection
        - Toxic bluegreen algae
        - Fishing, including closed seasons

    - **Government Coordination Subgroup**
        - Needed for implementation of issues in other subgroups
        - Watercraft use – Speed limits, time of use
        - Noise pollution from watercraft
        - Boat operator's license
        - Water quantity – Need for new reservoirs?
        - Enforcement and education
        - Recreational capacity, including boats
        - Determine economic value of lake resources
        - Inter-organizational communication (coordinate agencies and local government)
        - Information programs (e.g., residents, realtors) – For public support
        - Update lakes website

As group members signed up for the groups, it became apparent that the participants could initially divide into two subgroups: 1) Structures/Density and 2) Biology/Chemistry/Watersheds with Government Coordination issues integrated into each of these two groups.

11:30 a.m. Lunch

12:30 p.m. Subgroup facilitated discussion

- Subgroups were directed to:
    - Identify and initially prioritize topics
    - Select a subgroup chair
    - Determine next steps

<u>Biology / Chemistry / Watersheds Subgroup</u>

Chairman: Bill Jones

Discussion: Subgroup discussion started by reviewing the Guiding Principles in the original 1999 ILMWG report to determine if anything has changed or needs to be re-emphasized.

Discussion continued by brainstorming a list of potential issues that had not yet been fully addressed by the ILMWG in past actions. Group members then voted to develop a preliminary prioritization of issues, then combined some issues and elaborated on the scope of the top 3-4 highest priority issues.

The subgroup identified the **definition of "public freshwater lake"** as a primary issue that must be addressed by the ILMWG, as actions to address many issues hinge on determining exactly which lakes are subject to state jurisdiction.

- Revisit **Guiding Principles**
  - Reinforce principles from original 1999 ILMWG Report
    - Maximize public use and enjoyment
    - Ecological sustainability
    - Public Trust Doctrine
    - Short- versus long-term intergenerational interests
    - Property rights
    - Property values
    - Human health
  - Multiple approaches
    - Legislative and rulemaking remedies
    - Enforcement and education
    - Voluntary coordination
  - Examine
    - Application to various types of lakes (natural lakes, reservoirs, retention ponds)
    - Identify critical immediate issues
    - Exacerbation of conditions by human activities

- **Priority Issues**, listed in order after preliminary group voting (some issues were combined during later discussion)

  - Land conservation practices (urban and agricultural row crops)
  - Aquatic nuisance species
  - Economic value of lakes study
  - Flooding and legal drains
  - Construction site erosion control (Rule 5 and 13)
  - Law enforcement
  - Fishing
  - Toxic Bluegreen Algae
  - Septics, sewage systems and beach contamination
  - Fertilizer education
  - Empower lake associations (build institutional capacity)
  - Property management education (realtors, landowners, etc)
  - Stormwater management (MS4)
  - Land use planning

Other issues (not ranked):

- National Lakes Assessment
- Nutrient Criteria
- Wetland protection
- Erosion control and dredging
- Bass tournament fishing
- Closed seasons for bass fishing
- Impacts of resource use on water quality
- Nuisance geese
- Hunting and trapping
- Land acquisition for conservation
- Agency consolidation
- Water quantity, including ethanol plants, biomass production, drought planning and lake levels
- Connections to drinking water and groundwater supplies
- Shoreline management
- Development of lake districts for land use planning
- Livestock
- Public access
- Boat operator's license

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

- Ongoing priority action
- Increase money for cost-sharing
  - Clean Water Indiana
  - Increases partnerships outside the traditional agricultural community, which is a small segment of the population
  - Provides incentives for public good (e.g., water quality trading)
  - Beneficiaries of good water quality would help fund practices
- Address sediment and nutrient loading to lakes, including:
  - Dredging at inlets
  - Maintenance practices for regulated drains
  - Stormwater management
  - Lawn fertilization
  - Biofuel / ethanol production

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

- Immediate priority action (very urgent)
- Implement the Indiana ANS Management Plan
- Focus strategies on prevention, eradication, controlling spread (transfer)
  - Plant species include Hydrilla, Eurasian watermilfoil, Brazilian elodea
  - Animal species: Canada geese, mute swans

        - Follow exotic plant eradication with replanting of native species
        - Monitoring and rapid response to prevent spread
    - Public outreach
        - Increase public awareness of the seriousness of the situation
        - Communicate the cost of control versus the economic impact of closing lakes to prevent spread of infestations (e.g., Hydrilla at Lake Manitou)
        - DNR Lake & River Enhancement (LARE) program
            - Currently 73 lakes receive funds for aquatic plant management
            - Much of this budget may be required to treat Lake Manitou ($500,000 per year for at least 3 years)

Priority # 2B: Toxic bluegreen algae

- Includes both native and nonnative (exotic) species
- Major concern about potential public health risk
    - Nearby states are providing funding for monitoring
    - Track incidents and impacts
        - Health effects for dogs, humans, livestock
        - Source water for drinking water supplies
- Reconstitute algal task force
    - Veolia (Indianapolis Water Company) has a task force to address Indianapolis issues
    - Need to re-establish committee to address statewide issues
    - Develop a public policy statement

Priority # 3: Economic values study

- Immediate priority action
- Provides support for other actions
    - Provides data to back up investment in lake quality
    - Use for education to obtain funding
    - Identify a credible entity to conduct the study
- Expands existing county-level studies to statewide analysis
    - Includes land use planning
    - Does not have to be expensive
    - Evaluate true costs of actions affecting lake quality, both direct and indirect
    - Address effects on constituents statewide in legislators' districts
- Possible components:
    - Contribution to tourism
    - Relationship to lake resource quality
    - Assessed property value
    - Housing units
    - Median price

        - Retail sales and employment
        - Tax revenue

<u>Structures / Density Subgroup</u>
Chairman: Ralph Taylor

Discussion:

- Seawalls
    - Enforcement of regulations is insufficient
    - Shared use of improvements (Lucas/Purvis)
        - IC 14-26-2-23(e)(2)(A)

- Focus on well-reasoned recommendations rather than simply getting recommendations to legislature immediately

- Funneling challenge
    - Differences between jurisdictions regarding land and water
    - Issue is not "funneling", *per se,* but uses associated with it
    - How much of shoreline should be allowed to be "privatized"?
    - Need linkage between land uses and in-lake uses
    - Wisconsin has proposed pier rules (Hebenstreit)
    - Lake Lemon has pier ordinance
    - How to continue to allow public access in the future
    - Formula for calculating boat carrying capacity
    - Funneling and piers are interconnected

- Development of shoreline use standards
    - Include land and water-based controls (funneling)
    - Need to look at cumulative impacts / limits
    - Once decisions about regulations are made, important to educate locals
    - Beneficial to have coordination between local land regulations and DNR

- Shoreline issues: Concurrent regulation
    - Local zoning to limit shoreline use
    - DNR rules to manage piers
    - Subgroup would benefit from presentation on status of pier rule changes (Ann Knotek)
    - Kosciusko and Steuben Counties both have ordinances that establish minimum shoreline frontage per housing unit.
    - If DNR does not believe it has sufficient authority to enforce /regulate, it needs to make that known.
    - What constitutes "bioengineering"?

- Issues should be assigned to one of three subcategories:
    1. Development of shoreline use standards
    2. Enforcement related issues

3. Miscellaneous issues

- Move ILMWG meetings around state for public involvement

- Discussion about the definition of "public freshwater lake" is a specific separate topic
    - Must be approached carefully
    - Ask IDNR Executive Office if it wants the subject to be pursued (A. Knotek)

Reports of Two Subgroup Priorities

Facilitators of the subgroups reported on priorities and discussion.

Both subgroups reported that clarifying the definition of "public freshwater lake" was critical to many other actions.

The primary issues for each subgroup are provided below with additional detail earlier in these notes.

<u>Biology / Chemistry / Watersheds Subgroup</u>
Chair: Bill Jones

- Top Priorities:
    - Economic value of lakes study
    - Aquatic nuisance species
    - Toxic bluegreen algae
    - Land conservation practices (urban and agricultural row crops)

<u>Structures / Density Subgroup</u>
Chair: Ralph Taylor

- Three subcategories for issues
    - Development of shoreline use standards
    - Enforcement related
    - Miscellaneous

2:30 p.m. Discuss action steps

<u>Questions/comments:</u>

- Definition of "public freshwater lake"
    - DNR staff have been asked to provide a recommendation
    - The entire committee will have an opportunity to review the issue

- Group piers will be addressed under use of land. The informal ILMWG (which met over the past 2 years) supported revision of rules to address this issue.

- Lots of areas need ongoing exploration (e.g., "lawful nonconforming use")

- Spent time today to develop an organizational structure so that the group knows where to slot other issues that arise

- Many issues will require development of reference materials to provide the group with adequate background to explore these issues

- Indiana Association of Soil and Water Conservation Districts will be supporting establishment of a "state drink" to generate state funding, similar to 28 other states. Will request additional funding from legislature for Clean Water Indiana.

Next meeting(s)

- Will continue to inform the public of the issues that will be addressed by the group

- Where
  - May want to hold the next meeting in the lakes region
  - Have not developed enough information to present it to the public yet
  - Public may want opportunity to speak to these issues
  - Could hold the next meeting at IDNR Salamonie Lake Interpretative Center
  - Should have another meeting to bring thoughts together before the public is invited to provide input

- When
  - From January to end of April, legislators are only available on Fridays (Session on Monday, Tuesday, Thursday)
  - The ILMWG members may have informal meetings in between the 3 permitted official meetings, but with no expenses paid
    - Could allow information to be organized sooner
    - Only three paid formal meetings a year permitted by law
  - Sometime in March 2007
    - Prior to Indiana Lakes Management Society annual meeting (at end of March) so that a formal presentation can be made and a request for public input.
    - Jim Ray will send an e-mail requesting dates members could be available

- ILMS spring conference on March 30-31 at Lake Monroe.

3:00 p.m. Adjournment

LAKE MANAGEMENT WORK GROUP

Indiana Government Center South
Conference Center Room 14
March 16, 2007

MEETING NOTES

Members Present
Sen. Robert Meeks, Chairman
Rep. Dick Dodge
Larry Coplen
Mike Baise
Jim Hebenstreit
Pete Hippensteel
Orv Huffman
Bill Jones
Jeff Krevda
Kim Linkel
Jed Pearson
Tim Smith
Lee Bridges
Bob Madden
Mark Mongin
Paul Oakes
Ralph Taylor
Shannon Zezula

Other Attendees
Doug Keller
Tom Flatt
Angela Sturdevant
Felix Hensley
Holly LaSalle
Jim Ray, recorder
Gwen White, recorder

Discussion Notes

Welcome by Senator Robert Meeks and self-introductions of members
Senator Meeks thanked the members for attending and asked each person to introduce themselves.

Presentation on group pier regulation (Administrative Law Judge Steve Lucas)

Members were provided a copy of the nonfinal decision re Wawasee Real Estate and Development, LLC. Judge Lucas is one of two administrative law judges. Have a

variety of responsibilities related to DNR and other resource areas, mostly licensure and sanctions (notices of violations, civil penalties). Most active topic in adjudications twenty years ago, coal mining. Ten years ago, flood control act. Today, it is lake issues.

Was not able to talk about merits of the case. It is through the process but could come back to the ALJs. Was able to answer questions about process. This issue was about a licensure determination focusing on group piers. Several persons remonstrated, becoming the claimants, while DNR was one of the respondents with the developer.

After a hearing, Lucas prepared findings of fact and conclusions of law with nonfinal order.

Part A. Statement of Proceeding and Jurisdiction

- Routine element describing what the case was about. Jurisdiction is the subject matter.

Part B. Hearing de Novo and Burden of Proof on Administrative Review

- Hearing de Novo means the hearing officer takes evidence and makes decisions. The Burden of Proof establishes who shows what is right and wrong.

Part C. Standing

- Major decision in this case.

Part D. Pre-licensure Actions

- The DNR is required to conduct review of license applications before a decision is made as an informal review. Had some things that were not considered before, so it is a case of first impression.

Part E. Natural Resources Under the Lake Preservation Act

- Testimony from Jed Pearson as Biologist.

Part E (sic). Licensure of Temporary Piers and the Public Trust

- Discussion of Public Trust, which is major issue. Primary witness was Lt. John Sullivan, who works out of Syracuse.

Part F. Licensing of Marinas and Group Piers

- General license for placing individual piers. Some exceptions in rules for marinas and group piers. This was the second time that the issue came before an ALJ. In prior decision, the ALJ determined she did not have to decide the issue, because the case was fully decided otherwise. After a nonfinal order is rendered, any party can file written objections. Went to five person AOPA committee of the NRC, which listened to arguments by counsel for claimants, applicant, and the DNR. The committee rejected Part F (stricken).

Question: What was removed from this?

Lucas Answer: Cannot fairly construe the decision, but the entire consideration of marinas was removed from the decision, as if Part F never happened.

Question: By removing that part of the decision, does it take something away from the original decision?
Lucas Answer: Yes, in the ALJ nonfinal order, the first sentence says the decision of DNR should be affirmed, then goes on to discuss marinas. Everything but the first sentence was stricken from that portion by the AOPA Committee. Now, the final order from AOPA Committee says that, "the issuance of a license application is approved for a group pier under the Lakes Preservation Act and 312 IAC 11."

The respondents or any of the claimants could take judicial review to a court of competent jurisdiction, such as Kosciusko or Marion County. It is still alive within the next 30 days counting back from March 14. The court could change or remand the decision. If no one takes judicial review, the case is finished.

Presentation on definition of "public freshwater lake" (Steve Lucas)

Lucas provided a handout for the subject matter, which is whether a body of water is considered to be a "public freshwater lake". Lucas gets a lot of phone calls asking the question. There is a statutory definition in IC 14-26-2-3 stating a PFL is "a lake used by the public with the acquiescence of a riparian owner". The Natural Resources Commission has adopted a rule that does not change or expand upon the statute but which tells more about what the language meant.

There are several exceptions that do not totally eliminate the designation. Exception regarding a city of a certain size, which is an exemption for lakes located in East Chicago, Gary or Hammond. Other partial exemptions that restrict the meaning regarding cooling or discharge ponds, Shafer and Freeman Lakes as impoundments, municipal or public utility reservoirs for water utility service.

Meaning of "public" guided somewhat by decision on Lake Cicott, which says it merely requires the acquiescence of a single riparian owner. Elements that the trial court and court of appeals looked at to indicate whether it was a public freshwater lake. Asterisk by number 1 on the handout, as the court may not have been exactly saying that this was an element.

No interpretation for "freshwater" element. Was told that there were brine ponds (evaporation ponds) that were used in the oil and gas industry. After drilling water with high salt content, the evaporated ponds would be saline. No longer legal, but were at the time in the 1940s. Has never been a hot issue.

"Lake" is an important element of the definition. Mount Zion Millpond was determined to be a lake by the NRC. Following that, a rule defined a lake as a permanent body of water at rest and of natural origin or part of a watercourse by damming a river or stream. Does not go far enough to address how big a body of water has to be. Has not been an

issue in any case decided by the NRC. At one point, the DNR tried to develop a list of PFLs, but one of the issues was size.

Question: How does the definition affect a water body that has been dredged?
Lucas Answer: For a glacial lake of natural origin, it seems to be determined when the Lakes Preservation Act was enacted in the 1940s. If it met the standards then, it would be a public freshwater lake.

Question: Does "public" infer access?
Lucas Answer: Yes, the best answer is in the Garling case, in which the statutory definition refers to acquiescence by a riparian owner so that the public attains access to the lake.

Question: Has "watercourse" been defined?
Lucas Answer: Typically a river, stream or creek. There are common law definitions. DNR regulations typically refer to a "waterway." This is talking about damming up a stream or river.

Question: If someone lives on a natural lake that was dredged and has a DNR public access, do you have to have permission of one riparian owner for public use?
Lucas Answer: Court says that once you have access, it becomes a public lake.

Question: Can you vote it out, i.e., un-designate a PFL?
Lucas Answer: PFLs are treated much like navigable waters. When they are called upon to construe an issue, the courts use the same decisions for navigable water as for public freshwater lakes. Has been decided in a Grand Calumet River decision. U.S. Steel argued the river was no longer navigable because of man-made obstructions. The court determined that once a river meets the test of navigability, the river continues to be legally navigable even if factually no longer suitable for navigation.

Question: Weren't navigable waters defined in the State Constitution?
Lucas Answer: Whether it was capable of commercial navigation when Indiana was admitted to statehood in 1816.

Question: Bill to change effective date of riverboat captains, had to review.
Lucas Answer: Predates U.S. Constitution in Ordinance of 1787 to ensure that states and Northwest Territory would be on same footing as states in East.

Question: Does an access site confer PFL status? If the conditions were in 1947, that is the basis of the question.
Lucas Answer: Good question that must be deferred because such a case might be presented to ALJs.

Question: Marina portion of Wawasee ruling was stricken. Why was language included regarding similarity between group piers and marinas?
Lucas Answer: Case still pending, so couldn't answer.

Discussion among members following Lucas' departure from meeting: Interest in seeing the AOPA Committee final conclusion in the handout. Uncertainty whether a facility must have a pumpout station and/or gas pumps to be a marina and if such amenities are required of marinas. May need to have fuel as a marina. Perhaps must have individual slips for property owners to store boats.

Argument has come up for several group piers. Marinas typically charge a fee. A marina sells gas and services boats. The rule may need to be changed. Falls under jurisdiction of the subcommittee led by Ralph Taylor. Interested in exploring it for a recommendation.

Funneling and erosion control ordinances (Holly LaSalle)

LaSalle was asked to address the group regarding actions in Kosciusko, Whitley, and Noble counties. Concern around lakes re funneling from development with property adjacent to the lake or offsite, where developer could buy a small parcel on the lake and funnel through it. Kosciusko County established a "lake residential district" in zoning ordinance with more restrictions. Does not affect commercial use, but does impact residential use.

Meetings were held with Kosciusko County area plan commission. Suggested addressing erosion control as well because IDEM Rule 5 might not have applied to small lots around lakes. Discussed with county commissioners. Decided to separate the two issues with a successful erosion control ordinance requiring measures regardless of property size; passed in May 2006.

Task force was appointed to look at anti-funneling. Started with 60 people then reduced to core of 10-12 people. Through public relations, advertising, attorneys, and public input, passed an ordinance through county commission.

Ordinance is based on linear footage of lake shore. First residential unit must have 50 feet of lake front, second unit 20 feet and successive units with additional 15 feet of shoreline. Most developed lakes do not have this length of open shorelines. Also applies to acquisition of lakefront property with less than 50 foot lakefront, in addition to other restrictions on septic installation.

First attempt to address this issue. A similar process was initiated in Whitley County, which passed a nearly identical ordinance in two months. The process in Kosciusko County took from February 2005 to October 2006. Noble County may act on a similar ordinance in July.

Those three counties were chosen as a coordinated watershed with leadership from Lake Tippecanoe. They sent out simple surveys to all lakes in area with over 1,000 surveys returned. Developed a brochure. Example of enacting change locally.

Erosion control ordinance just for Kosciusko County, which includes any – even limited – ground disturbance, such as a seawall. Enforced by Area Plan Commission by zoning ordinance; investigated by complaint. They are also doing a massive education campaign.

Area Plan Commissions are appointed by the county commissioners, delegated to create and enforce zoning ordinances in the county. Their purview includes county building permits. The county surveyor's office and SWCD office typically look at Rule 5 applications, unless that has changed.

Steuben County has an anti-funneling ordinance similar to the developed in Kosciusko County; "Shoreline Development Standard" for nearly eight years with somewhat larger linear restrictions. There has been an appeal of a planning decision, but the two groups agreed to a compromise. So it was not brought before a judge. No challenges in Kosciusko County, but has been challenged in Steuben County.

Need linkage of group pier requests through DNR and local planning commission decisions. What is happening in the counties will continue to spread. This group needs to understand that the issues are related but separate. The plan commission is responsible landward regarding densities of buildings, but has no jurisdiction lakeward.

Uncomfortable with the term "anti-funneling" from water's edge lakeward, as it is a land-based term. Opinion that pier densities are out of control. Need to produce a similar recommendation that marries the piers, the proliferation of which is taking away public use of the lakeward areas along the shoreline.

The plan commissions must take a more active approach in protecting the shorelines. If you can only have three residential units, there should be a corresponding regulation that you can only have three piers to relate landward and lakeward development.

Definitions of marina differ landward and lakeward. There is a conflict if the DNR approves a marina (piers) with gas sales and dumping stations, but the county will not approve that development. Definition of subdivisions may affect these decisions.

Funneling to 38 docks for 58 condominium units on Lake James will open Pandora's Box to unlimited development. May require quite a bit of ability to stop that kind of development. If you look at rights issue with ownership of frontage and acreage off the lake. The county can rightfully determine limitations.

All of these definitions must be clarified and coordinated. If two owners have the same frontage but one has one house and another has a condominium, why should the condominium owner get more piers?

Needs to be more coordination between the DNR and zoning boards.

Lake Lemon has become more popular, but still has lots of undeveloped shoreline as the City of Bloomington owns much of the shoreline. The conservancy district stated that the City of Bloomington owned the water in the reservoir as a utility and could control what goes in the water. Regulated by DNR in regard to herbicide treatment of water because there are state fish in the water. Codes exempt the water from requirements for shoreline construction as a water utility.

The number of docks on Lake Lemon are limited based on linear footage of shoreline owned by riparians. Heritage Lake has a Clear Creek Conservancy District that owns the lakebed and can regulate structures in the water. The DNR may regulate use of herbicides, but not structures in the lake. Question about regulation based on "waters of the United States" as addressed by the Army Corps of Engineers.

Jim Ray has copies of the Kosciusko County ordinance and will make copies for the group.

Presentation on Lake Manitou – Hydrilla (Doug Keller)

Receiving inquiries on the minutes regarding various topics listed as potential issues for discussion. Receiving correspondence on Lake Manitou for eradication of hydrilla at $400,000 per year for several years and quarantine of lake.

The lake is the only body of water in the Midwest with hydrilla. Not sure what is special about the lake that hydrilla has occurred only there. Likely jumped from another state. Pennsylvania is the nearest place with monoecious plants. (Hydrilla in southern states is a genetically different form.) Very recently, Kentucky Lake just across the Ohio River was recently found to contain hydrilla.

Have been trying to get word out to everyone. Hydrilla is much worse than Eurasian water milfoil. DNR detected hydrilla in Lake Manitou in August 2006 during routine plant survey. Identity was confirmed by experts right before Labor Day weekend. Concerned about boats on the lake. The lake is 734-800 acres in size (unsure due to wetlands in upper end) near Rochester.

Plant surveys showed that it is spread through about 500 acres, mostly in northern basin of the lake in both dense and spotty distribution. Probably in the lake at least two years. Appears to have come in through city boat ramp on northwest corner. Problem worldwide. Must take quick action to stop plants.

All work focused on containing the plant in 2006. Immediately organized boat inspections over Labor Day weekend through efforts of the Lake Manitou Association members. Used media outlets to educate users to encourage removal of all plants from boats and trailers.

Within two weeks of confirmation, performed a 20 acre chemical treatment in the most dense areas. Truly a rapid response for an agency, including organizing, buying and applying chemical.

Very concerned that other lakes were also infested in the area. Went out to up to 30 lakes within a half hour radius to do surveys around boat ramps to look for hydrilla. Did not detect it anywhere else.

In October, a public meeting was held in Rochester along with the lake association's meeting to advise the public on access restrictions and further actions. Sent out "frequently asked questions" document to all lake associations for which LARE had contacts. About 100 people at the first meeting with very good support. They understood the dangers of the plant. On October 11, all public and private access ramps were cabled and locked. Signs hang at all access points from cables, announcing the access restrictions and who is allowed onto the lake.

DNR does not want to restrict recreational opportunities. Due to the tremendous risk, determined that restricting access on this one lake will protect other lakes. Hope that education will prevent people from spreading plants. Cannot rely on voluntary compliance to keep hydrilla contained.

Control will not be cheap. Want to only battle it in one body of water, so the target is eradication in Lake Manitou. Maintaining chemical concentration for 180 days. Tubers in the sediment do not all sprout at the same time, so the chemical must be in contact for a very long time. Intensive plant sampling will be required to track impacts of the chemical. Do not want fragmentation by boats that may drift downstream to Shafer and Freeman Lakes. Any plant not killed will produce more tubers. Will also sample tubers to make sure that the bank of tubers in the lakebed will be depleted. This can take 3-4 years before eliminating risk of regrowth.

Eradication efforts will cost at least $500,000 per year for at least three years. If the tuber bank has been depleted by then, cheaper spot treatments may be adequate. DNR does not have money set aside for such a long-term weed treatment. Scraped up enough money from LARE ($100,000) and the Fish & Wildlife Fund ($400,000). Using both of these funds in the future will have major impacts on other projects that these sources would otherwise support.

Have been seeking federal funds from the USDA Animal and Plant Health Inspection Service (APHIS). They are not taking this threat as seriously because there is hydrilla all over the south, east and spotty occurrences on the east coast. Trying to convince them that we need dedicated funds for Indiana and the Midwest.

At some point, Eurasian water milfoil was in only one lake in Indiana. It is now everywhere in the state. Unfortunately, it was not eradicated at the time it was present only in one lake. There is only one opportunity to eradicate hydrilla now.

Grateful to the Lake Manitou Association for cooperating with the DNR needs, including rapid printing of the signs.

Question: Has the department contacted Senators Bayh and Lugar along with Congressmen from that area?
Keller Answer: I don't believe so.

Question: Any further testing to look for infestations in other lakes?
Keller Answer: Any lake participating in the LARE plant management program will have surveys. DNR will also be surveying other lakes that are not in the LARE program.

Need to seek other state funding for emergency situations. May be competing with full-day kindergarten and other actions in legislature as biennial budget is being prepared.

Question: Will there be federal reimbursement through the Sportfish Restoration program?
Keller Answer: No. We are already overmatched with that federal funding.

Question: Could the passage of the Senior License also support this financially?

Question: What about ACOE assistance?
T. Smith Answer: I can contact someone with the Corps who could answer that.

Question: Is hydrilla sold commercially?
Keller Answer: Listed as a federal noxious plant, so it shouldn't be in trade. However, it can hitchhike in the sediment of water lilies that are sold from infected waters.

Question: Is there inspection of nurseries?
Keller Answer: Division of Entomology and Plant Pathology does inspections, but not sure if they are looking for hydrilla tubers.

Question: Seems like a good strategy to get aquarium shops involved in aquatic nuisance species.
Keller Answer: Hydrilla is not in trade.

Question: Has the eradication plan been used successfully elsewhere?
Keller Answer: California has done successful eradications with Sonar (fluridone) as a large-scale spot treatment in a very large (40,000 acre) lake that has been infested. They have not seen hydrilla there now for three years.

Question: LMWG and legislature has been active in creating additional LARE funding for exotic plant eradication and sediment removal. Know that the money has been split in half. May be a lot of plant programs that work over a period of time. May need to sacrifice some of the money towards lakes that have an existing plan. If they get less consistent money, will that affect them?

J. Ray Answer: We fund development of five-year aquatic plant management plans, then provide funding on an annual basis to implement plans. Have taken this point into consideration as we distribute money. As lakes make a commitment to control plants, they do need funds for follow-up treatment. In particular, the program is committed to follow-up for whole-lake treatments. Difficult to determine how to best divide money between dredging and plant control, then how to divide funds for plant control. There are a number of lakes that fell to the bottom of priority ranking due to Brazilian elodea and hydrilla receiving funding first.

Would hate to sacrifice an ongoing program to remove sediment, but don't think that any of the weed programs should be sacrificed in order to fund sediment removal. The sediment will still be there three years from now. So, maybe use the sediment funds now to continue plant control.

Keller noted that there is a native elodea that is fairly common. It looks very similar to hydrilla. There is a size difference. Native elodea tends to be smaller. Difference on number of leaves per whorl, more on hydrilla (5) with usually only 3 leaves. In a clear body of water, hydrilla can grow in 30 feet. It is more damaging than the native plant. Could easily cover half of Lake Manitou as a monoculture (no other plants) if it is not eradicated. Fragments or waterfowl feeding on tubers can be spread by wildlife. Leaving it in the lake can allow spread of the plant by natural or other means.

Rate of use will have some impact on natives. The most dominant native in Manitou now is eelgrass, which is not affected by Sonar. So, restoration costs of native plant communities should be low. The native plants should restore themselves. There is some separate discussion of replanting the "prairie area" in Lake Manitou. These projects will be held off. No fish consumption restrictions on the chemicals that are being used. Chemical applied at 6 ppb which is far below the maximum allowed level. Do have to avoid watering tomatoes or freshly seeded lawns.

Mark Mongin, as the President of ILMS and employee of SePRO, which manufactures fluridone, addressed a question about the chemicals used. Sonar (fluridone) was commercialized in 1986 as a component in an integrated approach. Most native plants grow to the water surface and occupy a certain percentage of the lake. Introduction of an exotic such as hydrilla knows no boundaries. Will grow to surface, producing fibrous plant material across the surface, turning the lake into a swamp. Have 500 lakes and over a thousand waterbodies including reservoirs in Indiana. Have had to close two lakes due to new introductions [Griffy and Manitou]. Sonar is one tool in integrated pest management that is an intelligent first step. The state is putting the best science and resources into addressing the problem. There are no guarantees or silver bullets.

The funding for LARE aquatic plants was implemented first in 2004 after a recommendation of the LMWG in 1999. The initial LARE fee was instituted as a $5 fee in 1990. There has been an increase in funding to a range of $5 to $25 depending on boat value. The amount is now split by original LARE projects, law enforcement, invasive species and sediment removal. Generates about $2.3 million per year, fairly consistently

but going up some due to recent legislation that assessed registration fees for out-of-state watercraft.

Consider addressing enough authority to handle invasive species. The authority to eradicate invasive species is through the Division of Entomology and Plant Pathology. They have the ability to quarantine waters.

First year of treating Brazilian elodea at Griffy Lake went tremendously well. Found nothing but one nearly dead plant in November 2006. But, there may still be some plants that require further treatment. Will do another whole-lake treatment this year to finish off any plants. Will continue to look for the plant in the future. Considering whether to continue quarantines. If no Brazilian elodea is found, may open the lake to boat access. If plants are found, none will be allowed.

Discussion of legislation for lifetime fishing license fees for seniors. Money would go into Fish & Wildlife Fund.

Question regarding provision of in-kind work for lake association. Suggest requiring the associations to provide a 10 percent match for aquatic plant grants. However, the boaters already pay their LARE fee. Most associations recognize that they have some responsibility and are willing to help out. Some associations do not have the level of income to support that. Should not assume that that associations don't have resources to help pay for these actions. Need the associations to recognize the problem. Associations are required to provide cash match. The in-kind is voluntary work that helps with education.

Recommendation in 1999 to coordinate with the DNR Division of Fish & Wildlife to fund a comprehensive state wildlife plan, an educational campaign to raise awareness, recognize and report species, conduct a cost-benefit study, review safe effective use of biological controls. In response, DNR developed an Indiana Aquatic Nuisance Species Management Plan that was approved by the federal Aquatic Nuisance Species Task Force in 2004. The DNR hired an ANS Coordinator (Doug Keller).

Many of the recommendations from the LMWG were implemented. Encourage group to get a copy of the 1999 "Final Report" document. Concerns about ANS predicted what has happened at Lake Manitou. This is a huge issue. There are 80 high speed boating lakes that have significant economies. To have to shut down access is a major thing. There are political issues that will have to be faced. Not sure what this group can do about the funding for hydrilla control. Need to use collective political muscle to get something done. There is $1.2 million in the LARE fund, but other lakes will also want funds. The problem to wrestle with will be who gets the money. There is a built-in argument for addressing Lake Manitou's problem.

<u>Funding sources</u>
Where will the money come from next year for Lake Manitou? No plans for the next two years in which they will need a million dollars. The Army Corps of Engineers

representative has agreed to contact someone to inquire about federal funds. The state budget is very tight. It would be difficult to find a half million dollars in each of the next two years. Eli Lilly & Company spun off the SePRO corporation. Would it be possible to ask the Lilly Endowment for funds. Some states have hydrilla in only one body of water (Maine) and are eradicating it. Other southern states are getting federal funds. Florida is concerned about hydrilla choking canals that are necessary to avoid flooding during hurricanes. Florida is spending millions of dollars per year to control hydrilla.

The Lake Manitou association has applied for grants through Fulton County economic development, as 86% of the county tax revenue comes from lake residents. Also applying to Lilly Foundation and NIPSCO for grants. They are trying to raise as much as they can. May be able to find a couple of hundred thousand in the state budget, but not half a million each year. The ACOE may perhaps be able to provide some funds. The DNR budget does not include hydrilla eradication funds. At the time the budget was prepared, the situation was not known. Can Major Moves funds be used? Have applied to FedCo which controls the county commission funds, but that distribution is only for local roads and streets.

Actions:

- *The Army Corps of Engineers representative has agreed to contact someone for federal funds.*
- *Need to contact national congressional representatives for Indiana.*
- *Seeking several sources of funding locally.*

Issues that LMWG members may wish to raise

The work group has shown great dedication to problems of Indiana lakes since the meetings have started. Thanks to all members of the work group and the DNR staff for support of lake issues.

Oakes raised the issue of closed seasons for any angler during the spawning season in the spring in Illinois, Michigan and Ohio. Anglers fishing on nests for bass in Indiana. Wrong to be only one state out of several that allows other fishermen to come in and kill the bass. Oakes submitted a position paper to the group. For two years, there was a law that did not allow outboard motors during spring spawning. Need to obtain the science.

Actions:

- *DNR staff can provide a review of the science regarding closed seasons.*
- *Issue for agenda of next meeting.*

Initiate sub-group discussions after lunch

- Biology/chemistry/watershed issues
- In-lake structures/watercraft/density/government coordination issues

Biology/Chemistry/Watershed Subgroup Discussion

Definition of a public freshwater lake

- Definition of acquiescence – may require further examination
  - Example: permitting on Goose Lake
    - Marl pit produced a manmade shoreline in a natural freshwater lake; denial of sand beach; lake contains cisco, which may be harmed by sand
    - Determination of original bottom complex in lakes that were mined for marl
    - Use of a probe to penetrate the accumulated material down to solid bottom
    - Approach to dredging projects is evolving
  - Need to determine DNR jurisdiction
    - List would shorten the response time in areas with jurisdiction
    - Make the list publicly accessible
    - Would be more efficient than fighting jurisdiction in the courts on a case-by-case basis
    - Jurisdiction allows riparian owners to protect themselves against actions of other property owners that may damage the lake
    - Acquiescence is not objecting to lake access *versus* "permission" in which you intentionally invite access to the lake
    - If someone was allowed public access to the lake sometime since 1947, it becomes permanently a public freshwater lake

Actions:

- Follow up with DNR staff (Tom Flatt) to obtain background information on pursuing a draft list of public freshwater lakes.
- Continue progress towards developing and refining a master list

Priority # 1: Land conservation practices (agriculture and urban)
The subgroup discussed potential actions to address issues related to invasive species in Indiana waters.

  - Strategies
    - Land trust for Steuben County Lakes Council
    - Balance between development (oversaturation of lake usage) and preservation of natural beauty of lakes
      - Need to pursue practices related to drainage as aggressively as reduction of lake development

    - Lakes functioning as sediment traps for uncontrolled erosion in inlet streams
      - Private property owners pay to remove material from upstream sources
      - Prioritize LARE dredging funds for inlets and boat ramp areas
      - Improve enforcement of Rule 5

        - Regulated drains contract maintenance work may result in sedimentation at inlets, depending on how work is done
            1. If counties had to pay for removal of material that went into the lakes, they would have an incentive to prevent movement of materials
            2. Encourage use of better practices in drain maintenance

    - Combined sewer overflows
        - Impose fine on cities?
        - Affects many communities with combined sewer overflows after rainfall
        - Major expense to separate sewage
        - Have reduced number of overflows to improve compliance (Example: City of Angola)
        - Funding problem
        - Explore use of wetlands to detain and treat sewage

    - Agricultural row crops
        - Reauthorization of the federal Farm Bill
            1. Federal government has a lot of money to give the producer
            2. May need to increase incentives by assisting with cost-share
        - Continuous corn production for biofuels
            1. Economic and operational costs of putting marginal land currently in conservation back into production
            2. Invest in failing underground drain tiles
            3. Future technology – use of cellulose in addition to grain
            4. Energy balance of biofuels – oil inputs
            5. Climate of rapid change and momentum
            6. Impacts on soil tilth, nutrients and water quality
        - Education
            - Realize the importance of how land is managed on the lake and impacts on economic benefits of water quality and lake use (Example: Lake Manitou properties provide >80% of the county taxes)
            - Recognize benefits to the property owner
            - Lake property owners see farmers as an easy target to blame for soil erosion; need to improve dialogue
            - Broaden focus
                - Beyond the farming or lake individual interests
                - Extend beyond county lines through watershed projects
                - Describe relationships between lake quality and interests of others in the county

- Problem: Need to improve dialogue between farmers/watershed residents and lake associations

- ***Actions:***
    - Market the value of lake protection
        - Conduct and distribute a Lake Economic Values Study
        - Use economic value of the lake to drive water quality practices

    - Develop and implement a Communications Plan
        - Audiences
            - Lake residents
            - Drain commissions
            - Watershed residents (row crop agriculture)
            - Developers, builders and real estate
            - Regulators (permits)
            - Forestry
            - Environmental clubs (especially middle schools)
            - Confined feeding livestock industry
            - Ethanol biofuels (corn production and conservation)
        - Strategies
            - Invite a county surveyor to discuss issues re impacts of drain maintenance
            - Lake fairs
            - Ride-along project where lake residents meet with farmers to improve understanding of farming practices, incentives and water quality
            - Increase awareness of lake management issues to broader audiences (Example: State Fair booth)
            - Hold a town hall style meeting in a key location for a dialogue between lakers and farmers/watershed
            - Implement a survey to create a list of conservation problems in lakes that need to be addressed
            - Identify key players in a county to be involved in a facilitated dialogue (farmers or commissioners that are partial to the lakes)
                - Focus group or think tank strategy
                - Find the right people to be involved productively
        - Funding
            - Steuben County Lakes Council may be able to contribute funds to hire someone to lead a process

- ***Actions:***
    - Identify unique projects (e.g., Steuben County SWCD)
    - Examine relationship between land management and water quality (e.g., Secchi depth)
    - Lake associations could increase incentives to farm producers by providing private cost-share to leverage federal funds for CREP, LARE or other sources

        - Address impediments on creative use of revenue to address water quality
        - Incentives exist for agricultural producers

    - Address enforcement of Rule 5
        - County level funding for implementation
        - Building inspectors in some counties have authority to enforce Rule 5

    - Phosphorus-free lawn fertilizers
        - Problem:
            - More expensive due to marketing
            - Fertilizer trucks spraying yards, lake water very green
        - Solutions:
            - Reduced fertilizer use and aerators
            - How do they know how much to put on
            - Promote soil testing or have lake association test for residents
            - Manure application is limited by phosphorus levels; may have to supplement to get enough nitrogen
    - ***Actions:***
        - *Find out more about inexpensive soil test availability*

    - Clean Water Indiana
        - For CREP match and SWCD
        - Funding in House budget bill may have reduced amount available
        - Bill now in the Senate

    - Septic maintenance
    - Rural Wastewater Task Force – Developed a rural wastewater strategy during the previous tenure of the Indiana Land Resources Council. After a long hiatus, they have started working again on:
        - Establishing predictable permitting for soil discharging systems permitted by IDEM
        - Pilot septic maintenance districts,
        - Creating some public service announcement-style education on septics for rural property owners
    - ***Actions:***
        - Track actions underway by the Task Force.

Priority # 2: Aquatic nuisance species (ANS) – Exotic invasive species
The subgroup discussed potential actions to address issues related to invasive species in Indiana waters.

Actions:

- Develop decontamination procedures (standard practice)
    - Dredging companies from out of state or Lake Manitou
    - Weed harvesting equipment

- Educate anglers in fishing tournaments
    - Education through fishing clubs (e.g., BASS – see hydrilla as the end of fishing; have been very supportive of eradication at Manitou)
    - Perception among some that "grass equals bass" may be against weed removal, even of exotics
- Pump root mass and sediment into geobags in southern states
    - Drained lake after spending six years trying to eradicate it
- Educate aquarium industry
    - Habitattitude (PIJAC)
    - Ongoing DNR dialogue with aquarium, aquascaping, and pet trade
- Develop a Marketing and Communications Plan
    - Invest more in outreach and prevention
        - Need more educational resources on Brazilian elodea
        - Quick to quarantine and treat Griffy Lake
        - Need more public releases locally regarding aquarium disposal and boat transport
        - Boat ramp signs
        - Sign compliance sheet to put boat on Manitou that includes education
        - Article in *Water Column* on loosestrife "posse" on Ball Lake
        - More use of *Stop Aquatic Hitchhikers!* Campaign – make it a part of the culture to clean boats and equipment, perhaps through middle school children
- Regulate sales of invasive plants
    - Legal sales of Brazilian elodea as an aquarium plant
    - Include other exotic species (plant and animal)

In-lake structures/watercraft/density/government coordination Subgroup Discussion

Participants included Taylor (Chairman), Hippensteel, Coplen, Madden, Hebenstreit, Bridges, Pearson, Baise, Smith, Linkel

Taylor wants to have small, non-quorum sub-group meetings as often as interest allows in order to rapidly accomplish as much as possible. Recommendations from subgroup to entire LMWG should be in the form of specific language agreed to by subgroup. There should be no equivocation by subgroup members after recommendation is forwarded.

Discussion of "acquiescence"
Pearson had drafted potential definitions for "acquiescence" and "public freshwater lake" in the past; they were circulated for consideration. Consider statutory change vs. rulemaking for definitions? "Acquiescence" currently defined by case law and administrative hearings. Current definition of PFL in IC 14-26-2-3. Future definition of acquiescence could be in 327 IAC 11-2.

What is bioengineering?

- Increasing number of people are questioning what actually constitutes "bioengineering", specifically with regard to the percentage of non-biological components.
- Success often requires addition of rip-rap
- How much rock can be added for it to be considered permittable and still be considered bioengineering?
    - Guidelines are needed in that regard
- In a related vein, how much area should a pier (especially a group pier) be allowed to cover?
    - Guidelines are also needed in that regard

Action Item: *Hebenstreit, Hippensteel and Pearson will discuss possible guidelines and prepare some information for the next meeting.*

Aquatic toys and other devices such as aerators
There are issues regarding the area of a lake that they occupy

What is funneling?
How is it defined? How should it be addressed?

Density of structures along shoreline
How can DNR effectively deny permits for structures, e.g., what criteria should be applied to group pier applications?

Issue of piers is prime subject for northeast Indiana lakes

Two aspects to issue: Land-based zoning perspective and in-lake group pier perspective.

- How can the two be linked so they can't be addressed one at a time by developer then one used to leverage the other?

What "shoreline development standards" could be developed/imposed, e.g., what is maximum area a group pier can cover?

DNR is engaged in informal internal process of trying to develop cumulative environmental, public trust and natural scenic beauty background information to support permit reviews

- Should those guidelines to shared with LMWG for evaluation/comment?

The situation has become so challenging that property owners are constructing homes occupying so much of their lakefront lot that they have to have their patios on piers

Most lakefront conflicts revolve around size and placement of temporary structures

Piers historically weren't such an issue as they are now, but desire for each riparian owner to own multiple watercraft, plus provide dockage for relatives or friends, has created climate for difficulties

How can rules be imposed on lake access without imposing on rights of riparian owners who've "overbuilt" and already occupied all of the nearshore area in front of their residences?

- Everyone must be treated fairly
- "Fairly" may not be "equally" because wetlands and/or natural shoreline must be addressed differently than developed shoreline

Pendulum has swung too far away from "public trust doctrine"

- Piers and other structures are precluding public access to increasingly larger portions of lakes

If there are no restrictions on pier areal coverage, plan commissions don't have a basis for limiting the number of condominiums that may be "funneled" onto a lake

Kosciusko County zoning ordinance doesn't discourage "back lot" development, but doesn't infer any rights to those units to piers

There's been a trend toward smaller parking spaces in automobile parking lots; might not that same principle be applied to the size of boat slips?

Lake Lemon limits riparians to one 60' pier for 50' of shoreline frontage and 4 watercraft per pier

DNR already has 4-category "zoning" of shoreline; might that be utilized in regulating piers?

Consider evaluating Wisconsin and Minnesota pier regulations for guidance?

- They began stringent regulation before problem got out of hand

***Action item**: Consult DNR legal staff about status of all temporary structure issues including winter pier removal, lawful nonconforming use, etc.*

Education and enforcement

Should the issue of licensing of watercraft operators be reopened?
Are speed limits for watercraft appropriate?

- Can't be justified solely by accident data since there are very few accidents
- PWCs capable of 60-70 mph; they and other watercraft operators not required to have any specific training or licensing, which seems counterintuitive

Should there be noise enforcement?
Boating fatalities peaked nationally in 1974 and have been declining since then

***Action item**: Taylor asked Hensley to coordinate with 1SGT Bill Snyder to prepare information about the subject for next meeting.*

Group piers vs. marinas

Issue needs to be discussed – Probably in context of broader discussion about "structures"

Public freshwater lake definition
Presently defined in IC 14-26-2-3

Should LMWG consider changing it in some way?

Many things factor into what defines the three elements of the term – public, freshwater and lake, e.g., size of the waterbody

Is there a need to more specifically define "acquiescence"

What about creating a lake list, as had been previously discussed?

- Developing a list could be concurrent with discussion/progress on what constitutes "acquiescence"

Reconvene entire work group for concluding discussion

<u>Report from Biology / Chemistry / Watersheds</u>

- Reviewed priority issues
    - Freshwater Lake Definition
        - Talk with DNR staff regarding the process to develop a list of lakes
        - Will coordinate with the other subgroup on the issue
    - Improving dialogue between the lake users and watershed residents
        - Possible facilitated focus group meeting with key constituents
            - Initial mutual understanding of problems
            - Explore roadblocks that are keeping the groups from interacting and solving problems with less finger-pointing and more cooperation
            - Need to identify region or place to hold a meeting(s)
    - Implement other communications strategies
    - Impact of biofuels initiatives
        - Pressures of production on marginal farmlands
    - Lawn fertilizers
        - Overuse and availability of inexpensive soil test kits as an activity for lake associations
    - Rule 5
    - Combined sewer overflows
    - Aquatic nuisance species
        - Standard industry practices for disinfection of pumps and tubing
- Distilling issues into productive action items

<u>Report from In-lake Structures/Watercraft/Density/Government coordination</u>

- Did not have expected reports

    - Law enforcement
    - Status of DNR actions regarding past recommendations
- Talked about format to bring issues back to the group
    - Will propose specific statutes or rule changes
- Reviewed issues
    - Public Freshwater Lakes definition
        - Discussions with ALJ and lawyers
        - Will provide information to the other subgroup
        - Acquiescence definition
    - Temporary structures
    - Bioengineering – definition and clarification of standards
- Intend to make progress

Next meeting: Tentatively scheduled for Friday, June 22, 9am-3pm to finalize topics needing public input
Interim report: Required before July 1, 2007 on subjects, tentative findings, meetings
Following meeting: August or September to present concepts to the public in facilitated sessions using DNR staff

3:00 p.m. Adjourned

LAKE MANAGEMENT WORK GROUP

Indiana Government Center South
Conference Center Room 2
June 22, 2007

NOTES

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

Members Present:

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

Staff and guests:

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

9:15 a.m. Legislative Update

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

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

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

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

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

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

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

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

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

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

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

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

Actions:

- Jones: Provide news release on national lake survey.

10:15 a.m. Sub-Group Discussions

Biology/Chemistry/Watershed Subgroup Issues

Topic: Bluegreen algae

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

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

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

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

    - Regulation and boat inspection

        - Conservation officers and others are already inspecting at the launches for boat and launch permits. They could be inspecting for invasive plants.
            - ILMS has been approached by DNR Law Enforcement to provide some education on invasive species identification.
            - County reserve deputies on lake patrol may also be interested.
        - Similar to anti-littering campaign, laws and fines.

    - Cost of control
        - Hydrilla and Brazilian elodea are expensive treatments, will take much of the LARE budget even with the legislative appropriation.

    - What outlets to use to reach everyone?
        - Tool available through AFWA project.
            - License vendors can educate or state could print "Stop Aquatic Hitchhikers" logo on licenses
            - Model program established but not used in Indiana.
        - VHS (fish virus) is a similar issue that has motivated rigorous protocols for boat cleaning in agencies in other states.
            - While lake sampling, IU will take boat through a power wash station; disinfect plankton nets and water pumps; protocols are difficult for professionals, how will public use them?
            - Requirements will continue to get higher.
            - Can learn from other states.

    - Messages may be difficult for some people to accept, takes time to change
        - Dumping live bait onshore instead of in the water where bass can eat them
        - Similar to public response changing to hunting deer in the parks

    - ***Actions:***

        - ANS communications strategies
            - Mongin will gather examples of information from other states and groups. May need to request funds from IDEM or LARE for distribution at marinas, boat license (BMV) or fishing license.
                - ILMS got some funds from the NALMS conference that could be used to support.
            - White will provide links to IAFWA model state communications plan project to use as in developing an Indiana plan.
            - Jones will seek education kits from Maine and Wisconsin.

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

Priority # 1: Land conservation practices (agriculture and urban)
The subgroup discussed potential actions to address issues related to nonpoint source pollutants.

Topic: Regulated drains

- Possible review of the state Drainage Code
    - More emphasis on use of sediment basins
    - Need to control sediment after maintenance has been done
        - Causes most of the work for lake dredging

    - Best management practices not being used in order to reduce costs in drainage assessments
        - Low motivation for elected surveyors to promote more expensive best management practices
        - Some farmers doing their own work with excavators to avoid the drainage assessment
        - Other construction activities require erosion control (silt fences), so should be standard for drain maintenance
        - Lake of the Woods in Marshall County gets sediment plumes and deltas from regulated drain maintenance projects
        - Wonder how many inlets that are dredged with LARE funds are getting sediment from regulated drains

    - If legal responsibility for regulated drains was extended into the lakes, there would be more motivation to control erosion
        - Perhaps, rather than reviewing drainage code, make drainage boards accountable for what goes into the lakes.
            - Monitor sediment before maintenance project starts and make the drainage board financially responsible
            - Need to know what, if any, exemptions there are for legal drain maintenance from the permitting requirements
            - Question what kinds of exemptions there may be from State Water Quality Standards for agricultural activities and drain maintenance
        - Kosciusko and Steuben County surveyors

        - Could continue an effort that was started with the 1994 "Log Jam Conference" that opened dialogue between county surveyors and natural resource professionals
        - Considerable variability in surveyors' approaches to maintenance
    - Need to get local buy-in for erosion control around regulated drains
        - USDA has funding to help implement best management practices
        - Need to find a way to bring it all together

- ***Actions:***
    - White can get information on current floodplain permitting requirements for drain maintenance
    - Consider inviting a few county surveyors to future meeting (e.g., Dick Kemper and Larry Gilbert)

Topic: Perception of Lake Resource Value

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

Topic: Agency Accountability

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

Topic: Increased Corn Production for Ethanol

- CRP land reverting to corn production

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

Topic: Confined Feeding Operations (CFOs and CAFOs)

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

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

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

- Minneapolis initiated the concept, which then went statewide in Minnesota with no phosphorus in lawn fertilizers unless a soil survey indicates the need for nutrients.
    - Article in *Lake Line* will show some effect of nutrients in runoff.
        - Too early to tell about effects on lakes.
        - Compliance in Minnesota is high with wide availability of phosphorus-free fertilizers.
        - Relationship to phosphorus-free laundry detergents? Indiana was the first state in the country to pass it.
        - Little change in chlorophyll levels in research three years after the Minnesota ban, although they were lower even in that short amount of time.
- Phosphorus is the limiting nutrient in lake systems.
    - Indiana laundry detergent P ban was a point-source control. People continued to drive across state lines to buy phosphorus laundry detergents at the time. It has changed with industry alternatives.
    - Should try to promote the phosphorus-free concept with the whole group.
    - Example of dredging operation in a lake. Association surveyed the bottom and found little soft substrate. Bottom was hard but water looked terrible. Meticulous lawns had seven trucks spraying fertilizers. Recommended reducing fertilizers and placing aerators in lake. Implemented a set-aside area with no fertilizer near lake, which made a big impact.

- Can promote phosphate-free fertilizer instead of banning it
    - Only banned for lawn fertilizer, not agriculture

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

- Other comments:
    - Group originally had representatives from IU, Purdue and Ball State
        - Not many lake-related professionals at those universities other than Carol Lembi
        - More publications from University of Wisconsin or Minnesota

Actions:

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

Topic: SWCD Effectiveness

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

        - NRCS interest in implementing the Farm Bill
            - May be some gaps that could be locally filled
                - Staff does not have time for education and watershed activities

- May want to provide input to State Soil Conservation Board and ISDA Division of Soil Conservation regarding use of legislatively appropriated Clean Water Indiana funds
    - Current discussion on whether CWI funds should be specifically appropriated to watershed management assistance
    - Could recommend focusing some staff on lake-related technical assistance to watersheds (e.g., lawn fertilizers, filter strips)
    - ISDA employees are organized with the NRCS Technical Teams
        - Conservation Implementation Teams to install waterways, filter strips, waste storage facilities
            - Do some conservation planning but not as much as they used to
            - Lend support to SWCDs, where there is a greater disparity
            - Less focus on water quality now than on agricultural practices
        - Rule 5 urban support is lower priority, especially for NRCS, so it has now fallen on the SWCDs for implementation
            - IDEM now providing all support staff for Rule 5
            - IDEM pays the SWCDs small amount to do Rule 5, but not enough
        - Opportunity to provide support for LARE and IDEM Section 319 projects has been reduced
            - LARE has two staff for Watershed Land Treatment
            - Section 319 has regional staff
    - IDEM Section 319 and LARE were supporting some activities that were similar to the Farm Bill programs
        - Demand for Farm Bill funds is lower than it used to be (less backlog in the amount of requests)
        - May need to rethink the focus for the LARE and Section 319 funds so that technical support efforts aren't duplicated
            - Restrict LARE and Section 319 to projects that cannot be covered in the Farm Bill
            - Encourage a discussion among the programs to examine any overlaps
        - Has the shift to larger farms affected interest in Farm Bill programs?
            - Owner of property has more interest than someone who cash-rents the property
            - Farming may transition from a part-time job to large-scale cash rent for crops

- Urbanizing trends
    - Farmers aren't as willing to use conservation programs if they think the land will be sold for subdivisions in the near future
    - LARE program had avoided funding urban conservation practices in the past; may need to reconsider focus on agricultural practices

- SWCD disparity
    - Depends on grant-writing and local conservation support among county commissioners

Actions:

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

Topic: Indiana Classified Filter Strip Law

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

Actions:

- White will find statutory language

Priority: Economic Value of Lakes

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

Develop subgroup recommendations:

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

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

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

Topic: Watercraft Concerns – Speed Limits, Education, Noise

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

Topic: Bioengineering Standards

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

Topic: Piers and Other Nearshore Structures

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

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

Topic: Public Freshwater Lake Definition

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

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

Topic: Funneling

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

2:30 p.m. Reconvene Entire Work Group

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

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

- Staff attorney with department, works with issues in northern part of the State
- Rules going through the process including:

    - Lawful Nonconforming Use Rule - preliminary adoption (for second time); sparsely attended hearing with no members of the public; will be on Natural Resources Commission agenda on July 17 for adoption.

    - Lake of the Woods, Bremen, rule on pier lengths – has dual lake level; when lake is low, some problems with boat access; allows for increased pier length to 250 ft with additional 50 ft buffer for high speed watercraft use; rule patterned after the Bass Lake pier length rule; will be on agenda for NRC. Lake level control structure was locked with two keys held by a lake resident and a farmer; now operated by DNR because of disputes. Lake level re-established by several lawsuits in Marshall County and higher courts. New pier rule will help with boating access at low level during dry periods.

    - Wawasee Property Owners and Real Estate Development case – Group pier permit (19 piers on end of channel); 2-day contested hearing with

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

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

Actions:

- Jim Ray will check on status.

Subgroup Reports

A. Biology/Chemistry/Watersheds Subgroup
Chair: Bill Jones

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

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

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

B. In-lake Structures/Watercraft/Density/Government Coordination Subgroup
Chair: Ralph Taylor

Topics for discussion were:

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

Next steps:

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

Process for interactions between subgroups

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

Next meeting

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

3:00 p.m. Adjourned

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 Gausselin, 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

- 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 form 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

- 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

- 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

- 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

- 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?

- 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

- 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

    - 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 !C 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

Summarize sub-group discussions

- Discuss potential legislative actions/bill drafts
- Future meetings or other actions

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 drafting against the timeline.
    - Second draft (handout) with legislative changes listed. 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 statute are subject to change during the process. Official recommendation in second draft short of those modifications.

- Recommendation # 1 (pg 2) – 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 size wise. Does not relate to context of IDEM rules. Bodies of water at least 5 acres in size. The cite itself is a logical place to put it, but LSA will be the ultimate authority. So cite numbers could change.
    - Added lake being a "reasonably permanent body of water" existing March 12, 1947, when the PFL Act was put in place. Specific charge as this body to look at act developed in 1946 and implemented in 1947. How law has been applied by courts is that the essence of PFL being unique that it comes from a natural origin.
        - Does not mean that some of these lakes are not protected in other areas of law, but that the shorelines and bed have a higher standard of protection for modification or removal significantly different from glacial development is regulated.
        - Page 3 – Definition is a housekeeping change. Meaning of PFL set forth in 14-26-2.
        -
- Rec. # 2 – Adds wildlife to definition of natural resources.

- Rec. # 3 – State has full power and control of PFL and holds in trust (IC 14-26)

    - Does not assign responsibility to a specific agency to carry out the public trust doctrine. Makes it the DNR responsible to implement. 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.
    - May add clause that it expires. Once the rules are adopted, the portion of the statute that requires the NRC to develop these rules will expire (becomes an unnecessary noncode cite).

- Rec # 4 – List of Public Freshwater Lakes (PFL)
    - Modifies the definition of acquiescence. Will also set exclusions by size (under 5 acres). To develop a list for everyone regarding which lakes are regulated as PFL, recognizing that the PFL designation is only a part of the fabric that causes a water to be subject to state jurisdiction.
        - IC 14-26-2-1.2 Section a.1-3 as Definition of acquiescence. Currently the standard but moved into statute.
        - Specifies what the judge may review to accept as evidence in determining acquiescence. All lakes must go through the transition from private to public (becomes designated as a protected shoreline). Before it can be included as a PFL, the essence of the whole deliberation lies within the term acquiescence, showing that

- Evidence:
    - Used for recreational purposes.
    - Operation by another person of commercial enterprise for access.
    - Regulation of structures by agency.
    - Already adjudicated (declared private).

- Rec. # 5 - Permits under PFL only have a term of two years.
    - Should vary depending on the type of construction activity. General classification of two years remain intact, but give NRC authority to promulgate rules that allow for longer permit time.

- Rec. # 6 (bottom of pg. 7) – Continual filing of appeals for administrative cause
    - Assuming due process has been filed, judge makes a determination, then the other 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 they law makes more sense

- Rec. # 7 – Temporary structure permits.
    - Protection of existing uses for current property owner with expiration of grandfathering for new landowner.
    - Only comprehensive change. Make law more responsive. Law written in 1947. Look at economic changes and "creeping normalcy" in which what seems to be abnormal lake usage 20 years ago is now considered normal. Examples include perception of boat overcrowding, number of piers, utilization of shoreline. No way to fix this without hurting the stakeholder. Want to improve the law, not too many changes, not hurting all the competing interests, more responsive to change, but still protecting the stakeholder. Creates backlash if new regulations don't allow for existing norms. Need to protect riparian owner.
    - Mechanism that protects use that was lawful when it was installed for the current property owner. Need to have a window of opportunity 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 but also provides a window of opportunity.
    - LSA drafted preliminary draft 3151.

- Rec. # 8 – List of public freshwater lakes

        - Add section to PFL under authority in IC 4-22-7 adopt a list of public freshwater lakes in Indiana as prima facie evidence for administration of this chapter.

    - Rec. # 9 – Riparian owners request funds
        - Examples: dam inspections, fish management programs
        - 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.
        - Requires 100% property owner agreement. Need to explore verbiage in regard to who has the right to vote (for example, up 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 tax payer dollars to be utilized on private bodies of water. Could be millions of dollars 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: Narrowly defined public trust. Not just for the use of the public for recreation.
- 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 someone accountable to the Public Trust Doctrine. No link in law to challenge it. Deputy Director noted that the public trust is much larger and should affect everything the state does. Have 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.

<u>Biology/chemistry/watershed issues (Jones)</u>

- Looking at policy, rather than just legislative action. Made updates on two others that are saved to hand out.

- **Issue # 1: Bass fishing on beds.**
    - Raised in original Angola meetings regarding Indiana complaints about out of state anglers fishing on Indiana beds during closed seasons in other states.

- Jed is in the process of developing a study that the group and agency 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, but recognition and approval of action to study the issue.
- Meeks: Takes legislative authority?
- Pearson: Can be done by rule.
- Meeks: Hear a lot of concern about this.
- Taylor: Michigan changed their law to open spring fishing season.
- Oakes: Isn't it catch and release rather than take?
- Taylor: Biological data did not justify season, but had political response through the Michigan Conservation Clubs. Moved forward one step by going to catch and release. Frustrated early tournament fishers who want to fish without necessarily taking the fish.
- Oakes: Say they save 95% of the fish, but there are bigger losses.
- Jones: Issues that Jed will address in work over the winter. He will report back to the group. Looking for endorsement as a worthwhile study.
- Madden: Any financial impact regarding fishing on the 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 license, and don't actually buy much in Indiana if they just come across the line. Big tournaments have overnight stays. This district is right across state line. 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, including economic value of properties, fish in lake, tourism income. Having data on true economic value of lakes will support investment in lake protection.
  - Outlined a proposal that a professor at Tristate University (John Stevens) will be working on this study over the next 6-12 months. Professor and Dean at Tristate wants to have confirmation that this effort will be worthwhile. Looking for support and encouragement.

  - *Discussion*:
    - Meeks: Discussion that school year 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 include impact of summer season. Have crafted a bill that school has to be out at end of May and not start until after Labor Day. Look at impact on tourism industry. Everything closes after first week in August due to extended school year.
    - Oakes: Tristate has encouraged Dr. Stevens to do this as a doctoral dissertation. Economic study expanded from just Steuben to state.
    - Meeks: Check with marina associations that are working on related issues.

- Issue # 3: Phosphorus dishwasher detergent ban
    - Phosphorus is limiting 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. 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 tones (huge watershed). Far more economically feasible to remove it from detergent than to treat it afterward. Other states have instituted bans (IL, VT, MN, WA).
    - Follow similar action on laundry detergent to restrict household and commercial dishwashing detergent to limit to 0.5% by weight (unreasonable to expect 0%) as other states have done.

    - *Discussion*:
        - Madden: Does cost of phosphorus-free go up significantly?
        - Jones: Is higher? 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.
        - Hippensteel: State Chemist indicated that only their office has jurisdiction. He recommended using education to convince property owners not to buy this. Never 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: ISCO unwilling to give exemption to enact a nonphosphate fertilizer law. His authority is responsible for labeling and licensing of fertilizers. This is an impingement on that office's authority. Three groups in Steuben County have passed an ordinance to limit sale of nonphosphate fertilizers. Right away, got a response from State Chemist that only they can regulate that and then refused to allow local ordinance. Could be enacted state wide. Part of the national eutrophication survey. Did some studies on cluster systems for sewage treatment and phosphate amounts in 1975.
        - Taylor: If lawn fertilizers do well without it, maybe should look at state law.
        - Jones: Group did not have a chance to consider it. Started in Minneapolis and spread to entire state of Minnesota. Have only had a chance to address detergent not lawn fertilizers. If the group as a whole wishes to forward a statute that modifies the state chemist's charge so this could be done statewide. Could work on that next meeting. Narrow window right now for legislation. Expansion of 1973 legislation to dishwashing liquids.
        - Bridges: Did the ISCO offer their expertise to look at it or did they just say no one could do this except us?

        - Hippensteel: Not sure of details as wasn't present, but do know that they would not grant a waiver to the City of Angola, Clear Lake or Steuben County commissioners to allow them to implement the ordinance.
        - Jones: Can have a whole group discussion, but would like to stick to the prepared recommendations.

    - *Hippensteel moves; Snyder seconds; motion passes to approve recommendation.*

- Issue # 4 – Aquatic Invasive Species Education
    - Doug Keller talked to group about need. Mark Mongin and ILMS has talked to groups. Lack of information and knowledge about AIS plants, animals, zebra mussels, ruffe.
        - Lots of information, but lack of knowledge and emphasis getting into right hands. More brochures and signs alone are not enough. Need more resources to the single AIS person. Funding or redistribution of funds for assistant to conduct workshops, train lake leaders on identification.
        - Prevention will save $1.5 million this past year in state money, much less private money to combat this.
        - 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.
    - Recognize statewide dialogue on bill advanced 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 a lake fair at West Otter Lake, Gwen had a nice display of invasive species from an aquarium shop. When people are done with aquarium, they dump it into the lake, which is likely how Griffy got Brazilian elodea.
        - Encouragement of this task force may be warranted. In a short session, may not be looking at budget items.
        - Meeks: Can create the task force though.
        - Jones: This group could encourage this as an area of emphasis.
        - Meeks: Last year's budget had $500,000 to eradicate hydrilla. Costs $500,000 minimum of three years. Thinking of taking it out of LARE fund, depriving the rest of the lakes from using that money. Don't have any problem putting money in for education. If you can buy that in an aquatic store and dump it into the lake, don't have any problem. Should the money be put in budget for task force? Sometimes the money is mis-spent. The Indianapolis Star got on my case as funding as a perk for hydrilla. They ought to get a copy of this.
        - Jones: So much need and not enough to go around. Spending over a million dollars to remove an 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.
        - Jones: Doug and ILMS have been doing this.
        - Mongin: Just one person, trying to augment.

- 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 Doug.
- 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 meet.
- Meeks: Could create 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 who were trying to do that. 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 from 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 you ban the plant?
- Jones: Have been some orders declaring bans. Hydrilla has been made illegal. Can have the laws but unless going around to aquarium shops to tell the mail order supply stores they can't sell it. Not sure if the worry is with aquarium shops. Other pets and supplies can be 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 too issue. With it comes invasives. Group wondering how to emphasize that we need to get more resources. Spending a lot on control but needs 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. Pathogens, such as VHS (fish disease). Dr. Waltz did have a task force of some nature that looked at issues related to AIS across terrestrial and aquatic systems.
- Jones: Talking about that previous effort and thinking that it got cut short when he moved to the chemist office.

        - Shipman: Farm Bill did have funding for VHS detection. Ballast water does move these species. Some states have restrictions on ballast water that were upheld recently by 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 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: Would ask DNR to provide recommendations and costs.
        - White: Can find the materials produced by Dr. Waltz on the task force, as well as the program recommendations and costs outlined in the ANS Management Plan that was signed by the Governor.

- **Issue # 5 - Cyanobacteria Toxins**
    - Eagle Creek and Geist advisories with measurable levels of toxins. Exceed 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.
    - Monitored by Veolia due to permit requirements. Dr. Lenore Tedesco got a rash after recreating in Monroe. Had over a million cells per milliliter. Tremendous concentration (1.5 million people per year) recreate there, but no one is testing water or monitoring public health (number of people getting rashes). Senator Gard's son got a rash at Geist. Fairly continuous publicity in Star advising people not to use the water in the reservoirs.
    - WHO recommendation at 100,000 cells per ml that people not go into the water. Many of our reservoirs are over that.
    - In 2001, had an invasive bluegreen (Cylindrospermopsis raciborskii) in Ball Lake. ISDH issued advisory. Created a toxic algae Task Force coordinated by Jill Hoffmann.
    - Monitoring added statewide with no toxin analysis and found it around state. Extraordinary high levels of cylindro at Lake Lemon.
    - Surrounding states have program where they test regularly (IL, IA, KS, NE). Indiana has no program. Don't study because if we don't know, it won't hurt us. Indiana needs to recognize and continue original work of 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. 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: Who 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. 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 with quick analytical screening test, but not sure how the state should respond. What level would require a particular advisory. A good rain will wash it out. Hot dry extended periods in the summer create the problems.
- Meeks: This group would evaluate, examine, analyze and give warnings.
- Jones: 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: Chemical treatment?
- Jones: Treating with algaecide will release toxins. Prevention by keeping phosphorous out of reservoirs is big thing. Monitoring is important. Blooms are transient. There could be private or public testing. Company called Abraxis.
- Pearson: Would the test have gone to the health department.
- Jones: Right now, no one knows where to turn.
- Oakes: Expand Secchi monitoring?
- Jones: Volunteers could ship sample bottle to be tested. Work group 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 have liver or nerve damage.
- Baise: Which agency is well equipped to provide the warning?
- Jones: Public health officer in county. How many people are going to doctors with rashes, upset stomach 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. 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. 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. 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 this group to establish a plan or create a group similar to this that would be charged with the responsibility and name who would be on (biologist, IDEM,

        - Hippensteel: Appropriate to reactivate the Task Force?
        - Ray: Can't speak on behalf of DNR but sense is that there is genuine interest in 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. Genuine interest, certainly within DNR. 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 study group would have more impact. If Senator Gard is going to file something.
        - Ray: Her statement was motivating.
        - Hippensteel: This group recommends 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: Jim and Bill have a list of who was on the group.
        - 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, but the issue was for the department of health.

- **Issue # 6 - Lake level petition procedure** (raised by public comment)
    - Dembowski: Takes only one remonstrator as a land holder. The DNR, county commissioners. 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: No, 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 a law on lakes that are over 70 acres or under 300 acres to change skiing laws. 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 in raising and lowering water level.
- C. Skelton: Only have four months. Want 6-7 months like other lakes.
- J. Skelton: Cuts recreational season to 3.5 months.
- Snyder: Who controls dam? In the lakes have trouble with people moving boards in lakes. Now have solid fixtures.
- J. Skelton: Would welcome a fixed structure.
- Snyder: Want it to go the other way, but the mechanism is there on how it works. How many people do you need to open it 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: Originally for flooding and septic systems. Did not have to do with agriculture when level was set.
- Baise: Uncomfortable with voting. Concerned about drainage. Important to farmers in spring and fall. Not comfortable with voting today. A water body might have a handful of residents where a majority of interests that are very narrow would have advantage over interests of large.
- Meeks: When it is passed, he has right to appeal. Person with one vote could stop it. Becomes his responsibility to make the appeal. Shifts the burden.
- Snyder: Could be 20% either way.
- C. Skelton: Want to still lower, but just change the season.
- J. Skelton: Discriminated against compared to other lakes with longer recreational season.
- Meeks: Can look at it. Needs discussion.
- Dembowski: Did not come prepared with legislation. Can develop that and bring it back. Too late already this year, as the season is over and the water lowered.
- J. Skelton: Would like to close April 1st.
- 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.

- **Other Issues**
  - Baise: Motor fuel tax when you fill up for car goes to road improvement. Does gas tax on motor fuel. Should gas tax for boat on the lake should go to improvement for the water.

        - Gross: 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 fueled up on road anyway because the marina fuel is more expensive.
        - Meeks: Could look at the fuel tax.
        - Shipman: Fish & Wildlife does get Sport Fish Restoration funds from offshore drilling. Have looked for alternative funding sources. Looking for this as a revenue source that goes to InDOT rather than Fish & Wildlife.
        - Meeks: How many gallons or dollars?
        - Shipman: No specifics. Several million dollars.
        - ???: Does marina pump permit?
        - Gross: Tax goes to the distributor. When marinas have to charge a higher amount for gas, is a big environmental issue. When people fuel with leaky gas can, spills into the lake.
        - ??: Biodiesel.

    - Meeks: Expire on June 30, 2008. Need legislation this year to extend for two years. Keep reappointments and remove those who were not here. Consensus that this committee should continue to meet?
        - Ray: Remiss in not getting travel vouchers prepared for those interested in receiving reimbursement. Need to know who wants to be reimbursed, so they can be prepared for signature. Will work with LSA to make sure that the last meeting was addressed for Rep. Dodge and Sen. Meeks. Let me know before you leave for a travel voucher.
        - Meeks: Was in legislation to get paid.
        - Dembowski: Senator Meeks can start it in the Senate. I would be glad to sponsor it in the House.
        - Meeks: I will prepare a bill.

- **Next Meeting**
    - Dembowski: 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.

3:53 p.m. Adjourned

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

Meeting Notes

Attendees

Members

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

Guests

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

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

Lake Sediment Removal

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

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

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

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

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

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

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

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

<u>Invasive Species Task Force</u>

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

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

- Emergency fund

8. Amend statutes to clarify authorities

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

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

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

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

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

Regulations for Piers and Related Topics

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

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

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

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

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

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

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

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

Proliferation of Piers

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

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

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

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

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

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

Legislation

Meeks stated that SEA 41, which defines "acquiescence" and "lake" and requires IDNR to prepare a list of public freshwater lakes, was enacted. SEA 88, which extends the LMWG expiration date to July 1, 2010, was enacted. SB 39, which would have explicitly required IDNR to implement the public trust doctrine, died in the House of Representatives for lack of a hearing. SB 40 also died in the House. Its most significant

element would have required a new landowner to apply for an individual license from IDNR if an existing pier did not conform to current standards suitable for a general license. That proved to be contentious, in part, because of misunderstanding of its intention and effects. Meeks believes that aspect of the bill to be a good idea, despite the controversy surrounding it.

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

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

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

Early Season Bass Fishing

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

Economic Value of Lakes

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

Marine Fuel Tax

Because a question had been raised at the October 2007 meeting, Ray distributed copies of information regarding the gasoline tax that is collected from marinas on Indiana lakes. That revenue is placed in the Fish and Wildlife Fund. The revenue was $141,606 for FY 2007.

Midwest Glacial Lakes Partnership

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

Attendance

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

Blue-Green Algae

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

Local Fertilizer Phosphorus Bans

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

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

Shoreline Erosion Control

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

Biology/Chemistry/Watershed Issues Subgroup

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

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

ii. Balanced against areas that are not currently good spawning sites.

d. Restriction also imposed in winter time for hibernating amphibians.

iii. A lot of science but not necessarily enough science to make site-specific decisions

c. Lake bottom
   i. Big Turkey Lake example – delineating natural lake bed; in area that had been previously mined for marl, so dredging was allowed.
   ii. Never has been any differentiation of lake bottom regarding sediment as original bed or what has eroded into the lake.
   iii. Seawalls are retaining organic material, so natural decomposition and consolidation don't take place.
   iv. Not enough oxygen for organisms to survive in these areas due to organic buildup.
   v. May not have information on depth from water surface to current lake bottom compared to lake bottom shown on contour maps in 1950s.
      1. Probing with PVC pipe to determine sediment depths.
      2. Dredge cutterhead will not work in dense consolidated material and heavy organic material
      3. Technology needed to determine depth of deposits

d. Quantification of lake bed before dredging – LARE sediment removal plan (lake restoration)
   i. Sites identified with GPS
   ii. Sediment samples taken to the lab per IDEM requirements (typically no contaminant issues in agricultural watersheds, but some areas may have manufacturing impacts)
      1. Toxaphene may occur in rural areas; selenium may occur in animal feed.
      2. PCBs may be released by disturbing sediments
   iii. Probe with pipe to determine depths of accumulated sediment, and then calculate volume of material to be removed.
   iv. Design of dewatering basins.
   v. Covers all proposed dredging areas including privately-funded areas.
   vi. Priorities for LARE are publicly-accessible sites, due to limited funding.
   vii. Don't have assessment of the local impact of the dredge operation itself with disturbance to water clarity and dislodging of weeds.

e. Permit process
   i. No concerns about administrative aspects.

ii. Construction in Floodway - law to prevent flooding was the origin of the permitting process; Division of Water conducts engineering calculations. Did not originally include an environmental review.
    1. Division of Water continued to be the permit administration agency when Public Freshwater Lake law was created.
    2. Some permits are reviewed for boating impacts by Law Enforcement, some for Historic Preservation, biological impacts by Fish and Wildlife.
    3. Division of Water staff compiles recommendations and determines final decision based on environmental or other comments.
    4. Do a technical review to determine whether the dredging will break the seam of the lake and disrupt lake levels.

iii. Draft policy guidelines for environmental review, including consistent guidelines for dredging.
    1. Hydraulic modeling guidelines now on the website for review by engineering firms.
    2. Has been some inconsistent application of decisions in past.
    3. Eight biologists in local areas around the state do the reviews.
    4. Will provide some legal certainty, possibly as rules in the future.
    5. Have been operating under the guidelines.
    6. Eventual nonrule policy would be available for anyone.
    7. Jim Hebenstreit will provide a copy of draft guidelines with background information to the subgroup.

f. Need to determine exactly what agency response is desired
    i. Asking for case-by-case consideration to determine where dredging is appropriate. Makes consistency difficult.
    ii. Krevda sent several letters over the past few years; relaying frustration of lake residents.
    iii. Whole-lake management plan for where opening in-lake channels may be preferable for lake use.
    iv. Put criteria on paper.
        1. Seasonal restrictions for biological protection.
        2. Channels nearly always approved.
        3. Coves susceptible to wind with unconsolidated material.
            a. Areas that never were dredged before would be denied.
            b. At mouth of inlet may be allowed.
            c. Status of lake since 1947.

g. Definition of lake and regulatory
    i. “Lowering of lake” standard refers to 10 acre lakes.
    ii. Definition of lake changed to 5 acres (minimum).

iii. Question about where the lake shoreline ends going up an inlet, which rules apply.

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

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

2. Closed bass fishing seasons

a. Draft IDNR document summarizes questions

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

Questions and answers

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

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

3. Economic impact study

a. Will not need more than $5,000 for property tax/value information to finish the study.
b. Tax information will be key.
c. Second homes with large waterfront mansions.

d. Reasons for study
    i. To prove to legislators and decision-makers that spending money to keep lakes clean, restrict piers, and enhance lakes.
    ii. Appearance before Senate Finance and House committee to provide funding to enhance lakes.
    iii. Use study to support regulations, such as the phosphorus ban.
    iv. Link to degradation of lake, such as misuse of shoreline
    v. Support the value of Lake and River Enhancement fee and other funds by enhancing lakes that provide local revenue for county services.

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

Senate Bill 40

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

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

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

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

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

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

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

Pier Rule Amendments

Lucas spoke about administrative rule amendments proposed by Advisory Council. One specific detail was deletion of word “yacht” from group pier definition. 312 IAC 11-4-8

is most significant proposed change; its attempt to establish standards for group piers – a reiteration of unwritten existing IDNR practices.

Meeks and Madden suggested that appropriate LMWG members meet with Taylor in the near future to discuss proposed amendments and develop recommendations to be presented to Advisory Council prior to its June meeting.
Madden noted that the existing rules and proposed amendments don't address environmental issues.

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

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

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

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

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

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

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

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

Entire Lake Management Work Group Reconvened

Jones recapitulated discussions in his subgroup's meeting.

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

Meeks recapitulated discussions in his subgroup's meeting.

- Need to thoroughly review proposed pier rule amendments and provide recommendations to Advisory Council

- Need to determine what action to pursue regarding SB 40; consider splitting out contentious portions of bill to increase likelihood of other portions' enactment

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

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

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

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

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

Indiana Lakes Management Work Group
Indiana Government Center South
July 10, 2008

Meeting Notes

Black = Full LMWG
Blue = Biology Subgroup
Green = Structures and Density Subgroup
Red = Action Items

Members Present

Representative Dick Dodge
Tony Bailey (for Shannon Zezula)
Larry Copeland
Jed Pearson
Major Felix Hensley
Ralph Taylor
Bob Madden
Mark Mongin
Jeff Krevda
Jim Stahl (for Lee Bridges)
Jim Hebenstreit

Guests Present

Jane Grund, Lake Maxinkuckee
Kathy Clark, Lake Maxinkuckee
Mark Hansbarger, Steuben County
John Baugh, Purdue
Bob Waltz, Indiana State Chemist
Darcy Zolman, Kosciusko SWCD
Dave Tyler, TELWF
Katie Stafford, Green Alliance
Mary Jo Fitzenrider, Clear Lake
Bill Schmidt, Steuben County Lakes Council
Tom Flatt
Ryan Hoff
Steve Lucas
Jim Ray
Angela Sturdevant
Gwen White

Notes

Welcome and Introductions
Representative Marlin Stutzman will be running for the Senate seat held by Senator Meeks. David Yard will be replacing Representative Stutzman. Representative Dembowski is on a trip and unavailable, and Senator Rogers' has an apparent meeting conflict. Representative Dick Dodge will chair the meeting today.

Short agenda with State Chemist addressing the group on fertilizer issues. Subgroup meetings will be held, then reconvene to summarize discussions.

The ILMWG meets four times. Will go through introductions to reintroduce everyone.

Phosphorus in Lakes (Dr. Bob Waltz, Indiana State Chemist)

1. Introduction to Office of Indiana State Chemist's function, not directing comments to policy or technical issues but questions being raised
    a. OISC established in 1881 for fertilizer issues, commercial and private use to certify that levels of nutrients advertised were in the products. Conduct chemical tests to validate manufacturer claims
    b. Purdue has strong relationship with agriculture; critical fertilizer determinations for crop production. Fertilizer management is integral part of university arena.
    c. Different products: fertilizers, feed, seed, and pesticides regulated for composition, product integrity, label claims, and use.
        i. OISC conducts chemical tests for consistency
        ii. Educational efforts with Purdue on training to properly use products to be consistent with state and federal standards
        iii. Issues with fertilizers involve both education and regulation

2. Phosphorus as pollutant in water
    a. Aware of critical pathways - from feeds, manures, movement through soils
    b. State law provides OISC with pre-emption authority
        i. Standards for bulk storage facilities – integrity of structures to contain materials such as maintenance and pressure gauges on ammonia tanks
        ii. Fertilizer use and application recently added – Rules being developed, now drafting education component for fertilizer materials, including commercial fertilizers and manure products
            1. Currently under development
            2. Will involve some education and training on materials handling
    c. Interest has been expressed about lawn care companies in Steuben County over the past year
        i. Education campaign on proper use of fertilizers near lake areas
        ii. Make sure local supplies of low phosphorus products are available by contacting the vendors

3. Questions?

a. ILMWG made a Recommendation #46 in 1999 report re educational aspects
    i. Taylor: Applicators have been handled well, seeing a difference as a consumer when someone did the lawn; found that doing one's own lawn was an interesting exercise in mathematics; homeowners may be fairly uninformed on proper use.
    ii. Recommendation was that IDNR, IASWCD, OISC would develop and publish brochures on fertilizer and pesticide management on nonagricultural areas such as lawns and golf courses
        1. Should this recommendation be revisited, perhaps with wording modification or more specific for lake users?
        2. Common denominator is to protect interests of lakes; do we need to give them more tools?
    iii. Waltz: General statement about education is that it is an ongoing process; no harm in reiterating important ideas; no education process is ever done in reality. Maintain educational programs for new homeowners coming into a lake area, perhaps with periodic training to apply at right dose, avoid lake contamination, work with septic systems and new construction. Perhaps not every year.
    iv. Taylor: May be able to reignite interest across agencies. Have several other education issues that could be dove-tailed.
b. Dodge: Now happening in Steuben County with good job of educating homeowners, lake users on these issues through lake council. Brought a news article regarding Hamilton Lake Association meeting with 68 people in attendance; Tony Cunningham of Weed Patrol spoke on algae problems. Growth of algae dependent on phosphorus in lake, saying do not hire lawn services to treat lawn or throw grass clippings in lakes.
    i. Waltz: Not a simple answer. Nitrogen, phosphorus and potassium are in fertilizers as nutrients needed by plants to grow, including algae.
        1. Nitrogen sources included fertilizer and air with so many sources that it is difficult to regulate.
        2. Phosphorus is an element with sources that we are still learning about. Regarded as a limiting nutrient. Growing organism requires certain nutrients. When you remove phosphorus, plant doesn't grow well so it is looking for phosphorus. When you plug in the phosphorus, the plant can use other nutrients and grow.
        3. One recommendation in the article was that you do your own fertilization. This is not a simple science. Looking at the amount of fertilizer needed, runoff, and soil content is not easy. If someone, such as a professional lawn service, knows what they are doing and how to do it right, may be well-advised to use that expertise.
    ii. Krevda: I work on lakes too. With lawn fertilizer companies, they get out with reel and spray the yard. There is no measurement or application to it. Don't know what the employees' qualifications are. I've worked on several small lakes of 7-8 acres. The lakes looked like a septic system. In tour around one lake, there were four lawn services spraying around the

lake. The lawns didn't need the fertilizer. They put aerators in the lake and banned the people from using phosphorus and restored the lake.

1. Dodge: Who initiated the phosphorus ban?
2. Krevda: Just lake association. It was private property. They thought they had a sediment problem, but there wasn't any. Bears out that once they removed the fertilizer and put in a restriction against fertilizing within 50 feet of the water, saw positive results.

iii. Waltz: Tremendous tools for education on not putting fertilizer close to lakeshore.

iv. Clark: Have educated residents, but there are people who can't educate or who show up. Farmers are concerned about criticism of their use of fertilizer when lake residents are also applying lawn fertilizers. Steuben County lake associations and others are trying to implement a phosphorus ban. Culver is interested in a ban. We were told by OISC that the locals didn't have the authority to do that. Why can't we impose a local ban?

1. Waltz: Specific pre-emption in law that gives that authority to the OISC. Have had two discussions and offered to work with Steuben County and Purdue Extension to provide technical background for good communication program.
2. Schmidt: The Steuben County Lakes Council is the "pre-emptee". The county and the Town of Clear Lake passed bans, and then found out that OISC controls this and has a procedure for application of waiver. County commissioners and Town of Clear Lake applied for waivers. Had a first meeting last August with OISC representatives at Purdue. Learned that there are several things to do. We were asked where we were on educational outreach, so we started that program. Reach over 8,000 lake residents with newsletter, had several articles on phosphorus. Had a "Turf Festival" to which county extension office brought graduate students to Angola. Having an education outreach program this fall where Angela Sturdevant will speak about lake health. Also have a scientific program with soil sampling throughout the county to determine if we need phosphorus in yards. Collected 160-170 soil samples to determine phosphate levels. Analysis was funded by Mr. Bigelow with turf science group. Also a county-wide water quality testing program underway. Using this information to justify whether we need a waiver and ban. Mr. Hancock of OISC indicated that this would be the first waiver in state. Have a 3-component system underway with support from OISC and Purdue. Within 3-4 months of deciding what we will do about waiver. Working with OISC to determine if what we are doing will be productive.
3. Pearson: What is the waiver?
4. Schmidt: The waiver gives the community authority to put a ban in place.

c. Coplen: What about herbicides and pesticides?
    i. Waltz: There is training and certification for use through the OISC.
    ii. Coplen: Also to establish rules for chemical application so many feet from open water?
    iii. Waltz: That is federal law on the label between the registrant and EPA.
    iv. Pearson: Right now, there are no restricted-use aquatic herbicides. So anyone could buy and use the herbicides in a lake.
    v. Waltz: There are exceptions with DNR regulation if the materials are applied to a public lake.
    vi. Pearson: No restrictions in place that would stop a sale of these pesticides to unlicensed user.
    vii. Waltz: If farmers are using non-restricted herbicides on their own property, they are not required to take the training and be licensed. If they are using restricted-use pesticides or non-restricted pesticides on property that is not their own, training and licensing is required. Any class of pesticides would need the appropriate category of certification, as it is geared to what product is being applied.
d. Dodge: Lawn applicators are certified?
    i. Waltz: Yes, they take a core exam and a categorical exam. We have 11 categories of certification.
e. Fitzenrider: Clear Lake Association is working especially on education component, which will be ongoing. Need to be open-minded about some sort of regulation. A lot of lawn applicators are responsible pesticide users, but we can't cover everyone unless we can say strongly that you cannot bring phosphorus on lake. May need some kind of regulatory support. Many people are gone over the winter in the lakes area and really don't know what the applicators are putting on their lawns. Know it is part of our education as a responsible property owner. Lakes are valuable to county and all of the state. Could be certain pockets of any state that may need special support. Some states have gone totally phosphorus free to protect their huge watersheds across most of their state. We are looking for all the support we can get.
    i. Clark: If people asked me about applicator licensing, where do I go?
    ii. Waltz: Names of currently registered applicators are on the OISC website.
    iii. Clark: Applaud efforts to get dishwashing detergent phosphorus banned. Taken aback by exemption for commercial users. Have 18 restaurants around Lake Maxinkuckee that feed 800 people through the summer. They are exempt and on the lake edge in a hard to maintain wastewater treatment system. If phosphorus is bad, it should be banned from every user. If enzymes work to clean my dishes at home, should also work for restaurants.
    iv. Krevda: Do applicators have to put license number on vehicles?
    v. Waltz: No, but have to carry license with them.
    vi. Krevda: Would it help to have it posted on vehicle to allow people hiring them to check up on them?
    vii. Waltz: Can be resolved by the landowner just asking to see the license.

viii. Krevda: With it on the truck, they could see it immediately. DNR or anyone driving by could look and know that there is a license number.

f. Mongin: Has anyone completed studies documenting the impact of phosphorus after bans are in place to show changes in water quality. In other places that have banned these, have they completed case study work to document change?
   i. Waltz: Classic study in Wisconsin in 1950s on, I believe, Lake Mendota demonstrating that phosphorus was a limiting nutrient. Not aware of any concluded recent studies, but a lot going on due to recent bans in Minnesota and Wisconsin. Preliminary results with ongoing studies.
   ii. Schmidt: Study in lakes magazine that addressed urban issues with phosphorus. Minnesota was first state with state-wide phosphorus ban.
   iii. Waltz: Purdue studies with gutters and soil types, but will be several years before the research is complete.
   iv. Mongin: Should review results to back it up with data.

g. Pearson: Are fertilizer vendors required to track sales?
   i. Waltz: No. There are tonnage reports from big distributors, but local stores are not required to track small sales.

h. Dodge: Phosphorus banned from detergents, but only for residential use? When does that go into effect?
   i. Waltz: Laundry detergent was in 1970s, dishwashing machines just went into effect.
   ii. Clark: Have 18 restaurants with 4,000 summer residents who are fed by the restaurants. The residents don't cook every day. Surprised that restaurants were exempted. They had a lobby saying they couldn't change over in two years.
   iii. Hoff: At the committee meetings where this was discussed they exempted commercial users because the enzyme for residential dishwashing works due to lower temperatures. It doesn't work in commercial grade dishwashers due to the required higher temperatures.

i. Tyler: With regard to permitting of applicators, are the permits issued to organizations or individuals
   i. Waltz: The individuals are licensed. In a business, the applicator must work immediately under the supervision of a licensed person. Required to be within a short distance. Lawn care may have 2-3 crews in area. Must be in close phone contact in case they have a question, such as what to do near a well.

4. Dodge: Thanks to Dr. Waltz for joining us. This is an environmental issue that the subgroup can talk about further. Visitors welcome to join the subgroup conversations and reconvening of whole group.

Biology Subgroup Meeting

1. Proposed Advisory Council group pier rule amendments

a. Regulations provide guidance regarding factors that the department must address prior to issuing a permit for group piers
b. Establish who has burden of proof and conditions that DNR could place on permit

i. Include language to minimize damage to natural resources?
    1. Contention that there is no basis for condition stated in subsection (c) to allow biological component
    2. Opposition was that the burden of proof was on the applicant, but that the department should make a judgment regarding environmental impact

ii. Was the environmental component defined?
    1. No, but would reflect the Lakes Preservation Act regarding fish, wildlife and botanical resources.
    2. Implication that if the applicant meets the requirements, which do not include environmental impacts, the permit can't be denied.

iii. Subsection (c) needs to be parallel to other parts of the regulations and the Lakes Preservation Act. Other parts of the regulations are not structured similarly.
    1. Implication that the department has to approve the permit if the applicant complies with the conditions, which do not address significant wetlands or other environmental impacts
    2. Regulation has a later section regarding conditions to protect natural resources in subsection (d)
    3. Question assertion that environmental harm clause would be more difficult for the applicant to address than the other navigability and safety issues

c. Considerations

i. Need to define where there are areas that should not have development, dredging, or other structures including group piers
    1. Would cover restrictions on funneling people to the lake through a thriving wetland

ii. Need to be consistent with guidelines for other requirements that restrict construction of structures in certain areas, such as Significant Wetlands.
    1. The way proposed rule revision is written, it appears that a large group pier could be permitted in a Significant Wetland where no other structures, like a seawall, would be allowed
    2. A previous rule draft included a phrase "cause significant environmental harm"
    3. There may be an argument that an ordinary, typical temporary pier has an environmental impact, based on a previous legal case. This may not be true for a large group pier if proposed language is followed
    4. Do not want to build allowances into rule that are greater than in other rules
        a. Example: allowing a width that is up to ½ the length of the applicants shoreline
        b. Not consistent with other regulations, where you can only use a herbicide or construct a beach on 625 square feet but can shade out vegetation over ½ the nearshore property with a group pier

    5. In either case, must ensure that all impacts are addressed

a. Navigation
b. Adjacent landowners
c. Natural resource impacts

d. Riparian rights
   i. Attorneys claim that every group of riparian owners has a right to a group pier, just as they would have a right to an individually-owned pier.
      1. The way the proposed rule changes are currently written is not consistent with other parts of the rules where riparians are not allowed to have a beach in a Significant Wetland
      2. Similar situation to standards that do not currently exist for dredging. If significant wetlands are not dredged, the area wouldn't be deep enough for group pier access or other structures
      3. Argument of subdividing a lot so that each property owner could have a pier, but the owner may subdivide the property and request a group pier on every one of the properties. That doesn't reduce environmental impact
   ii. Not a disagreement that the riparian has access rights to lake, but the question is what kind of access over what type of structures and the degree of impact that the structure would have
      1. Point is that the standards across all types of structures should be the same, so that impacts are addressed consistently
   iii. Could request that the DNR draft environmental standards as a basis for these proposed regulations

e. Possible courses of action:
   i. Add a statement (6) to subsection (c) on natural resources that would be consistent with the burden of proof regarding environmental damage in the Lakes Preservation Act. Need subsection (d) to restrict permitting of group piers according to shoreline classifications (i.e., Significant Wetland and Area of Special Concern), consistent with regulation of other structures

   ii. Consider revising the property width allowances in subsection (d)(5) and define restrictions on allowable structures in Significant Wetland and Area of Special Concern, consistent with regulation of other structures, such as:
      1. *A pier must not extend, in total width, more than one-half (1/2) the length of the applicant's shoreline or water line in a Developed Area.*
      2. *A pier must not extend, in total width, more than one-fourth (1/4) the length of the applicant's shoreline or water line in an Area of Special Concern.*
      3. *A pier must not extend, in total width, more than one-tenth (1/10) the length of the applicant's shoreline or water line in a Significant Wetland.*

   iii. Consider removing subsection (c) to reduce redundancy with subsection (d). Everything in (c) is repeated in (d).

iv. Consider waiting to define these restrictions with the regulations that will address all piers, including individual piers, rather than a separate regulation just on group piers.

2. ***Action***: The Biology subgroup agreed by consensus to incorporate an environmental component in the group pier rules by adding a statement (6) to subsection (c) and revising the property width allowances in subsection (d)(5) to reflect different sensitivities of shoreline classifications.

3. Clarification about who drafts regulations? Staff within DNR develops drafts that are reviewed by Steve Lucas before being passed to the DNR Advisory Council and the Natural Resources Commission

4. Other issues: Bass fishing on spawning beds, bluegreen algae, dredging guidance, exotic weed control.
   a. Dredging permit review guidance
      i. Krevda: Discussions that led to bill did not go any further because the Division of Soil Conservation no longer administers the program
      ii. Spawning restrictions have a huge impact on the cost of dredging projects
      iii. Need to look at regulations
      iv. Proposed guidelines were sent out by Jim Ray. The focus of a special meeting would be to discuss that document. Invite LARE staff who are managing the dredging projects, as well as Fisheries staff who review permits

   b. Requesting report from LARE on what has been accomplished with the additional funding for exotic weed control and sediment removal

   c. Jones: Could invite other Fisheries people to have a working meeting on all of these issues. Could meet in Indianapolis, at Mounds Nature Center or at some other location farther north. Perhaps in September.

5. ***Interim subgroup meeting on Monday, September 15***, to focus on dredging including:
      i. Dredging permit review guidelines
      ii. Report from LARE on how funding has been spent for dredging and exotic plant control
      iii. Inconsistencies with other laws
      iv. Fishing on bass beds and spawning restrictions
      v. County drainage board dredging operations, such as changes in Lowering of the 10-Acre Lake (and 20-acre lake)

Structures and Density Subgroup Meeting (Conference Room A)

1. Identifying issues for the next 6 months including possible statutes and rule changes

2. **Potential changes** – most that have been suggested have already been addressed
   a. Inconsistency regarding 5 acre lake size in two areas of statutes

b. Pier issues from Advisory Council

3. **Removal of temporary structures** – would require rule change
    a. Public hazard for winter activities such as snowmobiling
        i. Accidents with people hitting piers in winter
        ii. Discussion in past involved not wanting to force removal of entire structures in channels, but allow leaving a 5-foot long structure in the lake near shore
        iii. Discussion occurred during meetings of LMWG at a time when it was not operating under a legislative mandate

    b. May be very expensive to annually remove large structures, even though they're ostensibly "temporary"
        i. First, is it reasonable to encumber public use of areas with large structures?
        ii. Tyler: Unclear whether Lakes Preservation Act requires structures to be temporary and removed. Talking about ancillary issues like aerators, which are typically installed to prevent ice from forming around piers so they don't have to be removed. Because previous discussion occurred when LMWG was not legislatively established, need clarification of whether state intends to enforce annual removal of temporary structures. Disruption to many riparians of requiring removal will be profound. Familiar with Lake Tippecanoe with some piers that have metal roofs, not shore station type. Piers that are significantly larger and which stay if they are not likely to be damaged by ice. LMWG should not ignore issue of requiring annual removal of temporary structures
        iii. Taylor: Could put removal in general license requirement. If a structure is lawful, it would be possible to apply for an individual permit for it to not be removed. Keep in mind that we're are talking primarily about general licenses for what a riparian can do without seeking an individual permit. Assignment for DNR is to create rules for better management of structures in nearshore zone. Part of that process is opportunity for public objection and the adjudication process. What has occurred is that DNR has established articulated standards for automatic licenses. If the landowner wants to deviate from that, the licensing process allows the agency to take into account what the effect would be on neighboring properties. Example of the very large commercial party boat that can't be removed in the winter from Lake Wawasee may make perfect sense for a de-icing aerator. They would need to apply for a permit with notice to the public and could establish special terms for permit issuance. Don't believe general license should allow 200 foot piers; should be limited to 150 feet.

    c. Caveat on use of aerators
        i. Used to prevent ice from forming around a dock
            1. Reduces damage to avoid removing pier in winter

2. Marinas may use it to keep boats on water (instance on Lake Wawasee with huge boat that belongs to a restaurant)

ii. Serious safety concerns

1. Snowmobile went through thin ice near aerator
2. Issue of altering public waterway that prevents citizen from using it for seasonal intent

iii. Landowner conflicts

1. Aerators push ice across on someone else's area and other piers are affected
2. Open water attracts nuisance geese

iv. Can impose conditions on permits for aerators?

1. DNR has drafted an application for an aerator permit
2. Require a permitting process – would be allowed an opportunity to apply for permit
3. Establish guidelines for use

d. Want to have exact material/wording to discuss

i. Already written up, need to bring it up for consideration by the LMWG during the next two years

ii. Application was drafted in the past. Seeing proliferation of aerators more recently that could warrant consideration of requirements

e. ***Action:*** Jim Hebenstreit will provide draft language for 312 IAC rule for pier removal or explain how the existing language is clear enough. Aerator language would be new rule. Ralph Taylor will put this issue on the agenda for discussion over the next two years

4. Advisory Council proposed changes to group pier rules

a. Considerations for distance that pier should be allowed to extend into lake as well as lateral dimensions

i. McAhron suggested considering having bulk of pier further out into lake to preclude impacts to shallow, biologically active littoral zone

ii. Taylor does not believe piers should be allowed to extend more than 150 feet and intrude upon common, high-speed boating portion of lake

1. Hansbarger doesn't believe effective 200-foot distance should be modified by allowing piers longer than 150 feet

iii. Tyler: Riparians don't want group piers to have privileges (real or perceived) that they don't have with individual piers

5. Interim meeting of the subgroup on May 27, 2008

a. Clause of "unreasonable harm, loss or damage to resources in the lake" 312 IAC 11-4-8 in proposed pier rule changes from Advisory Council page 7-8.

i. Agreed on May 27 to strike that wording until there could be discussion in full ILMWG and agreement about language for proposed rule. Advisory Council asked ILMWG to address this

1. Intent was to place the burden on the riparian owner to prove that there would be no unreasonable harm. Attorney Steven Snyder

suggested (on May 27) adding the language to subsection (d) so that the burden of proof would be on DNR, not the applicant
2. The Biology subgroup should discuss this before bringing it back to the Structures group.
3. DNR's job is not to encumber anyone, but make the public freshwater lakes manageable as a public resource where everyone is taken into account, including riparians
4. Determining meaning of "unreasonable" will provide lawyers with something to address.

ii. Recommendations should be ready by January for rule promulgation process? Could be submitted by ILMWG anytime to Advisory Council. Entire process will take 9-12 months for promulgation. Want rule process to finalize during winter so rules are ready for lake users the following spring

6. **Recommendation #48** from ILMWG report on developing natural resource education materials for lake users has not yet been carried out
   a. Transition of population with new people buying cottages who don't have a lot of lake background. Discussions in lake association meetings indicate that they are requesting better natural resource information that can be provided to property owner.
   b. Recommendation suggests a booklet and short course for realtors, lake-related businesses and other lake property users
      i. Should be a quality publication where all issues are addressed with easy-to-read graphic form including pier law, herbicide and pesticide use, shoreline management, etc. Materials in layman's language with discussion of actual law can be problematic
      ii. Need to find funding, all agencies that are involved, appendix of actual language. Did not originally discuss potential for funding
         1. Internet publishing could be cheaper and wiser choice
      iii. Have to deliver something in a format that is easy to understand
         1. Hansbarger: Involved in trying to sell property with easement pier issue. Settlement agreement was 12 pages about how many people could use a 10-foot easement. Shows how problematic this can get. Goes a lot deeper than just a booklet.
         2. Clark: Want a workshop on 50 most common questions. Need contact phone number for questions. DNR website is so layered that it's difficult to find answers to relatively common questions.

7. **Bioengineering standards** – tabled for further research
   a. Hebenstreit: New DNR environmental supervisor has a draft that is pretty far along.
   b. ***Action:*** Hebenstreit will provide draft.

Reports from Subgroups

Biology Subgroup

1. Spent entire time talking about piers
    a. Want to be respectful of riparian rights and recognize existing shoreline classifications
    b. Focused on subsection 11-4-8(c) of Advisory Council's proposed rule changes
        i. First questioned whether this subsection should exist, but recognize the need to make sure applicant understands expectations
        ii. Problem with regard to shoreline classifications is that the section does not have restrictions on group piers in Significant Wetland. DNR can place conditions on the permit, but can't deny the permit in a sensitive area
        iii. Subgroup unanimously endorsed adding subsection (c)(6) to include addressing unreasonable damages to natural resources

    c. Subsection (d)(2)(5) – (note that numbering needs to be corrected)
        i. Add restriction to provide more clarity according to shoreline classifications to be consistent with similar regulations on other structures in the lake
        ii. Restrictions on width in Number 5 is addressing adjacent landowners, but should be subdivided into (a), (b) and (c) to the effect that:
            (a) A pier must not extend, in total width, more than one-half (1/2) the length of the applicant's shoreline or water line in a Developed Area.
            (b) A pier must not extend, in total width, more than one-fourth (1/4) the length of the applicant's shoreline or water line in an Area of Special Concern.
            (c) A pier must not extend, in total width, more than one-tenth (1/10) the length of the applicant's shoreline or water line in a Significant Wetland.
        iii. Acknowledged that this is inconsistent with general license rule for individual piers; need to address that incongruity at a later time

        iv. Discussion of riparian rights, since having access to lake is almost inalienable right. Access could be defined as simply as being able to walk into water. Can't have a seawall or beach in Significant Wetland, so is it inconsistent to allow group pier in Significant Wetland? Case law seems to place special value on piers, so it was agreed that it may be difficult to sustain a total ban. Could impose limits on size and area to provide appropriate protection in these areas.

        v. Question of whether the same restrictions should be placed on a general license for typical individual piers, which should reflect the same environmental concerns.
            1. May need to have same language applicable to all piers, but need to move this particular issue forward now

2. Will be interested in addressing the general license for temporary piers at a future time

2. Algal toxins
   a. After the last meeting, Representative Dembowski sent a letter to DNR, IDEM, ISDH and State Board of Animal Health requesting that they consider recreation of algal toxin work group. Have not heard from the agencies as a group regarding what the agencies are doing.
      i. Subgroup indicated interest in receiving update
      ii. Actions have been taken by some of those agencies on Eagle Creek and Geist Reservoirs because of algal concerns, but not in other areas of the state

   b. Ron McAhron: Will respond now to address confusion over this topic. Had a unique opportunity with IDEM doing a watershed study on Fall Creek. Veolia funding intensive work in Geist, Morse and Eagle Creek watersheds. No one had a better ability to do algal toxin work than IUPUI to look at three priority toxins. Concentrated effort primarily on Geist due to watershed work with the idea that we would have as much physical and chemical data as possible, and then extrapolate to a state-wide approach. State Department of Health lab may develop capabilities to do analyses for algal toxins to see if the simpler surrogate can be tested, similar to the Nebraska approach. Another viable alternative would be the Wisconsin approach, stating that if you swim in natural waters, you may be in peril. Have a lot of scientific information being generated this year that we will be able to digest over the winter. Will have a better statement at this time next year. Algal proliferation and potential toxicity not limited to reservoirs, but world-wide phenomenon
      i. Dodge: Are reservoirs with limited access through residential properties different from lakes?
      ii. McAhron: Intuitively you would think so. Data and utilization at Geist will give us some insights. Will be in better position at this time next year. Website at http://algae.in.gov Sampling every two weeks for cylindospermopsin, microcystin and anatoxin A. Have not detected any except microcystin so far.

3. Dredging guidelines
   a. Want to discuss topic, along with largemouth bass fishing on spawning beds
   b. Proposing a special meeting of the Biology Subgroup, inviting DNR (Doug Keller, Fisheries, LARE staff) to clarify guidelines to permittees and groups that receive LARE funding regarding what can or can't be done.
   c. Interim meeting at Mounds Nature Center, Monday, September 15.
   d. Will be a notice as it will be open to the public. Welcome participation by the other subgroup.

Structures and Density Subgroup

1. Group piers

a. Document brought forward April 10, then main body voted to send to Structures Subgroup, then sent back to the Advisory Council through Ron McAhron. Has not been acted on, but it is originally the Advisory Council document
b. From meeting of the Biology Subgroup, probably ought to continue to work on this draft. Question to Ron McAhron as to whether the group should work on this separately or within the Advisory Council process
c. Taylor: How should this be handled procedurally? Substantive issues brought forward by Biology Subgroup need to be discussed.
    i. McAhron: Advisory Council has been tasked with taking issues and getting diverse input, then ultimately forwarding proposals on as rule or policy.
        1. This issue has not made it past the Advisory Council. Has stopped with ILMWG to get input
        2. Advisory Council meets again in mid-August, then in October. The Natural Resources Commission will not take this up next week, but could in September. If the rule is not started in September, will not make a difference because it takes a year to get through. Would rather the ILMWG put together whatever they can in a concise package this fall. If consensus can be built around something that can be built around general license, the easier it is for DNR staff and law enforcement
    ii. Taylor: Will roll this into the process?
    iii. Pearson: Input from Biology Subgroup could be included. Bill Jones was asking for more discussion now so that we can iron out today or soon.
    iv. McAhron: Need to get a final document that will go back to the Advisory Council. Understand that the proposal may have some unintended consequences
    v. McAhron: Would be remiss not to let the ILMWG know exactly when the Advisory Council will address it so that ILMWG members can be present
    vi. Taylor: Have not done a process like this where the ILMWG is discussing something parallel with the AC. When the document goes to the NRC, need to make sure that the ILMWG and the Advisory Council are saying the same thing. Need some feedback from the Advisory Council to be sure we are on the same page.
    vii. McAhron: This issue will probably be addressed at the October Advisory Council meeting
    viii. Dodge: Does this group need to meet before October?
    ix. Pearson: If everyone is comfortable with the subgroup recommendations, as they are sent around, no need for the entire group to meet again
    x. Taylor: Today, need endorsement from this group to send it to the Advisory Council. Can decide whether ILMWG needs to meet again based on feedback from the Advisory Council.
    xi. Pearson: Were you thinking of general license for group piers?
    xii. McAhron: Yes, prefer to have simplified standards that apply to general license and group piers. Will let you know when the Advisory Council will discuss group piers. If consensus is not reached in the Advisory

Council, proposed rules will not go to the NRC. If you want to tackle the individual pier question, would make sense to do it together

xiii. Jones: Charge to the subgroup was to look at the Advisory Council's proposed group pier rules. Realized in the discussion that we need to look at general licenses as well, but not that wasn't the charge at the time

xiv. Pearson: That will affect a lot of people.

xv. Jones: Did not want to slow down the group pier progress by tying it to that process

xvi. Jones: Do we have a consensus on the changes?

xvii. Taylor: We are working on another group's (Advisory Council's) document. They will need time to discuss ramifications and decide whether to add our changes into their proposal. It's up to them to decide what their priorities are. Ron McAhron deserves note of gratitude for foresight in marrying the two things together. Will end up with better rules, but group pier portion needs to move on.

xviii. Jones: Wondering if we can revise the language subsequent to this meeting and circulate something electronically, then get agreement

xix. Taylor: Have acted and don't need another vote, but can have another conversation with Ron regarding language. Don't need to act on it again. Would like to have the last version to check on changes, but don't need authority.

xx. Dodge: Clarified that Ron McAhron is a member of the Advisory Council and that there are 10-12 people on the council.

xxi. McAhron: It's not a regulatory or rule-making body, just advisory. If I get comments, will compare with previous documents and send it out in advance of the meeting. Will let Jim Ray know when meeting is. It is a public meeting, so people are welcome to come and discuss what is on the agenda as a public forum to kick around the proposal. That groups goes to the NRC with a rule-making proposal. Can go to NRC with a summation of the various thoughts. NRC may kick it back to the council as a more informal hearing prior to official rule-making. Don't worry about it, but get it into a form that can be reviewed.

d. ***Action:*** Pearson and Jones can work with DNR staff to get the formal written recommendation to Ron McAhron

2. Other issues: Building agenda of items on regulations, now that legislative changes are basically completed.
   a. Removal of temporary structures, including what length of a pier can remain in place
   b. Review recommendations that were not carried forward during time when the ILMWG was unofficially meeting
   c. Aeration devices – old issue that is becoming bigger for environmental and navigation hazards
   d. Unreasonable harm language – for pier regulations, addressed today

e. Legislation on ambiguity between statutes based on minimum lake size, now that "public freshwater lake" is defined as being a minimum or 5 acres. Other existing statutes are based on 10-acre or 20-acre water bodies, but should logically be changed to reflect 5 acre size
f. Reintroduce last year's bills that were not enacted – will not change language, will go through LSA. (SB 39 and SB 40)
g. Recommendation #48 for more orchestrated effort to provide information for consumers, new riparian owners, realtors or other professional groups to access easy document on layman's language for law, questions about piers, etc. Need to determine agencies involved and funding
h. Bioengineering – statutory.
i. Pier general licenses – objective standards on shape and size
j. Most of focus should be on issues that have been explored but not completed

Future meetings

1. Wrap up comments
    a. Dodge: Some confusion about ILMWG membership due to change in law on July 1. Understand that Senator Meeks intended to continue chairing until the November election. Will discuss this with him. Legislation limits to four meetings per year, starting first of July. Three more, perhaps one more this calendar year. Requesting direction from group.
    b. Taylor: If we release rule recommendations for Advisory Council on group piers, support them to move that through. Then let them understanding that we will delve into other issues. Good opportunity to put together more comprehensive package for a year or so. Would like to have another subcommittee meeting to flesh this out and give this group something to chew on. Need to do a lot of preparatory work.
    c. Dodge: Subgroups will meet prior, and then have another general meeting, probably after the Legislative Council meets in October.
    d. Jones: If we get consensus on group pier rule changes and approval from subgroups prior to that, the Advisory Council will have a chance to consider the proposed changes. This group should meet after October.
    e. Dodge: Latter part of November or early December would be best. No legislative session until January then until April. Don't have dates for reorganizing after election.
    f. Jones: Make sure to meet LSA bill drafting cutoff date
    g. Dodge: That's usually about the third week in December
    h. Taylor: May only have 10-acre issue as a new statutory consideration. Whoever would carry bills could work with Mr. Jones and me to prepare that bill language and forward the last session's bills (SB 39 and 40)
    i. Dodge: Need to determine with Senator Meeks who will sponsor the bills
    j. Taylor: Does the group agree that we need to address the 5, 10 and 20-acre lake lowering issue (Chapter 5 and 6)? Need to make sure all statutes say 5 acres.
    k. Pearson: Someone will need to decide whether all three apply to Public Freshwater Lakes or all waters, including reservoirs
    l. Dodge: Vote passed on proceeding with clarification.

m. ***Action:*** Pearson will provide information to Representative Dodge on statutory changes.

2. Next meeting

a. Dodge: Things may be altogether different after election. Will decide later on a meeting in late November.

INDIANA LAKES MANAGEMENT WORK GROUP
Structures/Density Subgroup
DNR Northeast Regional Office
Columbia City, Indiana
October 13, 2008

Meeting Notes

Members Present

Ralph Taylor	Jim Hebenstreit	Dave Tyler
Senator Robert Meeks	Larry Coplen	Bob Meyers
Representative Dick Dodge	Jed Pearson	Lee Bridges
Pete Hippensteel	Felix Hensley	

Others in Attendance

Randy Pippenger (R & S Boats)
Greg Bender (South Bay Pontoons)
Jan Barkley (Crooked Lake)
Mark Hansbarger
Jeremy Price
Jim Ray
Stu Shipman
Angela Sturdevant
Gwen White

Actions Proposed – Based on Meeting Discussions

- Request drafting of bills for 2009: 1) SB 39 Recommendations # 2 & # 3 (Meeks); 2) SB 40 (Recommendations # 5 & # 6 combined); and 3) SB 40 Recommendation # 7 as independent legislation in House and Senate by LSA with possible change of authors later (results in 3 bills). Will meet with main body of ILMWG for final approval before December.
- Research history of statutes to determine intent of having two different lake acreages as basis for regulation, i.e., 10 acres vs. 20 acres (request assistance from Steve Lucas).
- Discuss changes for aerator regulation at next ILMWG meeting: 1) add definition of aerator to 312 IAC 11-2-1; and 2) changes to 312 IAC 11-4-9
- Obtain copies of Advisory Council minutes on group pier regulation and discuss with Ron McAhron and Steve Lucas to determine why the ILMWG recommendations were not accepted. Compare side-by-side to determine differences. Revisit issues at November ILMWG meeting and determine how ILMWG recommendations can be included in the public review process. Re-examine definition of group pier regarding number of properties and number of boats.
- Contact John Baugh at Purdue to determine what can be done to prepare outreach information for 1999 Recommendations # 46-48.

- Discuss fuel system problems with engine manufacturers and other states or organizations to determine actions nationally. Find out which Indiana agency controls fuel contents and labeling.

Next Meeting – Tentative Dates

November 19-20 or November 24-25
Legislative Organization Day is November 18

.

Notes

Senator Meeks and Ralph Taylor provided a welcome and overview of the meeting. Participants introduced themselves.

Statutory Recommendations

Synopsis of proposed statutory changes starts on Page 2 of Taylor's "Recommendation Package #2". The package describes bills that were introduced in the legislature in 2008, their outcome, and one new legislative proposal. Senate Bills 41 and 88 were signed into law. Senate Bills 39 and 40 passed out of the Senate but died in the House of Representatives. HB 1120 was enacted.

Legislative Proposals That Were Not Enacted

1. Recommendation # 2 (SB 39) – Add wildlife to natural resources definition in IC 14-26-2-2.
2. Recommendation # 3 (SB 39) – Add public trust doctrine to IC 14-26-2-5.1.
    a. Source of controversy? If there isn't avid support for legislation, bills may not get a hearing or proceed. Passed the Senate as the Natural Resources Committee Chairman conducted hearing. Not sure if House Natural Resource Committee Chairman Bob Bischoff had hearings for any bills. Legislature was focusing on other things (property taxes).
    b. No indication that this subsection was a problem for anyone. Did not recall any objections. No problems philosophically from IDNR, as have denied applications due to violation of public trust. Confusion over implementation in one division of DNR? Didn't get a hearing, so just wasn't catchy enough to be on the docket (committee didn't have a hearing)? Law mentions public trust; from the courts.
3. Recommendation # 5 (SB 40) – Extend permit deadlines beyond two years in IC 14-26-2-17.
4. Recommendation # 6 (SB 40) – Provide for riparian dispute resolution in civil court in IC 14-26-2-23.
    a. Have to go to administrative hearings judge. When party that lost the judgment didn't want to comply, simply filed another hearing to tie up the situation in the adjudication process. Receiving judgment of ALJ satisfies due process, so can then move into civil courts.
    b. Why does the person who wins the dispute have to go back to civil court to make the person that lost comply? Cases overwhelming the administrative law system. Have to file another petition to get enforcement or go to civil court. Existing process is all voluntary. ALJ can't impose sanctions. As it exists, cannot take it to civil court until it has completed process in adjudication system. Several examples that have gone on and on.
5. Recommendation # 7 (SB 40) – Temporary structures – nonconforming uses allowed until sale of the property in IC 14-26-2-24.

a. Objection to bringing property up to code at time of fee simple title change.
b. Recommend leaving Recommendations # 5 & 6; removing Recommendation # 7 from bill.

6. Strategy for 2009 session
    a. For SB 40, decided to remove Recommendation # 7. All things were grouped together in SB 40 with Recommendations # 5 - # 7. May introduce them all as separate bills, so that what kills one bill doesn't kill them all. Phosphate bill (HEA 1120) passed in 2008.
    b. Bills need to be filed 30 days prior to third Tuesday in November.
    c. Need to determine who has the majority to decide whether they should be Senate or House bills. Difficult to get hearings if sponsor is not in the majority. Will not know the majority until after elections or who will be the legislator representatives for ILMWG.
        i. Why not combine the two concepts from SB 39 and two from SB 40? How do "germane" rules apply? One bill deals with shoreline and other with public freshwater lake act. Senate is very strict on germaneness. Leave them in the original bills but remove SB 40 Recommendation # 7 to make it separate bill.
    d. Combine noncontroversial bills? Contentious part was real estate transfer (Recommendation # 7). Will be a lot of bills filed. Committees less likely to hear a large number of bills than one combined bill. These bills were presented under the legislatively mandated ILMWG. Meeting with the 26-member body was to separate all bills.
        i. Need to have endorsement from the rest of the ILMWG to combine them.
        ii. Separate out the controversial part and combine the rest.
        iii. Deadline for bills is in December after the ILMWG meets again. Can get them drafted and endorsed in ILMWG meeting in November.
        iv. Unanimous vote to resubmit SB 39.
        v. Unanimous vote to separate out Recommendation # 7 (fee simple title).

    e. *Action:* Request drafting of: 1) SB 39 Recommendations # 2 & # 3 (Meeks); 2) SB 40 (Recommendations # 5 & # 6 combined); and 3) SB 40 Recommendation # 7 as independent legislation in House and Senate with possible change of authors later (results in 3 bills). Subgroup will meet with main body of ILMWG for final approval before December.

7. Recommendation # 10 (new) – Lowering of Ten (Five) Acre Lakes in IC 14-26-5.
    a. Existing law applies to any lake of 10 acres, not just Public Freshwater Lakes. IDNR has no experience with lakes between 5 and 10 acres to determine if there is a need for legislation regarding lakes in that size range. If amending IC 14-26-5, may want to consider modifying appeal process as written in current law, which directs appeals to a circuit court without an intervening appearance before an Administrative Law Judge.
    b. Related statutes (IC 14-26-6; IC 14-26-8 re change of lake levels)

c. This group can act on pieces of legislation that are already approved by ILMWG. New discussion limited now to implementation strategy, since concepts were already approved. No responsible way to reach conclusion on the new recommendation by the deadline legislative drafts are needed. Therefore, look at such new recommendations in the upcoming year.
    i. Some aspects of potential changes are more complex and have broader application than just the 5 acre concern. Perhaps there is not any reason to protect smaller lakes down to the 5 acre size. We need to study the issue in depth.
    ii. Major enforcement action under this statute would go through administrative hearing and possibly the courts – may lead to other changes.
    iii. Will that create any court cases if the minimum size criterion in the law is lowered to 5 acres? Will there be a concern to reduce the size? Set on the basis of the lake definition changed last year.
    iv. Impoundments in southern Indiana would still be regulated under the 10-acre standard, but PFLs would be under 5 acres? Would need to apply universally.
    v. IC 14-26-2-1.5 says "freshwater lake" not "public freshwater lake", which is different. IDNR has enforced IC 14-26-5 on lakes that were not established as PFLs. Overwhelming agreement to reduce size limit to 5 acres. Several laws and regulations are interconnected. Need some legal counsel to determine effect on other areas of law to avoid unintended consequences.
    vi. "Shoreline" or "water line" verbiage was amended for consistency. At Conklin Bay in Lake Wawasee the water line may be out from the shore line. Which term applies? Both terms equate to the line formed at the legally established level as the survey elevation (court-established level) where the soils change.
    vii. DNR is working on a list of lakes that are considered PFLs, including acreages to determine lakes affected by a reduction to 5 acres. List is compilation of all bodies of water (2,600 in current draft list).
    viii. Broaden future discussion to review concept of legal lake levels (who sets and enforces; funding for control structures). Are all lakes established with legal levels? No, mostly larger lakes with a statute that allows to change or raise levels. Funding for control structures is a bigger issue.
    ix. Lowering of lake level was probably one of first issues leading to statutes, due to drainage in 1800s. Notion of why the word "public" is left out needs to be clarified by determining original intent of law. May want to strike the word "freshwater" and add the word "public." A lot will be cleared up with the change to the definition. Shouldn't be saying yes or no, but will determine whether various bodies of water are PFLs.
    x. Those are all legitimate points to be considered in upcoming year. Too broad to address with one brush. Cannot make a decision today. Need to be carried to main body of ILMWG. Cannot be done responsibly otherwise.
    xi. What is the rationale for separate statutes pertaining to 10-acre and 20-acre lakes? Anecdotally, 10-acre applies to PFLs. May want to ask for

repeal of the 20-acre statute. The 10-acre limit comes from common law of "big pond" but don't know history on 20 acres. The two laws were apparently designed to do different things, but unsure of their purposes.

1. ***Action:* Research history on statutes to determine rationale of having two different acreages (request assistance from Steve Lucas).**

<u>Administrative Code</u>

Changes to discuss in 312 IAC 11 as recommendations for the Natural Resources Commission to act on through the DNR administrative code (rules).

1. Removal of structures during winter
    a. Not new concept, but hasn't been formally recommended yet.
    b. Appropriate changes to rules can be topic for discussion at next ILMWG meeting.

2. Pier sizes and numbers
    a. Not new concept, but no formal recommendations yet.
    b. Appropriate changes to rules can be topic for discussion at next ILMWG meeting.

3. Aerators (*see separate file)* – discussed previously (DFW & LE)
    a. Recommendation for rule?
    b. Meetings between divisions of Law Enforcement (LE), Fish & Wildlife (DFW), and Division of Water (DoW). Arguably, permits are needed for aerators due to what they do and safety issues. Public is denied use of aerated portion of waterbody during season when aerator is in use. DoW has received several applications under IC 14-26. Not a new concept. Found until recently that an application was required (6-30-03; June 2006 applications). Not sure why DNR stopped pursuing requirement for permit.
        i. Definitely need some stipulations. Need to prepare concerns from LE and DFW.
        ii. Will incorporate all conditions regarding use of aerators and handle them under general license for use.
    c. *Action:* Changes for discussion at next ILMWG meeting
        i. Add definition of aerator to 312 IAC 11-2-1
        ii. Changes to 312 IAC 11-4-9

4. Group piers (*see separate file*)
    a. ***Action:*** Need to re-examine definition of "group pier"
        i. Originally talked about 5 boats as limiting criterion, but when adding the association, didn't extend the 5 boat limit in that context (e.g., can it be a group pier with only 4 lots?)
        ii. Does it apply to a new subdivision or an old subdivision? Qualifies as nonconforming use?).

b. Preliminary adopted rule dated September 18, 2008, from Ron McAhron. First, the DNR Advisory Council was working on group pier issue. Reached a conclusion, sent proposal to ILMWG for review, which discussed and made recommendations for change, then sent back to Advisory Council, which prepared final document for NRC.
    i. What was preliminary adopted by NRC on September 18 is neither of the above, but something in between.
        1. Need to compare September 18 version with ILMWG proposed version to determine differences.
        2. Understand the difference between (c) and (d) with stipulations for what the department "can" or "shall" do.

    ii. Make sure proposed changes do not interfere with the DNR nonrule policy on riparian zones and case law from courts in Fulton County.
        1. First paragraph in bold reflects the non-rule policy document.
            a. Some criteria for pier placement previously established by court.
            b. The rules cannot conflict with the court directives.
            c. Should not be complicated any further.
        2. Court ruling assumes that the shoreline approximates a straight line and that the property lines are perpendicular.
            a. Judge ruled that if pier crosses a property line extension into the lake, it is a problem.

    iii. The DNR Advisory Council met in August, looked at and apparently rejected some of the ILMWG recommendations, and forwarded a proposal to the NRC in agenda on September 16.
        1. The NRC preliminarily adopted the recommendations from the Advisory Council, which does not reflect all the changes recommended by the ILMWG. Not really ready for debate yet, but will be addressed as part of agenda in November.
        2. Preliminary adopted rule will be scheduled for public comment.
            a. Would the ILMWG recommendations be considered at NRC public hearing on the rule changes?
            b. Can the ILMWG recommendations be submitted prior to public hearing to modify the rule before it goes to public discussion?
            c. NRC AOPA committee deals with rules. Struggling with hearings on group piers.
            d. ILMWG made certain recommendations, which are not consistent with what was proposed by the Advisory Council. The Advisory Council proposal differs substantially.
        3. ILMWG would need to look at current rule proposal, since the NRC accepted the recommendations from the Advisory Council.
            a. How many are on the Advisory Council? Twelve people, appointed by the Governor. Do they represent a broad

spectrum of Indiana? Yes, but not focused on lake issues like the ILMWG.

b. Who brought the rule changes to the ILMWG? Considered by the Advisory Council first, which discussed it and sent it to the ILMWG via Deputy Director McAhron with a brief time frame for comment.
    i. Reviewed in detail by the ILMWG with consensus on 3-4 votes.
    ii. Next issue involved rehearing one component in the Biology Subgroup, which then received consensus.
    iii. Sent back to Advisory Council.
c. Advisory Council modifications did not reflect either the original AC recommendation or the ILMWG recommendations.
    i. Was Advisory Council under deadline? Several members on AOPA committee were anxious to see some standards to give guidance on review criteria for group piers. They were ready to go.
    ii. Do not remember what the differences were between Advisory Council proposal and ILMWG proposed changes. Thought IASWCD tried to incorporate the consensus issues and leave the rest for future debate. ILMWG recommendations appear to have been circumvented.

4. ILMWG recommendations
    a. Turn what is written to comply with General Licensing language.
    b. Original draft from Advisory Council had 200 feet from shore, which ILMWG changed to 150 feet. New verbiage articulates differently, but very well.
    c. Boat density language was stricken due to complexity.
    d. Agreement on need to move this with a rule in place so DNR wasn't applying arbitrary standard. Where to put the original debated issue? Lake Wawasee attorney made effective presentation at previous meeting to move language from one section to another. Agreed and voted on that.
    e. Jed took environmental component to Biology subgroup at July meeting, which recommended position, returned to main ILMWG with 100% consensus.
        i. Struck carrying capacity.

5. ILMWG future action
    a. Might want to change statement that was stricken? Not sure what to change, depending on what the Advisory Council proposed.

b. Blue type is what was approved for recommendations earlier, red has changed.
c. How shall ILMWG recommendations be included in the public review process?
    i. Representative should go to public hearing with ILMWG recommendations or submit them in writing.
    ii. Include any future recommendations.
d. Not known when public hearing will be conducted. (Winter is not best time for hearing on lake-related issue, since many lake users are in warmer climate.)
    i. Will not be a public hearing prior to the November ILMWG meeting.
    ii. NRC will meet in November, but will not revisit the issue until it moves forward via rulemaking process.
    iii. Can ILMWG recommendations be included in the preliminary adoption? No, but can be introduced in public hearing before final adoption.
e. Would be good to have consensus between the two bodies (Advisory Council and ILMWG) that are submitting recommendations to DNR?
    i. Something changed after ILMWG thought there was consensus. What happened and how can it be fixed?
    ii. Could be done in time because group has already acted. Would not recommend anything contrary to what the 26-member ILMWG advised.
    iii. Make sure there is nothing lingering as disagreement between subgroups. If all is resolved, it could move ahead.
        1. Don't have consensus on density issue, but recommended that it not be included.
        2. Had ILMWG consensus at the last meeting, but it was not incorporated into the Advisory Council recommendation for unknown reasons.

f. ILMWG has statutory authority to make recommendations.
    i. Expect will hear a lot of comments during NRC public hearing.
    ii. Proposed group pier rules directly relate to other parts of structure regulations that the ILMWG will discuss.
    iii. Who would be the individual to present the ILMWG recommendations? Can submit them in writing for the public record, as prepared by assignment to a writing group. DNR staff may be asked to draft a statement.
    iv. Will decide actions at the November meeting.

iv. ***Actions:*** **Obtain copies of the Advisory Council minutes on group pier regulation and discuss with Ron McAhron and Steve Lucas to determine why the ILMWG recommendations were not accepted. Compare side-by-side to determine differences. Revisit issues at November ILMWG meeting and determine how ILMWG recommendations can be included in the public review process.**

<u>Recommendation # 46 (related to # 47 and # 48)</u>

1. Idea was to develop booklet for realtors, property owners and businesses
    a. Document for lake-related people to educate them on the complex array of laws that revolve around lakes and boating. Identified as a nice resource in 1999.
        i. Never any money appropriated, but still a need.
        ii. John Baugh (Purdue) may have resources to facilitate development.
    b. Website
        i. Fertilizer and pesticide management brochure
            1. Steuben County commissioners considered adoption, Town of Clear Lake are developing some documents as result of non-phosphate detergent law. Discussed at a meeting during the end of September with about 50 lake people present.
            2. Purdue is following up on 150 soil samples from lake residential property for nutrient analysis.
        ii. Consolidation of lake information
            1. Lakes website commissioned by the ILMWG in 1999 still exists as a state-managed website. Have not had resources to update it.
            2. Will have to include a number of documents that may be confusing to understand.
        iii. Education on lake property management
            1. Include document on property lines and pier location.

    c. Outreach
        i. Need something that people can access when they are interested in learning more about lake-related laws. Division of Law Enforcement originally had a booklet that contained the actual boating and snowmobile codes. They were law and hard to read. Came out with same thing in lay language. Neither worked. One was quoted as law, the other not understood.
        ii. ILMWG attempting to do what we are doing because it is complex and requires much effort. Can't expect consumer to have a comprehension of statute, code and CADDNAR to determine when they can have a pier. They deserve a resource.
        iii. Effort could be expanded with fish and wildlife law.
        iv. How to do it; who has the responsibility to keep it current?
        v. That's the reason it wasn't carried out, but probably still have a need.

    d. Other groups exist to help with these actions

i. Indiana Water Monitoring Council has been recently formed to look at ways of delivering information.
   1. InWMC is looking for legislative support, but does not currently have legislative advocacy.
   2. There is a website and agencies are looking at ways to share water quality information.

ii. Lots of cooperative efforts to share tools for better decision-making.

iii. Consider blending the multiple efforts.

e. ***Action:* Contact John Baugh to see what can be done to prepare outreach information for 1999 Recommendations # 46-48.**

<u>Engine manufacture</u>

1. Senator Meeks invited Randy Pippenger (R & S Boats – Rome City) and Greg Bender (South Bay Pontoons) to speak about dangerous issue that they had brought to his attention.
2. Problems with fuel lines and tanks in boats deteriorating, fuel spraying on engines. If not addressed, someone will be killed. Boat brought in on Thursday with fuel line pressure bulb burst, looks like tar inside. Issue needs to be addressed with engine manufacturers.
   a. Sunlight gets to ethanol in fuel, can cause phase separation. In a vented marine fuel system exposed to outside air, alcohol will draw moisture out of atmosphere into fuel tank to produce stratification with gasoline on top, mixture water and alcohol, pure alcohol at bottom that's pulled up into the fuel system. With E85, only specific vehicles can tolerate high concentration of alcohol. In marine, set at maximum of E10. With phase separation, could have 90% ethanol in fuel system, reacting with plastics and metals, deteriorating items and spraying fuel.
   b. Any conversation or alerts from NMMA?
      i. Have been communicating with them. Seeing many engines that never have problems, but problem is affecting 1950s outboards. All rubber hoses will deteriorate. Some testing in tanks shows as high as 14% ethanol.
      ii. Need to change formulation of hoses or of gas. Recommending that both happen. Suppliers scrambling to change formulation of hoses, but items manufactured before ethanol create problems for marine dealers.
   c. Some reports from other states (WA, OR, CA) of explosions. Old large cruisers have fiberglass tanks that are corroded by ethanol.
      i. Boat owner fills gasoline can at filling station where all gas now contains small percentage of ethanol. Causes reaction over period of time in boats. Not available at marinas now either?
   d. Solving problem
      i. As manufacturers, having suppliers provide new materials, but won't solve issue.
      ii. Non-ethanol blend fuel available in lake region would resolve issue.
         1. Does law prevent that now? No state requirement prohibiting gasoline/ethanol blends. Question is whether they can buy it. Similar problem for old farm machinery. Exacerbated in marine industry with

fiberglass tanks and fittings. Explosions have occurred that resulted in fatalities.

2. Without mandate, nothing can be done. Capitalistic market taking care of itself.
3. If ILMWG required non-alcohol blends provided at marinas with marinas closed parts of year with higher prices, boat owners will take boats to gas station to fill up.
4. Is it really broke if Indiana does not mandate ethanol?
    a. Promote ethanol through subsidies.
    b. May be an education process through DNR.
    c. Manufacturers providing additives that will keep ethanol in suspension (blue "Stabil" ethanol treatment). Does it work? Helps in machinery that sets for 3-4 weeks with built-in fuel tank; won't start. With fresh fuel, will start right back up.
        i. Tell customer not to put any more fuel in it than will be used within short time (problems at over 60 days).
        ii. All fuels have some ethanol, including fuel at marinas? Used as an oxidizer in certain areas with mandates. Used to have MTBE that poisoned groundwater, so switched to ethanol in small concentrations. Increased ethanol use now is due to foreign oil concerns.
        iii. Knowing about a problem without doing anything about it, would feel really bad as boat dealer/maintenance facility. Not sure if it is educational problem, statutory language to solve it. What to do?
        iv. Problem for all engine makes. Part of manufacturing, have communications with several engine manufacturers. Automotive manufacturers also finding engine failures. Marine engines have different set up with way air gets to it. Newer automobiles don't have outside air vents, exposure, and higher concentrations.
5. Manufacturers are "looking into it" but dealers want to know that problem is solved, not having someone's boat blowing up on the lake.
6. Not first year for problems; started last fall. Not just old engines, but brand new motors also. Dealership out of Michigan – same problems with boat on fire. Congressman in Michigan has not responded yet to boat dealer who contacted him. Senator Meeks responded within an hour. Tried to get information together as soon as possible to present to ILMWG.
7. Boat dealers looking for relief from liability?
    a. Will have to de-winterize boat, look at all fuel lines and change them. How to do that and charge the customer? Will bankrupt the dealers.
    b. New tanks, fuel separator, changed gas hoses and not charging customer. Put new gas in, customer didn't want to pay for gas. Nothing being done. Over winter months, will have hard time

calling customer to say that fuel line was soft. If boat blows up in the summer on the lake, will come to the dealer. If dealer feels it is a hazard, should at least document it and tell the customer.

i. Telling customers to only put a few gallons in at a time.

c. Should dealers be required to tell customer about potential danger?

i. Dealerships, Coast Guard and DNR need to meet to discuss and decide how to fix the problem.

ii. In Indiana, not required to label fuel so you will not know whether there is ethanol in it. No law requires labeling with formulation.

d. Some advertised on their pumps that gas contained no ethanol. Now everyone is blending up to 10-15% or higher due to air quality and economy.

e. External tanks on government engines, fuel line deterioration has tripled or quadrupled. Mostly stored in a warehouse out of direct sunlight, used a few months a year.

i. Moisture in air in nonvented system. Alcohol is hydroscopic and will attract moisture.

ii. Anything with open vent fuel system (small engines for landscaping, etc.) will pull moisture and have phase separation.

iii. Adding ethanol starts to degrade fuel as an oxygenator.

1. Driving cars every day, so not as big an issue, whereas boats are used more occasionally. Red Stabil will not do any good. Leaving tank full with gas a year old, have to redo the carburetors.

2. Loss of octane with time; gas has not been stabilized.

8. Federal government not doing anything about this. Has been discussed over a year.

a. MN mandates 10% ethanol, so problem in other states besides Indiana.

9. Customer awareness of problem.

a. Label boat with warning that ethanol could damage engine and result in explosion.

b. Require pumps to be labeled with ethanol content?

i. Which state agency has responsibility? Weights and Measures governs fuel dispensing, but not contents. Could be the State Fire Marshal.

c. Use of blue “Stabil” product.

d. For owners of new and old boats.

iii. *Actions:* **Discuss with engine manufacturers and other states or organizations to determine actions nationally. Find out which state agency controls fuel labeling and alcohol content.**

3. Senator Meeks expressed appreciation to Ralph Taylor as subgroup chairman and to the members, as this was his last meeting in attendance as a legislator. He has been appointed by the Governor as a continuing participant on the ILMWG as a citizen.

Next meeting

1. Latter part of November, possibly 24-26 or 16-22, or first week in December.
   Possible alternate dates:
   November 19-20 or November 24-25?
   Legislative Organization Day on November 18
2. Uncertain who are the next four legislative members and some citizen appointments for vacancies.
3. Meeting location better in Indianapolis due to statewide distribution of members and legislators. Working hard to make sure that the public has access to meetings.
   a. Difficult to park at IGCS.
   b. IDEM office on Shadeland Avenue at I-70 has a smaller room with better parking and a room for a breakout.

INDIANA LAKES MANAGEMENT WORK GROUP
Indiana Government Center South
Conference Center Room 4
November 25, 2008
10:00 a.m. – 3:00 p.m.

NOTES

Attendees

Rep. Dick Dodge
Rep. Nancy Dembowski
Bob Meeks
Jim Stahl
Jed Pearson
Shannon Zezula
Ryan Hoff
Larry Coplen
Bob Madden
Bob Gross
Bob Meyers
Ralph Taylor
Darci Zolman
Dave Tyler
Major Felix Hensley
Pete Hippensteel
Bill Jones
Jim Hebenstreit
Jeff Krevda

Guests

Lyn Crighton, Tippecanoe Watershed Foundation
Tim Tyler
Kathy Clark, Lake Maxinkuckee Environmental Council
Steve Lucas
Chris Smith
Tom Flatt
Bob Waltz, Indiana State Chemist
Ron McAhron
Angela Sturdevant
Jim Ray
Gwen White

Notes

1. Welcome by Chairman Dodge and self-introduction of members
    a. By statute, four legislators are to be members of committee. Reorganization occurring in legislature, so the four have not yet been officially appointed. Chairmanship alternates between House and Senate. With Senator Meeks going off the committee, do not have a replacement or re-appointments to committee yet. Rep. Dick Dodge will be chairing and Rep. Dembowski will be participating in this meeting.
    b. Participants and guests introduced themselves.

2. Group pier regulations (Ron McAhron and Steve Lucas)
    a. Preliminarily adopted rule changes for group piers

i. Most people would like to comply if they understand the rules. A small minority won't comply no matter how simple rules are.

ii. Group pier permitting was originally done under general license. This changed in 2005, but didn't put any new standards to judge group pier applications. Over time, people sent in applications without knowing what to expect. Ended up with litigation that culminated in NRC AOPA Committee saying that standards were needed. Variety of changes, but an appealing one was an attempt to show that you can't wall off the shoreline or use more than the equivalent of 50% of your frontage for a group pier. McAhron showed two maps for a site in litigation, but would not reveal where it is. Pier has an arm out and opening with internal piece that DNR was ready to approve because there were no standards to work from. DNR denied it and went into litigation. Now hopefully settling it with a configuration that has several legs that the parties have agreed to which do not close off access to the lake. Trying to strike a balance between access to lake and inappropriately preventing public use of nearshore area.

iii. The proposed amended group pier rule has been preliminarily adopted. Have to do public hearings, go back to Natural Resources Commission for approval; have ability under DNR statute to issue a temporary rule that allows DNR to use all of the principles contained in preliminarily adopted rule. Would like to go to the ILMS meeting next spring to discuss proposed amendments, hold public hearings in the lakes region in the spring or summer. Therefore, the rule would not be final until the following season.

iv. Need to have an emergency (temporary) rule in place in the meantime to stop the appeals. Down the road, this will be a big change. Won't see that much occurring initially because nonconforming provisions will cover existing group piers.

1. Meeks: This is not retroactive but forward. What have you done in event of current nonconforming piers?
2. McAhron: Will be grandfathered if they give us certain information to confirm that they have been there.
3. Meeks: Legislation enacted that says that is valid until property changes ownership. Was this considered?
4. McAhron: Not sure we can do that administratively.
5. Meeks: Why not?
6. McAhron: Can try to set a standard. Have provisions to regulate this activity with a general license that allows piers to extend out to 100 feet in 6 feet of water. Took group piers out of general license, but need to have some objective standard to evaluate permit applications. Could take another step administratively and say that those permits have a life expectancy. Concerned that we may do something that threatens the general license provisions.
    a. Showed an aerial view of a lake without a single group pier, but plenty of controversy. If we are trying to regulate the impact of piers (fish don't know if it's individual or group piers), we threaten the general license approach for individual

piers. Have 450 lakes with very few IDNR people to administer all the permits for all the piers.

7. Meeks: Did this recommendation come from the Advisory Council?
8. McAhron: No, predominantly from me. Asked for one of the staff to give us a compendium of what other states do with piers. One of the things that jumped out was that people want to comply with rules. If standards are simple and straightforward, will be easier to comply. The 50% shoreline criterion is worth trying. Will get us out of this kind of situation and to more open, accessible configuration which was far superior to what we had no basis to deny.
9. Dodge: Is the group pier application made by an association or by an individual?
10. McAhron: By any party that wants to serve 5 separate entities. Want to be able to move toward situation where instead of a lot of individual piers, multiple property owners would share a pier with lateral extensions, so that there would be fewer intrusions to the lake. This could be allowed over a wetland or any other area. A group pier would be superior with fewer crossings of the lake.
11. Dembowski: Length differs?
12. McAhron: Piers are generally required to be less than 150 feet long over 6 feet of water. Other aspects with property line issues that are part of overall settlement. Crossing property lines is an anomaly.
13. Taylor: Not speaking for the subgroup, but:
    a. After our discussion, one of the things we were concerned about was the 200 feet from shoreline. Want to congratulate on new language that provides a reasonable buffer zone from pier and 200 foot zone, as a significant improvement.
    b. Question is that there was a lot of spirited discussion in the past about creating a section in the DNR or assigning personnel to determining carrying capacities. Strongly suggested carrying capacity should not be in the rule. Not sure why that is in there again. Essence of rhetoric was that we didn't see how to apply that concept in an arbitrary and capricious fashion in the eye of the beholder. Why was that put back in?
14. McAhron: If we have that information, ultimately carrying capacity is a surrogate for the issue of pier quantity. If an association wants to have a study on record, then that applies. Available studies would not be ignored, but are not mandated.
15. Taylor: Couldn't carrying capacity be used by riparians to force the general public off the lakes? Struggling with this issue since 1997 with bass fishing tournaments and other boating traffic issues. There are enforcement issues with setting density and enforcing it to determine who can use the lake when. If carrying capacity is 25 boats per acre on a particular lake, will have adjudication if there are differences between that lake and another. Where will that rhetoric lead us?

16. McAhron: If we do a carrying capacity study and establish a limit on boats per acre on a particular lake, subsequent applications for that lake are viewed against that standard. Whether we ever do any studies or not, if you have a piece of information that both we and the local folks are generating, we will use it.
17. Lucas: As a starting point, the carrying capacity concept came from the Advisory Council which was looking at a different context than the ILMWG. Had a situation on a navigable waterway (Burns Ditch in Porter County), where DNR had established a carrying capacity number for the number of boats the ditch could handle coming off Lake Michigan in a storm. Not more than a certain number of boats could pass in a set time. Thereby determined how many slips they could have on the waterway. Advisory Council liked the idea, understood problems with measuring carrying capacity, but if you go through the process and determine what a water body can handle, only in that situation would you look at this factor. Good point that this may trigger an interest on some lakes. Maybe will generate that discussion; may not be bad. At this point, would ask that this be taken in context of going to public hearing. Maybe it isn't a good idea or has been drafted so narrowly that it won't be a huge issue anyway.
18. Taylor: Creates insight, but not sure it answers the overall issues. Don't see any way to contain it or for it to be applied. Our charge from the legislature is to look from the larger perspective. We may see it the same way in the context of the Advisory Council. Have to ask if it's fair to use density standard for group piers with 20-25 slips and not use the same standard in a cumulative effect; how can we apply it in one standard and not the other? Contaminates the general license rules by its nature. Would be akin to setting a capacity standard for I-69 in a given weather condition, differing with ice or on a July day. Debating that in this context whether it makes sense, but looking at it in a bigger picture sets off alarms.
19. Lucas: Could impose a proviso that this analysis is not just to look at group piers but all watercraft. In the context of Burns Ditch, not a lot of group piers. This group is looking at it in a broader sense than Advisory Council was. Maybe the answer is that it doesn't work or need an understanding.
20. Taylor: Lake Michigan is exempt from Public Freshwater Lake code, but making connections with this situation.
21. Lucas: Advisory Council was looking at it as a navigable waterway, not Lake Michigan.
22. Meeks: What about language that minimizes disturbance to vegetation and sediments in close proximity to pier. When is that determination made?
23. Lucas: During licensing process, then the decision is subject to administrative review.
24. Meeks: Are the "shoreline" and "waterline" two different entities?

25. Lucas: For big inland lakes with a legally established elevation, the shoreline is that line. The waterline is the same.
26. Meeks: Determination about impacts is prior to permit approval?
27. Lucas: For group piers, we don't have standards. That's the problem, but DNR does the analysis before the license is issued.
28. Meeks: Someone from Division of Water does analysis?
29. Hebenstreit: Someone from DoW and a biologist, who may not have enough information initially to know for sure what they are supposed to be looking at.
30. Meeks: Who reviews in DNR or IDEM?
31. Pearson: The Division of Fish & Wildlife.
32. Meeks: Who else do I have to go through before going to DoW?
33. Hebenstreit: All permit applications are initially routed from DoW to Division of Fish & Wildlife and Law Enforcement.
34. Meeks: Who determines impact on sediment and vegetation?
35. Pearson: We look for significant environmental harm to resources. Question of whether the 50% of shoreline width standard would apply everywhere or could it be much lower if pier were to be placed in a Significant Wetland. The 50% criterion would be one standard, but there may be sensitive locations where we would want to have a smaller percentage.
36. Meeks: Taxpayer putting in a group pier has made an investment and wants to know probability of getting permit. That seems to make it more difficult to get one.
37. Pearson: Not more difficult, but process could provide more conditions. This would not necessarily affect their riparian rights.
38. Meeks: But don't riparian rights stop at the shoreline?
39. Lucas: Courts give us standard with a "reasonableness test", as riparians have rights for a reasonable distance into lake. Case on Bass Lake where pier distance was 50 feet from shore, but riparians have exercised rights farther into the lake. Depends on distance and what the riparian owner is trying to do.
40. Meeks: Could DNR limit scope of group pier if it disturbs environment along the shoreline?
41. Pearson: Yes, we already do that with seawalls, beaches and other structures.
42. Meeks: You can't have a seawall if others are not around.
43. Tyler: I have concerns about wording in temporary rule. Is now the time to discuss that or do we wait for public hearings?
44. McAhron: Group piers are a very big issue. Problem because we didn't have anything to judge approval by. I wanted to explain our thinking to you. We want to hear what you have to say.
45. Tyler: Asking chair of subcommittee on lake structures if we should discuss this first in subgroup, then discuss later.
46. Taylor: Has been discussed already and 26-member body has voted on it, but if the group wants to discuss the common ground later, can do

that. What Ron is pushing for is long overdue. Admire him for using strength of his section to move this forward. Issue has been there a long time. As a body with legislative responsibility, we need to have input and be roughly on the same page with the Advisory Council. Want to put in back of mind that there are some really good applications of group piers with people in tight coves. Let's give them the tool and protect everybody. Will discuss this in subcommittee this afternoon. Need permission to do that since the larger group has already voted. Asking for permission from the group to restudy the issue.

47. Tyler: I have additional comments on proposed wording.
48. Pearson: Don't we need to look at where we are in the process. It is beyond the point where this group can advise. We can make suggestions at the hearing.
49. Taylor: Discussion is one thing. Strategy is different. Need to discuss and come to some kind of conclusion.
50. Dodge: Do we continue with this discussion, asking for vote to confirm that?
51. Pearson: Issue is of interest to both subgroups because there are environmental and public trust components. Not sure that having only one subgroup talk about it will move it forward.
52. Meeks: If the administration wants our stamp of approval, need to have a clean understanding of what we are doing. Ought to be debated.
53. Dodge: Discuss this in both subcommittees and then in larger group.

b. Dredging

i. McAhron: Similar to group pier issue because of need for internal policy. In keeping with general outlook, want what we are doing in permit review process to be transparent. This body represents a diverse set of experiences. Ask that this body work with whatever dredging permit review policy we have, so that we can take it through rule-making procedure to result in general public understanding. Work through that as quickly as possible. Have a lot of controversy on dredging projects that we license currently without a lot of transparency.

ii. Meeks: Are there two policies, one from DoW and also from DoFW?

iii. McAhron: No, the two divisions look at applications from different perspectives. When a project needs a time extension, I sign that. Any licensure procedure comes initially into the DoW, which does some administration. If it is a floodway project with surcharge, engineers get involved. Anything with fish and wildlife concerns, go through that division.

iv. Meeks: Who has the hammer?

v. McAhron: If it's predominantly a biological issue, we rely heavily on DoFW. Problem is that policy is not published, so applicant doesn't have a good idea what the expectations are.

vi. Pearson: Got halfway through that dredging policy in the September meeting with the Biology subgroup. That group will continue the discussion and get closer to finalizing review.

vii. Jones: That is the agenda for today for the Biology subgroup.

c. Lucas passed out drafts of group pier rule amendments

i. Group piers

1. Draft temporary rule for group piers. This version doesn't have clean-up language, but pretty much the same otherwise.
2. Pearson: Concern about definition of a subdivision.
3. Lucas: Definition of group pier has some challenges. Density issue with how many boats and structures can be put in one place. Some group pier aspects are like that with reference to at least 5 owners. If it is a conservancy district that wants to put out a pier, it is automatically a "group pier" regardless of number. That's an issue if a conservancy district wanted to have a place to put out one boat for emergency use. Does that meet definition of group pier? Section 11.5 Group Pier, subdivision 9 regarding "club"—does that language really make sense?
4. Pearson: As written, the 5 boats do not apply. May need to clarify that the determination of 5 boats or more applies to all categories (campgrounds). Uncertainty of whether this applies to a new or old subdivision.
5. Dembowski: How does the emergency rule apply?
6. Lucas: Emergency or temporary rule places standards in effect right away so they can be used to do analysis while the rule adoption process goes through. The adoption process is always slow. Particularly sensitive to a need for hearings in summer in natural lakes region so as many citizens as possible can express their opinions, but mixed with reality that we have issues that need to be addressed today. The NRC AOPA Committee has several group pier cases right now. They expressed in strongest of terms that they want standards for group piers. This emergency rule, which would be signed into effect by DNR Director, would have force and effect of law. What is different is that it can't go on forever. One year limit with possible one year extension, but then it's done.
7. Meeks: What happens if the processes overlap? What if the final rule that is adopted is in conflict with temporary rule?
8. Lucas: The pier approved under temporary rule would be a nonconforming use, as the temporary rule would govern. If owners wanted to change the pier later, that would be governed under new permanent rule.

ii. Delineating boundaries of riparian zones

1. DNR is distributing nonrule policy document providing more direction on riparian zones in public freshwater lakes and navigable waters.

2. At the November meeting, NRC gave approval to these amendments. Both the temporary and permanent group pier rules would incorporate the nonrule policy by reference. There are often disagreements over placement of piers; drawing line between properties is the biggest issue. This nonrule policy will help resolve disputes. Litigants have their own interests, but they most don't want to feel like they've been cheated by giving up something where no one else has.

3. Toxic algae information from NALMS symposium (Bill Jones)
   a. Have talked about Harmful Algae Blooms (HAB) and toxins in past
      i. Jones attended NALMS meeting in Alberta, Canada. Had discussion with about 30 people from around the world on HABs regarding what to do. Handout summarizes information. Not for consideration today, but for future meetings.
      ii. How many LMWG members have viewed Indiana toxic algae website? Minnesota has web site work group page involving several agencies. Microcystin is one of the algal toxins. World Heath Organization recommends microcystin risk levels for people using the water. Minnesota DNR and PCA are funding research there, as many states do with a random survey in 12 lakes. About 50% of lakes had more than 20 ug/l (concentrations in high range) of microcystin. All of lakes with high levels also had chlorophyll greater than 30 ug/l. Looking at data for 300 lakes in Indiana, about 15% had this level. If there is a correlation, these lakes may be at risk.
      iii. Minnesota responds to citizen concerns where they have algal scums. Targeted sampling information was presented by Steve Heiskery, MN PCA. Some samples had over 8,000 ug/l of toxin. Some very toxic blooms. Sampling right in the bloom, rather than just out in the middle of the lake. MN Dept of Health recommends staying out of the water with scums.
      iv. State of Washington has had cases of high concentrations (over 4,000 ug/l microcystin, which is easiest to analyze). Test strips are available for microcystin; under development for other toxins. They have a testing program for citizens. Staff evaluates and receives sample for testing. Legislature and grants with recreational value of over 6 ug/l.
      v. Decision tree for policy of how to handle complaints in State of Washington (procedure in place).
      vi. Nebraska conducts weekly and biweekly sampling at 47 public recreational lakes in May – September. They don't have a lot of lakes, but take risk seriously. Have had public health concerns, advisories, lake closures, and effects such as rashes, diarrhea, vomiting. Warnings posted at lakes immediately where there is a visible scum, then do testing. If over 40,000 cells/liter, they post warning at the lake.
      vii. Vermont closes beaches.

   b. Indiana issues

i. About 50% of Indiana lakes sampled were dominated by potentially toxic forms of algae.
ii. Children more at risks than adults. Dog, cats, and livestock deaths. New research showing toxins can become airborne, exposing boaters when skiers go through scums.
iii. In 2002-2004, Indiana Toxic Algae Task Force requested study. Further studied at Lake Lemon with densities of Cylindrospermopsis at 2.2 million cells per milliliter (higher than anywhere else), but only one sample came back with trace of toxin.
iv. In 2007, National Lakes Assessment done by IU for 50 randomly-selected Indiana lakes. Detectable concentrations of microcystin in 63% of lakes. Nationally about 35% of 1,000 sampled lakes had toxins. So Indiana had much higher frequency.
v. In 2008, sampling at Indianapolis reservoirs, 69% of samples were positive for microcystin.
vi. Indiana has much that could be done. Established bluegreen algae website with limited information including links to other states. Recommendation a year ago was that DNR, IDEM, BOAH, and ISDH coordinate activities. They established monitoring on Eagle Creek, Geist and Morse reservoirs. Those reservoirs were selected not because they are most critical, as they don't have particularly high nutrient inputs, but because they were politically convenient and Veolia/Indianapolis Board of Waterworks had private funds to help pay.
vii. We have serious risk with many retention ponds. Don't have policies on how to inform people. Need to have more discussion, another open dialogue with more people involved. Can't get by on left-over pass through money or private funds.
    1. If our goal is to protect everyone, we are not doing that. Need to commit some funds. This is a serious issue.
    2. We are way behind other states. Evidence suggests we have problems on horizon. Lots of cooperation among the states.
    3. Minnesota and Wisconsin have warning poster describing scums. Education is the key.
    4. Telephone hotline, partnerships with veterinarian and medical professionals. Rate of examination of animals. People don't pay for expensive analysis for rashes or diarrhea. Need to get public health looking for signs and symptoms and reporting. If not for that approach, cholera and typhoid fever would not have been tracked back to sources.
    5. Monitoring targeted to sample blooms and routine sampling for baseline, especially in August-September when blooms are likely to occur.

c. Meeks: How active are county health officers?
d. Jones: At Lake Monroe, Lake Lemon, have largest bodies of water. Had to struggle with public health to get them involved. Have heard that it is hard to get State Department of Health involved.

e. Meeks: Health officer we had previously in LaGrange County, Bill Grant, was very active. He closed some beaches even though it wasn't popular to do. He was passionate about public health.
f. Jones: Grant really believed in what he was doing. Locally is where this should be done, but budgets are tight. Have talked to physicians to see if they would be involved. Would take a lot of coordination, must be something bigger.
g. Madden: Until state sets some guidelines, local officials will not act. They would not close the Lake Lemon beach; the conservancy district board had to. This has to be taken on at state level to give the county health departments something to work with.
h. Pearson: Which agency should take the lead?
i. Madden: Money is needed.
j. Jones: Information is essential.
k. Pearson: Until you get some guidance on paper, the issue hangs out there. Need something to review.
l. Jones: Jim Ray and Jill Hoffmann organized a very effective toxic algae group with input from EPA and other agencies. That is the kind of recommendation this group put out there a year ago – need for a work group. At some level, state agencies have had some discussions but it hasn't been as expansive as it needs to be. That toxic algae group was effective. We were scrambling, but state was active when issue arose with Ball Lake. Don't want to see first person to die from this for action.
m. Pearson: Legal authority to do something? A lot of discussion about who is in charge?
n. Jones: IDEM has stated it is their job to protect the public in lakes. Clearly if IDEM is the environmental agency to protect land, water and air, definitely a partnership.
o. Pearson: Need to start to figure out who is in charge.
p. Jones: And who would be most effective.
q. Dodge: Every county has a health department.
r. Jones: They are the place for information but policies trickle down from state level to the counties.
s. Coplen: Our county department of health tests all beaches. Could they include this?
t. Jones: Test strips would work for a screening level for toxins. If you find things, a sample could be taken. Volunteer monitors are on 100 lakes. They could send a sample, but not under the current DEM grant that I work from.
u. Coplen: Not uncommon to close down a public beach due to bacteria.
v. Madden: If this idea of pulling scientists together would be similar structure to what we have for lakes, it could get formed by legislative act to meet quarterly, file reports. That is the only way this will happen.
w. Meeks: No reason that this group (LMWG) can't make legislative recommendations.
x. Jones: Recommend that people look at what we have in place currently and put issue on agenda for another meeting.
y. Dodge: Was not aware of this issue. We should all take a look at it. On the Ball Lake issue, was that an algae bloom? How was it resolved?
z. Jones: Rain flushed the lake. Hot dry conditions and lots of nutrients off the watershed cause algae blooms.
aa. Dodge: I am part of a public health committee in the legislature. Would like to take a look at the issue in that committee.

<u>Biology/Chemistry/Watershed Subgroup</u> (Bill Jones, Chairman)

1. Group pier issues
    a. What about minimizing disturbance to vegetation and sediments in close proximity to shoreline?
    b. Current language addresses navigation and property, but does not adequately protect the shoreline and littoral zone functions of public lakes.
    c. Include different standards for PFL Shoreline Classifications (Significant Wetland, Area of Special Concern, Developed Area) – recommendation to that effect was provided previously to the entire LMWG, but was not included in the Advisory Council draft regulation.
    d. Need to break lakes into zones for permitting purposes?
        i. Ecologically sensitive areas with wetlands, shoreline, vegetation, positive impact on watershed, drainage ditches converted to channels, public access to lake. Developed areas with homes, structures. Lake property is such a high value that there is an effort to develop these areas. Some believe that we should draw the line on areas that are allowed to be developed.
        ii. County ordinances in northern Indiana setting precedents on property line needed to access the lake. Some developers buying up wetlands to acquire enough shoreline for access.
        iii. Riparian owners have basic right for lake access, limited by amount of impact.
        iv. Could enforce fairly simple criteria by type of lake zone. If it is undeveloped, it shouldn't be touched for dredging or vegetation removal.
            1. Right now rules are written to allow group piers.
            2. This group should make a recommendation based on our charge to manage the lakes. Look at the health of the lake. Do have to look at the general population interest. Kind of lost this approach over time.
        v. Give a criterion to manage each function of the lake within about 3 zones. Need a starting point for management.
        vi. Currently have several regulations that utilize the shoreline classification system, i.e., the plant control permits, shoreline construction, and dredging guidelines. Have not yet made the overall classification system an agency-wide policy so that new regulations are automatically pinned to that system.

    e. Process
        i. Not sure if we can change the pier rules' language, as they are ready to go to hearings. The process for making recommendations now is at the public hearings. Depends on what happens in discussion when we get back together.
            1. ILMWG can formulate recommendations to be entered into testimony during the public hearings.

2. May also have the opportunity to provide changes to the emergency group pier rule, which may be different from the preliminarily adopted rule.
3. IDEM lost its lake manager position. That would be the logical position to look into toxic algae issues. IDEM should be the water quality enforcement agency. Should let the administration know that the position is needed.
4. Don't like doing what they want us to do, because our charge is lake management. Do have to work within a political framework.

ii. Testimony in group pier rule public hearing
1. Can clearly restate the position of the ILMWG for submitting to the public hearing. Not sure who from the ILMWG would provide the comments.
2. Need to determine what issues need to be addressed by both subgroups. Recommendations that were not incorporated may need to be restated in testimony.
3. Considerations came out of this subgroup and were approved by the ILMWG without further discussion. Need to match those up with the rule that was preliminarily adopted to determine what needs to go forward in testimony.

iii. From July notes:
1. ***Action***: The Biology subgroup agreed by consensus to incorporate an environmental component in the group pier rules by adding a statement (6) to subsection (c) and revising the property width allowances in subsection (d)(5) to reflect different sensitivities of shoreline classifications. (Page 8 (1)(e) of July 10 notes).

iv. Should go back to regulations on individual piers for consistency.
1. Changes now are just on group piers. Right now, just addressing group piers, but will have an opportunity to also address individual piers.
2. Should have an overall philosophical and ecological framework for all activities, including question of grandfathering for existing nonconforming uses.

2. Dredging guidelines
a. Changes were made based on September subgroup meeting.
i. ***Action:*** *Provide draft guidelines with comments electronically for further discussion.*
b. Standard Conditions
i. (d) Areas of the lake that are not allowed to be dredged.
1. Criteria seem to be that any areas that were previously dredged and manmade areas are allowed.

2. Shoreline areas could not be dredged unless there was outside erosion coming in.
3. Several contributing factors with seawalls allowing organic materials to accumulate and not be removed from water.
    a. There is no shoreline, material isn't really consolidated until it comes to a bay or channel, where it builds up. Did not feel that these shorelines are "natural" where there are 5-6 feet of accumulated organic material, which is there due to lake configuration and the way shorelines were developed.
    b. Lakebed dredging vs. natural eutrophication: In developed area, the word "natural" may not make sense. Looking at environmental impact.
    c. Measure unconsolidated material to an established bottom. Accumulated material is removed. Need definition for "lake bed" as biggest difference with permit process.
    d. Material contributes to water quality of lake when it is not removed. Where there is no seawall, material is pushed up onto shoreline and does not build up.
    e. Currently reads that if the original lakebed can't be determined, it can't be dredged.

ii. Question was on determination of consolidated and unconsolidated materials.
    1. In lakes in northwest Indiana (e.g., Fish Lake) with bogs that have black dirt and peat, a thin metal rod can be pushed down through, but 1.5 inch PVC pipe will not penetrate the bottom material because it is fibrous. That would be considered consolidated enough to support the PVC probe.
    2. In marl bottoms (e.g., Big Turkey Lake), you can feel loose material and penetrate marl with a probe to some degree. So, probing is not consistent in some respects between all types of sediment.
    3. Need a standardized method for landowners to probe by their own means and determine whether they have consolidated material.
        a. Probe or core sampler. Trouble penetrating marl and clay even with sharp edges, but could show the different layers.
        b. Will not want citizens determining where the lake bed is. In channels, the people commissioning dredger to do the work are making those determinations. Not rocket science. Can use probe with a suspended plate to determine sediment depth.
        c. Reason to come up with method was to accurately measure volume of sediment to determine how large the disposal area needs to be. Water content can be up to 85% of material.

4. Dredging is determined by consolidated bottom or by maximum depth.

iii. Dredging plan
   1. Coring devices, maps of deposits, quantity to be removed.
   2. Example at Cedar Lake in Lake County has up to 500 acres where 5-6 feet of material could be removed, but not economically feasible.
      a. Will remove priority areas and use alum for the rest. Town of Cedar Lake has asked for removing a foot of material from 160 acres to remove high nutrient sediments from the middle of the lake, particularly in south lobe at about 8-14 feet. ACOE wants to mechanically dredge the material, slurry it and pump it instead of using a hydraulic dredge. Material is perfect for hydraulic dredging. Could change after it goes to bid, depending on expense.
      b. Actually an ecosystem restoration project with dredging, alum treatment, plants, fishing for $17 million.

   3. ***Action:*** *Clarify description of sediment removal plan (Page 6, items 1-4) and provide copy of Scope of Services for LARE plans for review to be consistent among projects.*
      a. Need to determine how to prepare a plan and what is adequate so everyone is working from same documents.
      b. Information provided by the LARE plans is not adequate to do the dredging project. Company doing the sediment survey may not do an adequate job. If someone has a vested interest in the plan and is capable of doing survey.
         i. Need to test contaminated sediments.
         ii. Two different tasks with contaminated sediments. Information on the consolidated sediment could be done by local people.
      c. More involved in developing the scope of work than just the volume of sediment to be removed. There's also land application, acquisition of disposal site, permitting.

iv. Page 5 (e)(8): deleted "material accumulated as a result of eutrophication".
   1. Reluctance to remove those deposits in the past. Can remove them as long as you can determine where the lake bed is.
   2. Definition of muck bottom, especially in areas where there are natural muck bottoms (wetland areas). In developed areas, not typical to have natural muck bottoms.

v. Page 5 (f)(5): Water depth limits for six (6) feet unless warranted by special circumstances.

1. Most dredging is not normally over 8 feet. This restriction is specifically designed to be consistent with the pier restrictions; where a pier isn't allowed, dredging for navigation is not allowed.
2. Valid reason to remove accumulated sediment in natural lakes in areas that are deeper.
    a. Example of Cedar Lake dredging would be in deeper areas. Some lakes originally a lot deeper. May have little or no effect of sediments in areas that are in deep areas without activity or oxygen, where it could compact and crust.
    b. University of New Mexico set up a lab to do a transport study of where sediment moves, effects of wind fetch. Wave action will move material with phosphorus changing locations. When winter ice melts, 2.5 mile wind fetch results in cloudiness.
    c. Where storage capacity of water is limited, reservoir owners may want to dredge.
3. Boating zones over shallow water could be regulated
    a. Attempted to do that through ecozones, but law enforcement would find it difficult to enforce based on water depth.
    b. Much of a lake may be restricted for power boating, but this would allow other uses in that area.

c. Actions:

i. Use process of commenting on Dredging Guidelines notes to share ideas. Hold a subgroup meeting after the first of the year to discuss the rest of the dredging guidelines. A one-hour meeting is not enough time.

ii. Discussion and recommendation for toxic algae, perhaps for Rep. Dodge's Public Health Committee.

iii. Discuss needs for IDEM Clean Lake Program, possibly including re-hiring IDEM Lake Manager position.

<u>In-lake structures/watercraft/density/government coordination issues (Ralph Taylor)</u>

1. Taylor: Priority for the day is to gain approval from entire ILMWG to pursue re-introduction of legislation from last session that was not enacted.
    a. Senate Bill 39: Add "wildlife" to definition of "natural resources" and assign responsibility for implementation of public trust doctrine specifically to IDNR
    b. Senate Bill 40: Allow for permit duration greater than two years, allow judgment of disputes to be enforced in civil proceeding
    c. New bill: Remove language from Senate Bill 40 requiring new owner to apply for DNR temporary structure permit after fee simple title ownership change and pier does not conform to any new rule requirements; draft as new bill.
        i. Meeks: Senator Mishler was strongly opposed to fee simple title ownership change provision in last session. As likely chairman of Senate

Natural Resources Committee, he can determine whether new bill would receive hearing.

2. Taylor: Owner of marina at Sylvan Lake (Pippenger) spoke at October 13 sub-group meeting about serious adverse effects of ethanol on fuel system components of boats
    a. No immediate action required of sub-group, just want to share information gathered by Major Hensley about the issue and make it a future meeting topic
3. Other future agenda items:
    a. Required winter removal of structures if they're to be considered temporary
    b. Pier dimensions and number of piers
        i. Need to debate possibilities, understand the implications and be prepared to possibly "take heat" for imposing restrictions
    c. Proliferation of aerators
        1. Pearson has draft of possible standards
    d. Two-year focus for sub-group is rulemaking, rather than statute recommendations
    e. State Chemist Bob Waltz and John Baugh of Purdue expressed interest at October 13 meeting in helping to implement Recommendation 46 from 1999 ILMWG Final Report re fertilizer and pesticide management brochure for lake residents
    f. Has been some discussion about clean-up language for various statutes related to lowering of lakes (IC 14-26-5, 14-26-8, etc.) in order to assure consistency with new definition of public freshwater lake that establishes minimum of 5 acres
4. Group pier rule amendments
    a. Pearson: What about language in sub-section (d)(2) regarding carrying capacity of lake?
    b. Taylor: ILMWG recommended removal of that language from proposed rule changes
        i. It creates a "can of worms" that could lead to litigation
        ii. However, as a compromise, perhaps just strike 8.(d)(2)(B)?
            1. There is precedent for considering congestion in vicinity of pier during permit application review process
        iii. "Carrying capacity" is in the eye of the beholder
            1. Number of boats considered acceptable on a lake has increased over time
    c. Hippensteel: There could be cases in which lake associations might commission biased carrying capacity studies, then insist that DNR use them in pier permit application reviews, if the language is retained in the rule amendments
    d. Pearson: Why use the singular issue of carrying capacity as an evaluation criterion?
        i. There are many other criteria that could also be listed in rule
    e. Madden: Without guidelines for carrying capacity, it's premature to include the concept in rule
    f. Meeks: If it's included, it's likely to result in a hearing before Judge Lucas
    g. Lucas: ILMWG could recommend to Director that carrying capacity be excluded from temporary rule, since that rule has a maximum life of only one year anyway
    h. For permanent rule, could submit comments to NRC regarding concept
    i. Tyler: Carrying capacity is unclear and undefined
    j. Hoff: Burns Ditch example cited by Lucas is different from a lake situation

k. Lucas: Burns Ditch case wasn't based on congestion in immediate vicinity of a pier, but considered what would occur as boats attempted to leave Lake Michigan during a storm
l. Coplen: Carrying capacity language would be a problem in situations involving channels that funnel many boats onto a lake
m. ***Actions: Agreed that Taylor will prepare comments applicable to emergency rule as well as for permanent rule amendments with regard to removal of subsection 8.(d)(2)(B)***
n. Pearson: Need to address subsection 8.(d)(6) on last page regarding percentage of shoreline used as criterion for pier width. Need to establish varying percentages based on type of shoreline, as with other rules.
o. Lucas: That portion of the rule is intended to control the width of portions of piers parallel to the shoreline, not length of pier extending out into lake.
p. Madden: What about changing wording to state, "A pier must not be wider than one-half the width of the applicant's shoreline" rather than "A pier must not extend more than one-half the width"?
    i. There was consensus on that wording change
q. Taylor: Consider strategy for rule-making on group piers and other things that need to be proposed. Need to state what the ILMWG position is on aspects of the rule. Can wait to see how the public and DNR respond in the hearing process before determining what action needs to take place next. Need to be concerned about size, location in wetland. Not the reality today with political strategy to think about. How to best take care of public need. Ready to go except for some things. Maintain some credibility and get behind it.
    i. Madden: Does item 4 allow some consideration.
    ii. Pearson: It does, but becomes a subjective judgment that may create inconsistent response. Consistency was the whole point.
    iii. Hippensteel: Need to have reasons. Support what is on the page with some change in width. This will only be in place for a year. Could then document that this does not work and can then go forward with a tiered situation. Concur with Ralph.
    iv. Meeks: Public may dictate what happens to this rule.
    v. Madden: It is a major first step.
    vi. Lucas: Number 6 is one of the two big things in the rule.

<u>Reconvene entire work group</u>

a. Biology (Jones)
    i. Discussed pier issues - Subgroup made recommendations in July, the entire ILMWG approved them, but the recommendations were not included in the preliminarily adopted rule amendments
        1. Needs to be more language about environmental protection in both the group pier rules and single pier rules (but that is a different battle). Needs to be consistent use of shoreline classification for dredging and other activities.

2. Should be restrictions on allowable structures with pier widths based on shoreline classifications (see July 10 meeting notes for details).
3. Enter these recommendations into the record through testimony at hearing or through other means.
4. In the future, need to also review application of the principles to individual piers for a single landowner that may take up larger area than a group pier (e.g., sea planes, multiple boats).

ii. Dredging – Need another subgroup meeting to spend several hours continuing discussion about dredging permit application review guidance.
1. The guidance currently used by DNR. Requesting language in guidance for use of LARE funds through development of a sediment removal plan.
2. Everyone should be using same methods, similar to the plant management plans.

b. Structures (Taylor)
i. Discussed what was wanted in group pier rules but also strategy and political viability.
1. As an example, the material in blue font includes the recommendation by consensus of the 26-member ILMWG.
2. Three components: 1) emergency rule, 2) proposed rule, and 3) definitive rule as recommended by the ILMWG.
3. Lots of significant differences between the ILMWG proposal and the emergency rule
a. Distance from shoreline
b. Carrying capacity
c. Subsection 6 on pier widths
d. Environmental components
e. Other issues
4. Really need more time for discussion. Strategically have not really debated this completely as a body. Landmarks to make decision.
a. Group pier issue is not new, but has been discussed for some time. Issues in debate need to be applied elsewhere in the rules. Ultimately need to work towards a complete definitive rule. That's not what the emergency or proposed rules are. Both are fairly good rules to get started with. In a perfect world, need to get the environmental component in there, including the three shoreline classifications.
b. Need to determine what must be changed, where we are in the legal process, and where we want to go in the future.
5. For group pier concept to survive public process, need to endorse the emergency rule pretty much as is.

a. ***Actions**: Recommend changing the following through a letter to Director Carter (emergency rule) and to NRC (proposed rule).*
   i. *Page 3, Paragraph 2(B) be stricken or modified.*
   ii. *Section on carrying capacity stricken – articulate the reasons to remove this in emergency and proposed rule.*
   iii. *Item 6 pier width description be clarified to state that a pier must not be wider than ½ the width of the applicant's shoreline or waterline (as opposed to "extend" more than ½ the width).*

6. Recommend changes for upcoming year after this rule is in existence, but let this survive to take into account political viability.
   a. Jones: Clarifications on pier widths. Is that a single pier or multiple?
   b. Taylor: Group pier. Concern brought up was referring to a pier that would "extend" more than ½ shoreline. Should be changed to not "wider" than ½ the shoreline.
   c. Jones: Diagrams showed a couple of individual extensions. Total cumulative width would not be more than ½ shoreline distance, not for each extension.
   d. Madden: Total system would not be any wider than ½ the shoreline.
   e. Jones: Different than the group pier which may have two "T"s, each of which may be considered as a separate pier. Want to make sure someone isn't asking for permit for two group piers on the property, each of which is 50% of shoreline. Can't use the word "cumulative" width.
   f. Hoff: May be covered in first sentence.
   g. Meeks: Like example better that an association gets a group of property owners, runs a single 4 foot pier across wetlands, then put in 150 foot wide pier at the end. Is that legal?
   h. Dodge: Who will provide testimony on behalf of ILMWG at NRC rule hearing?
   i. Taylor: Will send letter or do what is required.
   j. Madden: Do we have to decide now on proposed rule?
   k. Taylor: Yes, need to send a letter now.

7. ***Motion:** Passed unanimously to take these actions on emergency and proposed rules with changes suggested by the committee.*

ii. Discussed legislation previously introduced into Senate and House in 2008 session.
   1. ***Action**: Senate Bill 39 and 40 to be re-introduced as follows*

a. SB39: Put items 2 and 3 from SB39 into one bill on the public trust doctrine and definition of wildlife.
b. SB40: Give DNR authority to determine the length of time that permits are valid. Adjudication of due process.
c. Create third bill on property protecting lawful nonconforming uses until title transfer due to possible controversy.

2. Process
    a. Meeks: Recommend that bills start in the House with Dodge and Dembowski as authors or co-authors.
    b. Coplen: Would having three bills affect passage?
    c. Meeks: The third bill we're proposing addresses issue that was opposed the most by Senator Mishler, so may never pass. Some questions on the other subjects, but not of consequence.
    d. Dodge: Did SB39 receive a hearing?
    e. Dembowski: Don't even know who will be the chair. Didn't get a hearing, but not any opposition – just not enough time for all bills last session. The phosphorus bill passed.
    f. Dodge: Can submit as three bills if that is the committee recommendation.
3. ***Motion:*** *Recommendation unanimously passed to submit as three bills.*

c. No comments from public.

d. Thanked retired Senator Bob Meeks for his service.
    i. Meeks: Thank all of you. Been my honor to serve since 1996 meeting in Angola. Has been fun. Intend to stay on as a member-at-large with Governor's appointment. Has been a very good group to work with. Ideas brought forth and commitment to group, even when it was voluntary. Thanks for dedication to Indiana's environment and natural treasures.

e. Consider future meetings and/or other actions
    i. Dodge: Allowed to have four meetings a year. Have held July 10 and this meeting. What is the suggestion for next meeting?
    ii. Meeks: Sometime in April because General Assembly will still be in session, so will have time to do any lobbying. In second half, will know what bills didn't make it.
    iii. Dodge: By that time, will know where this legislation is. Could meet in mid-March. New appointments will come from committee and two new legislators.
    iv. Meeks: Would want Senator Stutzman to attend and possibly be Senate appointee, as he has the most lakes. Hope he has the same enthusiasm.

v. Discussion: Committee days on Wednesday. Session days on Monday, Tuesday, Thursday in afternoon. Would have longer time on Wednesday.

vi. ***Action**: Next meeting on a Wednesday in mid-March. Last meeting in May or June. Biology Subgroup may meet in February.*

2. Adjourned at 2:53pm.

3. Addendum:

a. Biology Subgroup Recommendations on group piers:

i. Add a statement (6) to subsection (c) on natural resources that would be consistent with the burden of proof regarding environmental damage in the Lakes Preservation Act. Need subsection (d) to restrict permitting of group piers according to shoreline classifications (i.e., Significant Wetland and Area of Special Concern), consistent with regulation of other structures

ii. Consider revising the property width allowances in subsection (d)(5) and define restrictions on allowable structures in Significant Wetland and Area of Special Concern, consistent with regulation of other structures, such as:

1. *A pier must not extend, in total width, more than one-half (1/2) the length of the applicant's shoreline or water line in a Developed Area.*
2. *A pier must not extend, in total width, more than one-fourth (1/4) the length of the applicant's shoreline or water line in an Area of Special Concern.*
3. *A pier must not extend, in total width, more than one-tenth (1/10) the length of the applicant's shoreline or water line in a Significant Wetland.*

iii. Consider removing subsection (c) to reduce redundancy with subsection (d). Everything in (c) is repeated in (d).

iv. Consider waiting to define these restrictions with the regulations that will address all piers, including individual piers, rather than a separate regulation just on group piers.

2. ***Action***: The Biology subgroup agreed by consensus to incorporate an environmental component in the group pier rules by adding a statement (6) to subsection (c) and revising the property width allowances in subsection (d)(5) to reflect different sensitivities of shoreline classifications.

INDIANA LAKES MANAGEMENT WORK GROUP
Indiana Government Center South
Conference Center Room 1
March 4, 2009

Members Present

Rep. Richard Dodge
Rep. Nancy Dembowski
Sen. Marlin Stutzman
James Hebenstreit
Ryan Hoff
Jeff Krevda
Jed Pearson
Dave Tyler
Bob Gross
Bob Madden
Ralph Taylor
Bob Meyers
Lee Bridges
Captain Dave Windsor (for Felix Hensley)

Others in Attendance

Angela Sturdevant
Glenn Pratt
Terry Archbold
Mike McBride
Jeff Bell
Jim Ray, DNR staff
Gwen White, recorder

Notes

1. Welcome by Representative Dodge and self-introductions of members
    a. Senator Stutzman was appointed to replace former Senator Meeks. He has a committee conflict in the legislature, so Rep. Dick Dodge will be chairing. Rep. Dembowski was also present. Had a conversation with the Senate Minority Leader who has said that Senator Rogers wanted to stay on the committee.
    b. Introduced participants around the room.

2. Issues members may wish to raise
    a. Agenda set up for subcommittee break outs but Bill Jones, environmental subgroup chair, was not able to be present. That subgroup just met last week to review dredging guidance. That guidance is at a point where the whole group may wish to review it for possible endorsement. Jed Pearson can provide an update.

3. Dredging overview (Pearson)
    a. DNR Deputy Director Ron McAhron indicated in the past there was unofficial guidance being developed for DNR review of dredging permits. Right now, there are no rules for how permits should be reviewed. Unofficial guidance is in process. Subgroup was charged to review guidance and suggest changes for review by the full group. Ultimately, would go back to DNR.
        i. Two fundamental issues were where and when to dredge. Based on biology and time of year (fish spawning), there may be environmental issues on location and timing.

ii. Guidance in handout is full document that was put together internally with historical background of dredging effects on lakes, review of other state's regulations, summary document with listing of types of areas in lakes for which dredging can be approved or denied.

iii. Handed out summary for review and comment.

b. Definition of lakebed dredging

i. No definition in rule or statute. Only says a permit is required to excavate the lakebed, but there are no guidelines for permit review. Department may not issue a license for unreasonable safety risk or environmental harm.

1. Measurable increase of depth or contour
2. Hydraulic suction, cutter head dredge, hand tools

c. Seasonal review

i. In practice, lake dredging generally allowed from July 1 to December 31. Permit would be issued with no seasonal restrictions during this time unless there were unusual exceptions.

ii. With ice and concerns about hibernating animals (such as frogs), there were concerns about winter dredging. Fish and birds nesting in spring could be disrupted.

iii. If a project started in that window, an extension could be requested through February. Rarely issuing permits from March through June 30.

iv. May recommend allowances in areas where environmental concerns are reduced (Subsection 4).

1. Small project areas.
2. Artificial channels are important for spawning. May allow some dredging if there were other undisturbed channels on the lake.

d. Location

i. Shoreline classification – developed, area of special concern, significant wetlands.

1. Restrictions for natural shorelines and significant wetlands.
2. Areas that are developed with seawalls may be dredged (75% developed section of shoreline) may qualify for a waiver.

4. Discussion

a. Madden: Lake Lemon has many areas where at normal pool level, people with docks may have only 2-3 feet of water, but may lose depth during a hot dry summer due to evaporation. People could not get off their docks. Have opened up boating lanes by dredging to hard pan (original lake bottom). In many cases, 50% of shoreline was developed, but probably a wetland at the other side because it was shallow. According to this rule, could never have opened that.

b. Pearson: Only talking about restrictions during the spring time. Those sensitive areas could be dredged during the open dredging window (last 6 months of the year).

c. Gross: Cedar Lake is entering into an agreement for Corps of Engineers Section 206 restoration for fisheries and plant life. Think a project like that should be excluded. Did not see that in the notes. Would dredge ice to ice (all year). Would restock fish and replace plant life.

d. Pearson: The second page 5. (H) says if there is a large-scale dredging project for renovation, that could qualify for a permit and restrictions could be waived. Would not preclude that type of project. Killing all the fish out anyway at project like Cedar Lake, so no need for seasonal restriction.
e. Hebenstreit: Who will make decision for depths less than 5 feet? Do not have depth contours for most lakes.
f. Pearson: Have a lot of lake maps, may have to enter information by hand.
g. Hebenstreit: Is this the responsibility of the agency or the applicant?
h. Pearson: The dredging contractor will have a contour map. In many cases, wouldn't need to be done in small areas. The idea was for larger projects involving 10% of lake or up to 5 acres. Would never provide a waiver for an area larger than 5 acres. May need to look closer at areas in small lakes. Wouldn't be too difficult for DNR to do contour map.
i. Hebenstreit: Manmade channels dredged during restricted time, would they be able to rotate channels from year to year?
j. Pearson: If they couldn't get the project done, can ask for an extension and get approval if the environmental damage was acceptable. If they wanted another channel, would be a waiver for a single channel. Requires the contractor to coordinate the timing on a larger project.
k. Krevda: Considering a lot of LARE-funded projects where there are several different areas. Had a lot of conversation about being able to use the mobilization and common disposal areas for private projects in addition to the state-funded project. Need to mobilize and demobilize with weather conditions. July and August are not prime months for dredging due to recreational boater exposure and liability. January and February are not typically dredging months. Only work then because of restrictions faced after that. Can save the sensitive areas for work after the spawning period. Gives consideration to each area to determine whether it can be dredged according to sensitivity and shoreline alteration.
l. Hebenstreit: Concerns about keeping track of the paper work. Holding some permit applications now due to lack of accommodation for some projects.
m. Pearson: Would allow relaxation for small projects. Guidelines were reviewed from biological and business perspective.

5. Dredging conducted for different reasons and suitable plan for disposal of material, Section 5. (A) through (I).
    a. Location considerations for approvals
        i. Where permits have been issued in the past
        ii. Marl operation, removal of structures (old timbers)
        iii. Areas never previously dredged were considered carefully if sediment has accumulated and is now unconsolidated material, could qualify.
        iv. Large-scale dredging project with major recreational and restoration purposes

    b. Contour
        i. Madden: Allowance to increase lakebed depth below original contours?

ii. Pearson: Addressed in 6.(D) will not qualify to increase water depth where it has never been altered by dredging and is natural character of the lake. Those naturally shallow areas have a lot of benefit.

iii. Madden: Definition of contour is confusing.

iv. Pearson: May be better to remove the word "contour" as the intent is to make it deeper.

v. Hebenstreit: Maps show the existing depth contours. For purpose of rule, a different word than contour may be better as it applies an actual elevation.

1. ***Suggestion:*** Consider rewording "contour" in definition.

c. Areas that were previously dredged

i. Pearson: Implies that if there is any change in the elevation of the bottom of the lake. Lowering the elevation of a natural lake bed is defined as dredging. Certain areas would not qualify as described (naturally shallow or naturally accumulating muck substrates). If area has been dredged before and has reverted to shallow depths, it could qualify.

ii. Ray: The conclusion of subgroup on February 26 was to move statement 6. (H) to Section 5, making it an allowable purpose.

iii. Pearson: If department had issued a permit in the past for dredging, did that create a precedent where future permits must be issued? Don't know that we resolved at February 26 meeting whether there was a legal precedent that would require repeat dredging to be permitted.

iv. Hebenstreit: Have typically issued permits where we thought an area was dredged before, but may not have had prior evidence.

v. Madden: Have homes on creeks at Lake Lemon that continuously fill up without a sedimentation basin above.

vi. Hebenstreit: Have not denied dredging of channels with homes, but other areas where excavation was from shoreline to wetland are more gray.

vii. Krevda: Lakes that were mined for marl and have channels from old operations, someone may want those areas dredged again to create more areas for future access. Those areas were created for access and are now in sensitive areas.

viii. Pearson: Key words are "previously authorized" where there was a permit. With channels built after 1947, would need research for record of prior permit. If there is no record, no proof of previous authorization so will need to look at current conditions for qualification.

ix. Hebenstreit: A lot of channels were excavated in late 1940s or early 1950s where people bought lots relying on having lake access. Would be difficult to deny repeat dredging. If we have a channel that was there and we never took enforcement action, judges would not uphold denial.

x. Dodge: River coming into lake from Pigeon River with huge sandbar. The procedure would be for permit from DNR. Would it be allowed?

xi. Pearson: Under 5. (D) would allow permit to restore original depth where there are sediment deltas.

xii. Dodge: Diverted route that river took into the lake.

xiii. Hebenstreit: Several places where wetlands have built up over time as the result of deposition.
xiv. Pearson: LARE funds are available for projects like that.
1. ***Suggestion:*** Move 6.(G) to allowable Section 5.

d. Dodge: Would this document become rules?
i. Pearson: Right now, just guidance. No rules exist.
e. Contaminated soils
i. Tyler: Are there areas in lakes where there is potential for toxic materials?
ii. Pearson: There may be areas that should not be disturbed.
iii. Madden: IDEM helps identify where there was toxic waste. Will not be able to dig without providing information on sediment contaminants. This guidance does not eliminate any IDEM requirements.
iv. Dodge: Does any dredging have to be permitted by IDEM?
v. Madden: Drinking water reservoirs are exempt from DNR permitting process. Local DNR fisheries biologists are aware of that. Not exempt from IDEM chemical and soils analysis, though.
vi. Pearson: DNR requires that spoil material not be put in a wetland. Does IDEM get notice of dredging projects?
vii. Hebenstreit: Copy of DNR permit goes to the IDEM and ACOE.
viii. Madden: Does not fall under nationwide ACOE Section 404 permits for inlake disposal or filling in a wetland.
ix. Hebenstreit: Can get a general permit from the ACOE for one-step dredging, but if any material is dropped into a wetland, there is an individual permit requirement.
x. Krevda: For return water.
xi. Bridges: No conflicts in guidance with IDEM regulations.
xii. Pearson: 5.(E) says it may be appropriate to dredge contaminated sediments, but in some areas, disturbing the sediment would be more damaging. Then the department can deny the permit and rely on technical expertise.
xiii. Dodge: What would be an example of contaminated sites?
xiv. Pearson: PCBs.
xv. Krevda: Found old storage tank in area where it leached over time. Contacted IDEM and worked with them on a means to excavate without allowing further contamination by examining return water. Another example is Wildcat Creek in Kokomo where PCBs exist. IDEM, EPA and ACOE will restrict return water. If there are contaminants, that is a consideration.
xvi. Bridges: Can take 10-15 years on highly contaminated sites, such as the Grand Calumet where USX has gotten their dredging done but ACOE and others still working on West Branch and Harbor to build highly specialized disposal areas. Many agencies involved.
xvii. Tyler: Concerned that as a draft rule, the word “potential” in 5.(H) is problematic, as that word invites litigation. I like the intent, but should be more clear. “Potential” is not clear. Could use the word “likelihood” instead.

xviii. Hoff: One step further - if the release of toxic chemicals is already being regulated by IDEM and ACOE, are we inserting DNR where they don't belong? "Likelihood" will still be cited by a court. Would feel more comfortable removing references to contamination because that is already under the jurisdiction of IDEM.

xix. Pearson: Ultimately, DNR would be the one to approve or deny the permit.

xx. Hebenstreit: Have always relied on DEM for contamination expertise. Would still issue a DNR permit, but now have a monthly meeting with DEM permitting. Where there is a permit interest on both sides, would coordinate to make sure IDEM would approve contamination aspects before we issued permit.

xxi. Hoff: Inserting DNR in contamination issues is just creating another layer of oversight.

xxii. Pearson: Same thing about 5.(E)?

xxiii. Hebenstreit: In lake law, contamination not addressed, but in Flood Control Act, it says if you have a permit from IDEM, then DNR will approve it.

xxiv. Hoff: In 5.(E), clarify that if IDEM is OK, then DNR can permit. In 6.(H), even if IDEM allows it, DNR may not. Creates an unclear situation over who has the authority on release of toxic materials. Just strike out 6.(H) to leave clear that toxic material oversight is DEM but leave it in 5.(E).

xxv. Hebenstreit: Practically speaking, no one has asked to remove contaminated material. More likely that marinas will encounter issues and ask.

xxvi. Pearson: Do not want to require them to certify that it is free of contaminated materials.

xxvii. Hebenstreit: Would be costly.

xxviii. Taylor: Impressed with document. Keep it in proper context as a guidance document. Subgroup is not asking for new Indiana Administrative Code, rule or law. In that context, the debate has isolated whatever issues would have with it. Not very solid issues. From my perspective, would like to congratulate Jed, Bill and the subgroup for the document. Have waited a long time.

f. Guidance or Rule

i. Madden: Will this be guidance or a rule?

ii. Hebenstreit: Could leave as internal document. Would at the minimum do a Nonrule Policy Document for approval by the Natural Resources Commission. Could create a rule.

iii. Taylor: Need to have the guidance on the internet, so everyone involved can access why DNR is making the decision so they understand what they are getting into, need to address and can expect.

iv. Hebenstreit: Rule process includes opportunity for public comment.

v. Madden: Is there a variance process?

vi. Hebenstreit: Any rule better have a variance because there will be exceptions.

vii. Madden: Would like to know how dredging contractor feels?

viii. Krevda: I like the document. A lot of what is in the document is based on simple precedents. What can be done is based on shoreline designation. Steve Tenant, another dredging contractor, was in the meeting when this was discussed. Do not have enforcement in it. Basically looking at having areas that have been developed would be maintained. Those areas are not natural. Accumulation of material would not be there without development. Takes that category out. Other areas were historically navigable and serve the public in existing channels between lakes that can be maintained. Other areas have not been dredged to this point because it was too costly. Those areas are now in play by developers. Eventually some of this may be put in same context with piers where shorelines are developed. Could have a future rule where areas that have not been dredged or developed can't be dredged or developed.

ix. Pearson: History over past 10 years or so is moving to classifying shorelines according to sensitivity and development. That classification concept can apply to concrete seawalls, beach location and size, and individual piers. Provides some guidance to the overall balance of the different users and interests in lake. Like zoning where you can do some things in some areas. Important concept that has developed over time.

g. Section 7 Restrictions

i. Lists some types of restrictions or conditions that the department may apply (e.g., silt or debris screens to prevent material from moving off site). Not necessarily reasons for denial. Example of dredger working in area with a lot of lilies that were floating around and other residents complained about cleanup.

h. Section 8 Nonconforming uses

i. What is required to make determination where there is no record?

i. Section 9 Alteration of shoreline

i. Shoreline classification is based on terminology about how shoreline has been altered. If dredging only affects the lake bed and not the shoreline, does it affect the shoreline classification? Document indicates dredging along the shoreline does affect classification. If there are references to tapering of the shoreline and it changes the classification, may change the opportunity to install other structures like seawalls. Right now, there is uncertainty.

ii. Hebenstreit: Think there is an answer, but needs to be examined.

j. IDEM regulatory authority

i. Bridges: Comments from IDEM

1. What is the difference between “license” and “permit”? Standardize references.
2. Last paragraph in “b” on page 3 where it talks about Section 401/404 process, have information on IDEM website that could be added.

k. Approval process

i. Hoff: Would like to see 6.(H) removed from summary document based on discussion. If the agency begins to rely on a document, it does carry legal weight. May not rise to level of nonrule policy or formal rule-making, but does lead to document that court could point to.

ii. Dodge: If you want to propose a change, can do that through a motion and vote.

1. ***Suggestion:*** Remove section 6.(H).

iii. Taylor: Procedural question. The ILMWG can approve this, but it moves to DNR which may or may not agree with it.

iv. Hebenstreit: Hesitate to speak for Ron McAhron, but we are in a situation where there is all or nothing on permits. Get a two-year permit that is only good for a full year total. Ron was looking for guidance from this group so we don’t have to hold permits until June 30. Looking for will of this group and endorsement. Have not discussed whether this should be a rule.

v. Taylor: That is a whole different process.

vi. Pearson: Document not coming back to this group. Have fulfilled our role by reviewing the guidance and making suggestions.

vii. Taylor: Anticipating that the DNR will take action or are we asking them to return it?

viii. Madden: They don’t have time to bring it back. They want something to use now.

ix. Dodge: Are we comfortable with it now?

x. Hebenstreit: Have looked at the summary but not necessarily the document.

xi. Dodge: Everyone has not had a chance to review the entire document. Should read through that before we decide.

xii. Hebenstreit: Before the next meeting, could talk to Ron to see what he wants. I think he would like a document that this group is comfortable with. Then DNR will decide whether to put this in rule form. That would give the public an opportunity to review and comment.

xiii. Dodge: Who prepared this?

xiv. Pearson: A lot of input from different people within DNR. Has been edited and modified several times before the subgroup looked at it.

xv. Hebenstreit: Have not had an opportunity to see the last changes or to prepare one clean document.

xvi. Pearson: There are some technical differences between the sections in the full document. Need to do some editing but not change the overall substance. Concerns about word “contour”, sections 5.(E) and 6.(A). The group can then take it to the DNR.

xvii. Taylor: Recommend we give it a due pass out of ILMWG for the DNR.
xviii. Pearson: Can DNR prepare the edited version and send it to the DNR?
xix. Taylor: This group may not meet again for 4 months.
xx. Ray: Blue verbiage was added before the red changes were made.
xxi. Pearson: Thanks to Steve and Kathie Tenant and Jeff Krevda for outside perspective of dredgers.

l. ***Action:*** Adopt document as amended with the following changes:
   i. Change word "contour"
   ii. Clarify IDEM role in contaminated sediments, such as changing (e)(8) in guidance document or 6.(H) and 5.(E) of summary document
   iii. Move 6.(G) in summary document to Section 5 as an allowable purpose
   iv. Standardize references to a "license" or "permit" in guidance document
   v. Use language from IDEM web site to clarify last statement in section b. on page 3 of guidance document re Section 404/401 permitting.

6. Update on actions on ILMWG issues (Ray)
   a. Administrative code
      i. The word "lake" has officially been defined in rule as of January 20, 2009, when the rule amendment formally took effect (one-page handout).
      ii. Group pier regulations acted upon as a DNR emergency rule (temporary) which was signed into effect in December 2008.
      iii. Rule amendment to create ecozones on Tippecanoe and James Lakes (connected water bodies) signed into effect in past few days.

   b. Current legislative session had three potential bill introductions
      i. HB 1119 Public trust doctrine - Concern developed within DNR and could be discussed. Agreed to take that concept out of bill, which removed most of the substance other than adding "wildlife" to definition in statute. Legislation did not get a hearing. Still open as possibility for amendment in last half of session. Small item now ("wildlife" word addition), but could consider getting it added to another bill. No point in calling it the "public trust doctrine" bill as that part has been removed.
      ii. HB1381 Shoreline permits – Passed House and moved to Senate to increase time for permits from two years. Senators Stutzman and Mishler sponsoring.
      iii. Temporary structures and property title transfer – Did not offer a bill due to Senator Mishler, Chairman of Natural Resources Committee, stating he would not give it a hearing in the Senate. No reason to just send it through the House.

   c. 2009 Fishing Guide – New guide now available; contains more than just rules, but also articles on DNR fisheries actions.

d. Bass fishing in springtime – DNR report available that shows no general harm for fishing during spawning, but more related to overall concern about how many fish are removed. Not intending to pursue this question any further within DNR.

7. Density/Structures Subgroup legislative issues (Taylor)
    a. Public Trust Doctrine bill
        i. Taylor contacted by DNR regarding concerns about debating public trust concept in public arena.
            1. DNR had a case that was in process and did not want the litigation affected by the public trust bill process. Taylor decided not to object individually if that language was stripped from the introduced bill.
            2. Public trust doctrine is defined in administrative code and judicial review, so it is somewhat redundant. DNR administrations change, so the statute would provide some consistency and give the Natural Resources Commission some authority to direct jurisdiction of each division of DNR over lake-related issues. Would expedite the permit process, similar to [ILMWG] goal from 1999.
            3. One piece of business has not been finished in that the LMWG had not had the opportunity to endorse removing that language from the bill.
        ii. Word "wildlife" omitted from original legislation was an oversight.
        iii. ***Actions passed:*** Bring bill language back to add "wildlife" but leave the public trust doctrine concept out of it.

    b. Riparian ownership bill for piers
        i. Knew the bill would not survive the committee process.
    c. HB1381 Shoreline permits to extend expiration beyond two years is likely to pass.

8. Final bioengineering standards (Taylor)
    a. Hebenstreit said DNR has a meeting scheduled within a month to discuss concept with biologists and engineers. Need a list of people who construct bioengineered walls.
        i. Dodge: What is bioengineered wall?
        ii. Pearson: Bioengineered means use of biological materials (plants) and structural (rocks) for stabilization of banks and erosion control.
        iii. Hebenstreit: Usually has a core of stone with plants embedded in it.
        iv. Pearson: The idea is to have a stable structure with plants and stone.

9. Temporary structure regulation
    a. Water toys, inflatables, cabins on rafts)
        i. Three part document on 10-foot setback for DNR authority. Was addressed in the rule-making discussion.
        ii. Building cabins on rafts that are rented out on reservoirs in other states. Question about if or how to regulate this
    b. Weed rollers
        i. Dodge: What is a weed roller and is it affected by this?

ii. Pearson: No, but that could come under the larger discussion about other structures in the lake. If they are using it for weed control, they would need a permit if the area is larger than 625 square feet. Otherwise, they would be altering the bottom and may need a permit. Problem that poses is whether to regulate it within the Division of Water as device affecting the bottom or in the Division of Fish & Wildlife as weed control.

iii. Hebenstreit: Issues a letter, but forget what act it was under. I think we said it requires a permit.

c. Boat shelters or hoists

i. Pearson: These also fall under the same question of regulatory authority.

10. Piers

a. Group piers and marinas – taken care of with previous action.
b. Winter pier removal requirements
c. Number of piers allowed under a general license
d. Square footage requirements on piers and temporary structures
e. Ten-foot set back on piers under general license for group piers
f. Maximum pier width

11. Local ordinances from county bureaus of zoning appeals (BZAs) and model ordinances

a. Line of demarcation on shoreline for DNR jurisdiction; best public policy would be to consider public trust and riparian rights by focusing on the shoreline building activities, specifically temporary structures.
b. Since original meetings, thing we heard repeatedly was agreement on one thing, being that DNR needed to do something to stop proliferation of boats and piers creating density problems.

12. Aerators (Pearson)

a. Two versions of possible rules; didn't have specific recommendations, needs to be continued with subgroup to understand why issue has come up and document concerns.

i. Main issue is operation in the winter for purposes of removing ice to reduce damage on seawall and taking out pier

ii. Hazard concern with open water in winter

b. Permitting

i. Had been some uncertainty as to whether it requires a permit, but it is legally a structure. Question is what kind of guidance or restrictions should be placed on them.

ii. Needs, uses, benefits, and risks from other times of year.

c. Draft rule

i. Helps in wordsmithing to develop rule language

ii. Means a mechanical device to increase dissolved oxygen (beneficial), decomposition of organic matter (benefit or harm if creating disturbance of

bottom), alter water flow or circulation, or reduce ice (may be legitimate to protect a permanent structure, but could be unsafe ice conditions in winter)

iii. Underwater aerator or fountain above water

iv. Currently, allowing aerators are required to be turned off through winter, but could allow operation in March to start opening water without a permit (originally just March, but could state that no permit would be required for operation from March through November.

v. Section (f) conditions describe various aspects such as how far out or how deep the aerator could be placed, effects on the bottom or operation during winter may affect requirements for a permit or conditions for general license.

vi. None of this has been decided.

d. Discussion

i. Gross: Just received a letter from DNR last week requiring a permit for an aerator to keep water open around permanent piers in the marina. Have been there for 30-40 years.

ii. Hebenstreit: Felix Hensley met with people at Sylvan Lake. The rule was crafted to address that particular situation but affects everyone else. Need to know how broad the use of aerators is and whether they need to be regulated. Sylvan just uses them in March where most piers are not very long (reservoir conditions).

iii. Pearson: Seeing one person putting it in, then proliferating at more lakes, more types, more reasons. Now at a time when there are not a lot of them. Can be preventive.

iv. Gross: Nine or ten locations use them on Cedar Lake. Structures are temporary but not taken out because the large pier in deep water is difficult to take it out.

v. Pearson: Links to pier issue where if the rules require temporary pier removal, aerators would not be necessary.

vi. Hebenstreit: May need provision for lawful nonconforming uses where piers have been there for decades.

vii. Pearson: May need a legal opinion on whether a temporary structure can be grandfathered. If it was designated as temporary, how can it be grandfathered as permanent? Legal implication on how this must be addressed. Task of trying to contain this will be hard to do if we grandfather everything out there.

viii. Taylor: No general license for aerators. All have to be permitted. It is a new phenomenon. Time to get regulation in place. Spoke to friends with marinas. Have a hoist and would like an aerator under it. A general license would be for lawfully permitted marinas. If you leave a pier out, it is not temporary no matter how much water it is in. Would clear up part of problem with uncontrolled proliferation. If we don't get them under some kind of regulation, it will be around every lake and ice will be floating around.

ix. Pearson: If all existing piers are therefore grandfathered, will create a difficult task in documentation.

x. Taylor: Not DNR's task. The reality of how they are enforced is that no one has dedicated funds or assignments to measure piers. Reality of how these come to light is a dispute among riparians (e.g., wrong angle or too long). Therefore, those issues will always come up and be decided in field or administrative adjudication process. Do not need to allow that to encumber our thought process. May regulate with exception for marinas or group piers. Need to shoot for nice clean aeration permit rule to get it off the ground, looking for legitimate reasons for why they should be permitted.

xi. Pearson: Every owner would have to file?

xii. Taylor: Unless there are exceptions where they could be tied into another permit, such as with marinas. If don't require permits to be removed, not only does proliferation get easier. Somewhat self-limiting. Set up general license for aeration and pier, then put the two together.

xiii. Pearson: Issue is whether to put them together or regulate them all as a permanent structure.

xiv. Taylor: Think they all need to be regulated. Agree that aerators should not be automatic or under a general license. Like piers, they represent the kind of taking of a lake that represents a real conflict between public trust and riparian rights.

xv. Pearson: Big administrative load to try to permit all of them. Could be a thousand out there.

xvi. Taylor: Don't worry about that sort of thing right now. Not aware of a negative statement about aerators, at least ones submerged to produce bubbles in water. Some are spraying devices. Not sure where they thin or prevent the ice. What is the problem?

xvii. Pearson: As long as they are operated properly, don't stir the bottom or bother the neighbor, not a problem.

xviii. Taylor: Are they a problem if we are not talking about freezing temperatures?

xix. Hebenstreit: Concern came from law enforcement about snowmobiling on the ice. Not much record of accidents.

xx. Madden: Driving reason is safety and legitimate concern. Have one stretch of shoreline [on Lake Lemon] with four riparian landowners that each have one, which keep open a fairly large chunk of lake. Every goose along there uses open water. Had some snowmobiles out there which could have easily run out of ice or cracked through. Extended a good 150-200 ft of open water. Can be a safety concern, but that's the only negative. Don't like fountains that may prevent use of lake (fishing) but bubblers have very little disturbance.

xxi. Windsor: Sign.

xxii. Gross: Proper use is to face it in not out so that open water is around the piers. The ice pressure will take the pier and push it to open area and crush the pier. Could require them to be *pointed towards shore*.

xxiii. Krevda: De-icing lake and using aerators for different purposes. .Shallow water decomposition. In Carolinas, Wisconsin, Minnesota, they are developing bacteria to consume organics and aeration is a big part of that system. Have seen they are somewhat effective in keeping organic material from piling up as summer time use, not related to de-icing. If this catches on, will be a lot of people applying for permits.

xxiv. Tyler: Do riparians put out aerator where they do not have a pier? Is this inextricable linked to piers?

xxv. Pearson: A few cases where put in Center Lake or in end of channels. May be a positive benefit to aerate for oxygen levels for fish. Over 90% used for piers.

xxvi. Tyler: If we think we will address general license piers, would we be wise to set this aside because they are linked 90% of the time.

xxvii. Taylor: Will not solve aerators or piers today. The discussion is linked. Need to figure out the tone for debate to codify itself. Whether this is a general permit process or general license process. Need to figure out overall approach before marrying topics together.

xxviii. Dodge: Difference between temporary or permanent pier?

xxix. Taylor: Permanent is built in fashion that can't be removed.

xxx. Dodge: Aren't temporary piers supposed to be removed?

xxxi. Taylor: No requirement.

xxxii. Hebenstreit: Structure has to be easily removable. If they are sheet pile or concrete, those are typically denied because they remove lake from public use.

xxxiii. Dodge: Can be removed, but don't have to be.

xxxiv. Hebenstreit: In smaller lakes, common not to take them out.

xxxv. Taylor: Came on table when individual hit one of the few piers that was not taken out.

xxxvi. Dodge: Safety issue there.

xxxvii. Taylor: Issues range from moral to safety.

xxxviii. Hebenstreit: Public freshwater lake law speaks to natural scenic beauty. Keeping ice off the lake may affect that dimension by not allowing the ice to form.

xxxix. Taylor: Public freshwater lake law of 1946 or 47 and public trust doctrine as it has been established in courts, all of these things affect taking of public rights. Case law in Fulton County, Lake James, comes back to whether this is a reasonable taking of a public freshwater lake. Someone will challenge whether DNR has the authority to allow these takings to take place such as 200 ft out, although navigation is from shoreline to shoreline. In Wisconsin or Minnesota law, it is where ever the water gets 3 ft deep. Comes up with proliferation along the shoreline not allowing entry for fishing with two piers, a T, water toys, aerators, boat houses, garden sheds on piers, patio on long piers that reached critical mass 15 years ago. We did the easy stuff, all tough now. Bob Meeks described it as smacking one thing down and others pop up.

xl. Pearson: Group addressed the issue in 2003-05 with restrictions on piers, then set it aside. On page 2, the current rules are shown. Everything in bold italics are suggested changes since 2004. By looking at number 10, starting to specify how much of an enclosed area would be exclusive use, winter aerators, exclusion of manmade channels (issue more concern on main body of lake), some piers with fences to block vegetation that accumulated on a neighbor, not be a nuisance, trying to limit amount of space that piers can occupy, goes to discussion of linking even pier concept to shoreline classification. Less sensitive area, could have larger pier. Could eliminate to only a single, straightforward pier where a T or deck would require a permit. Limit width to 10 ft wide. Do we need to wordsmith guidelines for a general license to see if it addresses piers and how it links to aerators.

xli. Tyler: Have added aerators in draft. To postpone detailed discussion of aerators and work on general license.

1. ***Action:*** E-mail the document to the whole group for study (Jim Ray) and look up 312 IAC 11-3-1 which is the general license requirement that will include the diagrams. Have a subgroup meeting where this will be the focus to begin the debate in earnest.

xlii. Taylor: Need to decide how to proceed with aeration as general permit or required to have a permit with some exceptions.

xliii. Pearson: Think aerator could be on back burner until pier discussion is complete. The aerator issue is not an issue at the moment, since we are almost to spring. Department has guidance from law enforcement and some comments here. Will not require every aerator to be removed.

xliv. Hebenstreit: Issued several permits on Sylvan Lake. Law enforcement was looking at piers that exceeded the general license requirement and may have included aerators. LE district commanders directed that action. Whether it is general license or not, we have said aerators need a permit (general license is a permit). Don't need to have a lot of permits with the same general conditions.

xlv. Taylor: Should be a permitting process in place and enforced to be fair. Agree that can't move ahead with aerators until piers are decided. Question on page two "placement and maintanence of" is from where?

xlvi. Pearson: Idea that one pier is ok, but a second pier requires a permit. Not sure of the history of how all of this has developed since 2004.

xlvii. Taylor: Have not discussed it in subgroup.

xlviii. Hebenstreit: Have not discussed it in the department.

xlix. Taylor: Doesn't matter.

l. Tyler: Think it came from the group, but Jed is doing a terrific job of keeping notes.

li. Madden: Did we talk about boat houses?

lii. Taylor: That is under permanent structures. Law is three numbers (312) and IAC that affects lakes and is on the table now (rule-making process). Section 11-2 is on structures. The whole statute will include boat houses.

Make yourself familiar with it between now and the next meeting. Get confused with what is statute and rule. Have spent two years on statute, now shifting gears.

liii. Pearson: The statute has the words temporary and permanent, so can the rule grandfather something that was really permanent.

liv. Taylor: Legislature can do anything they want. Question is whether we want to encumber the legislature with a bad idea.

lv. Pearson: If it is just in rule, we will get into this talking about what structures are already out there versus what will be in the future. Landowner will say they have had two piers for 30 years. Can the legislature state that no structure that is technically temporary can be grandfathered.

lvi. Taylor: Couldn't make it out of the Senate.

lvii. Pearson: Can we have a legal opinion as to whether existing structures qualify?

lviii. Hebenstreit: Steve Lucas has already told us that a new rule cannot apply.

lix. Pearson: If the rule says you can only have one pier, how will the officer inquire whether they have a legally nonconforming use? Won't there be hundreds of thousands of applications?

lx. Taylor: The judicial benchmarks are some givens with landmark decisions. By blending of navigational law into legal hybrid that is unique, anyone who is riparian (abuts shore) have the right to access the lake and put out some kinds of structures. Also know from Lake George that DNR charge is to apply a reasonable standard and has the authority to make rules. Have only heard about lawful nonconforming use. That card has been overplayed. DNR has authority and moral obligation to regulate. Public is demanding DNR to regulate, so for those who don't like the regulation, the ball is in their court.

lxi. Madden: Does current code affect what riparian owners can do before it gets to shoreline?

lxii. Taylor: County BZA. DNR jurisdiction is at the line.

lxiii. Pearson: As long as the foundation doesn't go below legal lake level within 10 ft of the shoreline.

lxiv. Dodge: What is our goal?

lxv. Taylor: Our charge is to look at all issues that affect public freshwater lakes and to communicate with other government agencies. Review, update and coordinate new and existing recommendations concerning lake resources. Spent from July 1 until bill introduction working on Indiana Code. Phase II is to focus on law, then make transition to look at Indiana Administrative Code, which is the rule that DNR works under. That is the phase we are in now. Will not be making a proposal for the public, but to the NRC which has ultimate authority over natural resources. Need to look at whole thing from much larger perspective. Did not limit this to DNR perspective. This is a document that DNR will be working with every day. Part of goal is to massage what needs to be done in 312 IAC but work closer with DNR because this needs to be a joint venture. That's why I ask where

the term came from. Do your homework and be prepared for the next meeting. Rules are as complex as law and maybe more.

13. Public comment
    a. Question: On Lake James, 75% of piers would not conform to half of these rules. When it comes out as law, who actually enforces it? Is it a permit process as one year permit or as long as they own that property?
        i. Taylor: Every couple of years, this group changes. Hardest thing is to understand differentiation between law and rule. Secondly, in 312 IAC there is a general license section. Have to separate that out. Means DNR doesn't have the manpower or want to encumber a citizen to get a permit for everything. Automatically permitted without applying for a license. That is where majority of piers lay. Everything else can happen, just have to have a permit for it. DNR must have a set of rules that are not applied arbitrarily and capriciously and neighbor has to have an opportunity to comment on decision. Large pier doesn't come under general license. Application starts the process where neighbor has an opportunity to argue with the action. DNR can permit virtually anything out there, but the public is provided an opportunity to contribute. When you think about what we are talking about, it is what should be in the general license versus what should be permitted.
        ii. Pearson: If 75% of piers meet standards, some will be grandfathered, but a lot of them would require a permit for thousands of people and a $100 license fee. How long the permit would be good for will be addressed by the legislation in process now which would provide some flexibility.

14. Consider future meetings and/or other actions (Next meeting: May 4 or 7, Indianapolis)
    a. Dodge: Have had 2 of the 4 meetings allowed between now and July 1, 2010. Ralph will have a subgroup meeting sometime in the next 8 weeks near end of April. Will have a full committee meeting around the first of May. Should be out of legislative session end of April.
    b. Ray: No requirement to have four meetings. Bill Jones teaching on Wednesdays. Will be easier to set a date now.
    c. Madden: Will be out of school by May 7 or 8.
    d. Dodge: Set date for Monday May 4 (preference) or Thursday, May 7.
    e. Ray: Meeting in Indianapolis?
    f. Dodge: Just as easy here. Senator Stutzman will be chair of the committee.
    g. Ray: Some seats assigned by congressional district are still open. Governor appointed.
    h. Dodge: Need to remind Governor to make appointments so there is a good working group.
        i. ***Action***: Provide current list of all members of committee (Jim Ray).

Adjourned at 2:48pm

LAKE MANAGEMENT WORK GROUP

Indiana Government Center South
May 4, 2009

Meeting Notes

Members Present
Sen. Marlin Stutzman
Rep. Nancy Dembowski
Rep. Richard Dodge
Lee Bridges
Larry Coplen
Jim Hebenstreit
Maj. Felix Hensley
Pete Hippensteel
Jeff Krevda
Robert Madden
Robert Meeks
Bob Meyers
Jed Pearson
Ralph Taylor
Dave Tyler
Darci Zolman

Staff and Guests
Terry Archbold, Indiana Marine Trade Association
Greg Biberdorf
Steve Lucas
Jim Ray
Chris Smith
Randy Strebig, Strebig Construction
Angela Sturdevant
Gwen White

NOTES

1. **Welcome by Chairman and self-introductions of members**
    a. Sen. Stutzman introduced himself as chair of the committee. Robert Meeks has been instrumental in the group. Looking forward to learning a lot. From LaGrange County where water issues are important. Come from an agricultural background. Irrigate land, so clean water is important. Excited about being part of the group.
    b. Reviewed the agenda.
    c. Members, staff and guests introduced themselves.
    d. Jim noted that Sen. Arnold had another commitment up north. Ryan Hoff had a conflict, as did Shannon Zezula from NRCS. Bill Jones proctored a final exam today. All apologize for missing the meeting. Bob Johnson will be present at 1 p.m. for discussion of regulation of temporary structures, especially aerators and fountains. He was a principal in a company called Aquatic Control. Now works for SePRO, which manufactures aquatic herbicides.
    e. Robert Meeks thanked Jim Ray for many years of service. Commended him for doing a magnificent job. Had some disagreements, but a lot was fun. Thanked him for years of service.
    f. Rep. Dick Dodge asked about openings on committee. Ray responded that there are two vacancies *[There are actually three.]*.
    g. Jed Pearson thanked Jim Ray for working in many agencies. Thanked him for moderating the group as a super facilitator, balancing discussion and issues, brought a lot of knowledge to the group and hope he will stay involved.
    h. Bob Meyers appreciated what Jim does and his fast answers to any questions.

i. Larry Coplen thanked Jim for help and involvement in group, as he retires, and wished him well.
j. Sen. Stutzman noted that there were several representatives from Trine University (formerly Tri-State), including himself, Jim Ray, and Pete Hippensteel.

2. Status of LMWG-inspired legislation

a. Dodge: Originally started session with three pieces of legislation that he introduced. Bills got changed a bit along the way. Two were HB1117 and HB1118. One was on transfer of title for temporary structures (piers) with change of ownership. Bill was drafted. Some opposition on Senate side. Talked to Sen. Mishler, who said he would not give it a hearing. Decided not to take it through the House side. One of the remaining bills was on extension of shoreline permit time limit beyond 2 years, as well as legislation on civil lawsuits between neighboring property owners outside of administrative judge's jurisdiction. Bill was one of few to pass with no amendments and signed by Governor as HB1381. Third bill on the public trust doctrine and addition of adding the word "wildlife" to definition of natural resources. The DNR objected to the definition of public trust doctrine in legislation. Talked to Committee Chair and Rep. Dembowski, decided to pull that part out of the legislation, leaving the word "wildlife" which was not much language for one piece of legislation. Amended that into a senate bill on second reading in the House. Passed the House, back to the Senate, and had some objection in the Senate. Sen. Mishler called with some objection. Talked to Chris Smith at DNR with no clarity about problem. In conference committee, the word was removed. Not sure why there was legislative objection. Did not want to hold up the bill. May bring it back next year. Successful with passing HB1381.
b. Meeks: Question to DNR was regarding the DNR Director's problem with public trust doctrine.
c. Smith: Met with Rep. Dodge, John Davis, and Ron McAhron during Chris Smith's first week on the job. Unsure what the concern was.
d. Meeks: The work group felt very strongly about that particular language regarding public trust doctrine and responsibility.
e. Dodge: Passed the Senate in 2007.
f. Taylor: Had conversations with DNR prior to time talked about stripping it out of bill. DNR was concerned about timing relative to case in Lake County where the outcome may be tipped if anything was introduced into the legislature on public trust. In conversation with the Deputy Director, felt that applying public trust doctrine to Title 26 had been resolved and the statute would set up redundancy. Verbiage is in the Lake Protection Act, but with more subtlety. Agreed to pull the language out. Sense is that right now, comfortable with where we are. No reason to believe that DNR is not doing what needs to be done. Explained this at the last meeting, where Meeks was not present.
g. Dodge: What happened on wildlife issues?
h. Smith: Contacted by Sen. Mishler about addition of word "wildlife" when dealing with lake preservation. Confusion on Senate side as to whether it had broader bearing. Had been discussed in committee with objections from some outdoor community groups back to when Sen. Weatherwax was in the Senate. Call to Weatherwax

indicated concern. Decided to remove it when there was no new testimony. DNR did not have an objection. Believe that wildlife can be looked at in Chapter 26 permitting. Bill it was attached to was a department bill which did a lot of other things. Sen. Mishler preferred removal with possibility of return next year for public testimony.

i. Stutzman: Was that in second reading amendment?
j. Smith: Yes.
k. Stutzman: Was there testimony in Senate?
l. Smith: No.
m. Dembowski: Will have to decide whether that was important to pursue. We do not know what the concern was. Will need to know that and whether this is important enough to bring back.
n. Smith: Told there was a concern, but not what it was.
o. Dodge: We were on the last 3 days.
p. Smith: do not know what the objections were.
q. Pearson: Any concern about aquatic wildlife like turtles and frogs that live within the lake?
r. Smith: Just told there was a general objection.
s. Stutzman: Was dealt with towards the end. Their minds were on other things. Not a clear answer on what the objections were. Seemed innocuous but information was not readily available. Got caught up in the mix. Would be good to follow up with clearer answer.
t. Smith: Will do that.
u. Stutzman: Any other comments on legislation? General Assembly will be called back to a special session. Really appreciate Senator Meeks and his service to our part of the state and as a whole. Good to see him here today. Appreciate everything he has done, learned a lot from him.

3. General discussion regarding identification of current significant issues warranting action by the work group

a. Ray: After spending last few sessions working on details, this is an opportunity especially for new members to reacquaint themselves with the myriad lake issues that the group could be considering. This is open-ended brainstorming session without preconception on how to pursue it. Tried to stimulate discussion by sending out a list of potential topics. Hope there would be other ideas to put forth as well. Towards the end of discussion, identify issues that may be a priority.
b. Madden: First some housekeeping. This is end of first year now? Was there a biannual report?
c. Ray: Yes, end of first year report is to be submitted by end of June, then there is another year until June 30, 2010, under SEA 88, a copy of which was distributed to you.
d. Madden: How many more meetings for next year?
e. Ray: Four are allowed now bu SEA 88. Was three originally. That bill was enacted last year. There were meetings in July, November, and March, so this would be the fourth meeting.
f. Stutzman: Would have to wait until after July 1 to meet again.

g. Pearson: Original document from work group had 40+ recommendations. Now time to not get bogged down in details, but consider some of the topics. Originally went before the public at Angola to list their concerns. Do not need to do that again, but get some new ideas in.
h. Meeks: Starting point to look at those recommendations to see if there is anything paramount that needs to be considered. Jim, anything that we need to address in those?
i. Ray: Would be happy to get copies of those reports. Everyone would have a chance to look through those. Would be more time consuming to go through what has occurred and what recommendations still have not been pursued.
j. Madden: Things are changing. It's a natural break with Jim gone. May need to have next meeting after July 1 with reorganization to find out who will be Jim Ray's replacement. Without someone keeping track of us, we will flounder. Would be good for subgroups to go back over original recommendations and determine what to pursue. Concerned about structure without someone facilitating. That's what happens when you have institutional knowledge when someone retires.
k. Hippensteel: We also have the current dynamics of the real world and comments from citizens who are actively participating in lake use and riparian ownership. Shoreline issues are still the primary concerns. Each spring comes out a new set of piers. With the collective history of people attending these meetings, we need to continue working on the first page of suggested list of topics while we have the knowledge to fine-tune this and make additional progress. Without doing that, we are losing a lot of effective discussion. At least keep this first page as issues that need to be looked at.
l. Meeks: Have LSA Emergency Rule Document 08 with notes from last meeting. Note that need a study on carrying capacity of public freshwater lake, published before the license application is filed. Have discussion on piers.
m. Taylor: Have a section to bring everyone up to speed. We got two documents. One was the emergency rule proposal and permanent rule before the Natural Resources Commission. Sent a letter to Director Carter focusing on five bullet points involving sentence on carrying capacity. Talked to DNR officials and reiterated that it created pressure on DNR to develop carrying capacity criteria. Complicated activities with high speed boating, fishing, weather conditions. Would be ineffective with lakes going through significant changes year to year. The study would require substantial funding and law enforcement would be improbably. Sent the letter on November 30, 2008. That was stricken from the emergency rule. Moving to step two was the emergency rule that was already presented to the NRC. Takes about two years from draft to enactment in rule. Now waiting on public hearing process on that rule and may file objection to carrying capacity language at that time. Would be inappropriate to change language now without the public hearing process.
n. Pearson: This whole issue (emergency rule) is on group piers only.
o. Taylor: Focused primarily on impairment of carrying capacity, that was our objection. The emergency rule was changed to remove the term "carrying capacity" and is now rule. Next phase is on the permanent rule, which is awaiting public hearing phase.
p. Meeks: Made some notes that group piers need to be addressed and definition moved somewhat on item # 17 front page.

q. Taylor: Has been forward movement on that. The last proposed rule change for group piers, less the carrying capacity issue, is in process. The DNR needed to get that through quickly with some issues. We are in step with what DNR wants.
r. Meeks: Do not need to look at it anymore?
s. Taylor: Not today.
t. Ray: Bill Jones had responded by email on the list of potential discussion topics. Since he could not be here to advocate his priority topics, he listed his top three. The first is on toxic algae, second was promoting economic value of Indiana lakes, and the third was updating the Indiana lakes website.
u. Taylor: Would like to tie comments in. When, three years ago, the new group authorization was started. Our subcommittee looked at the 1999 document for some pieces that had lost momentum. Said all along that the easy part is done and now have to focus on hard stuff. Felt that these were the compelling issues left over from original 48. Even though we had not done new public hearings, the membership was pretty attuned to compelling issues. Agree that issues on the front of this page are still alive. Have probably done legislatively what we can get done. Fortunate enough to be working on housekeeping issues such as word "wildlife" but what can solve these problems is not a political realty. Even though political climate is not what it was 8-10 years ago, the crux of what needs to be fixed now is in rulemaking. Coordinating of land use with respect to funneling will be in new generation of rules, whether we can all get in step together to work on behalf of public and riparian. Proliferation of piers and structures, the real answer is in rules. At the junction where rules may need to be recodified for entire 312 rule package. Time to take a giant step forward. Don't think the answer for another two years is legislative.
v. Meeks: Want to address question to Judge Lucas to see how practical it would be to rewrite the rules.
w. Lucas: Has been done before. It is a big task, but my staff does the writing function (not the policy function) in their work for the commission. If the ILMWG and NRC decide that we do this, we can.
x. Meeks: Not all of 312 but just look at things on this sheet, whether it would be practical to modify those without resistance.
y. Lucas: No resistance from our office. Don't think there would be from the NRC either, as the commission is the junior partner of the general assembly. Several of their members are pretty highly focused on this issue. Will have 6-7 different opinions.
z. Meeks: Don't want to waste time doing something that isn't going anywhere.
aa. Lucas: Full recodification of 312 IAC 11 (Lakes Preservation Act - LPA) rules has been done before. Can be a fairly daunting task with simple issues. These are not simple, but is the subject matter. My office has primary functions of assisting NRC with rule writing and with judicial action. Public freshwater lakes issues are, bar none, the most complicated issues. Have as much that gets to the appellate level on lake issues, relative to all other DNR issues.
bb. Stutzman: What are the main issues that come before an administrative law judge? What cases are most frequent and difficult to handle?
cc. Lucas: Number one in LPA is delineating the lines into the lake between riparian owner properties to accommodate interests of both persons and the public trust.

Number two is relationship among the person who is riparian owner (fee ownership) and an off-shoreline person who has a property interest as an easement, and the state of Indiana with the public trust. Number three is placement of piers and boat stations without posing a navigational hazard. Number four might be placement of seawalls and differentiating among different kinds of shorelines with sliding scale on what you can do with constructing a seawall commensurate with how natural that stretch of shoreline is from restrictive interpretation in sensitive areas to developed areas.

dd. Pearson: How much are violations heard?

ee. Lucas: Get enforcement cases. Did not try to differentiate the content. Bulk of cases are licensure for placement of pier or riparian rights disputes between neighbors where DNR is a passive participant.

ff. Dembowski: If we want to change rules, what is the process.

gg. Lucas: Start off with proposal for rule change from ILMG, DNR or citizen petition. Special process for commission receiving a petition. A study group within DNR is appointed from divisions that may have an interest to review petition and make a report to the DNR Director and NRC. Sometimes the Advisory Council (AC) has ideas, such as with carrying capacity. Early step is to get advice from AC. First formal stage is preliminary adoption by NRC. A notice of intent (NOI) is published in the Indiana Register. Goes to OMB for review of fiscal consequences. Then posted on NRC website and again in the Register. Bass Lake pier length was from citizen petition and was published locally in the paper. Have to publish in Indiana paper of general circulation (Indianapolis Star), then to public hearing(s). Multiple hearings in region that is affected. Would likely do one hearing in Indianapolis and 2-3 in northern areas. Hearing officer creates a report with that input for the NRC, which can make some changes. Written comments from public as a logical outgrowth, the NRC can make modifications or deny further action or decide to start over if substantial changes are made. Attorney General has 45 days for review. Governor has 30 days. If says no, end of it or he signs. Becomes effective 30 days after sent to LSA.

hh. Dembowski: How much time is that normally?

ii. Lucas: From moment that we cause LSA to do NOI, has to be done within one year unless we say complexity will cause it to go longer. Almost never extended, just twice. One element we don't have control over is how long OMB takes. May have to ask for more time.

jj. Pearson: Spent a lot of time at last meeting about guidance for review of dredging permit applications. Sent an endorsement from group back to DNR which fits into rule-making process.

kk. Lucas: For dredging, the NRC is handling that initially as non-rule policy document, which is faster but does not have the force and effect of law. That document is entatively on the agenda for next NRC meeting on May 19 at Morgan-Monroe State Forest. Could be published in Indiana Register June 1 to give guidance on DNR handling. If it goes to a dispute, will not have legal force. Can be a test run to see how it works before formal rule adoption process. A new concept always has problems you didn't think of.

ll. Stutzman: Any other questions?

mm. Krevda: When we started in the 1990s, had a watershed committee that was separate with soil conservation dealing with issues in the watershed rather than on the

lakes. Since the soil conservation division was removed from DNR, leaves a void in that area. A lot of ditch work and off-site development has become haphazard with no money to do things in the county. A lot of things suggested by this group are being ignored. Need to look at cause and effect on what is happening at the lakes. Economics dictates everything but need to get involved in what is happening that is detrimental to lake survival. Laws in place, need to make ideas work. Lake shorelines and communications with drainage boards are issues. Don't want to advocate bureaucracy with a new division, but think there is a huge void since it was removed.

nn. Dodge: Soil and water was part of DNR and is now a part of agriculture. Most of that is local rules?

oo. Krevda: There is a Drainage Handbook, lots of surveyors who try to do the right things, in some counties, drainage board is aware; in others, no one is keeping an eye on it. Looked at project for LARE where there was a failure in a tile. They made an open ditch across a 4-acre field. There is no vegetation or shoreline stabilization. That material has eaten ditch out to 3 times its original size and is going into the lake.

pp. Pearson: Would it be a violation?

qq. Hippensteel: A year ago, legislation was passed that exempted permits from drainage boards if it was backing water up on farm fields.

rr. Hebestreit: Inlet ditches to lakes are exempted if work is done by drainage boards. There are a couple of loopholes.

ss. Meeks: Do not have jurisdiction within a half mile. Who is responsible for silt getting into the lake?

tt. Hebenstreit: If a lot of sediment washed in, we would treat it as a violation.

uu. Meeks: County drainage board would have to make restitution to clean it out. Has that ever happened?

vv. Hebenstreit: Not recently.

ww. Meeks: How cooperative are drainage boards?

xx. Hebenstreit: Have some litigation.

yy. Meeks: The drainage board has responsibility to clean it out, not the property owners.

zz. Hippensteel: Some unintended consequences.

aaa. Pearson: Can go without permit up to the lake or the elevation that matches the lake level. That is unclear.

bbb. Taylor: Should be looked at in the biology subcommittee not the density subcommittee. That is a huge hole in lake protection act.

ccc. Hebenstreit: Emergency rules with heavy rains to make repairs.

ddd. Taylor: What is the history of legislative change?

eee. Hippensteel: Farming groups wanted to drain areas to get crop in. Has turned out to be much broader. Most ditches that are large enough to damage lakes are under jurisdiction of the drainage boards. Boards vary tremendously on who has priority—agriculture or lake water quality. Since the assessment is on the landowner, they are willing to pay their share to get this done, so drainage board is in support of landowner.

fff. Coplen: Trying to relate to what is going on with drainage board. Don't know of any specific issue in out county.

ggg. Zolman: Not beyond what the winter and spring has done.

hhh. Coplen: Never ending issue with one ditch that has a considerable amount of fall. With spring rains, a lot of sediment enters the lake (two lakes). Never ending issue with stabilizing streams.

iii. Krevda: Rule 5 has something to do with eroded areas. Are drainage boards excluded?

jjj. Coplen: No.

kkk. Krevda: If plan has to be reviewed and accepted, wouldn't that take care of this issue. Problem is not from farmers, but how systems are maintained. There isn't money in county coffers to do things the way they would like to do them. Rule 5 is not enforced anyway.

lll. Zolman: Varies a lot county to county with no one to enforce it—two people statewide.

mmm. Krevda: Did project that would receive a lot of scrutiny in Kosciusko County.

nnn. Stutzman: Give a short description of Rule 5?

ooo. Krevda: When Soil Conservation was a part of DNR, had people dedicated to reviewing an erosion control plan on project over 5 acres. Was reduced to 1 acre. Plan consists of how to keep material on site with silt screens through common sense. Didn't have to be done by engineer, but was prepared and turned over to DNR Soil Conservation for review.

ppp. Zolman: Erosion control plans go to Soil and Water Conservation Districts (SWCDs), but they are not compensated for doing that work, so varies among counties as to amount of review. Plans are forwarded to IDEM.

qqq. Madden: Overseen by Monroe County planning because SWCD doesn't have staff.

rrr. Meeks: No specific guidelines statewide?

sss. Zolman: Checklist of things that must be met.

ttt. Tyler: Rule 5 is an IDEM rule. Must be filed with local authority first, if approved, can file with IDEM. If disapproved at local level, must change it. Rule is consistent throughout state. There are exemptions for agricultural activities as farmers tilling fields are disturbing more than an acre. Draining farm fields is a mixed bag.

uuu. Stutzman: Other exemptions?

vvv. Tyler: Meant to address control of stormwater erosion from a construction site.

www. Hippensteel: When DoSC was within DNR, there were 8 people assigned around the state. When DoSC went to Dept of Agriculture, they made the decision that they would not be promoting Rule 5. Several counties are fully involved but many other SWCDs chose not to do this. Reverted to IDEM where funding and number of personnel was less and the network is less than with DNR, resulting in less enforcement. Dilemmas have been amplified under current configuration.

xxx. Ray: Suggest that you think about steps in the future regarding issues that have been identified. Could do something similar at a future meeting with a trained facilitator helping everyone work through the issues. Would be possible for staff to send supporting information prior to the meeting, including the original report recommendations. Could update an older version of a document that lists what has occurred to address recommendations.

yyy. Meeks: I think Gwen acted as a facilitator at one time.

zzz. Taylor: Has been over 9 years since there has been a public meeting. If we can find a facilitator, think we might do a mini version of the 1996 Tri-State meeting.

aaaa. Stutzman: Who will be the chair after July 1?

bbbb. Madden: will need to consider legislation to extend LMWG for next two years.

cccc. Stutzman: Will look down through list to determine which topics to pick. Can think about this and discuss more what issues we should address. The incoming chair may have issues.

dddd. Ray: Chair changes July 1 to be appointed by Speaker of the House.

eeee. White: On June 20, the Midwest Glacial Lakes Partnership will be hosting facilitated sessions with representatives of all lake interests to identify threats, stressors and possible solutions for the glacial lakes. That process will provide information that could be very useful and timely for this group. The members of ILMWG are invited to participate in that session.

ffff. Stutzman: Can that information be sent out to this group by email?

gggg. Ray: Certainly.

hhhh. Stutzman: What about appointments to the group?

iiii. Ray: Less certainty about who will be appointed through the administrative process.

jjjj. Meeks: Sent a letter to the Governor asking that the same persons be appointed if they were active on the group.

kkkk. Ray: Some reason to presume that this group would be essentially the same after July 1. With the chairmanship going to the House member, we could offer up a trained facilitator. Gwen would be an example. Would take some time to do that, most of a meeting day to get an idea of the important issues and how to proceed. Could talk about that more today.

llll. Stutzman: Sen. Arnold is an appointee in place of Sen. Rogers.

mmmm. Coplen: Only have four meetings per year other than subgroup meetings on our own, so it is tough to accomplish a lot of work. As far as the proposed list, can't imagine more than what we have to review. These are all extremely important. Would hate to take a whole meeting lost to a facilitator to come up with new topics. Use our time to find out what is important and prioritize as best we can. Need to look at key people to see if legislation could be passed if it were addressed. Let's pick the topics that we could accomplish. No way to address all these issues.

nnnn. Stutzman: Incoming chair will be somewhat of a lead and can have a good sense of whether to tackle issues. Will come back to the same issues.

oooo. Madden: May have run gamut of what we can do legislatively. Need to look at changing administrative codes for these issues. Have not changed administrative code in nine years?

pppp. Taylor: Have actually made a lot of changes to administrative codes, but focus for last two years has been confining ourselves to legislative side. Now focusing on administrative rules. Agreed early on that key focus was this discussion on funneling issue. As we analyzed that, got to the conclusion that the zoning boards above shoreline and DNR permitting process lakeward would never be married in an efficient way. Focus inside of lake enhancement law as to issues of density of boats, shoreline structures, overuse of multiple pier structures, all got back to overdevelopment of shoreline. The public's domain starts at the shoreline lakeward. Private domain is shoreline landward. Talked about model legislation to recommend

to counties how to control zoning. Concluded that this was not logical, as counties were so different. Started shoreline lakeward to look at how to better organize. Know what our limit is statutorily, what we cannot get through the legislature. Leaves us with working on things we can address within administrative code. Reality is to dovetail effort with us, DNR, NRC, Advisory Council.

qqqq. Pearson: You are only talking about piers. Make it sound like black and white with state authority. Not necessarily true with IDEM and DNR regulations, where we changed to regulate landward 10 feet where it affects water level.

rrrr. Taylor: Working within DNR jurisdiction.

ssss. Pearson: For piers, but if it is Rule 5, IDEM regulations, those don't necessarily stop and start with the shoreline.

tttt. Taylor: The legislation says "public freshwater lakes" but our marching orders from Senator Meeks were that we need to address anything affecting the lakes. If the failure of Rule 5 has an impact, we don't need to change Rule 5 but to confer with other agencies. Nothing to prohibit us with direct dialogue with IDEM.

uuuu. Pearson: You think this focus is just within public freshwater lakes?

vvvv. Taylor: For legislation we can recommend, yes, but if there is an impact beyond that, we have the authority beyond that short of recommending legislation.

wwww. Meeks: Quoting SEA 88 the work must be directed toward problems and issues associated with lakes meeting the definition of public freshwater lakes under IC 14-26-2-3.

[Senator Stutzman left to attend another meeting and turned the chairmanship over to Representative Dodge.]

4. **Discussion regarding regulation of temporary structures in lakes, including aerators and fountains**

   a. **Pier installation and maintenance** (Terry Archbold, Indiana Marine Trade Assoc.)

      i. Dodge: Introduced Terry Archbold, a businessman who installs and maintains boat lifts and piers.

      ii. Archbold: Those of you discussing the issues may not be familiar with situations affecting installation of temporary structures. [handout on "The Process of Installing Docks and Lifts"]. On lakes or large water bodies, can walk out into the water to install or remove dock or lift with an auger or set in type on hard bottom. Length of posts runs from 4-8 feet. Can put numerous boats on a single dock. In channels, creeks or small covers, may not be able to walk out on the bottom because it may be soft. Would need a 12-20 foot dock post to stabilize the dock. May need diagonal posts to reduce swaying. Will need readjustment after walking on it. Stabilize again after shifting and settling. Removing a 12-20 foot post cannot be done by standing on bottom. May need work boat with electric winch. In these areas, a 75-150 foot dock cannot be used (shorter due to narrow channels). To dock multiple boats, may need more than one pier.

      iii. Pearson: Difficult to get it back in after winter?

iv. Archbold: In small bodies of water, ice may move it a little bit requiring readjustment. On main part of lake, everyone takes dock out anyway. If property has changed owners, may have to remove piers.
v. Krevda: A lot of sockets being installed?
vi. Archbold: Yes, piece of pipe put in bottom into which the posts are placed to install the dock in the same place every year.
vii. Krevda: Can they be used for shore stations?
viii. Archbold: Haven't seen that yet?
ix. Pearson: Floating docks?
x. Archbold: In mucky areas, can use floating dock with posts driven just for stability. Dock has a "T" on it to keep it stable. Stays in place. Can cross tie between anchors to take shock out of waves hitting it.
xi. Meeks: Can you go out beyond 6 feet deep? I thought it was 150 foot limit.
xii. Taylor: You can go out 75 feet into deeper water.
xiii. Meeks: I thought it was 6 foot maximum.
xiv. Archbold: Only after 75 feet does the depth come into play.
xv. Meeks: I don't see the significance of 75 feet or 150 feet.
xvi. Archbold: Next topic is boat lifts. Easier to install on hard bottom. May need larger foot or plate, including plywood to distribute weight. On creeks and coves, will need longer legs, larger feet to hold weight of boats. Procedure to get it stabilized to use lift, which will settle as the boat loads on. Will remove and adjust legs. Set boat on it again to determine shift. May have to repeat 4-5 times until it stays level. To remove, the front of the work boat may go completely under water trying to get the boat lift to break free from muck bottom.
xvii. Taylor: Question about boat bags.
xviii. Archbold: Nylon bag with air that will blow up and float boat out of water.
xix. Taylor: How are they secured to keep sway out?
xx. Archbold: Tied to shore, dock or anchors in the lake. Have three in our community.
xxi. Taylor: Cost?
xxii. Archbold: Similar to mechanical lift ($2,500-$3,000) but don't have canopy. There are boat lifts with pontoons to push water out of tank and float boat up (very popular in reservoirs and rivers). Those are more expensive.
xxiii. Pearson: Recommendation to use bleach to keep the boat clean?
xxiv. Archbold: Haven't heard of that. Put phone number (260-833-2492) and email (terry@drydockboats.com).
xxv. Meeks: Regulated by rule?
xxvi. Archbold: Just the 75 or 150 feet.
xxvii. Meeks: Don't need a DNR pier.
xxviii. Taylor: Not as long as they are within the limits.
xxix. Archbold: Joined this group to learn more about the rules. One person wanted a dock put in 6 feet from the property line. Have had DNR officers

come into our dealership, invited other marine dealers to find out rules, so property owners don't have problems with neighbors.

xxx. Tyler: What problems would be created if all piers had to be removed every year?

xxxi. Archbold: Not enough manpower or businesses to get them in and out.

xxxii. Tyler: What percentage of piers are left in?

xxxiii. Archbold: Large body of water with harder bottom versus muck in coves where they all stay in. In open water, if they don't take it out, Mother Nature will.

xxxiv. Tyler: Take them out because ice will damage them. If moving ice is not a problem, they aren't taken out?

xxxv. Archbold: Yes.

xxxvi. Tyler: What percentage stay in?

xxxvii. Archbold: Varies by lake, probably 60 percent come out (Jimmerson, Snow, Crooked). In housing additions on channels, they all stay in. Some are legal rivers, looks like a channel.

xxxviii. Meeks: In channels muck cause by eutrophication from trees. What's wrong with dredging that out?

xxxix. Archbold: Nothing. Focus to get them cleaned out is great. Everyone's attitude here is to make more usable water.

xl. Meeks: Not sure that is the opinion of everyone here.

xli. Archbold: Protecting fish. Doing positive things as opposed to not doing anything.

xlii. Taylor: If we require piers to be removed under general license, you say about 60% would be removed? The other 40% would have to apply for a permit to leave them in. Not sure it is right to force someone into hiring someone to remove pier, but would just need to have license. When they get far out into the lake, they become navigational hazard for snowmobilers. To get permit, might have to put reflectors on it. Given these options, would some change pier configuration to something that is easier to remove?

xliii. Archbold: Think everyone would get permit to leave it there.

xliv. Coplen: Is that one-time permit or every year?

xlv. Taylor: Was two years before the statute went through. Now could be left up to DNR for 5-10 years or whatever based on criteria.

xlvi. Archbold: Some are so difficult that they would get a permit.

xlvii. Taylor: Average person would understand that some configurations are harder to pull out of the water. Not wanting to make anything illegal, but just determine what needs a permit.

xlviii. Archbold: Reflector would help person trying to navigate narrow areas at night (by boat). Wouldn't be a bad idea to have that on all of them.

xlix. Coplen: Would reflectors increase state liability?

l. Meeks: What liability?

li. Coplen: If the state requires reflectors and someone still hits them, does it increase state liability.

lii. Meeks: Steve, what do you think?

liii. Lucas: Gets to policy, General Assembly and NRC, but don't let the tail wag the dog. If there ought to be reflectors, there ought to be. Wouldn't be impossible to say that there isn't liability, but should decide first what is right.
liv. Meeks: State is not liable when they set speed limits.
lv. Lucas: Even if state was liable, would you not want speed limits.
lvi. Dodge: What is fee on group permit?
lvii. Lucas: $100 for each permit for however long the permit is good.
lviii. Strebig: Who is responsible for regulating and monitoring permits?
lix. Meeks: Division of Water.
lx. Strebig: Is there a decal that law enforcement agent knows there is an expired permit?
lxi. Pearson: No.
lxii. Strebig: If 40% would have an exception permit, administration would be overwhelming.
lxiii. Taylor: Now there needs to be a complaint to generate action.
lxiv. Strebig: Left up to dock owner.
lxv. Taylor: And how well he gets along with his neighbors.
lxvi. Hensley: Normally a site inspection is required before the permit is approved. Division of Fish and Wildlife may have someone inspect, but also the Law Enforcement district office would do a site inspection and recommend approval or an alteration of application. Would go to district commander for agreement, then final approval or denial. That information would go back to district headquarters.
lxvii. Strebig: Now you have limited number of group piers. If you made this ruling, that could be over 1,000 piers in Steuben County. Would be a massive flood of applications.
lxviii. Taylor: That's why Terry is here to help us figure that out.
lxix. Meeks: Taking them all out is the easy way.
lxx. Meyer: This is just new piers right? Are piers along an existing restaurant grandfathered in?
lxxi. Meeks: Had bill last year that didn't get a hearing. For now, they are grandfathered even with exchange of ownership.
lxxii. Pearson: Isn't there a 2-year registration period for any group pier?
lxxiii. Lucas: Generally speaking, structures that are consistent with what was there before. They say there's been a pier there since 1955, but the pier doesn't look anything like it did in 1955. If you're talking about grandfathering and you have a new rule, that new rule applies to anything that changes after the effective date. As soon as you change the dimensions, if there is a rule in place, you don't have lawful nonconforming use anymore. Not true that there will be tens of thousands of new piers the next day, but a bunch more than there used to be. Long piers have to be registered after 2010.
lxxiv. Hensley: Officers spent patrol documenting all long structures. Will generate a letter to send to the owners. After the nonconforming use rule, the proof is not our responsibility, but the landowner will have to bring

information with them. When someone adds to a pier, they will not be able to show that this was there by a certain date.

lxxv. Pearson: Maybe over 90% of those that don't conform have records by the officers.

lxxvi. Hensley: Won't say a percentage but should have the most complete list.

lxxvii. Dodge: What does that add to the discussion?

lxxviii. Taylor: That will be a main agenda item for the subcommittee.

lxxix. Dodge: Will have two subcommittees. Will we discuss the issues on the list of potential discussion topics?

b. **Aerators** (Bob Johnson, ran Aquatic Control, retired, but now consultant for SePRO)

i. Different kinds of aerators. Less obtrusive is submersed diffuser with pump from shore. Some put them in to help decay bottom organics, prevent ice from forming around docks or protect waterfowl in winter. Difference between fountain and aerator is amount of water they move. Fountains don't do much for aeration. Aerators have propeller and shoot water up. Newer thing is underwater pump mounted on frame to shoot water out to circulate debris out of area. Fairly recent. A lot of people use them to move sediment away from their dock, over on their neighbors. Now more wind-powered units, some quite large with wings 6-10 feet tall, originally used in sewage treatment. Most run by electric motors. Floating units have electric motors in water. Have GFI protection for equipment, not necessarily safe for humans in water. Have instructions to turn them off to swim. High voltage (up to 440) and high amperage (30-35 amp) with a lot of electricity in water.

ii. Meeks: How far out do they go?

iii. Johnson: Can put diffusers out as far as you want with 1,000-1,500 ft hose. Windmills sitting out in middle of large bays. One company leases a lot.

iv. Meeks: In Indiana lakes, some of these would deny access to general public for use of that particular stretch of lake. Water belongs to the people not to someone who wants to put an aerator out. Landowner could deny access by putting two big aerators between piers. Feel that is wrong to deny public use.

v. Pearson: Fountain would do that more than aerator.

vi. Hippensteel: Keeping water open for wildlife but safety problem for winter ice users.

vii. Johnson: Will have hole in the ice (10-50 foot hole) with argument about how far out they weaken the ice. Can usually walk out to edge ice hole, where it is thick. Wisconsin has rules that if you have a diffuser, you have to put a barricade around it in the winter so snowmobiles don't run into it.

viii. Dodge: What are windmills used for?

ix. Johnson: To aerate or circulate the water. Some have large fan that turns slowly to cause upwelling of water. Some have wind-driven pump that draws water up and circulate it.

x. Krevda: What is primary function?

xi. Johnson: Increase decomposition at bottom. Effective with windy enough area. Just one in a 50 acre lake will not do any good.
xii. Krevda: How about in a channel?
xiii. Johnson: Manufacturer would say yes. Shortly before retiring, had a proposal to put diffusers back into Barbee Lakes but as far as I know it never happened.
xiv. Pearson: Permitted an aerator on Sechrist Lake.
xv. Johnson: Think it never happened.
xvi. Meeks: What kind was it?
xvii. Pearson: Diffuser that wouldn't interfere with boating rights.
xviii. Hippensteel: Not decomposing really, but just moving problem to another landowner.
xix. Johnson: Mostly. Put in to move duckweed off their docks. Could see it causing problem.
xx. Dodge: What are rules?
xxi. Hensley: When I moved into this position, there was a complaint about use of aerators. Been working with Jim Hebenstreit and Division of Fish and Wildlife. Had a snowmobiler go through thin ice generated by aerator at Sylvan Lake. Our stance is a very serious public safety issue. Photo showed a whole channel opened up where others couldn't use it. Originally did require a permit through Division of Water. Not quite sure why the permit requirement went away. Have been issuing some permits with stipulations about how they may be used. Hoping to have a rule.
xxii. Pearson: Or through general license if they meet some stipulations.
xxiii. Dodge: Can do that as a rule now?
xxiv. Lucase: Legislation gives NRC the authority to write a rule.
xxv. Madden: Noticing decrease in number on Lake Lemon. Area of water opens up and becomes a home for winter geese. Homeowners take their dock out. There is no environmental concern?
xxvi. Johnson: If anything they improve habitat?
xxvii. Pearson: What about stirring up bottom?
xxviii. Johnson: For first day or so, then they clear up.
xxix. Meeks: Felix, on a channel, how could someone put three aerators unless he owned all the lots? Does my lot end at water line, halfway or across channel.
xxx. Hensley: Area affected depends on how powerful it is. They are using aerators to leave piers in all winter.
xxxi. Meeks: If I live on lot where the area is, do I have any rights as property owner, Steve?
xxxii. Lucas: Courts have answered that question that the rights do <u>not</u> go to center of the lake. They go a "reasonable distance" out (rule of reasonableness).
xxxiii. Meeks: Got to be more than 75 feet.
xxxiv. Lucas: Court decided on that particular parcel, 50 feet was how far you needed to get a boat out and that was it.

xxxv. Hensley: Have been allowing effects out to 150 feet due to general license.

xxxvi. Pearson: Look at safety, fish and wildlife, alteration of lake bed. In all cases, it is safety not necessarily an alteration of lake bed? That would have bearing on rules.

xxxvii. Hippensteel: Fountain could be an alteration of the lake bed.

xxxviii. Johnson: Not if it's operating as a fountain, but if it's mounted in the bottom.

xxxix. Strebig: On most larger bodies of water, it's not the freezing of the lake, but thawing when ice moves. By keeping open water, when the ice comes off the lake, can still wipe the dock out. Don't really understand how they are aerator to keep the dock in.

xl. Madden: Sold by a slick salesman. Guy had one in, then slab of ice took out whole dock.

xli. Strebig: Sidewalks have buckled. Wonder how much of aerator issue is mandating docks be removed to keep people from putting in aerators. More controls on aerators would be required but less on docks.

xlii. Johnson: Could allow aerators but have to be shut off in winter to eliminate hazard.

xliii. Dodge: Discussion in earlier meeting about restricting in certain times of year.

xliv. Hensley: One stipulation is that their concern is not all winter long but as ice starts to break up and lift. One condition is that they only be allowed in month of March for anything approved for winter.

xlv. Dodge: Doesn't necessarily give protection.

xlvi. Hensley: Those who use aerators not necessarily suffering, but the aerator is pushing ice across and damaging someone else. People don't want to use them but being victimized by people who do.

xlvii. Madden: Would have to be a big aerator.

xlviii. Taylor: Wind pushes on ice. Ice thaws from shore out. If 6 ft is thawed out, wind picks up, not a straight edge, but spear points delivered into your property.

xlix. Pearson: Do have a working document at subgroup meeting in February. Bigger question may be whether lakes group wants to get into details or if DNR is moving forward and lakes group doesn't have to be specifically involved.

l. Hensley: It's an ongoing discussion.

li. Pearson: But should the lakes group look at it or will the DNR work it up first.

lii. Taylor: We need to be working in conjunction with DNR. Last meeting, this group voted to put removal of temporary structures, proliferation of piers (size, numbers, configuration), third aerators and fourth group piers, which is pretty well solved other than rule going through with term "carrying capacity." DNR has forward movement already. Opportunity to share points of view.

liii. Dodge: Any recommendations from Judge Lucas on what this group should address?

liv. Lucas: Generally my role is to help write what is given to me. There is one part of group pier provisions that may not really make sense. The issue is about the influence in terms of funneling. Might be better to have one group pier than six individual piers but it presents its own issues. Several different things cause a structure to be a group pier in terms of ownership. Wonder if it makes sense to talk about example of conservancy district that owns a pier that has a site for one boat for emergency action at a beach. Is that a reason to require group pier license or should it focus on numbers. Does the entity matter or the number of boats?

lv. Meeks: What about a dump station?

lvi. Lucas: Would have to be licensed as a marina.

lvii. Dodge: Does Lake Lemon have group piers?

lviii. Madden: No, we have marinas (IU Yacht Club). City of Bloomington owns the water, so we tell people how many boats and docks they can have in the reservoir. DNR considers us a private lake that happens to be open to the public. In Monroe and Brown Counties, built in cooperation with the Army Corps of Engineers. Bowl of Monroe Reservoir is owned by the Corps. Bowl of Lake Lemon owned by City of Bloomington. Limits are more stringent, based on lineal feet of shoreline.

lix. Meeks: Length?

lx. Madden: Can get into 5 feet of water within 60 feet. Don't have long docks.

lxi. Dodge: On Monroe, is that privately owned shoreline?

lxii. Madden: No private docks on Monroe. Can have marinas (Four Winds).

lxiii. Hippensteel: Does Steve recommend a general statement that a group pier is for anyone wanting to have more than six boats?

lxiv. Lucas: Right, based on number of slips.

lxv. Pearson: What would be the point of a group pier if it is not a group, but just limiting number of boats?

lxvi. Lucas: If issue is congestion, the concern is the number of boats not the ownership.

lxvii. Hippensteel: History of rule development was in conjunction with anti-funneling situations, as there was no control over the number of access points for a condo or campground with large numbers of boats. Developed as attempt to put constraints on it.

lxviii. Lucas: Didn't occur to me when writing the rule that we are just concerned with the numbers. Fighting over lawsuits asks why the name of ownership matters, when really only concerned about number of boats. As a judge, I'm only applying the rule.

lxix. Tyler: There is presently no limitation with number of piers attached to a property. A substantial property could limit number of slips on a pier, they would just put out a large number of piers.

lxx. Lucas: You could put out many piers without getting a group pier permit.

lxxi. Tyler: Property owner could put out several general license piers to stay under the limit on the number of boats per pier. Rhetorical question was aren't we missing the point if we don't address the number of mooring slips per pier. If we limit general license to maximum number of slips per pier, then property owner would simply put out a large number of piers.

lxxii. Lucas: Condominium owner would only have to transfer rights to an individual, who could then put out all the piers they want to. Legitimate problem, just not a solution.

5. Discussion of future action steps/meetings

a. Dodge: Will not get all these issues settled today. Let's divide these issues among subgroups, which may be able to resolve some of them.

i. Coordinating land use – *Density Subgroup*

ii. Proliferation of piers – *Density*

iii. Seasonal removal – *Density* (combine with # ii)

iv. Lake shoreline destruction (may include loss of adjacent wetlands) – *Biology Subgroup*

v. Bioengineered alternatives – *done within DNR*

vi. Control of ANS – *Invasive Species Task Force* created by legislation

vii. Toxic algae – *Biology*

viii. Economic value – *entire group*

ix. Communications (drainage boards, health) – *Biology*

x. Information for property owners, realtors (John Baugh and Bob Waltz from Purdue spoke on this) – *staff will check on status*

xi. Indiana Lakes web site – *staff will check & Biology*

1. Ray: A website was developed with D.J. Case as a paid facilitator. Was posted on internet server maintained by Access Indiana. DNR staff had limited ability to work on it. No one assigned to it. Working now with some other changes to get ability to directly maintain websites. www.indianalakes.org (?)
2. Pearson: Would one option be to eliminate this site as redundant with other websites, unless this group had a specific message that we want to get out.

xii. Weed control and dredging – *Biology*

1. Pearson: Permit to do dredging in areas with vegetation requires a second permit to do aquatic plant control. DNR Fish and Wildlife does both reviews. The weed control permit is in statute, so it may need to be changed.
2. Meeks: Seems to be a little controversy between those agencies.

xiii. Lowering 10 acre Lakes – *Density*

1. Taylor: This is a byproduct of action from the Density Subgroup. Should probably stay there.
2. Pearson: Didn't think
3. Lucas: This group focused on Lakes Preservation Act and that is not in the LPA.
4. Pearson: But they could change the shoreline of a lake.

5. Lucas: Three or four chapters. How they inter-relate is a grey area. Would be a legitimate issue for the General Assembly to address. Not technically a Lakes Preservation Act (IC 14-26-2).
6. Pearson: Lowering of a 9-acre lake could affect a public freshwater lake.
7. Meeks: Doesn't acquiescence fall in there.
8. Lucas: Yes, in the Lakes Preservation Act.

xiv. Dredging inlets – *Biology*

xv. Palustrine wetlands – *Biology*

xvi. Lake levels and control structures – *Biology*

1. Pearson: Where they don't know who owns the structure, someone is required to maintain the level.

xvii. Lake habitat law enforcement – *Biology*

6. Schedule next ILMWG meeting

a. Subgroups can hold meetings before next general meeting.

i. Taylor: Most of June is gone already.

ii. Dodge: Could meet again in August. Could leave it up to the new chairman.

iii. Dembowski: Normally have a meeting in November.

iv. Meeks: Should meet before November with any legislation.

v. Dodge: Latter part of July perhaps. Let Chairman Dembowski set a date. Will need to have a contact at DNR.

vi. Dembowski: Someone will be assigned to take your place.

vii. Ray: Right now, Gwen will be the contact.

viii. Madden: DNR will send out information on the June 20 meeting.

ix. White: Yes, the meeting will be 9a.m.- noon on Saturday, June 20, in northern Indiana.

x. Krevda: Lake Manitou expenses detracting from other uses of LARE funds

xi. Meeks: DNR got $500,000 in the budget two years ago for hydrilla.

xii. Kredvda: Are they being funded out of the money for invasive species and dredging?

xiii. Ray: The $425,000 for this year is coming out of the LARE fund as opposed to the $500,000 that was appropriated in the budget. In discussion between the State Budget Agency and DNR, did not use the $500,000.

xiv. Meeks: That was a direct appropriation.

xv. Ray: The way things are progressing, it is anticipated that there will be $425,000 out of LARE.

xvi. Dodge: Why did they not use the general fund money?

xvii. Ray: That was an overall budget consideration.

xviii. Meeks: We appropriate it. The administration spends it.

xix. Krevda: Programs funded by LARE are continuous funds to lakes. If funds are not available, disrupting the programs.

xx. Ray: All relates to the overall state of the economy and the fact that the amount of money available through the General Fund is diminished. The

LARE funds are coming in at a similar rate. The thought was that if there are limited funds for other programs in the General Fund, perhaps it makes more sense to use the dedicated funds for the Lake Manitou situation for the time being.

xxi. Krevda: People are disappointed that there is no funding for some lakes.

xxii. Ray: State's revenues are down dramatically, so there is substantially less money to spend on all programs.

xxiii. Meeks: Still taking $1.2 million for each of three categories.

xxiv. Ray: That's correct. The LARE fund oversees $2.4 million between traditional LARE funds and sediment and invasives.

xxv. Meeks: How much goes into watersheds?

xxvi. Ray: A very small amount. I would like to thank all of you on a personal level from the bottom of my heart for all the hard work you've done over the years to benefit the lakes of the state, the people and natural resources. This is one of the most dynamic groups of people that I have had the privilege to observe and assist. It has been a great pleasure to work with you.

General sentiment for next meeting in the latter part of August.

7. Adjourned at 2:57pm.

5/4/09, gmw

INDIANA LAKES MANAGEMENT WORK GROUP

Natural Resource Education Center
Ft. Harrison State Park, 5753 Glenn Road, Indianapolis
August 6, 2009

NOTES

Present

Members:
Senator Marlin Stutzman, District 13
Representative Nancy Dembowski, District 17
Representative Richard Dodge, District 51
Bob Meeks, retired State Senator, CD3
Dave Tyler, Lake Tippecanoe & ILMS
Jeff Krevda, Dredging Technologies contractor
Pete Hippensteel, Steuben County Lakes Council
Larry Coplen, member at large
Bob Myers, CD2
Lee Bridges, IDEM
Felix Hensley, DNR Division of Law Enforcement
Jed Pearson, DNR Division of Fish & Wildlife

Guests and staff:
Richard Miller, Sierra Club, retired professor Butler University
Chris Smith, DNR legislative liaison
Nathan Long, Aquatic Control and ILMS
Matt Pearson, Indiana State Chemist's Office
Angela Sturdevant, IDNR LARE
Gwen White, IDNR LARE, recorder

Actions

Next Meetings

- **Recreation & Structures Subgroup** meeting, Wednesday, **September 23**, 10am – 3pm, at the Natural Resources Education Center, Ft Harrison State Park with Bob Meeks as acting chair.
- **Indiana Lake Management Work Group** meeting, Wednesday, **October 21**, 10am-3pm, at the Natural Resources Education Center, Ft Harrison State Park.

Other actions

- Representative Dodge will contact the Governor's office regarding vacancies on the Work Group (CD4, CD6, CD8, At-Large). Members are encouraged to provide names of suggested members to Representative Dodge (h51@in.gov).
- Suggest any changes to the wording of the enabling legislation for the Work Group to Representative Dodge.

- The Work Group requests that DNR provide 2-3 suggestions of properties that could be named as a memorial for retired Lt. Ralph Taylor, taking into account the location of his primary residence and areas of responsibility in the state.
- Staff will send out the list of current ILMWG members and a map of the congressional districts (*see addendum to the notes below*).
- IDNR Division of Water staff will provide information on time limits for environmental review for lake construction permits.
- Recreation Subgroup will address pier and easement issues.
- DNR staff will bring a copy of the group pier regulations to the Recreation Subgroup meeting in September.
- LARE staff will report on disposition of state budget appropriations for Lake Manitou and use of all LARE funds for the past biennium.
    - Funds appropriated by the legislature in the FY08-10 state budget for Lake Manitou have not been used to date. In 2007, a total of just over $350,000 in LARE funds were spent from the Fish & Wildlife Fund for the first year of treatment and monitoring. In 2008, treatment and monitoring cost $316,000 with most of the funding from the Division of Forestry and $67,500 from LARE (costs were lower due to lack of rainfall and reduction in herbicide to minimize impacts to nontarget native plants). In 2009, the LARE program allocated $425,000 for herbicide treatment and monitoring.
    - Each year, all available LARE funds collected through watercraft fees and unspent in previous projects are awarded as grants in March (invasive plant control and dredging) and July (traditional lake and watershed projects), along with paying administrative costs for the program. Annual listings of LARE awards since the year 2000 are posted to the IDNR website at: http://www.in.gov/dnr/fishwild/3304.htm.

Notes

1. **Biology/chemistry/watershed sub-group meeting** (chaired by Jed Pearson for Bill Jones)
    a. The group met in the morning to consider potential topics for 2009-2010 (detailed notes from subgroup meeting are provided separately).
    b. Looked at 26 topics with handout containing descriptions of topics. Basically clean slate now that dredging was completed.
    c. Identified four highest priority issue areas:
        i. # 4 Palustrine wetlands – cattail marshes adjacent to lakes; funding and regulations for protection.
        ii. # 8 SWCD effectiveness – group has focused narrowly in lakes, need to look at watershed issues.
        iii. # 14 & # 15 Aquatic nuisance species and toxic algae – new Invasive Species Task Force formulated and identify other needs.
        iv. # 16-#18 Educational topics – inform public with more materials to understand issues.

2. **Welcome to Work Group meeting** (Rep. Dick Dodge)
    a. **New Chair for Work Group** (July 2009 – June 2010)
        i. Meeting chaired by Representative Dick Dodge. All have copies of the statute establishing the work group. Statute allows 4 meetings for coming year through June 30, 2010. This is first meeting of the year. Chair rotates between Senate and House. Senator Stutzman chaired last year. Will be a House position this year. Have not decided who will chair this year. Will find out who is appointed for next meeting.
        ii. Have set up the meeting. Notify Gwen White for the per diem forms for regular members of the Work Group.
        iii. Recognized Ralph Taylor's passing since last meeting as a big loss to the committee, as he was one of the original members of the group. Senator Meeks also was an original member. Jim Ray has since retired.

    b. **Self-introduction of members and guests** (see list above)

    c. **Governor appointments needed for vacant positions** (CD4, CD6, CD8, At-Large)

3. **Midwest Glacial Lakes Fish Habitat Partnership report** (Gwen White)
    a. Strategic Planning meeting, June 20
        i. White: The Saturday morning workshop will provide input on the priorities for strategic planning at the state and regional level for the Midwest Glacial Lakes Fish Habitat Partnership (MGLP). Over 30 participants represented various lake-related interests. Several of the ILMWG participated. A report summarizing the meeting will be prepared and sent to work group members. Lists of threats and actions were prioritized and discussed in the meeting using Turning Point voting technology. These lists also will be sent to all LARE contacts as an online survey for further input. This is the beginning of a process to continue getting feedback from the public on priorities for Indiana and the Midwest.

    b. Lakescaping Workshop, August 1
        i. Sturdevant: Used Turning Point technology to get input on the Lakescaping work book and Indiana-specific addendum. Will be organizing more workshops.
        ii. Pearson: LARE is planning on developing a cost-share program but no details have been set yet.

    c. Discussion of topics pertaining to Work Group
        i. Pearson: Recommendations from the strategic planning session will be useful in determining what the Biology Subgroup will address.
        ii. Krevda: On the meeting in June, these different items that are prioritized, some were fairly significant in regard to the percentage. Some may have been 75% percent of the vote. Would be helpful to have the breakdown. This was somewhat similar to the meeting in Angola that

created this group. May be a guideline to review. Can look at these situations regarding what people are interested in.

iii. White: Will be developing a report on the workshop and sending out the list of issues for online voting of the entire LARE subgroup.

iv. Dodge: This provides a comprehensive list of issues for someone to work on.

4. Issues and subgroup organization for 2009-2010

a. **Biology/chemistry/watershed issues** (Bill Jones sub-group; report by Jed Pearson)

i. Looked at 26 topics with handout containing descriptions of topics. Basically clean slate now that dredging was completed.

ii. Identified four highest priority issues.

1. # 4 Palustrine wetlands – cattail marshes near lakes; funding and regulations for protection.
2. # 8 SWCD effectiveness – group has focused narrowly in lakes, need to look at watershed issues.
3. # 14 & # 15 Aquatic nuisance species and toxic algae – new Invasive Species Task Force formulated and identify other needs.
4. # 16-#18 Educational topics – inform public with more materials to understand issues.

iii. Coplen: Great to have support for funding from legislators.

iv. Dembowski: Weed control funding does not seem to be as available. If you don't want to pay the taxes, will not get services.

v. Coplen: People on lakes paying sizable taxes.

vi. Meeks: $15 LARE fees with $5 to lakes, $5 to wetlands, and $5 for law enforcement. Generates $1.2 million per year. So there is money for weed control administered through LARE. Used to be concerned that funds go to wetlands upstream to protect the lakes, which is important. To address constituents, they want to see where money is going.

vii. Coplen: They are paying state and county taxes and want to know where money is going.

viii. Meeks: Sheriff's patrol is paid for through that money.

ix. Pearson: LARE funds are not being used for toxic algae.

x. Meeks: what is the status of Lake Manitou.

xi. Sturdevant: has been treated for three years and seems to be under control. They are monitoring closely to make sure there is none coming up.

xii. Meeks: Have they exhausted the money.

xiii. Hippensteel: Understand that money was never available to be spent. Had to use some of the LARE funds because of unavailability of funding.

xiv. Meeks: When the legislature speaks, can expect the administration to listen.

xv. White: Can check on disposition of funds.

xvi. Coplen: Important to educate associations so they know what is available.

xvii. Meeks: Funds are there for the project. Important to know who the contact is now for the LARE program.

xviii. White: Jim Ray's position has not been filled, but his phone and inquiries roll over to my phone. We are sharing his responsibilities among the 5 remaining LARE staff.

xix. Dodge: Was any of this discussed in the Steuben County meeting, which county association has about 2,000 members.

xx. Hippensteel: Mostly discussed lawn phosphate fertilizer exemption to enact an ordinance to reduce phosphate fertilizer. This was the first time that the state chemist has been asked for an exemption. This is not for agricultural fertilizer but for lawn fertilizer.

xxi. Meeks: Nancy, you carried the bill?

xxii. Dembowski: that was not for lawn fertilizer, but to reduce phosphorus in detergents.

xxiii. Hippensteel: Limited resources this year.

xxiv. Meeks: there was a half million dollars of appropriation. Wish I had know that was not allocated. May be kind of late now.

xxv. White: can check on it and will let the Work Group know.

xxvi. Meeks: Would like an accounting of the $1.2 million for lake enhancement and for the watersheds. Need to know how much is needed and to make sure it is being spent wisely. If the sheriff's departments are not using the grant money, maybe they could slide some over to use for weed control. Are they using it all, Felix?

xxvii. Hensley: To 2008, there were 8 counties participating. Last year they got $30,000 each.

xxviii. Meeks: If they take $250,000, where does the rest go?

xxix. Hensley: Eighty percent goes to DLE with the 20% to patrols.

xxx. Meyers: Only have 3 lakes in Elkhart County, but DNR has positive. Simonton, Heaton and Hunter Lakes.

xxxi. Pearson: Indiana Lake shared with Michigan.

xxxii. White: $7 million in requests for the program; used about $480,000 for administrative costs (salaries, benefits, services) leaving about $1.5 million to address the requests. All funds are allocated every year.

xxxiii. Pearson:

xxxiv. Hensley: Lake, Steuben, Kosciusko, Parke, White, Carroll, Daviess participate in the program. Marshall and LaPorte County have participated but dropped out.

xxxv. Meeks: The payment of $20 an hour seems like a lot of money. Would do it for less than that.

xxxvi. Dembowksi: Not that other counties don't want to participate, but funding for 8 or could there be openings for additional counties?

xxxvii. Hensley: Have received some calls for counties along Ohio River, but only the lake counties.

xxxviii. Stutzman: LaGrange doesn't participate?

xxxix. Hensley: No, they have not requested funds.

xl. Meeks: Good Samaritan immunity wrote into law?

xli. Hensley: Don't think so.

xlii. Meeks: They have to be trained and they have authority to make arrests.

xliii. Hensley: That is correct, it is in the contract.
    1. *Action*: LARE staff will report on disposition of appropriations for Lake Manitou and LARE funds for the past biennium.

xliv. Dodge: Need to identify chair for the Recreation Subgroup.

b. **In-lake structures/watercraft/density/government coordination issues** (Ralph Taylor sub-group) – identification of new chair

i. Dodge: How were the individuals assigned to the subgroups?

ii. Hippensteel: No assignment of individuals to subgroups.

iii. Meeks: Whoever wanted to go on the subgroups.

iv. Pearson: Were originally three groups: Biology/Chemistry/Watersheds; Recreation/Structures/Shorelines; and Watersheds. Need to determine whether subgroups will exist, what topics they will focus on.

v. Dembowski: Seems important with a lot of the complaints on those issues.

vi. Dodge: How to proceed to select the new chair of that subgroup.

vii. Meeks: Does Bill Jones want to do that?

viii. Pearson: He is willing to chair the Biology Subgroup.

ix. Meyers: Think Bob Meeks should chair that subgroup.

x. Meeks: Ralph Taylor knew more about those issues than anyone. Representative Dodge also participated. Asked whether anyone picked up cases of materials from Ralph Taylor's home. The only way that will work is to put someone from law enforcement. Ralph's knowledge was unparalleled and he had a masterful way of putting all that together.

xi. Tyler: Do we have a record of the larger membership and which associated themselves?

xii. White: Varied from meeting to meeting.

xiii. Meeks: Some migrated to the same committee every time. Bob Madden, Larry Coplen.

xiv. Coplen: Think it is impossible to fill Ralph's shoes but we have to do the best we can. Whoever is willing to step forward, the pay is great.

xv. Pearson: Would we want to set a meeting at Columbia City with whoever is interested in the subgroup.

xvi. Meeks: Have some people from Southern Indiana, like Bob Madden who has to come from Lake Lemon. Could do that here.

xvii. Pearson: Or at Mounds State Park. The main group won't meet until November. The subgroup could meet later this month or September.

xviii. Meeks: Some definite issues to pursue.

xix. Dodge: Will get with Cheryl to pick up materials from Ralph Taylor.

xx. Hippensteel: Recommend to follow up on Jed's suggestion to set a date in early or middle of September. Send out an invitation to all members and meet to identify and start addressing issues. Had some suggestions from the Biology Subgroup on issues to address.

xxi. Dembowski: What is meant by need to coordinate for implementation?

xxii. Pearson: Better coordination for local and state organizations to implement the ILMWG recommendations.

xxiii. Dembowski: Have you been happy with it so far.

xxiv. Pearson: Think this has been one of the most effective groups. This list came from several past issues. Not sure that item prompted a lot of discussion. The ones more related to Recreation Subgroup were on proliferation of piers and shore stations (# 11), seasonal removal (# 12), and aerators and fountains (# 13). Some of these issues aren't specific just to the Biology Subgroup.

1. *Action:* Set a Recreation & Structures Subgroup for Wednesday, September 23, 10am – 3pm, with Bob Meeks as acting chair.

5. Preparation of legislation for 2010 session and update on regulations

a. Re-establish Work Group for July 2010 – June 2012

i. Meeks: This committee expires next June, so this requires legislation to extend the work group.

ii. Dodge: Will need to file legislation to extend the group to continue. Legislators will see that this gets.

iii. Dembowski: Are there any changes that need to be made?

iv. Meeks: No, but there were some appointments that were made that never showed up. Kept track when chair of those who attended. Some legislators and others never came. The NRCS and ACOE members did not attend after a few sessions.

v. Pearson: Missing a coordinator from DNR with Jim Ray's retirement. Gwen takes notes. May need to be someone else to help.

vi. Meeks: When sent the list to the Governor, told him

vii. Hippensteel: Who needs to contact the Governor to find out if the positions will be filled.

viii. Meeks: Someone needs to contact their office.

ix. Dembowski: this would be the time to do that, early in the meetings. Can point out to the Governor those who have not attended.

x. Hippensteel: Maybe the ACOE position should be replaced by someone else if they do not attend.

xi. Dembowski: Who would you suggest?

xii. Tyler: Could be another At Large.

xiii. Hippensteel: Uneven distribution across state. Another At Large position would be

xiv. Coplen: Darci Zolman has been attending for the SWCDs.

xv. Pearson: Could be really helpful, along with Shannon Zezula.

xvi. Meeks: Senator Weatherwax's office had some ideas.

xvii. Hippensteel: If you eliminate a position like the ACOE, another At Large position would be able to provide input from places like Whitley County that has a good number of lakes. Those areas are where there are a good number of people.

xviii. Meeks: Can't eliminate the Corps of Engineers. Manmade ditches are exempt from the 401/404 process. At a meeting, the guy from the ACOE in Cincinnati said all waters belong to the United States. He said there are no

guidelines and he determines those. They have to be represented for some uniformity.

xix. Dodge: Understand there is federal legislation that will allow IDEM to have complete control over all waters?

xx. Krevda: Legislation would take the word "navigable" out to encompass all waters.

xxi. Tyler: Would mean a bucket of water in the back yard was federally controlled.

xxii. Meeks: Particularly related to wetlands.

xxiii. Hippensteel: Can't recall the exact counties that fall into these districts. At a loss of identifying someone without knowing where the congressional districts are.

xxiv. Meerks: District 4 is probably Ft Wayne and Allen County.

xxv. Some discussion about where the districts are located. Information is on the internet.

1. *Action:* Representative Dodge will contact the Governor's office. Members are encouraged to provide names of suggested members to Representative Dodge.
2. *Action:* Suggest any changes to the wording of the enabling legislation for the Work Group.
3. *Action:* Staff will send out the list of current ILMWG members and a map of the congressional districts.

b. Reviewed outcomes from previous year

i. HB 1381 Extend 2-year limit on lake construction permits

1. Dodge: HB 1381 passed to allow extension of the 2-year limit for lake construction permits without the property owner re-applying. Also allowed riparian property owners to settle disputes that had previously been adjudicated by the administrative law judges. Signed and has become law. Helped to speed up settlement of disputes.
2. Smith: Currently working on administrative rule to extend the permits beyond the 2-year period. Several things can slow down construction, such as weather prevening them from getting work done. Then, they had to pay application fee again. Getting hit twice for no fault of their own. Have been dealing with pier issues in areas from both Representatives Dembowski and Dodge.

ii. HB 1119 Public Trust Doctrine (PTD)

1. Dodge: Did not get heard.
2. Meeks: The DNR had a problem with that.
3. Pearson: Talked about that in the subgroup this morning. The essence of the PTD is already in statute, may not be clear or formally recognized. The bigger problem was department was not adequately documenting how they used PTD in permit reviews.

4. Meeks: Saw Rob Carter and asked him about it. He said he didn't have a problem.
5. Pearson: Think it got the attention of the department. There will be some documentation of how the department reviewed permits using PTD.
6. Meeks: As long as we accomplished what the legislation wanted to do, then the goals have been met.
7. Hensley: PTD is part of every review. We just haven't done a good job of documenting it and will certainly do better to include that in the documentation of every decision.
8. Meeks: Did that because of piers that boxed in the lake and violated the public trust to be able to use that portion of the water. Could run those things out and close off the lake.
9. Pearson: When officers find those now, they are telling them those are illegal.
10. Meeks: How did they get those in the first place? They were permitted?
11. Pearson: No, they were not permitted. IC 14-26-2-5 embodies the concept of the public trust doctrine. So it's already in statute but hasn't been documented in review.
12. Smith: Discussed in house and have a new form. Where we documented PTD was when there was a conflict, but not documented where the permit was allowed. Have new forms where the reviewer shows a history of reviewing specifically for the PTD.
13. Dodge: Recently acquired lake front property. Going through process of trying to apply for a lake enhancement permit online. It is not easy.
14. Meeks: It is impossible.
15. Dodge: Worked on that several days and still have not gotten through, keeps kicking me out, have called down to the department. Will not allow me to continue application without including application and have not been able to get that. When we call, all we get is an automated answer to leave a message. The agency staff said to disregard a question, but when that is not filled in, it kicks you out of the system. Would like to start the project yet this year, but not sure if I can get the application done. Extremely frustrating.
16. Meeks: That's why you put your seawall three feet back.
17. Dodge: The application says if you file electronically, you can save 3-4 weeks in process, but can't get the application done.
18. Meeks: I tried to fix my shoreline. What a nightmare. Met with staff. Form was difficult to use. Ought to make it simple. Had to get GPS, photographs, and inform neighbors. Just trying to keep land from washing away. Biodegradable materials cost $18,000 for 200 feet. Could have used concrete, but didn't. Trying to make that form work is a nightmare.
19. Pearson: Want to make that another topic on the list?

20. Dodge: It is certainly not an easy process if you don't know anyone in the system.

iii. Temporary structures and property title transfer

1. Meeks: Suggest forgetting that bill. It will not be heard in the Senate.
2. Dodge: On hold at this point, as everyone agrees, due to some objections from legislators.

iv. Dredging nonrule policy update (NRC Information Bulletin # 60)

1. Krevda: Subgroup put the information together with Jed, Steve Tennant and others from DNR (field agents from LARE). Starting place as a work in progress. As we go along, will look at issues of concerns.
2. Dodge: Updating existing bulletin.
3. Pearson: just formalizes review process.
4. White: Has been formally approved.
5. Meeks: Who has the authority over dredging.
6. Pearson: Several divisions.
7. Meeks: Understand there has been a rift between divisions. Ought to be some definition of who is the lead with accountability.
8. Pearson: Lead is director of DNR, deputies John Davis and Ron McAhron take into account positions of divisions, ultimately the commission.
9. Meeks: What if one wants to hold it up.
10. Pearson: Coordination takes place internally then funneled up.
11. Meeks: Who do I go to for review if there is a rift.
12. Smith: Permits can be reviewed by the Natural Resources Commission if there is a concern. They are the final authority with input from the Advisory Council.
13. Coplen: Is part of the question that the permit is not achieved because it is held up?
14. Smith: There is a time frame with environmental review from fish and wildlife and technical review, each reviewing their own specific interests. They have keys to look at regarding environmental or technical impact. Permit can be denied. It doesn't just sit. There is a time frame for either issuing or denying a permit.
15. Meeks: Does that go to IDEM?
16. Smith: Projects can go to IDEM.
17. Meeks: IDEM looks at water quality.
18. Smith: Can be projects going to DNR, IDEM and ACOE.
19. Meeks: Are there time frames on all of that?
20. Pearson: Have guidelines with big improvements on consistency of review within the last 10 years or so.
21. Meeks: Not trying to be a devil's advocate, but saw those problems as legislator.

22. Krevda: A lot of the issues were on lake bed dredging where people had a lot of organic material and permits were denied based on encroaching on lake bed. Think we are going the right direction. Not resolved entirely.

    a. *Action*: IDNR Division of Water staff will provide information on time limits for environmental review for lake construction permits.

v. Other regulatory issues from subgroup discussions

1. Hippensteel: Clarification on emergency rules that were approved by ILMWG and NRC related to group piers, are those being applied as a useful document.
2. Hensley: Think it is a useful tool with applications already submitted.
3. Hippensteel: Are these for new group piers or modification?
4. Hensley: Modified piers would have to go through that process.
5. Coplen: Modification means configuration of pier being different?
6. Hensley: If they change the foot print of the pier.
7. Coplen: But no one has history without a photograph.
8. Hippensteel: Now responsibility of applicant to prove that this was the foot print before. Not the onus of DNR but of the applicant.
9. Hensley: To be a lawful nonconforming structure, they have to submit documentation by 2010. Officers spent last summer on patrol documenting piers. Have that in a database. Will get district offices trained on how to use the Unity database and will send letters to owners. If a person does not want to do that with a group pier, they can apply for a permit but it must conform to new administrative rule guidelines.
10. Meeks: What's the hammer when the department is changing the rules?
11. Hensley: They have to demonstrate that pier existed in the time when it was lawful.
12. Pearson: Only if they change the pier. If they leave it as it is, they do not need a permit.
13. Coplen: That's where education comes in. Most do not know. Another issue in building a new home on lake front property. There was a 5 foot easement, spelling out number of people off site who can use this. The pier that have is very conservative in the number with only 2-3 boats where it could have been 2-3 times that. The two neighbors on each side happen to be related. They decided to eliminate that pier. The department has had to deal with this in court action. A lot of unnecessary expense was brought to bear and these neighbors encouraged this. The neighbors made a point to put their pier first, right against the 5-foot area. These poor people only had a foot on either side. Can't believe the head aches the DNR has had to go through on this.

14. Hippensteel: Made an effort to look at group pier first. Need to look at individual lake resident's rights too with similar criteria. The two neighbors can have a tremendous effect on the one. Need to look at guidelines for individual piers. Spent quite a bit of time last couple of weeks on Lake James. Have 2,000 boats parked with number of piers going up by about 10 percent. Same number of boats, more piers. Each pier is getting bigger, particularly the patios at the end, one of which is 20 feet by 30 feet.
15. Meeks: There's the Public Trust Doctrine.
16. Hippensteel: Single pier with couple boats grown to 30 feet. No building on pier, but benches with storage units.
17. Pearson: Talking about two separate things. Steve Lucas told us riparian rights was big issues. Larry talking about who has a right to a pier, which is not necessarily a DNR issue. Should the group look at who should have a pier and how they should be built?
18. Hippensteel: This is the constant challenge locally. The plan commission or the BZA has jurisdiction up to the water edge. But what they do on landward side has tremendous impact on the person having a pier. They say they already checked with DNR or talked to DNR and zoning told them they could have a lot with riparian rights. The two are linked with entirely jurisdictions that have to be coordinate. The issue will fester forever unless we get some communication between these two groups.
19. Pearson: Starts with who has a right to a pier. Landowners who control easement may affect the pier. The department will require some proof that those who claim they can put out a pier have a right to it.
20. Meeks: Refresh my memory on Syracuse Lake with street deadending into lake. That went to court.
21. Pearson: Big interest from DNR standpoint was that the pier didn't have a big impact.
22. Meeks: People thought they had access at end of street, as part of public property.
23. Coplen: Believe the initial court action proved they had utilized a pier for many years. Neighbors couldn't eliminate the pier, but could make sure it was nonoperable.
24. Hippensteel: Goes to question of how much shoreline you need for the pier. With a narrow property line, they could have a pier, but not a boat lift.
25. Coplen: Aware of many issues with old easements that were granted. Congestion is creating phenomenal head ache. Question is whether there is a feasible way this group can help.
26. Hippensteel: Should be a prime issue for Structures Subgroup to attack.
27. Meeks: For funneling.
28. Hippensteel: That is associated. Have to make progress in trying to minimize contentious nature of what is going on.

29. Dodge: Is the situation illegal that Larry describes?
30. Pearson: Those kinds of cases are going on all the time with questions of how much space you can use.
31. Stutzman: With boat lifts and piers.
32. Dodge: Could keep a lot of people busy.
33. Hensley: Incredible amount of time spent.
34. Dodge: Do you cite someone?
35. Hensley: Officer goes out and reports, normally with a Notice of Violation from Division of Water, then goes to division of Hearings as a dispute. The administrative law judge tries to resolve it. If boats go over property line, they will typically lose as encroaching on neighbors property.
36. Dodge: How is decision by Judge Lucas enforced?
37. Hensley: We hope they comply. If they don't they go to court.
38. Smith: HB 1381 allows enforcement of judgement in civil court.
39. Coplen: in this case, both property owners have 60-70 feet of frontage, so they have room but they do not want people coming down on easement.
40. Pearson: The judge could rule to balance the interests where those neighbors could put their piers.
41. Hensley: Steve Lucas prepared a nonrule policy regarding those judgments, showing different configurations of shoreline property as the guidelines of decisions. Go to NRC website and nonrule policy on riparian zones.
42. Stutzman: Does that affect how far out the pier goes?
43. Hensley: That is governed by the general license. A shorter pier must conform to guidelines of administrative rule to not require a permit.
44. Meeks: Can the 10 foot owners go out 150 feet to 6 feet of depth, forcing landowners on either side to go out.
45. Coplen: Property has since changed hands and have no problem with the current pier. People owning 50 foot next to them don't care because they can share with the people on the easement. Their concern is if they don't put a pier out, the DNR will never allow a pier.
46. Pearson: They would be allowed, if they meet the guidelines.
47. Hensley: Think there is a mechanism in cases where the configuration of the lake does not allow neighbors to have their own piers, so the DNR can allow one pier, but it has to be shared.
48. Hippensteel: Where there are restrictions on 5 or more people on a group pier, may want to have several on a group pier rather than multiple owners having their own pier. May be more appropriate just for 2-3 owners. Could be another modification.
49. Meeks: When does it become a marina?
50. Hensley: Depends on what other services they provide.
51. Pearson: No doubt piers will be a big topic for the Recreation Subgroup.

a. *Action*: Recreation Subgroup to address pier and easement issues.
b. *Action*: DNR staff will bring a copy of the group pier regulations to the Subgroup meeting in September.

6. <u>Opportunity for public comment</u>

a. No comments from those attending.
b. Hippensteel: Ask a question of the State Chemist Office representative regarding the current status.
c. Pierson: Meeting on August 13 in the chemist office.
d. Pearson: Rather than go for a statewide ban at this time, will see how things turn out with the Steuben County situation.
e. Dodge: Know there are some strong feelings on the subject.

7. <u>Reconvene entire work group</u>

a. Summarize discussions
    i. Dodge: Have had a lot of issues and a lot of work ahead to continue to discuss. Hope to come up with some solutions and resolve issues. Did not realize how much was involved and difficulty of making changes.
    ii. Meeks: Those who just joined should read the book of recommendations. There were 48 and a lot have already become law. Took two years to put that together. Shows what we have done.
    iii. Pearson: Ron McAhron said they are making progress on list of public freshwater lakes.
    iv. Coplen: Suggest for Bob's benefit on subgroup the possibility of using a co-chair so if anything happens to one person, the other is well-versed. Might also benefit the work load on the chair's shoulders. If there is someone else willing to help out with this responsibility.
    v. Meeks: A good chair can delegate responsibility.
    vi. Dodge: The time and dedication from Ralph Taylor should be recognized in some way, something that could be done as a group.
    vii. Pearson: Think it is a great idea in terms of something small or more permanent. Have public property, such as public access sites, that are named after individuals.
    viii. Dodge: Assume DNR has ways of recognizing.
    ix. Pearson: Have Denniston Conservation Area named after officer killed in plane crash.
    x. Dodge: How to do this?
    xi. Dembowski: could we make a recommendation?
    xii. Hensley: The NRC has ultimate authority.
    xiii. Pearson: Could get an access site and name it after Ralph. That kind of thing makes a difference and is out there for the public to see.
    xiv. Meeks: Ought to be something meaningful at one of the lakes, preferably in Steuben County.
    xv. Pearson: Could name an existing access site that Ralph had a special relationship to.

xvi. Meeks: How about Clear Lake where there is funneling.
xvii. Dodge: Boat launch is next to controversial site.
xviii. Meyers: Need something with an eddy because he always stirred things up.
xix. Pearson: Perhaps something at Pokagon.

- ***Motion:*** The Work Group requests that DNR provide 2-3 suggestions of properties that could be named as a memorial for retired Lt. Ralph Taylor, taking into account the location of his primary residence and areas of responsibility in the state (Tyler moved, Coplen second; motion passed unanimously).

b. Consider future meetings and/or other actions

i. Dodge: Meet in November.
ii. Meeks: If there is legislation to be prepared, need to have that meeting before November. Filing deadline would be sometime in October.
iii. White: The department has been contacted by lake residents who requested that the ILMWG meet up in that region at some point over the next year. The fall meeting may not be most appropriate, given that legislation will be prepared.

iv. **Next meeting:** Wednesday, October 21, 10am – 3pm, at the NREC, Ft Harrison State Park.

v. *Actions*: Staff will send the per diem forms out to regular members who requested them.

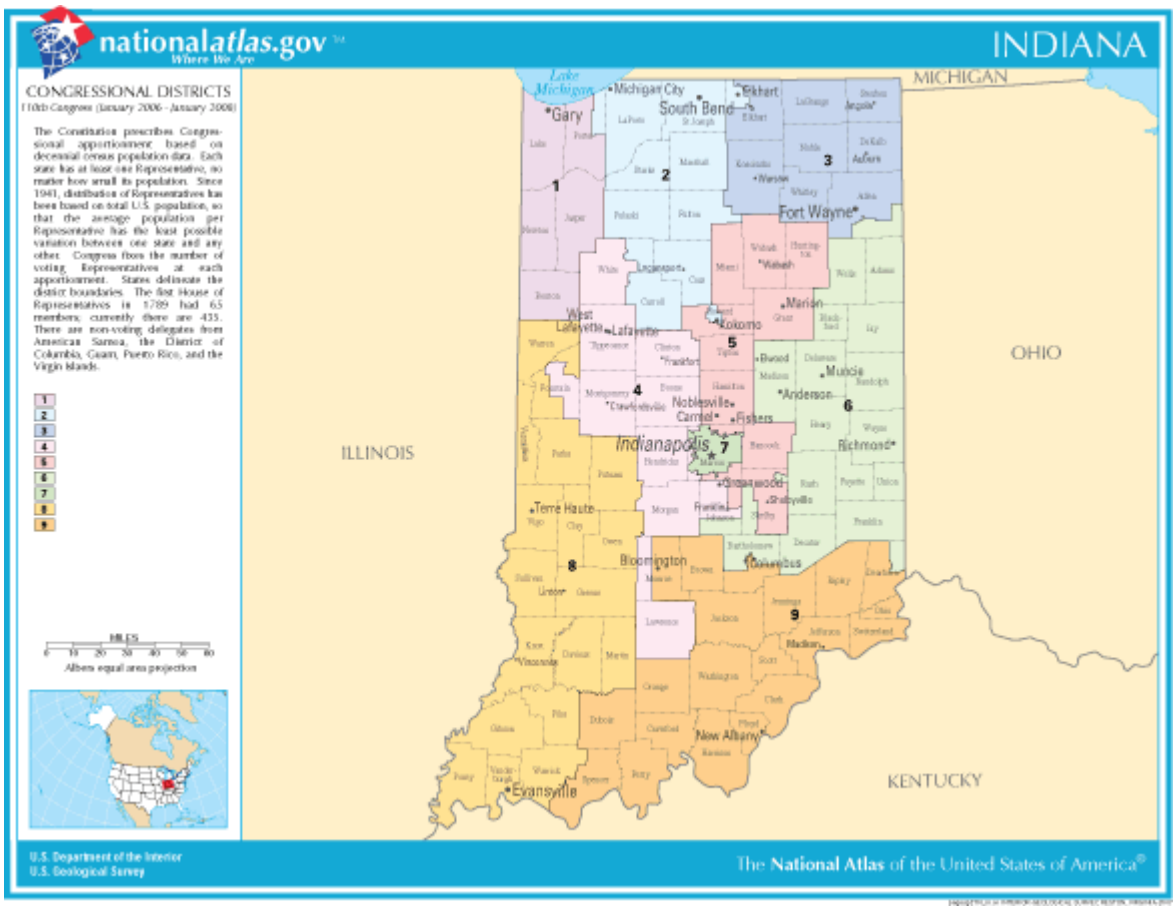
8. Adjourned at 3:49pm.

Rev. 8/19/09, gmw

List of Indiana Lake Management Work Group Members as of July 2009

LMWG position	Name	Title & Affiliation
Legislator	Sen. Marlin Stutzman	Senate R
Legislator	Sen. Jim Arnold	Senate D
Legislator	Rep. Richard Dodge	House R
Legislator	Rep. Nancy Dembowski	House D
IDNR	Jed Pearson	Division of Fish & Wildlife
IDNR	James Hebenstreit	Division of Water
IDNR	Maj. Felix Hensley	Division of Law Enforcement
IDEM	C. Lee Bridges	Office of Water Quality
Indiana Lakes Management Society	David Tyler	ILMS
NRCS	Shannon Zezula	State Resource Conservationist
Soil & Water Conservation Districts	Darci Zolman	Kosciusko SWCD
CD1	Robert Gross	Pine Crest Marine
CD2	Robert Meyers	Simonton Lake
CD3	Robert Meeks	
CD4		
CD5	Jeffrey Krevda	Dredging Technologies
CD6		
CD7	Ryan Hoff	
CD8		
CD9	Robert Madden	Lake Lemon Conservancy District
CD-at large	Peter Hippensteel	Lake James
Army Corps of Engineers	Deborah Snyder	Indpls. Regulatory Office
Agriculture organization	Michael Baise	Director Of Ag Development, Indiana Farm Bureau
Environmental organization	William Jones	School of Public & Environmental Affairs, Indiana University
At-large	Lawrence Coplen	Coplen Construction, Inc.
At-large		

Indiana Congressional Districts



INDIANA LAKES MANAGEMENT WORK GROUP

Natural Resource Education Center
Ft. Harrison State Park, 5753 Glenn Road, Indianapolis
October 21, 2009, 10am to 3pm EST

NOTES

Present
Members:
Representative Nancy Dembowski, District 17, Chair
Representative Richard Dodge, District 51
Pete Hippensteel, Steuben County Lakes Council
Lee Bridges, IDEM
Bill Jones, IU SPEA
Darci Zolman, Kosciusko Co SWCD
Jeff Krevda, Dredging Technologies
Larry Coplen, member at large
Bob Myers, CD2
Jim Hebenstreit, IDNR Division of Water
Dave Tyler, Lake Tippecanoe & ILMS
Felix Hensley, DNR Division of Law Enforcement
Jed Pearson, DNR Division of Fish & Wildlife
Bob Meeks, retired State Senator, CD3

Guests and staff:
Dave Stang, Lake George, Steuben Co
Deb Fairhurst, ISDA Div of Soil Conservation
Richard Miller, Sierra Club, retired professor Butler University
Steve Lucas, Natural Resources Commission
Sara Peel, Wabash River Enhancement Corporation & ILMS
Lyn Crighton, Tippecanoe Watershed Foundation
Michael Hancock, Office of Indiana State Chemist
Kent Tracey, IDNR LARE
Doug Nusbaum, IDNR LARE
Greg Biberdorf, IDNR LARE
Angela Sturdevant, IDNR LARE, recorder

ACTIONS
Next Meeting

- Indiana Lake Management Work Group meeting, Wednesday, **March 24**, 10am-3pm, at the Natural Resources Education Center, Ft Harrison State Park. Second choice is March 31 (Wed).

Other actions

- Representative Dembowski will make suggested changes to enabling legislation for the Work Group and will submit a bill.

- LARE staff will update list of "interested parties" to include ISDA, surveyors so they receive meeting notices and correspondence.
- Representative Dodge will contact the Governor's office regarding vacancies on the Work Group (CD4, CD6, CD8, At-Large).
- Members should contact Linnea Petercheff (lpetercheff@dnr.in.gov) with any proposed changes to the draft Public Freshwater Lake List prior to the NRC meeting on Nov. 17.
- Rep. Dembowski will write a letter to DNR Director Carter and the NRC with the Work Group's recommendation to establish a memorial to Ralph Taylor at either the Marsh Lake or Otter Lake public access site.
- Rep. Dembowski and Dodge will prepare legislation for the revised Lowering of 10-acre Lakes law.
- Rep. Dembowski will submit the aerator letter to the NRC on behalf of the Work Group.

NOTES

1. **Administrative issues**
    a. **New Chair for Work Group** (July 2009 – June 2010)
        i. Rep. Dembowski is chair
    b. **Changes to enabling legislation to re-establish Work Group for July 2010-June 2012**
        i. Requires Interim report filed by July 1 – Gwen submitted
        ii. Meeks: not sure per diem is covered ($50/day). On page 4: Non-state employees are only entitled to mileage, not per diem. Might have been taken out due to budget constraints. Meeks thinks everyone should be entitled to per diem, Dembowski will add to bill for 2010 and try to get it added back.
            1. Motion by Meeks, second by Tyler to add per diem to bill. Motion passed.
        iii. Biberdorf: New forms for travel vouchers. Members asked to check forms for correct name, address, SS#, and get it back to Biberdorf.
        iv. Krevda: No representation from the Governor's office. Might be helpful to have someone from the Governor's office present. Dembowski: Having someone at the meetings would eliminate need for liaison between group and Governor's office, and open line of communication. Add as an official member of group, or just request that someone come to meetings? No cap to number of members in group.
            1. Motion by Krevda, Tyler seconded. Motion passed.
        v. Biology subgroup discussed having a rep from ISDA. Jones: may be sufficient to have someone present at meetings, rather than an official member. Deb Fairhurst is present from ISDA on behalf of Jerod Chew (Director, Division of Soil Conservation). Jerod would like to have representation on the work group, either as an official member or just attending meetings.
        vi. Krevda: had also discussed including a county surveyor.
        vii. Used to have a member from the ACOE, but only attended one or two meetings, so dropped from list when reauthorized group. Jones: Want to be cautious about making the group too large, would rather focus on

filling existing vacancies than creating new slots for additional members. Try to fill existing vacancies with representatives from surveyors or ISDA. A representative from ISDA lives in one of the open districts.

viii. ***ACTION*:** Update list of "interested parties" to include ISDA, surveyors

c. Governor appointments for vacant positions (CD4, CD6, CD8, At-Large)

i. Jerod Chew (ISDA, Div of Soil Conservation) lives in Putnam County (Greencastle, CD4?)

ii. County surveyor in CD6 or CD8?

iii. Dodge has 2 names for at-large positions: Sara Peel (WREC &ILMS) and Nathan Long (Aquatic Control, ILMS – suggested by Bob Madden – lives in CD-9)

iv. In original group had reps from Purdue (CD4) and Ball State (CD6). Jones suggests Jarka Popovicova, professor from Ball State working on Prairie Creek Reservoir issues.

v. Meeks: in tight economic times, it behooves this group to submit timely and accurate reports regarding group's activities to justify the group's continuing existence. Reports are made available to the natural resources study committee, the DNR, members of the house agriculture, natural resources, and rural development standing committee and the senate natural resources standing committee, and the public (SEA 88, Section 1j). Make sure a copy goes to the Governor's office.

vi. ***ACTION*:** Rep. Dodge will compile list of names and present it to Governor's office.

2. Public Freshwater Lake List – update on status

a. Oct 16, 2009 version is the latest version.

b. Meeks: surprised that Steuben Co only has 84 lakes on list, even though they advertise 101. Hippensteel: many are privately owned, or less than 5 acres in size.

c. Hebenstreit: this list includes lakes that DNR was pretty certain would qualify, may add more at later date. If you have a lake that you think should be on the list or if there are lakes on the list that should be removed, submit them to Hebenstreit. Will create non-rule policy document, and post on DNR website and on NRC website. Will be on agenda for next NRC meeting in Nov. Commission would have authority to approve it at November meeting if they so choose. *[NOTE: submit any proposed changes to Linnea Petercheff – she will be revising the list for the Nov. 17 NRC meeting.]*

d. List only includes lakes in upper third of state (north of SR26). List doesn't have "the force and effect of law", a person affected by inclusion or exclusion can petition for addition or subtraction. Similar to Navigable Waters List, which has been in effect for 20 years with few changes?

e. Are reservoirs included? Yes, if they fit definition of a lake (created prior to 1947). Does not include 2 water supply reservoirs in Ft. Wayne (specifically excluded from PFL definition). Shafer and Freeman are included, Mississinewa is not.

f. Lakes Preservation Act passed in 1947, statutorily established definition of "lake".
g. What happens if a lake is not on the list? If doesn't meet definition of PFL, then can't be regulated as a PFL, but there are still laws that regulate it. E.g. Lake Michigan is not a PFL by definition, but it's a public waterway and navigable water and regulated under those laws.
h. Statutes that are specific to reservoirs for ACOE-owned reservoirs that are leased by state. Mostly in boating code or fish and wildlife code. Most reservoirs are also regulated as navigable waters.
i. Boating law covers "public waters" (more broad def than PFL, includes Morse and Geist)
j. Primary arena that this list will be used in is review of permits for seawalls, beaches, etc
k. PFL does not necessarily have to have a public ramp. If there's an adjacent public roadway where right-of-way extends to water's edge and people can launch boats there, then that constitutes public access.
l. Need a simple, easily understood explanation to be added to list, that explains what the list means. E.g. are all these lakes open for boating, fishing, etc.
m. Meeks: did we pass legislation that defined "acquiescence"? Yes, it passed in 2008 (SB-41).

3. Ralph Taylor memorial – potential sites

a. Biberdorf contacted Cheryl Taylor & Terry Coleman (Div of State Parks, good friend of Ralph's). Mrs. Taylor had several suggestions (see copy of email dated Oct 19, 2009). In subgroup meeting, suggestion had been made of public access site at Big Otter Lake, access to chain of lakes that includes Snow Lake, where Ralph owned a cottage. Procedure should be to present group's suggestion to DNR Executive Office and NRC. Would NRC have to formally approve the recommendation? Lucas is not sure if that's a requirement, but that's what's been done in the past, to publically acknowledge the person being honored.
    i. Otter Lake site
    ii. Marsh Lake site – particularly resonates with Mrs. Taylor. NE of Angola, east of Trine recreation property.
b. ***Motion:*** that the Work Group recommends Marsh Lake, with Otter Lake as second choice, be named as a memorial for Ralph Taylor (Hippensteel moved, second by Pearson, motion passed).
c. ***ACTION*:** LMWG make recommendation to Dir. Carter and informally notify NRC. Letter from Dembowski to Dir. Carter.

4. Initiate sub-group discussions

- Biology/chemistry/watershed issues (Bill Jones sub-group) – Conference Room
- In-lake structures/watercraft/density issues (Pete Hippensteel sub-group) – Training Room

5. Summarize sub-group discussions

a. Biology Subgroup:

i. Palustrine wetlands (contiguous to lake shorelines, but above legal lake level). Continuing pressure to develop these. Discussed potential ways to find incentives to protect these. Have many questions about legal ramifications and plan to contact Steve Lucas for further help.
ii. SWCD effectiveness: Had Deb, Darcie and Doug present to get update. Doug just attended a meeting of the Indiana Conservation Partnership (ICP) and gave update. State Soil Conservation Board has $550k this year to grant out to SWCDs. ICP is working to coordinate efforts to maximize use of funds, developing training program for staff. Subgroup plans to wait and see how partnership develops. ICP is planning a signing ceremony at IASWCD conference in January.
iii. AIS: GLRI funding decision is coming up ($200 million for Great Lakes states), will include $1 million for AIS program in each state (Doug Keller's program). EQSC has upcoming meeting on Monday to discuss HAB blooms. Waiting for updates at next meeting.
iv. Education: Has been a big deal since our first recommendations. SEA 88 includes Indiana Lakes website. Hasn't been updated for 3-4 years. Difficult to find info on newly redesigned DNR and IDEM websites. It's possible to get Indiana lakes website updated and redesigned. Designed to be a clearinghouse of info on Indiana lakes. Subgroup thinks this is important and if the entire group thinks so too, then we should work on updating it.

b. Structures subgroup:
   i. Aerators preliminary rule: a couple recommendations from group that were not included in preliminary rule. Drafted a letter to NRC:
      1. Change 150 foot standard to 25 feet from shoreline, or under a pier.
      2. Change to exclude fountains (prohibition on spray)
      3. Limit to one aerator
   ii. Outlet structures and dams: several hundred lakes around state are impacted by this – need for maintenance of structures.
      1. Dave Stang spoke about situation at Lake George. No framework in place for funding maintenance of these structures. Legislative line item wouldn't work. Most of responsibility falls on riparian owners to maintain structure that's mandated by law to maintain lake at legal level.
      2. Lake associations cannot receive foundation funding because they are not a governmental entity. What local government agency might be used as avenue for obtaining funds? Will pursue this in future meetings.
      3. Piers were on the agenda, but didn't have time to get to them. Intend to address them in future.
      4. Recommend developing legislation for Lowering of 10-acre Lakes.
         a. Reduces to 5 acres the size of a lake to which certain laws placing restrictions on lowering the level of a lake apply.

This was included in bill last year that added "wildlife", which didn't make it out of committee.

iii. Meeks: Question on SEA 88, Indiana Lakes website. That's a pretty broad mandate. Should we designate in the legislation who should be responsible for this? Jones: concerned that the website would be lost in the shuffle if DNR or IDEM was given the responsibility for it. You'd never be able to find it on DNR or IDEM's website.
    1. Who used to manage it? Deb Fairhurst managed it the first time around when she was in DNR.
    2. Jones: Might be useful to put it under DNR or one of the agencies so that it gets done.
    3. Pearson: Not sure this is something that needs to be done independently by Lakes Group. ILMS is working on improving their website, may be better to collaborate with them to create one website. Jones: this is an important state function that wouldn't be fair to give to an underfunded volunteer-run organization. Needs to be done by a state agency.
    4. Don't include responsibility in work group legislation, since we're not sure who it should go to. But make sure it gets done.

6. Preparation of legislation for 2010 session

a. Legislation for Lowering of 10-acre Lakes
    i. Reduces to 5 acres the size of a lake to which certain laws placing restrictions on lowering the level of a lake apply. This was included in bill last year that added "wildlife", which didn't make it out of committee.
    ii. ***Motion:*** Moved that legislators pursue revising the Lowering of 10-acre Lakes legislation this year (Hippensteel moved, Jones seconded, motion passed unanimously).
    iii. Lucas: suggests that this could be accomplished by deleting section (a) in IC 14-26-2-7 and simply beginning with section (b), because definition of public freshwater lake now specifies 5 acre limit. Make the language as simple as you can make it.

b. Aerators draft letter
    i. ***Motion:*** Moved to approve distribution of letter to NRC with Work Group recommendations regarding changes to the rule (Tyler moved, Meeks seconded, motion passed unanimously).

7. Consider future meetings and/or other actions

a. Jones can only meet on Tuesdays and Thursdays in spring semester
b. Legislature will be in session on Tuesdays and Thursdays beginning in Feb. Three day break (W-F) when bills move from one chamber to another. Feb 17 (Wed)
c. Or March 25 (Thursday before ILMS conference) in Merrillville, to allow for larger public input.
d. **Decided on:** March 24 (Wed) at NREC. Second choice is March 31 (Wed).

8. **Opportunity for public comment -** NONE

Adjourned at 2:50pm

Rev. 11/9/09, aks

Meeting notes of the Indiana Lakes Management Work Group

March 24, 2010 10:00 AM-3:00 PM

Training Room, Natural Resources Education Center, Fort Harrison State Park

Indianapolis, Indiana

Members Present:

Representative Nancy Dembowski, Chair Representative Richard Dodge

Lee Bridges Larry Coplen

Jim Hebenstreit Jeff Krevda

Bob Madden Robert Meeks

Bob Meyers Jed Pearson

Dave Tyler Darci Zolman

Others present:

Terry Archbold, Indiana Marine Trade Association, Angola

Sarah Archbold, Indiana Marine Trade Association, Angola

Jeff Bell, Lake James Association

Greg Biberdorf, LARE Program Manager, IDNR, Division of Fish and Wildlife

Kathy Clark, Executive Director, Lake Maxinkuckee Environmental Council

Sandy Clark-Kolaks, Asst. Fisheries Research Biologist, Division of Fish and Wildlife, IDNR

Steven Donabauer, Asst. Fisheries Research Biologist, Division of Fish and Wildlife, IDNR

John Goss, Executive Director, Indiana Wildlife Federation

Sara Peel, Vice-President, Indiana Lakes Management Society

Glenn Pratt, Sierra Club, and retired former administrator of both IDEM and EPA

Justin Schneider, Staff Attorney, Indiana Farm Bureau, Inc.

Chris Smith, Legislative Liaison, IDNR Executive Office

Nate Thomas, Lakes Compliance Biologist, IDNR, Division of Fish and Wildlife

The Chair convened the meeting at 10:08 AM with introductions of those present.

> *Upon a motion by Jed Pearson, seconded by Bob Madden and carried, the notes of the October 21, 2009 meeting were approved.*

Item 1. Status of HB 1040 reauthorizing the Lakes Management Work Group

Passed in the house, Senate amended, work group was extended to July 1, 2011, and the amendment to add salary per diem for non-legislative, non-agency personnel was deleted. House Enrolled Act 1040 passed by both houses unanimously. HEA 1040 was signed by Governor Daniels on March 17, 2010 as Public Law 59.

One concern registered was the lack of a report to the Natural Resources Study Committee. The interim report required by the legislation is currently posted on the legislative services agency website. (Attached, page 10)

Group consensus that members need to be present report personally at the next meeting of the Summer Study Committee including a listing of the items accomplished from the original recommendations of the Lakes Management Work Group (1999). Rep. Dembowski and Chris Smith pledged to make sure that happens this summer.

Chair Dembowski opened the floor to suggestions on goals for the upcoming year.

Rep. Dodge noted that phosphates in fertilizers are a big issue in his district due to runoff concerns, algal blooms and weed growth. Discussion ensued.

Question posed: Can this group propose a solution?

John Goss, Executive Director of the Indiana Wildlife Federation, noted there was no bill in the recent session, but that Senator Gard is interested in such a bill, and numerous legislators would support it. IWF has drafted language loosely based on State of Wisconsin legislation and is ready to encourage action towards legislation.

Question posed: Should support of this effort be one of the goals of the Lakes Management Work Group this year?

Jed Pearson noted other worthy issues include discussion on aerators, lake level maintenance, and piers.

The Chair asked if these are acceptable issues for goals for most of the committee.

Jim Hebenstreit noted that DNR is regulating piers currently. One potential question that hasn't been answered is "Do we have the number of piers on lakes that are possible or are we exceeding that number?

Bob Meyers noted that definition of "grandfathering" and "group pier" are issues.

As to grandfathering, Hebenstreit noted that the emergency rule was implemented in 2007. If a person can show their pier was in its current configuration prior to that date, they are exempt from the emergency rule.

Larry Coplen asked about the specifics of how DNR needs help in these issues.

The issue of piers becoming oversized with patios, sea plane docks, etc. would also be an issue.

Coplen asked what to suggest and how to define pier width.

The Chair noted the need to prioritize goals. The Work Group should plan to meet in June and need to have a new interim report for the summer study committee for Natural Resources.

A proposal was discussed to address the phosphorous in lawn fertilizers and aerator issues as primary goals this year, with no formal motion or objections.

Rep. Dodge noted that the legislation on changing the statutes regarding lakes to 10 acres (HB1101) did not get a hearing.

Chris Smith noted that the regulations would not be askew of what DNR would be in support of.

The Chair noted the need to narrow the focus of the LMWG and do some good and that the subgroups can help the entire group to refine that.

Glen Pratt noted that the Interim Study Committee was asked about making the LMWG group permanent and that might be a future goal. He also noted that the issues of interbasin transfers and water rights are another future issue.

Robert Meeks noted that whoever makes the presentation to the summer study committee needs to go through the 48 issues and the results of each from the LMWG report.

Item 2: Status of LMWG membership additions and changes

Rep Dodge sent a letter to the governor in January and made recommendations in February. He received a call on Tuesday, March 23 stating that the Governor's office is looking into the request and will see about filling the vacant positions.

There are four vacancies, including Congressional District 8 (Evansville-Terre Haute area) with several names already suggested.

Item 3. Status of request for Memorial to Ralph Taylor.

Chris Smith noted that Marsh Lake is probable location, but suitable action or item is not determined at this time. He noted it is "on the radar" and that they will be following up on that, and try to get an answer to Rep. Dembowski in the next couple of weeks.

Item 4. Follow-up on Aerator letter.

Hebenstreit noted current responses to some requests that have been submitted for aerators. No permanent rule adopted at this time, there is a temporary rule for non-winter months.

The Chair noted that we didn't have a response to the letter in October.

Hebenstreit noted we may need more discussion in detail.

The Chair noted this letter should be a basis for the start of the discussion.

Hebenstreit can bring more data, examples of aerators that are being approved. The discussion in front the NRC about aerators in the winter months has not been made.

Pearson noted that what is needed is a permanent rule that establishes standards for year-round aerators.

Hebenstreit noted we may need to determine what is an aerator, what is a fountain?

Pearson noted there is more opposition to approving fountains.

Pratt asked whether SolarBees would be included in this issue. (SolarBee is a registered brand name for a solar-powered recirculation pump system that sits in a lake. See http://www.solarbee.com/ for info on this item.)

Item 5. Removing Phosphorous from lawn fertilizers.

Lee Bridges discussed the science and justification for removing phosphates (PO4) from lawn fertilizers in Indiana. He provided a hand-out entitled "Knowing your numbers" regarding Phosphorous and referred to Glen Pratt's handout regarding Phosphorous in Indiana lakes.

IDEM set up a contract to add some lakes to the national lake assessment. A total of 30 to 40 lakes in Indiana are to be sampled this summer.

IDEM is looking into the national "push" to look at nutrient criteria in water. By next year, they hope to make recommendations to Water Pollution Control board for first notice of nutrient criteria for lakes and reservoirs. It would mean recommending a series of numbers for natural lakes, reservoirs, and mining lakes, with different numbers for each group. According to information provided by Bill Jones, it appears that the nutrient concentrations in Indiana seem to separate out into these three groupings.

The nutrient criteria for rivers and streams have been more problematic. IDEM has made some progress.

IDEM has some recommendations, but are attempting to find funding for the next step in the process. These results show that nitrogen and phosphorous are the nutrients for which criteria would be developed, as well as possibly turbidity.

This would tie into the discharge permitting program. Phosphorous-removing technologies have been part of wastewater treatment facilities for over thirty years within a certain distance to lakes and reservoirs. These criteria would not affect agriculture, only industries for non-point discharge.

Phosphorous is most often the limiting nutrient in lakes, but not with too little, but with too much.

Nonpoint sources of phosphorous are unregulated from the standpoint of actual permits.

The question is posed if phosphorous is banned from lawn fertilizers, will it provide a positive effect upon lakes? And if so, how much benefit is gained?

It was remarked that the legislation on banning phosphorous in automatic dishwater detergents was carried by Rep. Dembowski and that Indiana was the first state in the country to ban phosphorous in laundry detergents, and the fourth to ban it in automatic dishwater detergents.

The Chair asked if the fertilizer industry is "for" or "against" a ban in lawn fertilizers.

Glenn Pratt noted that China's use of phosphates is up as is the cost of phosphorous. He believes that industries will be in favor of this in a year or so as they re-gear their production.

In response to a question, Bridges explained that Cylindrospermopsis is a toxic algae found in Geist Reservoir and Ball Lake among other places.

Item 6. Education program for phosphorous-free lawn fertilizers.

Glenn Pratt and John Goss discussed the educational efforts and plans of the Indiana Wildlife Federation (IWF) to help promote phosphorous-free lawn fertilizers.

Pratt provided background material about phosphorus in sediment and the effects of preventing erosion. He noted the goal of looking at tools to limit phosphorous in sediment which would limit the amount going into water.

Noted the goal is not to make it illegal to sell it, for it would still be available if soil tests warrant the addition of it. It is more of an issue of not adding phosphorous where it is not warranted.

Pratt hopes for the support of the LMWG for the IWF efforts.

Goss noted that the LMWG recommended good changes for lakes, and that the 48 recommendations has been a good roadmap for direction for a dozen years and noted the support of IWF for permanent status for the Lakes Management Work Group.

Goss also noted this is not related to agricultural or home garden use, but only to lawn fertilizers.

Goss noted that Dr. Lenore Tedesco, Director of the IUPUI Center for Earth and Environmental Science, has documented the increasing water quality and algae issues due to the contribution of lawn fertilizers. There exists at this time a much higher awareness on this issue in central Indiana due to the algae concerns at the reservoirs.

The price and scarcity of phosphorous makes this an easier time to remove it from lawn fertilizers. The request is for a strong recommendation for action from the LMWG recommending statutory authority on this.

Goss noted the education effort underway to help people understand the positives of this issue. They plan to make at least fifty presentations to organizations in central Indiana. The effort will also go to other organizations statewide. They are working on a campaign to educate the public and educate their legislators for next January session.

Goss noted that they would appreciate the support of Representatives Dembowski and Dodge in as supporters or sponsors of legislation. He noted a goal of having as many legislators statewide in support of this effort by next January.

Concerns expressed by the group included: Will it make a difference? Will agricultural interests understand that this is not an attack on agriculture or farmers?

Justin Schneider, Staff Attorney for Indiana Farm Bureau, Inc noted that there is a concern that agricultural use of fertilizers could be targeted or included in this effort.

Kathy Clark, Lake Maxinkuckee Environmental Council, remarked that eliminating phosphorous in lawn fertilizers would be better for lakes and leave more phosphorous resources available for farmers.

Pratt noted that anything less than a state-wide ban would be hard to manage, such as a ban in certain counties or lake watersheds.

Question asked: Why is phosphorous in fertilizers important in certain soils and sometimes in new lawns? Answer: Phosphorous is an important nutrient for plant growth, but it is soil specific, especially in the establishment of a new lawn.

Goss noted there is an IWF committee drafting potential legislation, based on, but not a copy of the Wisconsin legislation.

Goss noted continuing efforts to obtain agricultural interests' involvement is important and hopes that the Work Group will be in support of potential legislation.

He will provide a draft of legislation for distribution. (Attached, pages 11-13)

Larry Coplen asked if there is documentation that lawn fertilizer is the major source of phosphorous in water bodies.

Pratt remarked that in Geist Reservoir the majority of phosphorous is from lawns, and that very little is attributed to agricultural use of fertilizers.

Item 7. Lake and River Enhancement (LARE) Grants.

Chris Smith, DNR Legislative Liaison addressed the group on status of LARE grants for March. Four grants for Manitou-Hydrilla, Meserve-Parrot feather, Wawasee and Lake George for Starry Stonewort, total about $485,000 were approved for "super exotics".

There followed much discussion on hydrilla control in Manitou.

Robert Meeks noted there is about two million in the Lake and River Enhancement fund. Why isn't it being used as described in the law?

Bob Madden asked if it is possible to get a list of projects funded by LARE this year.

Greg Biberdorf, LARE Program Manager, explained how the LARE grants for all current and outstanding projects were encumbered, locking in the funds for projects already granted. This encumbered amount is greater than the actual annual allotment to LARE this fiscal year. He will provide a listing of grants provided this fiscal year. (Attached, pages 14-16)

Jeff Krevda noted that the legislation for LARE funding was a result of the recommendations of the Work Group. He noted the money in the fund and wants to know why it isn't being utilized

for dredging and aquatic vegetation control to the level it should be and feels that the questions have not been answered adequately. He asked how the administration can go against what the legislation and why isn't it being distributed for what it was collected for.

Krevda believes money will be lost on some dredging projects by not continuing current projects and that a year will be lost on some aquatic vegetation control, so in essence, we are going backwards.

The Chair asked if the entirety of the LARE funds comes from Boat fees.

Smith confirmed that point and noted that the fee varies and is based on the value of the boat when it was new.

Madden noted that this is the only source of funding available for treatment on the water.

The Chair noted that while we may not be happy, we have to wait for the revenue streams to flow.

Biberdorf noted that LARE cannot provide grants unless funds are appropriated to LARE account by the State Budget Agency.

Madden noted that if the money is not being used, we should stop collecting the fee.

Question was posed: How about increasing the boat fees? No response.

Biberdorf will attempt to get updated information on the balance in the account and the projects currently encumbered. (Attached, page 17)

Item 8. DNR representation to the Work Group.

The Chair noted that Jed Pearson has requested that another DNR employee have the opportunity to participate and be an active member of the group. The DNR Director will make recommendations to the Governor for an appointment to fill the DNR position on the Work Group that Jed will be vacating.

> *Upon a motion by Robert Meeks, seconded by Dave Tyler and carried, the Lakes Management Work Group formally recognized and thanked Jed Pearson, IDNR, Division of Fish and Wildlife for his 13 years of dedicated service to the Work Group's efforts.*

Item 9. Date of next meeting.

The next meeting of the Work Group will be Wednesday, June 9, 2010 at the Natural Resources Education Center at Fort Harrison State Park.

The subgroups will meet separately at 9 am and the full work group will commence at 11 am in the training room.

Item 10. Subgroups meetings.

Since the Chairs of both subgroups could not attend this meeting, following a break, the Work Group conducted open discussion on various issues. The following notes are a summary of these comments.

Jed Pearson opened a discussion on aerators.

The Work Group questions whether there is still an open hearing process.

The issue of denying a fountain application due to removing an area of public use was a decision by DNR Division of Water.

The Work Group questions where the Natural Resources Commission (NRC) stands in terms of a rule on aerators.

Pearson noted an option of adding specific language to the existing rule and presenting to the NRC.

Hebenstreit noted that the rule is nearing final adoption, but that the Work Group could present its concerns.

Madden asked for clarification on 25 and 150 feet definition.

Pearson noted a sense that a permit should be required for anything over 25 feet.

The Work Group wants to reaffirm the letter to NRC on aerators.

The Chair asked if this is an issue to present to the legislative interim study committee this summer. No response noted.

Robert Meeks asked why a pier would be 150 feet out into the water.

Hebenstreit noted that alleviates the need to remove the piers during the winter.

Pearson noted another issue is the number of aerators-is it one?

The Chair noted that something needs to be added to the letter to specify only one.

Hebenstreit asked is that one per pier or one per property.

Krevda noted that some lakes in Wisconsin used aerators to reduce need for dredging

Hebenstreit noted that aerators pose a safety concern that DNR Division of Law Enforcement expresses.

Madden asked if the date piers are allowed is March 1-Oct 31.

It was suggested that the structures subgroup should have follow-up discussion with Hebenstreit.

Currently all aerators require a permit, this rule would regulate only those beyond 25 feet. The option would exist to allow those who meet the minimum standard to be exempt from this rule.

Hebenstreit noted that every aerator would require a permit during winter.

The subgroup needs to examine the current rule and determine where the NRC is in terms of accepting new comments or suggestions from the Work Group.

Dave Tyler noted that the structures subgroup should also look at issues of shape and width of pier. Does the group have any suggestions? Should the number of piers on a property be limited? Should the width of a pier be limited? How would pre-existing piers be handled?

The Chair asked if the width of the piers is an issue.

Robert Meeks suggested learning what is acceptable to the Chairman of the Natural Resources Summer Study Committee?

Jeff Krevda suggested we invite that person to address the Work Group.

The Chair asked if the issue of lake level changing still needs discussion.

Pearson affirmed that it does.

Meeks noted that at some lakes the level is constantly raised and lowered.

Meeks recalled the issue from the previous meeting concerning the control and repairs of the dam at Lake George. A court ruling noted that the state did not own the dam and is not responsible for repairs.

Hebenstreit confirmed that.

Representative Dodge noted that Trine University developed a solution that cost $200,000 instead of the previous $900,000 solution, but that nothing has happened further at this point.

The issue of preventing Asian carp introduction into Lake Michigan was briefly discussed. US EPA is devoting considerable funds to this effort.

Meeting adjourned at 2:18 PM

Notes recorded by Gregory L. Biberdorf, IDNR, DFW, LARE

NEXT MEETING: Wednesday, June 9, 2010 at the Natural Resources Education Center at Fort Harrison State Park.

The subgroups will meet separately at 9 am and the full work group will commence at 11 am in the training room.

Attachments follow as referred to in the notes of the meeting.

LAKE MANAGEMENT WORK GROUP

Interim Report: June 2009

S.E.A. 88 (2008) amended P.L. 35-2006 to continue the 26-member Lake Management Work Group, whose activities are to be directed to problems and issues associated with public freshwater lakes. Since its inception in 1997, similar work groups have existed in various forms previously, either as the result of statutory creation or on an *ad hoc* basis under the auspices of the Department of Natural Resources.

This report fulfills the legislative requirement to provide an interim report before July 1, 2009. Complete notes from all meetings are available upon request. Work group members as of March 2009 are listed below.

The work group met four times since continuation was enacted (July 10, 2008; November 25, 2008; March 4, 2009; May 4, 2009). Task-related subgroups met informally between these sessions to prepare for meetings of the work group. The next meeting for the work group is tentatively planned for August 2009.

A wide variety of lake-related topics have been discussed at the meetings resulting in recommendations that would help resolve concerns related to several of the topics.

Since the interim report was submitted in June 2008, topics under discussion include but are not limited to the following issues:

- Coordinating land use and lake use with respect to “funneling” (lake access)
- Proliferation of piers, shore stations, aerators, and other structures.
- Mandatory seasonal removal of “temporary” structures (piers, boat lifts)
- Weed control, lake shoreline construction, and dredging regulations
- Control of aquatic nuisance (invasive) species
- Toxic bluegreen algae impacts on recreational use and drinking water supplies
- Promoting the economic value of lakes in Indiana
- Communicating with other entities to implement work group recommendations
- Education and outreach to lake property owners, users, realtors, and others
- Livestock impacts and manure management near lakes
- Updating the Indiana Lakes web site as a resource for work group actions
- Conservation of wetlands around lakes
- Lake level maintenance and impacts on ecological systems
- Lowering of 10-acre Lake Act and relationship to Lakes Preservation Act
- Development of a list of public freshwater lakes
- Dredging guidelines (nonrule policy of the Natural Resources Commission)
- Public trust doctrine

The work group developed formal recommendations for a number of topics, some of which resulted in legislation that was enacted (HB 1381 on shoreline permits and dispute resolution).

This is a copy of the DRAFT legislation developed by the Indiana Wildlife Federation concerning phosphorous in lawn fertilizers. This is provided as information only for members of the Indiana Lakes Management Work Group and interested parties.

State of Indiana

SECTION 1: To restrict the use of fertilizer material containing phosphorus and enact requirements for fertilizer suppliers and retailers.

(1) PURPOSE:

a. Recent scientific research has indicated that by using products containing phosphorus, as in fertilizer material, this nutrient enters local Indiana water resources including wetlands; thereby causing an excess of algae growth, which contributes to a loss in essential resources (food, habitat, and oxygen) and decline in water quality.

b. The act of not using fertilizer material containing phosphorus will help the state of Indiana in reaching the reduction in phosphorus concentrations entering local water resources including wetlands as required by the Indiana Department of Environmental Management's Total Maximum Daily Load (TMDL) values for local rivers, streams, and creeks, as amended by the United States Environmental Protection Agency

.

(2) DEFINITIONS: In this section,

a. "Fertilizer material," as defined by the State Chemist means any substance containing nitrogen, phosphate, potash, or any recognized plant nutrient that: (1) is used for the plant nutrient content; and (2) has nutrient value in promoting plant growth. The term includes unmanipulated animal and vegetable manures (State Chemist of the State of Indiana; IC 15-16-2-11).

b. "Fertilizer material containing phosphorus" means fertilizer with > 0.67% of phosphorus by weight.

c. "Inorganic fertilizer," as defined by the State Chemist means any fertilizer material: (1) manufactured by means of a man-made chemical reaction; and (2) that does not contain any plant or animal products, manures or renderings (State Chemist of the State of Indiana; 355 IAC 7-2-11).

d. "Organic fertilizer," as defined by the State Chemist means any fertilizer material derived from either plant or animal products or manures containing one (1) or more elements (other than carbon, hydrogen, or oxygen) that are essential for plant growth. For the purpose of this article, the term does not include sludge

e. "Turf" means non-crop land that is planted with closely managed grasses including residential and commercial property, schools, universities, golf courses, and government-owned land such as parks and recreation areas. Exceptions consist of agricultural lands and pastures.

(3) RESTRICTIONS ON USE

a. No person except in paragraph (b) shall apply fertilizer material containing phosphorus to turf grass within the state of Indiana.

b. Exemptions include

i. Application of fertilizer material by a person who is establishing a new lawn that requires a balance of all necessary plant nutrients through use of seed or sod during the same growing season.

ii. Application of fertilizer material by a person to an area that is phosphorus-deficient as determined by a soil test completed within the past 36 months.

c. No person shall apply fertilizer material containing phosphorus to the turf during the restricted season of November 15th to April 1st, especially while the ground is frozen.

d. No person shall intentionally apply fertilizer material containing phosphorus to impervious surfaces including driveways and sidewalks. If this fertilizer material is applied to an impervious surface, it should be removed immediately.

e. No person shall apply fertilizer material containing phosphorus or any pesticides in a fertilizer-free zone of 10 feet within of any pond, lake, stream, river, creek or any wetland that acts as a natural buffer to local waterways. Care should be taken to maintain this area as natural as possible.

(4) REQUIREMENT OF TRAINING

a. All persons acting as applicators of fertilizer material, except private landowners, should complete a Best Management Practices educational training and certification program, as determined by the Office of the State Chemist (State Chemist of the State of Indiana; IC 15-16-2-44). These practices should be immediately implemented following the completion of this program.

(5) REQUIREMENT OF CONSUMER INFORMATION

a. Fertilizer retailers, suppliers, and manufacturers in conjunction with local universities, watershed groups, lake associations, and other concerned organizations shall provide consumer educational information that includes details on the restriction of phosphorus use and general best management practices. These resources should be in an easy, comprehensive format applicable for display and distribution in point-of-purchase retail locations of fertilizer products.

SECTION 2: This law shall take effect on July 1, 2012, one year after passage.

This is a copy of the Press Release of July 23, 2009, announcing LARE grants made at the beginning of Fiscal Year 2009-2010.

Grants announced for 26 lake, river projects

New grants totaling more than $925,000 have been awarded for the care of Indiana's waterways this year through the Lake and River Enhancement (LARE) program, part of the DNR's Division of Fish and Wildlife.

"In a time when all spending is scrutinized for cost-effectiveness, these boater-funded LARE grants are an important way to address problems in public lakes and river watersheds across Indiana," DNR director Robert E. Carter Jr. said. "The grants direct funds toward projects that protect and enhance the very resources used in aquatic recreational activities, including fishing and boating."

The 26 projects were submitted by local sponsors who commit to sharing a portion of the total cost. DNR's portion comes from the Lake Enhancement fee paid annually by boat owners to the Bureau of Motor Vehicles. It is a variable fee based on the value of the boat when new.

"The LARE grants are crucial to local organizations enabling them to tackle natural resource concerns that can be impossible for them to address on their own," said Gwen White, an aquatic biologist with LARE.

White said some projects can require years of planning and diligence to complete. The new grants feature biological and engineering projects, including diagnostic, design, and engineering feasibility studies, and construction projects.

Several watershed land-treatment projects received funding to assist landowners with water-quality concerns near locally important streams. These grants complement the $1.33 million in LARE grant awards Carter announced in March to address nuisance aquatic vegetation and dredging of sediment in publicly-accessible lakes.

"Our goal is to provide grant funds in projects that provide improved aquatic habitat in lakes and rivers," White said. "As a side benefit these projects also promote a positive economic impact resulting from better access to improved water resources. In this way, LARE funds help improve the experiences for boating, fishing, swimming while enhancing and improving the aquatic environment for fish and other inhabitants of Indiana's waters."

A list of projects by water body, county, project type and grant award follow:

Water body (County)	Project Type	Grant Award
Midwest Glacial Lakes Partnership (Statewide)	Special Evaluation/Workshop	$7,400
Indian Creek (Johnson, Morgan)	Watershed Monitoring Study	$27,000

Lower Lost River (Martin, Orange, Dubois)	Watershed Diagnostic Study	$37,800
Brandywine Creek (Hancock)	Watershed Management Plan	$67,500
Baugo Creek (Elkhart)	Engineering Feasibility	$62,000
Simonton Lake (Elkhart)	Lake Diagnostic/Eng Feasibility Study	$31,500
Dewart Lake (Kosciusko)	Engineering Feasibility	$27,000
Big Creek (Posey)	Engineering Feasibility/Design	$54,000
Clear Lake (Steuben)	Design	$45,000
Dillon Creek - Lake Wawasee (Kosciusko)	Engineering Feasibility/Design	$27,000
Blue Lake (Whitley)	Design/Build	$13,000
Pretty Lake (LaGrange)	Design/Build	$17,200
Dewart Lake (Kosciusko)	Design/Build	$22,500
Black Creek-Hamilton Lake (Steuben)	Construction	$51,675
Little Crooked Lake (Whitley)	Construction	$35,145
Village Lake (Kosciusko)	Construction	$46,875
Little Elkhart Creek (LaGrange)	Construction	$13,500
Ongoing Projects		
Ball Lake (DeKalb, Steuben)	Watershed Land Treatment	$10,000
Big, Little Turkey (LaGrange, Noble, DeKalb, Steuben)	Watershed Land Treatment	$40,000
Elkhart River Watershed (LaGrange)	Watershed Land Treatment	$5,000
Locust Creek Watershed (Vanderburgh)	Watershed Land Treatment	$50,000
Lost River Watershed (Orange)	Watershed Land Treatment	$45,000
Pigeon Creek Watershed (Steuben)	Watershed Land Treatment	$80,000
Sand Creek Watershed (Decatur, Jennings)	Watershed Land Treatment	$55,000
New Projects		
Big Walnut (Clear, Miller, & Heritage Creeks) (Putnam)	Watershed Land Treatment	$30,000
Headwaters Big Run Creek (DeKalb)	Watershed Land Treatment	$25,000
Total = $926,095		

LARE Grants awarded March of 2010 include:

Lake Manitou	**Control of Hydrilla**	**$400,000**
Meserve Lake	**Control of Parrot feather**	**$ 6,000**
Lake Wawasee	**Control of Starry Stonewort**	**$ 40,000**
Lake George	**Control of Starry Stonewort**	**$ 39,454**

Total $485,454

The listing of encumbrances on the next 4 pages includes all LARE projects encumbered that were granted in Fiscal Year 2009-2010 in July, 2009 and March 2010, as well as all outstanding, current, and active projects. Those projects in green have been completed and closed out. All others are active as of 4/27/2010

Name of Grantee	Project type	Amt encumbered
Adams Lake Conservation Club	Sed Removal Plan-Adams Lake (LaGrange)	$5,000.00
Allen County SWCD	St. Joseph-Maumee River WLT	$6,864.00
Atwood Lake Association, Inc.	AVM Plan	$9,405.00
Barbee Lakes POA	AVMP Barbee Lake - PLAN	$6,702.97
Bass Lake Conservancy District	AVM Plan and Treatment-Bass Lake Starke County	$11,160.00
Benton County SWCD	Upper Mud Pine Creek WLT	$99,176.87
Big Lake Association	AVM Plan-Big Lake (Whitley County)	$5,400.00
Big Long Lake Association, Inc	Sed Removal Plan-Big Long Lake (LaGrange)	$20,576.00
Big Long Lake Association, Inc	AVM Plan Big Long Lake	$10,800.00
Big Turkey Lake Improvement Association	AVMP-Big Turkey Lake - PLAN	$4,320.00
Big Turkey Lake Improvement Association	AVMP-Big Turkey Lake - TREATMENT	$607.50
Bishop, Barry	Lost River WLT project	$1,500.00
Blue Lake Association, Inc.	Blue Lake Design/Build	$40,722.41
Blue Lake Association, Inc.	Blue Lake Engineering Design/Build (2009 award)	$13,000.00
Boone County SWCD	Eagle Creek WLT	$38,480.00
Bruce Lake Conservancy District	Bruce lake Sediment Removal	$30,868.25
Cedar Lake Enhancement Association	Design/Construction - Cedar Lake	$56,250.00
Cedar Lake Enhancement Association	Design/Construction sed/nutrient controls - Cedar Lake	$28,161.62
Center Lake Conservation Association	Sediment Removal - Lones Ditch, Center Lake	$75,000.00
Center Lake Conservation Association	Sediment Removal Plan - Center Lake	$5,000.00
City of Bloomington, Parks & Rec	Griffy Lake Design Study	$31,500.00
City of LaPorte, Parks and Recreation Dept	AVMP Clear Lake - TREATMENT and part of Plan	$3,600.00
City of LaPorte, Parks and Recreation Dept	AVMP Clear Lake - Balance due on plan	$1,417.50
City of Warsaw, Parks & Recreation	Center Lake-Engineering Feasibility & Design	$4,050.00
Clear Lake Township Land Conservancy, Inc.	Design Study-Clear Lake-Steuben	$45,000.00
Crooked Lake Association	Crooked Lake AVMP (plan & treatment)	$25,400.00
Crooked Lake Association	Four Lakes Restoration	$6,000.00
Crooked Lake Association	Littoral Zone Project	$14,116.88
Daviess-Martin Joint County Parks & Rec Dept	Const project-West Boggs Reservoir	$49,500.00
Decatur SWCD	Salt Creek Diagnostic Study	$15,000.00
Decatur SWCD	Sand Creek WLT (2009)	$12,744.62
DeKalb SWCD	Big Run WLT (2009)	$25,000.00
DeKalb SWCD	Ball Lake WLT (2009)	$10,000.00

DeKalb SWCD	Ball Lake WLT (2006)	$19,194.69
Dewart Lake Protective Association	Dewart Lake Construction Project	$1,292.29
Dewart Lake Protective Association	Dewart Lake Engineering Feasibility Study	$27,000.00
Dewart Lake Protective Association	Dewart Lake Engineering Design/Build	$22,500.00
Dewart Lake Protective Association	AVM Plan-Dewart Lake	$5,040.00
Diamond Lake Conservation Club	AVMP-Hill Lake - TREATMENT & PLAN	$8,640.00
Elkhart County Auditor	Elkhart County Drainage Brd-Baugo Crk	$62,000.00
Five Lakes Conservation Association	Sed Removal Plan Five Lakes	$4,997.42
Five Lakes Conservation Association	Streambank Stabilization-Little Elkhart River-LaGrange	$13,500.00
Gibson County SWCD	Scott and Loefler Ditches Diagnostic Study	$5,670.00
Grant County SWCD	Middle Mississinewa River Watershed Diagnostic Study	$36,000.00
Grassy Creek Watershed Foundation	Sediment Removal-Barbee Lake	$85,975.00
Grassy Creek Watershed Foundation	Sediment Removal-Barbee Lake - balance	$2,475.00
Grassy Creek Watershed Foundation	Sediment Removal-Barbee Lake - final balance	$4,500.00
Hamilton County SWCD	Eagle Creek WLT	$3,786.75
Hamilton Lake Association	Black Creek Construction project	$51,675.00
Hamlin, Bradley D.	Pigeon Creek WLT project (Steuben)	$3,824.00
Hancock County SWCD	Brandywine Creek Watershed Management Plan	$67,500.00
Heaton Lake Conservation Club, Inc.	AVMP Heaton Lake - TREATMENT and PLAN 2009	$12,300.00
Heaton Lake Conservation Club, Inc.	AVMP-Heaton Lake - PLAN 2008	$3,600.00
Hudson lake Conservation Association, Inc.	AVMP Hudson Lake - TREATMENT & plan	$11,025.00
Indiana University (CEES-IUPUI)	Remote Sensing Stdy 10 Lakes LaGrange/Noble Ctys	$8,624.25
Jennings County SWCD	Sand Creek WLT (2009)	$55,000.00
Johnson County SWCD	Water Quality Monitoring - Indian Creek Watershed	$27,000.00
Knox County SWCD	Wtrshd Diag/WMP-Smalls, Kelso-Snapp Crks/Roberson Po	$34,650.00
Koontz Lake Association	Watershed Mgmt Plan, Koontz Lake	$17,866.30
LaGrange County SWCD	Little Elkhart River WLT (2009)	$5,000.00
LaGrange County SWCD	Little Elkhart River WLT (2008)	$20,000.00
Lake Gage and Lime Lake Association	Construction Project, Lake Gage	$7,616.25
Lake George Cottagers Association	Lake George AVM treatment - 2009 Starry stonewort	$3,000.00
Lake George Cottagers Association	Lake George Trtmnt for Starry Stonewort-2010	$6,000.00
Lake James Association	Eng Feas and Design, Lake James	$47,875.00
Lake of the Woods POA	Diagnostic Study - Lake of the Woods	$30,000.00
Lake Maxinkuckee Environmental Council	Vegetation Restoration	$2,766.94
Lakeville Business Owners Association	AVM Plan Pleasant and Riddles Lakes	$3,600.00
LaPorte County SWCD	Watershed Diagnostic Galena River	$17,767.00
Life of Riley Home Estates	AVM Survey & Treatment-Parrot Feather-Meserve Lake	$44,279.12

Little Turkey Lake Association	AVM Plan Little Turkey Lake	$4,050.00
Manitou Lake	Hydrilla Eradication	$400,000.00
Martin County SWCD	Diagnostic Study - Lower Lost River	$37,800.00
Menkedick Farms	Sand Creek WLT project	$3,000.00
Miller, Gary	Turkey Creek WLT project(Steuben)	$360.00
Monroe County SWCD	Indian Creek WLT (2006)	$40,000.00
Oliver & Martin Lakes Conserv & Improvement	Sediment Removal-Oliver Lake	$15,814.70
Oliver & Martin Lakes Conserv & Improvement	Lake Diagnostic Study	$5,670.00
Orange County SWCD	Lost River WLT (2009)	$45,000.00
Orange County SWCD	Lost River WLT (2008)	$11,057.00
P & S Farm, Inc.	Chain O'Lakes WLT Project	$9,570.00
Palestine Lake POA	Feasibility Study-Palestine Lake	$27,657.24
Posey County Drainage Board	Big Creek Eng Design	$54,000.00
Pretty Lake Conservation Club	Engineering Feasibility Study, Pretty Lake	$4,307.17
Pretty Lake Conservation Club	Engineering Design/Build (2009)	$17,200.00
Pretty Lake Homeowner's Association	AVM Plan Pretty Lake (Marshall County)	$3,600.00
Putnam SWCD	Big Walnut-Clear Creek-Miller Creek WLT	$30,000.00
Putnam SWCD	Ramp Creek WLT	$15,020.00
Qualkenbush, Stephen	Lost River WLT Project	$1,498.10
Ridinger Lake Property Owners Association	Sediment Removal - Elder Ditch, Ridinger Lake	$79,489.00
Ridinger Lake Property Owners Association	AVM Plan Ridinger lake	$4,500.00
Rock Lake Conservation Club	Diagnostic Study, Rock Lake	$4,724.73
Save the Dunes Conservation Fund	Engineering/Feasiblity Study-Salt Creek	$7,407.10
Shipshewana Community Lake Improvement A	AVM Plan-Shipshewana Lake	$4,050.00
Shultz, Scott E.	Pigeon Creek WLT project	$1,380.00
Silver Lake Conservation Association	AVM Plan Silver Lake and North Little Lake	$7,200.00
Simonton Lake Area Homeowner Association,	Simonton Lake Diagnostic and Eng Feas.	$31,500.00
Sporleder Rentals	Sand Creek WLT project	$12,316.10
Steuben County SWCD	Big and Little Turkey WLT (2009)	$40,000.00
Steuben County SWCD	Big and Little Turkey WLT (2007)	$21,835.63
Steuben County SWCD	Pigeon Creek WLT (2009)	$70,542.22
Steuben County SWCD	Ball Lake WLT (2008)	$20,000.00
Stockwell Farms, Inc.	Pigeon Creek WLT (Steuben)	$2,400.00
Stockwell Farms, Inc.	Turkey Creek WLT project (Steuben)	$23,600.00
Sullivan County (Park & Lake) Treasurer	Lake Feasibility Study-Sullivan Lake	$12,160.00
Sullivan County (Park & Lake) Treasurer	Sed Rmvl,Sed&Nutrient control plan S Lake	$13,510.00
Sylvan Lake Improvement Association	AVMP-Sylvan Lake - TREATMENT 2009	$23,134.50

Sylvan Lake Improvement Association	AVMP-Sylvan Lake - PLAN 2009	$7,200.00
Sylvan Lake Improvement Association	AVMP Plan and Treatment (2008)	$25,112.00
Syracuse Lake Association, Inc.	AVMP-Syracuse Lake - TREATMENT	$12,960.00
Syracuse Lake Association, Inc.	AVMP-Syracuse Lake	$5,400.00
Thomas, Patti A.	Pipe Creek WLT Project (Howard County)	$23,846.26
Tippecanoe Watershed Foundation	Construction Project-Little Crooked Lake	$35,145.00
Lake Tippecanoe POA	AVM Plan-Lake Tippecanoe, James, Oswego	$9,000.00
Tri-Lakes POA	Tri-Lakes Sediment Removal	$5,000.00
Upper White River Watershed Alliance	Watershed Management Plan - Geist Reservoir	$47,200.00
Upper White River Watershed Alliance	Watershed Management Plan - Morse Reservoir	$42,700.00
Upper White River Watershed Alliance	Watershed Management Plan - Upper White River	$34,860.00
Valparaiso Lakes Area Conservancy District	AVM Plan Long Lake Porter County	$3,600.00
Vanderburgh SWCD	Locust Creek WLT (2009)	$50,000.00
Vanderburgh SWCD	Locust Creek WLT (2008)	$30,000.00
Vanderburgh SWCD	Locust Creek WLT (2006)	$30,000.00
Wall Lake Fisherman's Association, Inc.	AVM Plan Wall Lake LaGrange County	$3,735.00
Waveland, Town of, Parks and Recreation Dep	AVM Plan Waveland Lake (Mont. Cty)	$4,050.00
Wawasee Area Conservancy Foundation	AVMP-Lake Wawasee - TREATMENT	$16,200.00
Wawasee Area Conservancy Foundation	AVMP-Lake Wawasee - PLAN	$10,800.00
Wawasee Area Conservancy Foundation	Engineering Construction at Village Lake	$46,875.00
Wawasee Area Conservancy Foundation	Stream Stabilization Design, Village Lake	$16,575.00
Wawasee Area Conservancy Foundation	Feasibility/Design, Dillon Creek	$27,000.00
Wawasee Area Conservancy Foundation	AVMP-Lake Wawasee-starry stonewort 2009	$3,575.00
Wawasee Area Conservancy Foundatation	AVMP-Lake Wawasee-starry stonewort 2010	$40,000.00
Webster Lake Conservation Association, Inc.	Sediment Removal - Webster Lake	$1,310.36
Webster Lake Conservation Association, Inc.	AVM Plan-Webster and Backwater lakes	$5,400.00
West Lakes Conservation, Inc.	Sed Rmvl-Steinbarger, Jones, Waldron	$30,484.56
West Otter Lake HOA	Engineering Feasibility-West Otter Lake	$5,010.50
Word, Timothy W.	Pigeon Creek WLT project (Steuben)	$2,580.00
		$3,176,835.80

INDIANA LAKES MANAGEMENT WORK GROUP

Natural Resources Education Center (NREC), Fort Harrison State Park
5753 Glenn Road, Indianapolis, Indiana
Wednesday, June 9, 2010, 9:00 am to 3:00 pm EST

NOTES

Members Present:
Representative Nancy Dembowski, District 17, Chair
Representative Richard Dodge, District 51
Pete Hippensteel, Steuben County Lakes Council
Lee Bridges, IDEM
Bill Jones, IU SPEA
Jeff Krevda, Dredging Technologies
Larry Coplen, member at large
Bob Meyers, CD2
Jim Hebenstreit, IDNR Division of Water
Dave Tyler, Lake Tippecanoe & ILMS
Felix Hensley, DNR Division of Law Enforcement
Doug Nusbaum, DNR Division of Fish & Wildlife
Robert Meeks, retired State Senator, CD3
Bob Madden, CD9

Guests and staff:
Richard Miller, Sierra Club, retired professor Butler University
Steve Lucas, Natural Resources Commission
Sara Peel, Wabash River Enhancement Corporation & ILMS
Dave Scott, Office of the Indiana State Chemist
Matt Pearson, Office of the Indiana State Chemist
Steve Tennant, Tennant Industrial Dredging
Brian Jones, Lake James Association
Jeff Bell, Lake James Association
Sandy Clark-Kolaks, IDNR Division of Fish & Wildlife
Nate Thomas, IDNR Division of Fish & Wildlife
John Goss, Indiana Wildlife Federation
Glenn Pratt, Sierra Club
Justin Schneider, Indiana Farm Bureau
Chris Smith, IDNR Legislative Liaison
Sara Christensen, ISDA
Kent Tracey, IDNR LARE
Greg Biberdorf, IDNR LARE
Angela Sturdevant, IDNR LARE, recorder

ACTIONS
Next Meeting

- Indiana Lake Management Work Group meeting, Wednesday, **Sept. 8**, 10am-3pm, at the Natural Resources Education Center, Ft Harrison State Park, Indianapolis, Indiana.

Other Actions

- Hebenstreit will make sure revised language is included in group pier proposed rule.
- Hippensteel will draft two separate letters with the group's recommendations for the aerator and group pier proposed rules, send to Dembowski for approval, and email to NRC (Steve Lucas) by June 17th.
- Members should notify Chris Smith of potential donors of stone mason labor.
- Biberdorf will work with Rep. Dembowski to set up a meeting with trade group representatives and other interested parties to get input on the proposed draft legislation.
- Members should send any updates for the 2011 Update of Recommendations to Biberdorf.
- Biberdorf will revise Interim Report to include discussion of LARE funding. Members should send any other comments or revisions to Biberdorf ASAP. Interim Report will be submitted to LSA and Senate Natural Resources Committee by June 30.

NOTES

I. The Chair convened the meeting at 9:00 am with introduction of those present. The two subgroups, structures/density/recreation and biology, broke off for separate meetings. Subgroup notes are provided as attachments.

II. The full group convened at 11:10 am, with reports from the subgroups.

III. Biology Subgroup report

Bill Jones reported on the discussion from the biology subgroup. ISDA technical staff cuts were discussed and there is still a need for technical assistance that isn't being met. The Indiana Conservation Partnership is looking at agricultural practice recommendations and how these can be modified to reduce the impact on water quality. For example, for grassed waterways the recommended rate of fertilizer application for initial establishment was 1000 lbs/acre, now recommending 400 lbs/acre.

Discussion followed on topic of combined sewer overflows (CSOs) as point sources of pollution. Municipalities have long-term agreements, usually a 20-year plan, so it will take long time to address. CSOs result in overflows of sewage to waterways during rain events. It is very expensive (millions of dollars) to make infrastructure improvements.

Phosphorus (P) in Lawn fertilizers issue was revisited. John Goss and the Indiana Wildlife Federation (IWF) have been working with various groups to encourage the voluntary reduction of P in lawn fertilizers. Scotts Fertilizer Company has about 60% of the market and they are changing to almost totally P-free, as well has having joined the Alliance for the Great Lakes. TruGreen Company has gone P-free in their products. The State Chemist's office at Purdue University is incorporating education about P in lawn fertilizers in the certification and education program for pesticide and lawn fertilizer applicators. Reduction of P in lawn fertilizers has been achieved largely through regulation in seven other states, similar to the ban on Phosphorus in automatic dishwashing detergent. This puts pressure on industry to comply. Senator Gard is encouraged and wants to move forward with a regulation proposal, working in conjunction with Reps. Dembowski and Dodge. The language of the draft legislation suggested by IWF still needs to be "tweaked". For example the ten-foot fertilizer-free buffer along lakeshores may need to be increased, along with increasing the amount of non-turf vegetation along lakeshore to provide natural habitat and discourage Canada geese.

IV. Structures Subgroup report

Pete Hippensteel reported on the subgroup for structures, density, and recreation. There are two proposed rules on the Natural Resource Commission (NRC) agenda for a public hearing on Friday, June 14 at the North East Regional Office of DNR at Columbia City.

1) Group piers:
   Guidelines for group pier permits are in last section of the proposed rule. A significant modification from the current rule is that the pier must not extend more than one-half the width of the applicant's shoreline. The Subgroup recommends full support of the proposed rule as written.

   Motion by Rep. Dodge, seconded by Meeks to fully support the adoption of this rule as presented.

   Discussion:
   There was a question on what a permanently mounted structure is (Sec. 3 (f) (7) on pg 4) and the consensus was that this wording needs to be modified. DNR will work on tweaking language.

   There was concern that the language in Sec. 8(c) (6) was unclear, specifically, the "pier must not extend more than ½ width of the applicant's shoreline." This could be interpreted that it cannot extend out into lake more than ½ the width of the shoreline. It was suggested that it should be written that the pier cannot extend "along" shoreline more than ½ the width. This was discussed at the previous meeting and all agreed that language change needs to be made for better clarification.

   Motion carried, with amendments.
   ACTION ITEM: Jim Hebenstreit is to make sure revised language is included.

2) Aerators:
   There are currently no guidelines for a general permit. At the March 24, 2010 meeting, the group had recommended three items for modification of proposed rule. After discussion, the subgroup decided that they would not support a general license for aerators, and to recommend that all aerators should be required to get individual permits.

   Motion by Jones, seconded by Meeks, the Work Group does not support the proposed rule for aerators under a general license.

   Discussion:
   Meeks noted that DNR will develop guidelines for individual permits. Hippensteel noted that this is just a recommendation to NRC. They will take comments at the hearing and make a decision in July.

   Jones noted that the definition of aerator was a concern. Aeration is a legitimate lake management tool, for hypolimnetic aeration, as an example. The proposed rule as written could allow aerator installation wherever, with no hard data to back it up. Before and after photos are not data. He supports the subgroup's decision.

   Hebenstreit noted that the decision was mostly based on safety issues. DNR would welcome input on this, as this issue has been a struggle in terms of how to deal with aerators. Most recent applications are for keeping a pier in year-round.

   Motion carried.

ACTION ITEM: Hippensteel will draft two separate letters; send to Rep. Dembowski for approval, to be provided by e-mail and hard copy to NRC (Steve Lucas) by June 17th. (Note: this was accomplished and copies of the letters are attachments #1 and #2)

V. Full group discussion

a. Indiana Lake Management Work Group Vacancies:

Rep. Dodge has contacted the Governor's office, and received this response: Recommendations for CD6 and at-large positions have been vetted and are ready for approval. They are still working on filling two other vacant positions (CD's 4 and 8).

Doug Nusbaum was introduced as the new DNR representative to the work group, filling Jed Pearson's spot. Doug is a LARE program specialist in the Division of Fish and Wildlife and has worked for DNR since 1991.

b. Chair of workgroup until June 30, 2011:

Hippensteel noted that we have not had attendance from Senators. Is there something we can do to encourage that? The Chair noted that the chairmanship was not amended in the re-authorization of the work group (HEA 1040). The Chair will discuss this with Senate leadership to determine how to proceed. Meeks is meeting with Sen. Long next week, and will plan to discuss the need for active Senate involvement. It was suggested that Senator Ryan Mishler (Chair of Natural Resources committee) might be appropriate.

Following a break for lunch, the meeting reconvened at 1:00 pm.

c. Ralph Taylor Memorial:

Chris Smith distributed photo of the stone with plaque that was utilized for a memorial to the late Senator Harold "Potch" Wheeler. The proposed Memorial for Ralph Taylor will look similar. The proposed wording for the plaque is:

In memory of …
Lt. Ralph E. Taylor
Indiana Conservation Officer, public servant,
advocate for public access to natural resources,
angler, hunter, conservationist,
and true friend of the great outdoors.

The stone has been donated, and Smith is working with vendor to try to get a plaque donated. He has quote from vendor (around $200-300) and donations will be solicited if it is not possible to get it donated. This will leave just the need for labor to set the plaque in stone. Transportation of stone has been donated. Chris Smith is looking for donation of stone mason's labor. The proposed location will be at Marsh Lake in Steuben County, near the boat ramp. An appropriate dedication ceremony will be scheduled when the plans are in place.

ACTION ITEM: Notify Chris Smith of potential donors of stone mason labor.

d. Phosphorus-free fertilizer draft legislation:

In discussions held prior to the meeting, the Chair noted that Senator Gard wants to have this issue brought before the summer study committee.

The Chair had invited reps from the fertilizer-trade group to make presentation to meeting to ensure that both sides are listened to. She suggested having a subgroup meet with them before next the full meeting.

John Goss and Glenn Pratt would like to join subgroup in setting this up. They noted that they have already met with representative of the Scotts Company.

ACTION ITEM: Biberdorf will work with Rep. Dembowski to set up a meeting with trade group representatives and other interested parties to get input on the proposed draft legislation.

John Goss passed out Phosphorus-free Lawn Fertilizer Draft Concepts handout (attachment #3). He noted that professional applicators and residential fertilizer companies are moving in this direction already. The Office of the State Chemist, in cooperation with Purdue University, is incorporating education about phosphorus in lawn fertilizers in the pesticide certification and education program. According to communication with Dave Scott, they will also be revising the 3B certification to incorporate fertilizer applications as part the training program for pesticide and lawn fertilizer applicators. Goss noted that it's an education process to help homeowners understand that they do not necessarily need phosphorus in fertilizer. Changes included in the current version of Draft Concepts are a definition of organic fertilizer; restriction of sale language was not included before; defining a "P-deficient" area as determined by soil test in last 36 months (but this may need to be changed to 24 months). He stressed that this legislation would only apply to turf maintenance and that agricultural usage is clearly exempted.

There followed discussion of whether the fertilizer-free zone adjacent to waterbodies should be 20 feet, which is standard for NRCS buffer guidelines, instead of 10 feet.

Meeks questioned the rationale of punishing retailers for selling lawn fertilizer with phosphorus. Should the state just ban it altogether without a permit? If farmer wants to use within 200 ft, they could apply for a permit. Retailers cannot know where people are going to use it. However, this would create the need to create a huge bureaucracy to handle permitting, placing a new burden on taxpayers.

The proposed legislation does not prohibit people from using fertilizer with phosphorus for gardening, flowers, or food production.

Goss noted that next phase is continuing education, working with conservation groups statewide, talking to legislators, and contacting three summer study committees (Water Resources Study Committee, the Environmental Quality Service Council, and the Natural Resources Study Committee).

VI. Review of summary of actions on recommendations in 1999 Final Report

The final report of the Lake Management Work Group is due by July 1, 2011. An updated draft of a 2005 document on the status of recommendations from the 1999 report was distributed. Biberdorf proposed this as a framework to develop the final report, with inclusion of new recommendations, accomplishments, and notes on issues that are no longer issues (such as phosphorus in automatic dishwashing detergent). The goal is to have this report finalized by March 2011. Biberdorf and the LARE staff will continue working on the document, with input from staff from other divisions of IDNR, IDEM, NRCS, ISDA, and other partner agencies that are referenced in the recommendations. They welcome input from work group members.

Lee Bridges noted that IDEM contacts need be updated due to retirements and reorganization since 2005.

ACTION ITEM: Members should send any updates for the 2011 Update of Recommendations to Biberdorf.

VII. Annual Interim report to LSA and Senate Natural Resources Committee – due July 1

A draft of the Annual Interim Report for the Lake Management Work Group was presented and comments were solicited. There was the question of whether this report needs to be presented in person.

No meetings were scheduled for any of the study committees at this time according to the LSA website. It was suggested that the Work Group propose this as an agenda item to Senator Mishler as the current Chair of the Natural Resources Study Committee. It was proposed to do so at the same time as the discussion on ban of phosphorus in lawn fertilizer.

Jeff Krevda suggested including the concern about the lack of LARE funding for sediment removal and aquatic vegetation control as a "topic under discussion."

ACTION ITEM: Biberdorf will revise Interim Report to include discussion of LARE funding. Members should send any other comments or revisions to Biberdorf ASAP. Interim Report will be submitted to LSA and Senate Natural Resources Committee, as well as the House Agriculture and Rural Affairs Committee, by June 30.

VIII. LARE Program Update

Chris Smith provided an update on the LARE grant funds and noted that new LARE grants have been suspended indefinitely, as of June 9, 2010. Ongoing projects that were previously awarded grants will continue. Smith warned that the state budget may in the same situation for the next fiscal year (2011-2012). The Governor and State Budget Agency will make final decision as to disposition of funds.

Discussion ensued regarding current LARE staff responsibilities, use of dedicated funds for other purposes, whether to continue collecting the LARE fee, potential protests by boat owners, and how LARE funds stimulate the local economy.

Of the total Lake and River Enhancement Fee that is collected by Bureau of Motor Vehicles and transferred to IDNR:
1/3 goes to IDNR Division of Law Enforcement, of which 20% then goes to county sheriff departments as grant program. This part is not affected by the suspension.
2/3 goes to IDNR Division of Fish and Wildlife for LARE program operations and grants for Watershed Land Treatment, Aquatic Vegetation Management, Sediment Removal, and "Traditional" Biological and Engineering projects. These grants are currently suspended.

Meeks suggested a bill to suspend the payment of these fees.

Madden noted that the LMWG has to be the advocate for the boaters of Indiana.

Question as to distribution of funds to southern portion of state and why LARE funds are not spent on state-owned lakes. Biberdorf noted that LARE has funded, and is currently funding, projects on river watersheds in southern Indiana, including watershed diagnostic studies, watershed land treatment projects, and engineering projects. Pete Hippensteel, as former Chairman of the State Soil Conservation Board, explained that when that Board was responsible for the distribution of LARE funds, the Board made the conscious decision not to routinely use funds on DNR-owned lakes. A greater demand existed for the funds than was available and the decision was made to work with as many lake associations as possible. While the State Soil Conservation Board no longer oversees funds, that policy has been continued to this day. The law currently specifies that the Director of the Department of Natural Resources is the administrator of the funds. Biberdorf also noted the philosophical question that with $7 million in requests for funding, even if LARE could have provided grants at the same level as last year, only about 25% of requests could have received grants. If the funds were targeted towards DNR-owned lakes, the perception would be that we were utilizing it only for DNR properties rather than spreading it out to multiple water bodies.

The question was posed as to who boat owners should contact to express their concern. Chris Smith noted that he would provide the e-mail addresses for Governor Daniels and the Director of the State Budget Agency, Chris Ruhl. (Note: Governor Daniel's e-mail address is mdaniels@gov.in.gov Chris Ruhl's e-mail address is cruhl@sba.in.gov.)

IX. Other items

Brian Jones suggested an idea for way to make more money for LARE. Currently there are no LARE fees for non-motorized boats (canoes, kayaks). He suggested a LARE sticker that boaters with non-motorized craft could purchase. Maybe it would be something to look into in the future, once economy has improved.

It was noted that there are currently DNR permits for state-owned lakes with categories for motorized and non-motorized ($10). The issue with LARE fee for non-motorized boats would be how to collect it. Would it be a scale in relation to the value of the boat? Since the DNR currently is a user-pays system, this would seem to make sense.

Larry Coplen asked if this is something that should be addressed at the next meeting of the LMWG. He questioned what the LMWG costs the state. Biberdorf noted that the travel expenses for non-legislator members of the LMWG come out of LARE budget (Note: in 2009 this amounted to a total of about $2,000) as does the staff support to assist the work group.

It was also noted that the legislation concerning the Lake Management Work Group would need to be updated again to authorize the LMWG to continue beyond July 1, 2011.

ACTION ITEM: Biberdorf agreed to send the link to the Public Freshwater Lake Listing to the members of the LMWG (link is: http://www.in.gov/legislative/iac/20091125-IR-312090920NRA.xml.pdf and was provided to LMWG members by e-mail on June 16, 2010).

Hippensteel mentioned his discussion with Steve Lucas over lunch. Lucas noted that the first section of proposed aerator rule (discussion of riparian use) is very useful and that he hoped that the LMWG would support section 1, even if it is opposed to sections 2, 3, and 4.

Motion made by Jones, seconded by Meeks to not support the proposed rule for aerators under a general license.

Motion made by Jones, seconded by Madden to revise letter to NRC to support section 1 and oppose remaining sections. Motion carried.

ACTION ITEM: Hippensteel will draft a letter detailing the work group's recommendation on the proposed aerator rule, as amended, send to Dembowski for approval and will email to NRC by June 17th (attachment #2).

X. Public Comment – None

XI. Next meeting – scheduled for Wednesday, September 8 from 10 am to 3 pm at the Natural Resources Education Center at Fort Harrison State Park in Indianapolis, Indiana.

XII. Chair adjourned the meeting at 2:30 pm

Attachments to the Meeting notes include the following:

#1 is the letter from the Lake Management Work Group to Steve Lucas, Hearing Officer for the Natural Resource Commission regarding the proposed rule on Group Piers.

#2 is the letter from the Lake Management Work Group to Steve Lucas, Hearing Office for the Natural Resource Commission regarding the proposed rule on Aerators.

#3 is the letter regarding the LMWG Interim Report from the Chair of the Lake Management Work Group provided to Senator Mishler, Chair of the Senate Natural Resources Committee and Rep. Bischoff, Chair of the House Agriculture and Rural Affairs Committee as well as to the Legislative Services Agency for posting to the state's website for the LMWG.

#4 is the copy of the June 30, 2010 Interim Report of the Lake Management Work Group

#5 is the notes of the Biology/Chemistry/Watersheds Subgroup meeting held on June 9, 2010.

#6 is the notes of the Structures and Density Subgroup meeting held on June 9, 2010.

STATE OF INDIANA
HOUSE OF REPRESENTATIVES
THIRD FLOOR STATE HOUSE
INDIANAPOLIS, INDIANA 46204

NANCY DEMBOWSKI
ASSISTANT MAJORITY CAUCUS CHAIR
200 WEST WASHINGTON STREET
INDIANAPOLIS, IN 46204

COMMITTEES:
COURTS AND CRIMINAL CODE, VICE CHAIR
LOCAL GOVERNMENT
NATURAL RESOURCES
ROADS AND TRANSPORTATION

June 15, 2010

Mr. Steve Lucas, Hearings Officer
Natural Resource Commission
100 North Senate Avenue, Room N501
Indianapolis, IN 46204-2200

Dear Mr. Lucas:

In response to the proposed rule on "Group piers" the Lakes Management Work Group has reviewed the document creating standards and amendments for Group Piers.

We strongly support the adoption of the proposed rule as presented in LSA Document #09-856.

Respectively,

Nancy Dembowski
State Representative
House District 17
Chair, Lake Management Work Group

STATE OF INDIANA
HOUSE OF REPRESENTATIVES
THIRD FLOOR STATE HOUSE
INDIANAPOLIS, INDIANA 46204

NANCY DEMBOWSKI
ASSISTANT MAJORITY CAUCUS CHAIR
200 WEST WASHINGTON STREET
INDIANAPOLIS, IN 46204

COMMITTEES:
COURTS AND CRIMINAL CODE, VICE CHAIR
LOCAL GOVERNMENT
NATURAL RESOURCES
ROADS AND TRANSPORTATION

June 15, 2010

Mr. Steve Lucas, Hearings Officer
Natural Resource Commission
100 North Senate Avenue, Room N501
Indianapolis, IN 46204-2200

Dear Mr. Lucas;

The Indiana Lake Management Work Group has reviewed the proposed rule on Aerators and other subjects.

We support the adoption of Section 1 related to the determination of riparian zones within LSA Document #09-806.

The Lake Management Work Group does not support the adoption of Sections 2 and 3. This proposed creation of a general license for aerators is not warranted because of the multiple safety and environmental issues that are involved. Each proposed aerator should be evaluated on its own merits and individually licensed.

Respectively,

Nancy Dembowski
State Representative
House District 17
Chair, Lake Management Work Group

STATE OF INDIANA
HOUSE OF REPRESENTATIVES
THIRD FLOOR STATE HOUSE
INDIANAPOLIS, INDIANA 46204

NANCY DEMBOWSKI
ASSISTANT MAJORITY CAUCUS CHAIR
200 WEST WASHINGTON STREET
INDIANAPOLIS, IN 46204

COMMITTEES:
COURTS AND CRIMINAL CODE, VICE CHAIR
LOCAL GOVERNMENT
NATURAL RESOURCES
ROADS AND TRANSPORTATION

July 1, 2010

To All Interested Parties:

Enclosed please find the Interim Report for the Lake Management Work Group as required by statute.

As you know, the group meets quarterly and we have had great participation from all involved. We do have some vacancies that the legislation requires to be appointed by the Governor that have not yet been made but we have been assured that his office is working on them.

Our intent has been to be a forum for discussion of many of the high priority subjects that affect Indiana's freshwater lakes and, in some cases, make recommendations for rules or legislation. The report will indicate the varied subjects that have been undertaken by this group.

If you have any questions in regard to the report, please do not hesitate to contact me.

Sincerely,

Nancy Dembowski
State Representative
House District 17
Chair, Lake Management Work Group

LAKE MANAGEMENT WORK GROUP
Interim Report
June 2010

H.E.A. 1040 was signed by the Governor in March 2010 as P.L. 59-2010 to continue the 26-member Lake Management Work Group until July 1, 2011, whose activities are to be directed to problems and issues associated with public freshwater lakes. Since its inception in 1997, similar work groups have existed in various forms previously, either as the result of statutory creation or on an *ad hoc* basis under the auspices of the Department of Natural Resources.

This report fulfills the legislative requirement to provide an interim report before July 1, 2010. Complete notes from all meetings are available upon request. Work group members as of May 2010 are listed below.

The work group met four times since the previous interim report was submitted (August 6, 2009; October 21, 2009; March 24, 2010; June 9, 2010). Task-related subgroups met informally between these sessions to prepare for meetings of the work group. The next meeting for the work group is tentatively planned for September of 2010.

Since the interim report was submitted in June 2009, topics under discussion include but are not limited to the following issues:

- Proliferation of piers, shore stations, aerators, and other structures.
- Mandatory seasonal removal of "temporary" structures (piers, boat lifts)
- Lake level and dam maintenance and impacts on ecological systems
- Control of aquatic nuisance (invasive) species
- Toxic bluegreen algae impacts on recreational use and drinking water supplies
- Restricting phosphorus in lawn fertilizer
- Conservation of palustrine wetlands adjacent to lakes
- Promoting the economic value of lakes in Indiana
- Communicating with other entities to implement work group recommendations
- Education and outreach to lake property owners, users, realtors, and others
- Updating the Indiana Lakes web site as a resource for work group actions
- Public trust doctrine
- Effectiveness of soil and water conservation districts in implementing conservation practices
- Midwest Glacial Lakes Fish Habitat Partnership strategic planning in Indiana
- Status and use of Lake and River Enhancement (LARE) grants and funds
- Memorial to honor retired Lt. Ralph Taylor, former LMWG committee chair

The work group developed formal recommendations for a number of topics, some of which resulted in legislation that was introduced (HB 1101 on lowering of 10-acre lakes). Non-rule policy was developed as a result of other recommendations (dredging guidelines, NRC Information Bulletin #60; listing of public freshwater lakes, NRC Information Bulletin #61; group piers on public freshwater lakes, emergency rule filed 12/17/09; aerators on public freshwater lakes, emergency rule filed 11/18/09).

Lake Management Work Group Members

HEA 1040 (2010) -- Effective June 1, 2010
Membership as of June 2010

Position	Name	Title & Affiliation	Address	Phone	Email
Legislator	Sen. Marlin Stutzman	Senate R	250 W. 600 North, Howe, IN 46746	260-562-3303	s13@in.gov
Legislator	Sen. Jim Arnold	Senate D	5698 W. Johnson Rd., LaPorte, IN 46350	219-326-5826	s8@in.gov
Legislator	Rep. Richard Dodge	House R	555 W. Parkway Dr., Pleasant Lake, IN 46779	260-475-5585	h51@in.gov
Legislator	Rep. Nancy Dembowski	House D	902 S. Pearl St., Knox, IN 46534	574/772-3876	h17@in.gov
DNR	Doug Nusbaum	Division of Fish & Wildlife	1353 S. Governors Dr., Columbia City, IN 46725	260-244-6805	dnusbaum@dnr.in.gov
DNR	James Hebenstreit	Division of Water	402 W. Washington St., Room W264, Indianapolis, IN 46204	317-232-4165	jhebenstreit@dnr.in.gov
DNR - Law Enforcement	Maj. Felix Hensley	Division of Law Enforcement	402 W. Washington St., Room W264, Indianapolis, IN 46204		fhensley@dnr.in.gov
IDEM	C. Lee Bridges	Office of Water Quality		317-308-3183	lbridges@idem.in.gov
Indiana Lakes Management Society	David Tyler	ILMS	3776 E. Armstrong Rd, Leesburg, IN	574-453-3560	dtyler@kconline.com
NRCS	Shannon Zezula	State Resource Conservationist	6013 Lakeside Blvd., Indpls., IN 46278	317-290-3200 x388	shannon.zezula@in.usda.gov
Soil & Water Conservation Districts	Darci Zolman	Kosciusko SWCD	217 E. Bell Dr., Warsaw, IN 46582	574-267-7445 x118	darci.zolman@in.nacdnet.net
CD1	Robert Gross	Pine Crest Marine	14415 Lauerman Rd., Cedar Lake, IN 46303	219-374-5771	bobg@pcmarine.com
CD2	Robert Meyers	Simonton Lake	51587 Woodthrush Dr., Granger, IN 46530	574-675-0970	spriii@aol.com
CD3	Robert Meeks		5840 E. 25 North, LaGrange, IN 46761	260-463-3198	senbob@embarqmail.com
CD4	Vacant				
CD5	Jeffrey Krevda	Dredging Technologies	4896 East 200 South, Marion, IN 46953	765-674-6815	jkrevda@aol.com
CD6	Vacant				
CD7	Ryan Hoff	BAGI	P.O. Box 44670, Indianapolis, IN 46244	317-236-6340	ryanh@bagi.com
CD8	Vacant				
CD9	Robert Madden	Lake Lemon Conservancy District	7599 North Tunnel Rd, PO Box 59, Unionville, IN 47468	O: 812-334-0233, H: 317-251-5971	llcdmadden@aol.com
CD-at large	Peter Hippensteel	Lake James	155 LN 200 FA Lake James, Angola, IN 46703	260-833-2016	pdhipp@mchsi.com
Army Corps of Engineers	Deborah Snyder	Indpls. Regulatory Office	9799 Billings Rd, Indianapolis, IN 46216	317-532-4197	deborah.d.snyder@usace.army.mil
Agriculture organization	Michael Baise	Dir. of Ag Development, Indiana Farm Bureau	PO Box 1290, 225 S. East St, Indianapolis, IN 46206	317-692-7833	mbaise@infarmbureau.org
Environmental organization	William Jones	School of Public & Environmental Affairs, Indiana University	1315 East Tenth St, Bloomington, IN 47405	812-855-4556	joneswi@indiana.edu
At-large	Lawrence Coplen	Coplen Construction, Inc.	PO Box 1749, Warsaw, IN 46581	574-269-1673	coplenconst@kconline.com
At-large	Vacant				

INDIANA LAKES MANAGEMENT WORK GROUP

Biology/Chemistry/Watersheds Subgroup

Natural Resources Education Center (NREC), Ft. Harrison State Park
5753 Glenn Road, Indianapolis, IN
June 9, 2010, 9am to 11am EST

NOTES

Members Present:
Bill Jones, IU-SPEA, chair
Jeff Krevda, Dredging Technologies
Lee Bridges, IDEM
Doug Nusbaum, IDNR

Others Present:
Richard Miller, Sierra Club
Glenn Pratt, Sierra Club
John Goss, TWF
Sara Peel, ILMS, WREC
Matt Pearson, State Chemists office
Justin Schneider, Farm Bureau
Angela Sturdevant, DNR, recorder

Discussion of Agricultural Conservation Practice effectiveness
Through ICP, Conservation Cropping System Initiative (CCSI), Nutrient Pest Management, EQIP – is partnering with NRCS to pursue new ways to establish grassed waterways that don't use as much fertilizer. Studies have shown a loss of N&P if rain events occur before waterway is fully established, due to heavy fertilizer used to get grass established quickly. Over the years, have reduced fertilizer recommendation from 1000 to 500 lbs/acre without a soil test and looking at reducing it further or doing split applications.

Schneider – lots of grant money available, not a lot of tech assistance from state anymore. Not a lot of studies to show what the actual reductions are from different conservation practices. Push to try to get better data.

Trying to target watersheds, rather than scattering practices all over. Get critical mass, should see more visible water quality improvement that way.

Pratt – editorial in Indy Star yesterday. Need to better fund ag practices. Emphasis on Great Lakes and Lower Mississippi/Gulf.

Jones - Need small field runoff studies. Lot of research funding has been cut, loss of staff. Solution for that in these tough economic times?

Krevda – last meeting talked about getting somebody from ag at meeting to discuss these issues. Nusbaum has been in contact with Jarod Chew; Sarah Simpson was going to be here. She had another meeting to be at today.

Combined Sewer Overflows
Krevda – CSOs are a big issue. Especially this year with so many large rainfall events, CSOs are dumping sewage straight into streams. We have more problems than just agriculture.

Pratt – most cities now are under agreed orders to address CSOs. Years ago there were big grants to address (deep tunnel in Chicago, Milwaukee, etc). Indiana didn't take advantage, didn't want to come up with state match, and lost opportunity.

Lee – largest municipalities have entered into agreed orders with state. Medium-size municipalities have developed long-term control plans (mostly 20-year plans), but no funding to implement. Before LTCP, most municipalities dealt with it on neighborhood basis. Could have a bad WWTP operator, things may be so fouled up that the sewage gets to plant but then it bypasses plant – usually license enforcement problem. Can be slow process – up to a year. Anything group can do to help? Those people should be part of watershed management planning process. Will need to go out and borrow money (state revolving loan fund or other sources), but money is limited. Like other forms of infrastructure, not always the glitziest projects.

Pratt – Dave Sherman, city of Indy, went back and looked at plans from previous administration, re-engineered, cut costs by $300 million and just as effective. E.g. 32 foot tunnel through loose, uncompacted material, reworked smaller tunnel thru bedrock. Failing septic systems are also big problem in Indy, lots of people don't know about that. Set up Septic tank elimination program – made it much more affordable.

Jones – given Indy's CSO problems, switching people from septic systems to sewers may not help much. Pratt – human health issue with people swimming in raw sewage. Jones – same problem in lakes, very little beach sampling (responsibility of county health depts.).

Algal Toxins
Bridges – IDEM's doing pilot beach monitoring program for algal toxins this summer – have funding, ordered equipment. Jones will be doing for Clean Lakes – 80 lakes, sampling microcystin. May not get contract signed in time for 2010 sampling season. IDEM sampling 10 beaches. First step – only getting one snap shot in time, only sampling microcystin. Lots of other programs we could model after – Jones especially likes Washington State program – any citizen can call state office, collect sample and submit for analysis. Could use Clean Lakes volunteers in Indiana.

ACOE is doing similar thing with reservoirs – e.g. Salamonie Reservoir – training property managers to take samples. Meeting a month ago in Bedford with ACOE (Lisa Underwood) – reservoir program to monitor microcystin. Bill, Lenore, DNR and IDEM all present. Open to discussion of how to do this the right way.

Krevda – so many colleges in Indiana with environmental programs. Why can't they coordinate efforts to develop sampling program? Jones – small colleges are mostly undergrads, doing more basic science. Grace College (Kosciusko Lakes and Streams) is an exception – sponsoring Northern Indiana Lakes Festival, applied for $1 million grant from a foundation to do work in Kosciusko lakes. Have better chance of getting funding to do basic research than to do work to solve problems.

Phosphorus in Lawn fertilizer
Statement in March notes that majority of P runoff is from lawns, with very little attributed to agricultural use of fertilizer. Which study is this from? IDEM study from 10 years ago.

Jones would caution statements like this, without hard data. Most lake watersheds, annual nutrient budgets have most P coming from agriculture. Even if lawn fertilizer is over-applied. Concentration may be higher from lawns, but as far as overall land use agriculture has bigger impact than residential.

Krevda – it's an economic issue for agriculture producers, spending money on fertilizer. More conscious of that now than a few years ago. Lawn care companies don't seem to be concerned about this – proper application rates, weather.

John Goss – progress: met with Scotts in Columbus, OH at home office, have about 60% of market in Midwest. Converted two of their product lines to P-free. By 2012, all lines will be P-free, except for one for new lawns (below ~5% P). Scotts has joined Alliance for Great Lakes. Have in-store poster and tear-off for consumers. Committed to P-free in Great Lakes basin. Goss talking with them to get same statement for state of Indiana, hopefully before fall applications – next step for in-store education:

-leave clippings on lawn
-mow high
-probably don't need P fertilizer
-clean up – keep clippings and fertilizer off hard surfaces

www.lawnsandlakes.com
It helps that cost of fertilizer is going thru roof right now. Scotts won't oppose legislation.

Professional applicators are quickly coming around too. TruGreen and Engledow are now P-free. They all offer it, but question of how much they're actually recommending. If have a service area, will they send different trucks – one P-free and one not?

Pratt – current Veolia contract gives more incentive for building new infrastructure rather than promoting water conservation. Legislation last year that failed to require moisture sensors in new irrigation systems.

State Chemists office working on training and certification for lawn fertilizer applicators – anyone applying fertilizer for hire will need to get same certification as pesticide applicators (3b license). Required to show experience or take training class and exam. Will require continuing education or have to take exam again. Should go into effect this winter. State Chemists office is hoping education of applicators will solve problem without legislation.

Schneider – working on certification for agricultural users. If applicator's doing something they shouldn't be, can pull certification.

7 or 8 states now have rule or statute for P-free fertilizer. Sen. Gard still favors legislation that says we're ending the use of P fertilizer. We have a great education program now; a statute will formalize Indiana's commitment. Goss has slightly updated version of proposed statute, with these exemptions:

- For new turf
- Soils without certain level of organics
- Problem areas that need reseeding
- Golf courses – working with them to determine level that's actually needed.

Difference between lawns and agriculture that many lay people don't understand – in agriculture you're removing P and other nutrients with harvest. With lawns you shouldn't be removing nutrients if you're leaving grass clippings, shouldn't need to add nutrients. Hopefully education will go a long way to addressing this.

Role of LMWG? Goss – would be good if LMWG would make statement that they support a statute. Certification can go a long way, but for individual property owners that fertilize their own lawn, a P ban is needed. Need to make distinction that food production and agriculture need P, but lawn maintenance does not. Farm Bureau is concerned that if a statute is proposed, someone might try to add agriculture to it, even though it doesn't belong.

Pratt – IDEM needs to regulate "bad eggs" (e.g. those that apply manure to frozen ground the day before it rains). Schneider – if done correctly, it's not a problem; problem is having an intelligent discussion about the nuances.

Schneider – studies on legacy P in sediments? If do conservation practices but don't see marked improvements. Implemented idle zone only within 200 feet of shore to reduce resuspension of sediments in lakes due to boating. Once you address inputs, can work on removing sediments within lakes. Krevda – problem is migrating sediments in lakes. Pratt – need to look at solutions (aerators) to prevent anaerobic conditions and P-release from sediments.

Many LARE studies look at how to reduce P in sediments (alum, dredging).
Schneider – concerned that if ban P in lawn fertilizer and don't see improvement in 3-5 years, and then they'll look for something else to fight.
Nusbaum – that may be an issue on a select few lakes, but most lakes get the big picture now. They're taking initiative to address in-lake issues (hot spots on lakes – swimming at sand bars)
Jones – when passed idle zone within 200 ft, proposed basing it on depth (no high speed boating in less than 10 ft of water). Was squashed by boaters on Wawasee because so much area of lake was less than 10 ft. More boats on Wawasee than were in the Normandy invasion (5400 registered boats, not including sailboats). But same group in 1991 acknowledged that they wanted to work with farmers, not against.

P statute – includes 10 ft set-back. In agriculture, minimum set-back is 20 ft. Should this be wider for lawns?
Nusbaum-Literature from the mid-90s to current based on nationwide information on buffer strips. Approximately 15-20 ft – 75 ft width of buffer there is no real difference in nutrient concentration. May be suspended solids based?

Jones – soluble removal increase up to 300 ft across the buffer – increased retention time results in decreased soluble P/N.

Goss – if NRCS standards are 20 ft, then we should recommend the same. Is this appropriate?
Jones – additional opportunity for education – convert 20 ft adjacent to the lake to natural buffers rather than creating a separate strip of grass along the lake. Others agree with this recommendation.
Nusbaum – 393 indicates 20 ft, so that should be the number.
Group agreed.

Other questions:
Nusbaum- pesticides are mentioned in (3) d. This is the only mention of pesticides. Why is this here?
Goss- present to push OISC to move forward.

Krevda-Is there a paragraph about the natural buffer? Goss- would like to see an addition (3) e to address this; possibly include information locations and that the implementation of a natural buffer is recommended, not required.
(aside) NPDES permit requirement for application of pesticides to water will be required beginning April 2011 (via EPA). Indiana is handling this through the OISC.

Jones – Mulching clippings returns P to lawn. Many lake residents direct side shoot out into the lake without thought to the impact on the lake. The statute isn't written solely for lake, stream residents; however, it would be beneficial to include recommendations for mulching versus direct discharge. Goss- this could be included as a recommendation.

Bridges-MS4s give "tickets" to violators for discharging lawn materials to storm sewers and open water bodies.

Pratt-previously discussed removing (2) b as 0=0 so there is no need for this language to be included. DG- is this some limitation for the companies to get P=0? Pratt-Scotts indicated that there was no phosphorus

present in fertilizer without an addition so 0 is possible to achieve. Goss-Municipal sludge and organic phosphorus likely has a base level that is higher than 0. We yet need to determine what those concentrations measure and insert it into this language. A small percentage needs to be included here was the overall consensus that literature should be reviewed to determine if we can actually get to 0. Source of the 0.67%? Wisconsin law. Jones-P adheres to everything and it is nearly impossible to achieve 0; if 0 isn't defined as some small number then most fertilizers will be in violation. We could lose a lot of people if we are constantly violating our own law.

Jones – curious as to why the biology subcommittee isn't discussing aerators and aeration as this is a biological issue. Issues with small aerators and using the incorrectly sized aerator – horrible idea.

INDIANA LAKES MANAGEMENT WORK GROUP

Structures and Density Subgroup

Natural Resources Education Center (NREC), Ft. Harrison State Park
5753 Glenn Road, Indianapolis, IN
June 9, 2010, 9am to 11am EST

NOTES

Members Present:
Pete Hippensteel, SCLC, chair
Rep. Nancy Dembowski
Rep. Richard Dodge
Larry Coplen, at large
Bob Meyers, CD2
Jim Hebenstreit, DNR
Dave Tyler, Lake Tippecanoe & ILMS
Felix Hensley, DNR
Robert Meeks, CD3
Bob Madden, CD9

Others Present:
Steve Lucas, Natural Resources Commission
Brian Jones, Lake James Association
Jeff Bell, Lake James Association
Dave Scott, Office of the Indiana State Chemist
Steve Tennant, Tennant Industrial Dredging
Sara Christensen, ISDA
Nate Thomas, DNR Division of Fish & Wildlife
Kent Tracey, DNR LARE
Greg Biberdorf, DNR LARE

Rep. Dodge welcomed everyone to the meeting and convened the subgroup meeting of the structures, density, recreational subgroup.

Proposed aerator and group pier rules
Steve Lucas introduced the new proposed aerators and piers rules. He welcomed any comments from individuals and the LMWG. Written comments are suggested to the commission regarding the proposed rules. The Advisory council will be considering them this morning. Comments will be closed on these rules a week from Friday-June 18.

The LMWG is well situated to consider these since Felix Hensley and Jim Hebenstreit are here today.

The determination of the riparian zones was added, gives guidance, based on the opinions of the court of appeals.

This is not exclusive to aerators, but any issues related to lakes.

Based on "Reasonableness." Court came up with "as far as needed to get reasonable access to the lake".

Next section gives definition of aerator
Next section defines license requirements for general license including signage.
Next section the dispute resolution process.
No standards for a specific license. Could still go to DOW and make an application if not qualified for a general license.

Felix Hensley noted that this started with complaint about aerator use on a lake up north. He noted that there is a public safety issue with the use of these, with no guidelines or regulations governing the use of them. He recalled a snowmobile accident due to thin ice. For issues of public safety, something needed to be done. People noted that the time to when aerator use was desired was when the ice was breaking up usually in the month of March to prevent damage to piers. This alleviates the concerns of aerator use

during winter, and the general license prohibits use of aerators during the winter months of November through February.

Hebenstreit noted that as soon as the draft was created, applications were submitted for use of aerator through the winter. The Division of Water will be developing a draft rule for winter use of aerators with the primary issue of safety.

Riparian zone rule is founded on specific surveying methods.

There followed questions and discussion.

Larry Coplen noted that some people want the aerators out all year long. Is it because they want their pier out all year long? Hebenstreit noted that is probably true. Coplen noted that the cost of removing a pier doesn't compare to the cost of someone drowning. Should liability insurance be required?

Meeks opined that permits shouldn't be allowed until rules are adopted.

Piers issues exist because there were no standards for piers from 1997 because of court of appeals.

Steve Lucas noted that the letter from the Work Group may or may not be sent to NRC. We need to check to make sure that the letter was officially sent (by June 14).

There followed discussion on the three issues of the letter, the exempted area and spraying of water. Coplen noted that the letter should note the desire to discourage piers that extend far into the lake during the winter.

Major Hensley noted the attempt to make this administrative rule consistent with other administrative rules. He noted that there are no speed limits for snow mobiles within 200 feet of shoreline. For boats within 200 feet of the shore, the concern is mostly shoreline erosion.

Madden noted that those who have docks should remove them or risk the damage, if it is a safety issue. Piers rule proposes amendment to pier rules on public freshwater lakes.

Some housekeeping issues, but some issues that will affect many.

Group piers are defined in the rule.
Amendments are housekeeping, but Section 4 Group piers section is added. This establishes standards pertaining to group piers. There already was a requirement for specific license, so this establishes the conditions for the license for a group pier.

In Section 8, Part C. 1b the specifics of riparian zone are described. This is a highlight of the rule and a step forward.

C2 talks about carrying capacity. Need to have standards first.

C6 probably the greatest impact of the rules-----"appropriation of public water". A pier must not extend more than ½ the width of the applicant's shoreline. This may be the cause of many comments.

Hebenstreit noted that the Division of Water is actively regulating is helping. First rules were adopted in 1991, "regulation light". In 1997, the court said the NRC had no jurisdiction to write rules. By 2000 it had gotten way out of control. Legislation was put together to show legislative intent to regulate piers.

We have been playing catch-up since then. Blossoming of use of bigger boats and piers has caused it to be a problem more in the last 10 years.

There is nothing in the rules or statute that says the license requirements change if title of ownership changes.

Dave Tyler suggested that group note its approval to support proposed group pier rule-Madden seconded. "The LMWG support the adoption of the proposed rule 09-856."

Hebenstreit expressed appreciation to the work group because rules developed with input from people on the lakes make for better rules.

Question was posed: "What is mounted in or affixed to the bed of the lake" mean? Does this mean a socket system or an auger? This is still under discussion.

In returning to the aerator issue, it was noted that the letter should address the issue in Sec. 1.5, noting "Bubbling or spraying of water". Recommend removal of item 5, which would make it unregulated.

The question was posed whether a statute with a bubbler would be considered to be part of the rule? It was also questioned whether a flashing light should be requested.

Hensley noted the general license and signage only refers to March.

Why should aerators be allowed? It would relieve a lot of headaches if docks are out. If aerators are not allowed, it would be up to the dock owner to leave dock in to risk damage. Should a recommendation be included that there is no need for the rule if the aerators are truly a safety issue?

The group was asked if it is the consensus of the subgroup that there is no need for a general license for aerators.

Tyler moved, Coplen seconded to recommend that we not support the rule because we don't support the concept of aerators being under general license. The motion passed unanimously.

Subgroup meeting ended and full group meeting was rejoined.

INDIANA LAKES MANAGEMENT WORK GROUP

Natural Resources Education Center (NREC), Fort Harrison State Park
5753 Glenn Road, Indianapolis, Indiana
Friday, September 10, 2010, 1:00 pm to 3:30 pm EST

NOTES

Members Present:
Sen. James Buck, Senate District 21, Chair
Rep. Nancy Dembowski, House District 17
Rep. Richard Dodge, House District 51
Tony Bailey, USDA, Natural Resources Conservation Service (for Shannon Zezula)
Lee Bridges, Office of Water Quality, Assessment Branch, IDEM
Larry Coplen, member at large
Jim Hebenstreit, Assistant Director, Division of Water, IDNR
Pete Hippensteel, Steuben County Lakes Council
Jeff Krevda, Dredging Technologies
Robert Madden, CD9
Robert Myers, CD2
Doug Nusbaum, Lake and River Enhancement (LARE) Program, Division of Fish and Wildlife, IDNR
Dave Tyler, Indiana Lakes Management Society (ILMS)
Darci Zolman, Kosciusko Soil and Water Conservation District (SWCD)

Others Present:
Cale Bigelow, Agronomy Department, Purdue University
Jennifer Boyle Warner, Indiana Association of Soil and Water Conservation Districts (IASWCD)
Chris Smith, Legislative Liaison, Executive Office, IDNR
Nate Long, Aquatic Control, ILMS
Sara Peel, Wabash River Enhancement Corporation (WREC), and ILMS
Sara Christensen, Indiana State Department of Agriculture (ISDA)
Glenn Pratt, Sierra Club
Kathy Clark, Lake Maxinkuckee Environmental Council (LMEC)
Steve Tennant, Tennant Industrial Dredging
Nikki Hendrickson, Green Industry Alliance (GIA)
Reggie Cornett, GIA
Mike Leppert, GIA
Dave Scott, Office of the Indiana State Chemist (OISC)
Justin Schneider, Indiana Farm Bureau
Glenna Shelby, SDS Group
Greg Biberdorf, LARE, Division of Fish and Wildlife, IDNR
Angela Sturdevant, LARE, Division of Fish and Wildlife, IDNR

ACTIONS
Next Meeting:

- Date in mid-November to be determined, 10am-3pm, at the Natural Resources Education Center, Ft Harrison State Park, Indianapolis, Indiana.

Other Actions:

- Mid-term report to be prepared by Nov. 1 by LARE staff. Will work with Senator Buck and Chris Smith to get data from Dept. of Tourism on lake-related revenue.

Rep. Dodge convened the meeting at 1:15 pm.

Old Business

1) "Phosphorus Fertilization in Turf Systems": Presentation by Dr. Cale Bigelow, Assoc. Professor, Turf Science/Agronomy Dept., Purdue University (specialty in soils and fertilizers), follow-up from issue at March 24, 2010 meeting. Copy of presentation is available from LARE staff.

Main points of presentation:

- Healthy turf – goal is sustainability, reduced cultural inputs.
- Don't guess, soil test.
- Evidence that algal blooms are due to N&P enrichment, actual sources are unclear, harder to pinpoint.
- Is there a direct link between managed turfgrass areas and water quality issues? Golf course at Purdue adjacent to Celery Bog – algae in bog is natural phenomenon, not due to over fertilization at golf course.
- When is P loss a problem? For example, application of manure to frozen field (turns a pervious surface into impervious).
- Does turf grass need P fertilizer? It depends, but in most cases, yes. Establishment – need fertilizer after germination. New construction, soil disturbance removes or covers top soil, need fertilizer for turf establishment.
- Tippecanoe and Steuben County – offered free soil tests to residents (done by Purdue). Lawns with greater than 25 ppm P wouldn't see growth response by adding P. Results (ppm P) = 22% low (would need P inputs), 25% adequate, 53% high.
- Purdue turfgrass website – Turf Tips – send email reminders for lawn care
- Problem is in garden centers – lots of options, confusion about what people need to use.
- Risk: if have P deficiency, won't make a difference how much N you put on (if using P-free fertilizer)
- Options: only allow fertilizer products with 3% P by weight or less - "lawn maintenance" products
- Turf industry (licensed turfgrass managers) is very conscious of what they do. Bigger problem is homeowners that do-it-themselves. Turf program is trying to get education/outreach material into hands of homeowners. Turf managers go to continuing education programs.
- Problem with outreach when fisheries managers (e.g. Alabama) advocate fertilizing ponds for fisheries production. What message are they sending to the public?

Discussion:

Hippensteel: If promote low-P or P-free around lakes, doesn't this help educate people on how P inputs affect the lake? Bigelow: better idea is to promote soil tests, if P is deficient, then need to fertilize with P to establish dense turf that will prevent soil erosion.

Dembowski: P is most expensive component of fertilizer, price has gone up, and will manufacturers start reducing amounts on their own? Answer: Yes, price going up, looking for alternatives, but those alternatives will still pose same problems in water as P.

Bigelow: Purdue is trying to promote alternatives to KY bluegrass (requires high inputs) such as fescue that don't require as many inputs. Only 1 in 4 homeowners fertilize their lawn, so may be barking up wrong tree. 30% of those that fertilize hire a professional to do it, 70% do it themselves.

2) Following the presentation, the Chair requested introductions of those present.

3) Notes from June 9, 2010 meeting – no comments.

4) Recap of report by the Lake Management Work Group for the Senate Natural Resources Study Committee meeting, August 24, 2010 – Rep. Dembowski

There is a legislative requirement for the Work Group to submit year-end reports. Submitted in 2009, but somehow not received by NRSC. This summer, Rep. Dembowski presented the report to the committee in person. There were few questions, and the committee accepted the report.

5) Update on plans for Ralph Taylor Memorial Dedication – Chris Smith

Ralph Taylor was a retired DNR Conservation Officer and long-time member of the Work Group who passed away in 2009. The Work Group advocated for an appropriate memorial to honor his impact on Indiana. Tentative date for memorial dedication ceremony is Oct. 1 at Marsh Lake near the public access site on Feather Valley Road. Smith acknowledged the donation of stone and other work by Doug McComb. Rep. Dembowski suggested writing a letter of thank you to those that have donated services. IDNR will send invitations to dedication ceremony to all Work Group members. Several Work Group members plan to be present and will arrange for someone to speak.

6) Update on the legislative efforts for the P-free fertilizer proposal – Rep. Dodge

Rep. Dodge attended Steuben County Lakes Council workshop on Aug. 21, and noted this was a topic of discussion. Clear Lake in Steuben County had passed an ordinance prohibiting use of P fertilizer on lawns around lake. The Office of the Indiana State Chemist notified them that it was illegal for them to pass such an ordinance. The Steuben County Commissioners passed a county-wide ordinance and received the same response from OISC.

John Goss of the Indiana Wildlife Federation (IWF) made a presentation at the Work Group meeting on June 9, 2010 regarding effects of Phosphorous (P) in fertilizer on lawn applications and water quality impacts. IWF drafted proposed legislation for P-free fertilizer. IWF approached Rep. Dodge to prepare legislation for introduction in January session. Distributed draft legislation to group at last meeting. Goss noted that many manufacturers have started producing P-free fertilizer on their own (Scotts, Tru-Green).

Comments on draft legislation:

Hippensteel: The Steuben County Lakes Council (SCLC) supported the use of central sewers around all lakes to remove P inputs from septic systems. They are looking at other potential sources of P. Fertilizer is obviously one. Seasonal residents contract lawn maintenance companies. Compared to cost of converting to sewers, reducing P in fertilizer is relatively cheap and easy. They are also educating the public on leaving grass clippings on lawns, and not tossing leaves in lakes. Now that have P-free dishwashing detergent laws implemented, this is obvious next step.
Dodge: Noted that the legislation exempts agricultural use.
Hippensteel: Have had good response from local retailers to at least make P-free fertilizer available in stores. It was not commonly available 3 years ago.

Mike Leppert (GIA & Professional Lawn and Landscape Commission): GIA doesn't have manufacturers and distributors that have agreed to a ban. Manufacturers and distributors have voluntarily agreed to reduce P content. GIA is very supportive of voluntary programs to modify P content and public education programs, but does not think there is science evidence to support statewide ban. Soil tests are not free and having that included in the ban is not adequate.

Glenn Pratt: In Goss' presentation at last meeting he noted study showing that 26 of 27 lakes/reservoirs were P-limited. There seems to be a concern that after a P-fertilizer ban is passed, they will be going after agriculture. However, every year Indiana turns down federal match money to work with agricultural producers. Need to eliminate negativism between agriculture community and environmental community.

Scotts and Tru-Green are agreeable to ban. Scotts has been conducting a large "P-free" campaign around the Great Lakes. Exemption for establishment of new lawns, but main product available on shelves would be P-free.

Leppert: Golf courses are members of GIA and the PLLC and also agree with their stance.

Kathy Clark: Noted that there are three courses around Lake Maxinkuckee and that they all went P-free voluntarily with no problems so far.

Nikki Hendrickson (GIA): The Indiana Professional Lawn & Landscape Association (IPLLA) is offering to educate everyone applying fertilizer about benefits of P-free. It is now hard to find P in fertilizer products. There are still times when P is needed such as in new lawns. A thin cover results in more runoff. Do not want soil tests to be required. It has been a voluntary movement, and they do not feel like they need to be regulated. There is a significant difference from soils in Minnesota and Wisconsin, with more organic matter than Indiana's heavy clay soils, so nutrients are more readily available.

Bigelow: Look at fertilizer as a tool. Professional managers have a suite of tools available. The wild card is the plan and the changes in response to environmental conditions. Nationally, this summer there have been serious turf issues due to having the hottest summer on record. For example, in Louisville, with the hottest summer on record, it was hard to keep turf alive. The aim is to keep slow steady input of fertilizer, not overuse.

Exemptions in proposed legislation include new lawns, any soils that are tested and show need.

Bigelow: Soil tests generally test the upper 2-4", but the root system on golf greens may be one-half inch or less, so even if soil test shows adequate levels, there may not be what is needed in top one-half inch of soil.

National statistics: 70% of fertilizing is done by individuals, 30% is done by professionals.

Pratt: Scotts supported ban to prevent other manufacturers from coming out with "new improved" products that contain P and marketing them that way.

Bridges: There is no state lab at Purdue that conducts soil tests for homeowners.

Bigelow: That is correct, Purdue has list of private labs on website.

Tennant: Is there another product on market that would substitute for P?

Hendrickson: No, P is an essential nutrient that cannot be replaced by something else.

Bigelow: Returning grass clippings to lawns allows nutrients to be recycled back into system. Turf scientists have been trying to get the message out about benefits of returning grass clippings for the past 15 years.

7) NRC decision on aerators and group piers rules – Jim Hebenstreit

Both proposed rules were approved by NRC as submitted. Group pier rule has been in effect on emergency basis for 1½ years. People apparently have not realized there has been a big change yet. The main focus of aerator rule was on safety issues.

He was questioned on whether there will be an opportunity to incorporate environmental concerns in future? Hebenstreit stated that once rule is in place, can always go back and amend. The Division of

Water has received applications for winter use of aerators (which are not covered by the general license and require an individual permit). These will be reviewed individually based on safety concerns. So far they have reviewed ten applications and denied several.

Pratt: SolarBee aerators maintain oxygenated waters at depth to prevent release of nutrients from sediments. He believes we may see applications for this use in future.

Coplen: Aerators can be used under general license from March through October, but do they need signage for thin ice?

Hebenstreit: Signage is just required during March, when ice is on. Rule started for use of aerators in month of March, then broadened rule and the language was not changed.

Hippensteel: If purpose of aerator is to control ice around piers, why are we allowing them through summer?

Hebenstreit: The problem is that there is no science to show environmental concerns.

New Business

8) Chair's vision for Work Group – Sen. Buck

Economy is only as strong as its natural resources. Senator Buck talked with Senator Mishler,Chair of the Natural Resources Study Committee, about continuing the Lakes Management Work Group. If work group does not survive, should it be added as a subcommittee of the Natural Resources Study Committee? He noted that there is no effort at this time to discontinue the work group. General Assembly by and large is information-poor, and is dependent on outside input. He learned a great deal at summer study meeting in Angola about role of work group.

Visions of group?
Hippensteel: Procedural suggestion – consider reauthorizing for 5 or 6 year period rather than every 2 years, so that it doesn't have to be revisited so often.

Senator Buck: Because of biennial budget, prefer to authorize groups for two years so that a commitment of financial obligation doesn't' extend beyond the budget cycle.

Hippensteel: Since the cost of work group is only $4000/year, if we can't commit to that then we are in trouble.

Pratt: Provided testimony in last session that this should be made a permanent body. Coming together to look at issues in common throughout state (an example is the Environmental Quality Service Council). Committee he presented to was not the right committee, but they were receptive and suggested taking it to the right committee.

Rep. Dembowski: This group is unique, and provides a forum to present issues. It cannot pass legislation but can make recommendations, which is a great value.

Krevda: Noted that he was one of original members, and helped create the 1999 report of recommendations. By and large it is the same group of member groups. The group had more participation of lake residents at first, primarily because of connection to Sen. Meeks. In last couple years, have mostly been dealing with issues brought to group from DNR, and so it has lost connection to lake residents and their issues. Issues with LARE are a good example. Group originally created because a lot of lake residents showed up at meeting at Tri-State University. Created LARE program and statute, that's been lost in the past year. Need to get group to rededicate itself to issues of the

people. Personally, if it keeps going in current direction, he doesn't see any reason to continue to meet.

Sen. Buck: Were many pieces of legislation created by group over the past few years?

Rep. Dembowski: More input on DNR rules than legislation.

Biberdorf: Legislation banning P in detergent, statute change to add Aquatic Vegetation Management and dredging to LARE.

Sen. Buck: Is there a record of recommendations to legislature? When legislators see work group that's making lots of recommendations to legislature, it shows value to them, even if recommendations aren't accepted.

Biberdorf: There exists the 1999 report of recommendations from work group, and the 2005 update on progress. LARE staff members and others are working on updating current status on those recommendations.

Madden: Robert was also a founding member. Noted that the value he has brought to the work group is that he is the only actual lake manager on the group, so he brings a different perspective. He agrees with Krevda, the group has floundered over the past few years, mostly due to lost leadership (Meeks from the Senate, the passing of Ralph Taylor and retirement of Jim Ray and Dave Herbst from IDNR). There is a need for a strong leader to regroup. The good turnout at today's meeting on a Friday afternoon shows dedication to this group and lake issues. It needs to be kick-started again. He would not be willing to walk away, since so much time and energy have been put into this. He noted that it took 2 ½ years to create the 1999 document. We need to go back and revisit and see if we can implement some issues that for whatever reason were not able to be implemented back then. The vacancies on the committee need to be filled. The loss of LARE funds should be addressed. He noted that natural resource conservation seems to have become second fiddle in today's political and economic climate.

Biberdorf: Will resend 2005 update document to group.

Tyler: Supports Madden's comments. Aware that group initially took care of "low-hanging fruit". Now have been addressing the more difficult issues, and loss of key leaders has made that even more difficult.

Tennant: How long does it take to appoint new members? He's been waiting since spring.

Senator Buck: New members may be appointed by Senate President Pro Tempore, David Long, rather than Governor. Sen. Buck has not gotten a sense that there is a desire to disband group, it is more of a question of how group should be structured.

Pratt: Committee he spoke to was willing to consider making it a permanent committee, but they are waiting for recommendation from the work group.

9) Plans or strategy for producing final report for the work group by June 30, 2011.

Sen. Buck: Recommends preparing mid-term report to present to Legislative Council and chairs in House and Senate now before session begins rather than waiting until next summer. Include recommendations of work group and recommendations as to permanency of group and why. Is there discussion as to form of group going forward?

Krevda: Could we schedule meeting before next legislative session and meet with subgroups to go through 1999 recommendations and figure out what to focus on going forward?

Sen. Buck: Most of summer committees have reports submitted by Nov. 1 for consideration by legislature before session starts. Why is work group report due June 30? Was it to coincide with biennial budget cycle?

Rep. Dembowski and Hippensteel: Idea was to have report done and available to the Natural Resources Study Committee.

Sen. Buck: Recommends having mid-term report done by Nov. 1. With all three legislators up for re-election in Nov, it will be hard to schedule a meeting in Oct. Organization Day is two weeks after general election in Nov (when legislators find out what committees they're on).

Biberdorf: Is it appropriate to have subcommittees meet before then?

Sen. Buck: Proposes scheduling a date in Nov. between Organization Day and Thanksgiving.

10) Other business

Update on LARE funds situation:

Biberdorf: $1.4 encumbered projects underway and finishing up. LARE grants suspended indefinitely. Don't know if funding will come back or not, it is dependent on state's economy.

Smith: Revenue numbers are still down, budgets based on predicted revenue, so shortfalls exist. LARE had funds transferred out to cover General Fund shortfalls. Don't know if they'll choose a different set of accounts to "pick on" if future reversions are necessary. It will depend on degree of shortfall. Funds were transferred funds out of LARE account before June 30, 2010. Funds are still being collected by BMV. Specific amount is allotted to IDNR in the budget, and rarely get all the money that's in the lake enhancement fund for use. What amount will be put in next budget bill for use in the LARE program is still unknown.

Madden: Could boaters of Indiana continue to pay the fee and never get it back?

Smith: It will still go into the lake enhancement fund, but don't know if money will be allotted to LARE to award grants.

Biberdorf: According to the State Budget Agency's listing of dedicated funds that were reverted in June, overall $2,415,121 was reverted from "Lake Enhancement" and $1,415,530 was reverted from Conservation Officers Marine Enforcement. These both come out of the Lake and River Enhancement Fee paid to BMV by boat owners.

Krevda: Where did they get authority to take funds?

Smith: By statute they are allowed to move it if necessary. Section 30 of budget bill allows Budget Agency not to move funds if needed to keep state solvent. We would prefer to be putting projects on ground, but not in fiscal position right now.

Sen. Buck: Whenever there's a fiscal concern, legislature has given Budget Agency ability to go out and "confiscate" funds to prevent state from going into the red and keep triple A bond rating.

Connection of Lakes and Tourism:

Sen. Buck: Does this group work with the Department of Tourism? Lakes are directly related to tourism with an enormous rate of return on dollars invested. Work to enhance and maintain lakes has

a direct correlation with tourism revenue. He will try to find out if someone from tourism industry can sit in on group.

Tennant: Noted that as an example, he conducted a dredging project on a new boat ramp installed by IDNR, where access to lake was impossible because it was too shallow. His company dredged the channel and now that lake is full of people from Michigan.

Krevda: People do not want to hear that they've been sold a bill of goods, in paying the LARE fee and not getting anything back. Legislation in 2003 got through because people knew they would see projects in the lakes. If the state is not going to use it, then why collect it?

Sen. Buck: Understands the frustration. It is an unfortunate temporary situation. It is his hope that the state won't keep reverting funds. The Department of Tourism should be able to provide the amount of revenue brought to Indiana from lakes. Compare that to LARE funds being taken away to loss in revenue from tourism. Either lack of access to lakes because of no dredging, or loss in water quality.

Smith: IDNR works with the Department of Tourism regarding the State Parks, and the director of the Department of Tourism, Brian Blackford, is a member of the Natural Resources Commission. He will see if they are able to provide statistics for the November report.

Sen. Buck: Used to have accurate stats on contribution of dollars versus revenue from tourism. Probably have it broken down into various segments (e.g. lakes and streams). This should be included as an item in the mid-term report.

Timing for submittal of mid-term report:

Sen. Buck: The Legislative Services Agency (LSA) needs to have proposed legislation by Dec. 15 to have it ready for bill filing deadline in mid-January.

Madden: Is it easier to prepare a report after the next meeting of work group and discussion of future direction?

Sen. Buck: Prepare mid-term report based on today's discussion and previous documents, then add anything from Nov meeting as an Addendum.

Hippensteel: Goal is not so much to present legislation, but to provide documentation of value of LARE fund.

Sen. Buck: If a case can be presented for need for all or some of fund, will have a better case for being able to spend even a portion of it.

Krevda: LARE funds cover LARE staff as well. We lost a valuable asset with the departure of Kent Tracey from IDNR recently. LARE staff has been doing more and more in-house work, have crafted program, work directly with lake people. We don't want to lose any more staff.

Sen. Buck: What is the cost of LARE staff and administration expenses?

Biberdorf: Estimated $377,000, but this is dependent on the status of the current vacancies as to exact amount by the end of the year. This covers salaries, benefits, computers and phone, travel, vehicles, gas, and equipment including boats, and the various surcharges by state agencies.

Rep. Dodge: Since the word came out in June about reversion of LARE funds, he gets one or two phone calls or emails per week. He and Dembowski have been getting lots of complaints.

Sen. Buck: Issue with some county sheriffs not letting out grants. Lake associations do a lot to relieve pressure on DNR for patrolling their lakes. Need to have mechanism in place where if a sheriff's dept decides not to participate in grant program, lake associations have a second step to take to get funds. Will work to introduce amendments this session.

Other business:

Pratt mentioned the Drop by Drop video addressing water quality issues in Indiana, created by IN Regional Sewage Districts and IN Rural Water. This DVD is available from the Public Television station WFYI in Indianapolis for $20.

11) Plans for future meetings date, time, and location.

Plan to meet in November between, between Organization Day and Thanksgiving. Dates will be proposed via email by LARE staff. (In 2009, organization day was November 17; comparable date in 2010 will be Tuesday, November 16. That gives a one-week window.)

Meeting was adjourned at 3:40pm.

INDIANA LAKES MANAGEMENT WORK GROUP

The Garrison, Fort Harrison State Park
Indianapolis, Indiana
Thursday, November 18, 2010, 10:00 am to 3:00 pm EST

NOTES

Members Present:
Sen. James Buck, Senate District 21, Chair
Rep. Nancy Dembowski, House District 17
Rep. Richard Dodge, House District 51
Lee Bridges, Office of Water Quality, Assessment Branch, IDEM
Jim Hebenstreit, Assistant Director, Division of Water, IDNR
Major Felix Hensley, Division of Law Enforcement, IDNR
Pete Hippensteel, Steuben County Lakes Council
Jeff Krevda, Dredging Technologies
Robert Madden, CD9
Robert Meyers, CD2
Doug Nusbaum, Lake and River Enhancement (LARE) Program, Division of Fish and Wildlife, IDNR
Darci Zolman, Kosciusko Soil and Water Conservation District (SWCD)

Others Present:
Jennifer Boyle Warner, Indiana Association of Soil and Water Conservation Districts
Jerod Chew, Indiana State Department of Agriculture
Kathy Clark, Lake Maxinkuckee Environmental Council
Reggie Cornett, Green Industry Alliance
Matt Pearson, Office of Indiana State Chemist
Sara Peel, Wabash River Enhancement Corporation and ILMS
Glenn Pratt, Sierra Club
Justin Schneider, Indiana Farm Bureau
Marija Watson, Indiana Wildlife Federation
Rod Edgell, IDNR LARE
Greg Biberdorf, IDNR LARE
Angela Sturdevant, IDNR LARE, recorder

ACTIONS
Next Meeting:

- Date in late March to be determined, 10am-3pm. Tentative location is IGCS Conference Center.

Other Actions:

- Sen. Buck will send letter to Governor regarding filling of vacant seats on work group.
- Follow-up on creation of legislation for reauthorization of group.
- LARE staff will finalize interim report and economic value report/presentation and send to Sen. Buck for distribution to appropriate committees and legislators.
- Make presentation to the committees in mid-January, regarding past activities of work group and recommended continuation. LARE staff will prepare draft presentation.

Sen. Buck convened the meeting at 10:10 am.

Old Business

1) Notes from 9/10/10 meeting

Motion to approve notes from Rep. Dembowski, seconded by Hippensteel. Motion passed.

2) Ralph Taylor Memorial Dedication October 1, 2010

Biberdorf reported on successful dedication ceremony, showed photos. Thank you letter to donors from LMWG was sent following ceremony.

3) Update on Proposed Legislation for Ban of Phosphorus in Fertilizer

Rep. Dodge talked with groups this week, planning to go to LSA next week to draft legislation. He will start with draft legislation from IWF. Have interest from several other groups, will meet with them once have draft legislation put together. Lawn applicators have indicated they don't support legislation, will try to work with them to develop legislation that they'll support.

Sen. Buck outlined the bill process: have until mid-Dec to initiate legislation, Jan 17 deadline for legislation to be filed.

Glenn Pratt stated that Rep. Bosma supports P-free legislation. Sen. Gard also supports it and has indicated she would co-sponsor a bill in Senate.

New Business

4) Presentation on the economic impact and value of lakes – Greg Biberdorf

Main points of presentation:

- Presented findings of studies from Iowa, New Hampshire, Maine, Minnesota, Ohio and Indiana.
- Economic value of lakes can be huge, but it's expensive and time-consuming to quantify.
- Economic impact includes jobs and tourism, property, income and sales taxes, and intangible "quality of life" benefits.
- Value is closely tied to water clarity and water quality.
- It's cheaper to maintain water quality in the first place, than to restore or improve it in the future.

Discussion:

Hippensteel – Looking at impact of lakes on property values in Steuben Co. 23 lakes, 18% of parcels – lake-associated parcels generate 62% of assessed land valuation of whole county. Lakes are a major generator of revenue that local governments depend on. He will be looking at Noble, LaGrange and Kosciusko counties next. Will have data pulled together by end of this week. Has diagram that shows that water quality of lakes in Steuben is correlated to value – assessed valuation of lakefront land is highest in lake with highest water quality.

Kathy Clark –Noted she was a former tax assessor for Marshall Co. She did a quick assessment of Union Township in Marshall and found $800 million tax value; $450 million is homes associated with Lake Maxinkuckee. Water quality helped by the LARE-funded projects over the years. Projects needed on lake are too big for their donors to support on their own. Residents don't want to see water quality and related property values suffer.

Krevda – Has been dredging at Center Lake in Warsaw and has photo that looks similar to Grand Lake St Mary's (GLSM) in Ohio. He's familiar with GLSM – average depth is 5ft. Water level down 18 inches

on Center Lake where he did dredging project. When lose depth, with nutrient load in sediment, get situation faced on GLSM. Water quality should be focus of LMWG going forward.

Rep. Dodge – Water quality is maintained in part by projects funded through the LARE fund. Report on LARE amounts for last two years?

Biberdorf – With suspension of grant funds this year, our grants awarded was limited to about $487,000 to control "super exotics" on four lakes in March 2010. In past years, LARE would award about $1.3 million for aquatic vegetation management and sediment removal. In July, normally would have expected to award about $900,000 for biological/engineering/watershed land treatment projects. No grants were able to be granted in July of 2010. In calendar year 2010, awarded about $487,000 compared to $2.25 million in 2009.

Major Hensley – Division of Law Enforcement received LARE funds, but then a little over a million was reverted. That portion would have been used by law enforcement officers to do boat patrols.

Madden – LARE funding for other projects has decreased over last three years due to amounts utilized for Hydrilla eradication on Lake Manitou.

Rep. Dodge – Maintaining water quality is important, expensive to improve.

Madden – Water quality has been pretty good on Lake Lemon over past few years, but clarity is usually low because it's a reservoir. Potential future invasion of zebra mussels could result in increased clarity. Zebra mussels are now in Geist, so expecting them at Lemon in future and doing inspections, surveillance.

Pratt – We must commit to spending for conservation. 5 to 1 federal match on agricultural conservation practices – must work with agricultural producers to install practices. Every year we turn away federal money. Last 4 or 5 years Indiana has gotten 2% of federal money for agriculture. Need to have better foresight to invest in conservation (agriculture or LARE) so the state does not lose out on capturing the federal funding.

Sen. Buck – Wants to see the presentation on the economic value of lakes to be given to Senate and House Natural Resource Committees. Legislature many times is information-poor unless someone brings info to them. Often take natural resources for granted. IN spending lots to bring jobs to IN – mostly in business or industry. Tourism tied to lakes is economic development, need to make that clear. Wants to see if we can get some Indiana-specific studies, possibly through universities. May try to arrange presentation to joint meeting of Senate and House.

Biberdorf – One of Bill Jones' research focuses is economic value of lakes, may have some data available.

Sen. Buck – Wants to see money spent to attract business to state versus economic impact of lakes. Not sure what industry to use as example, but if knew amount of money needed to prepare lakes for more tourism and value of local property (taxes), need to tie to value of lakes.

Krevda – Had discussion with member of Chamber of Commerce in Warsaw. Asked why they located business in Warsaw – 1) close proximity to Chicago and 2) presence of lakes. Thinks this is one of the most economically active areas of state. Also talked to member of tourism task force – asked how lake activities are factored into their work and he responded that they're not.

Sen. Buck – Most states trying to figure out how to manage budgets in economic crisis. Redistribution of population around country and congressional delegations. Indiana's gone from 13 to 9 representatives, predicted to be down to 7 by 2030. Goal should be to get back to 10 representatives. What's causing people to move out of state? It's one thing to try to grow population by attracting jobs; it's another to figure out how to increase revenue by other means. He's seen great benefit of tourism and has been surprised at how little the legislature considers this. Lakes should be part of this. In the past young people from IN were wanting to move to East Coast, now that these young people are starting to raise families it's a good time to work on attracting families back to Indiana. Families look at places to live based on opportunities for recreation (i.e. lakes). Cycle of grandparents moving down south for winter is starting to change. Baby boomers now becoming grandparents and don't want to miss out on time with grandkids by going south. Recreation plays a big part in that – lakes, streams, fishing, and hunting. Challenge to LMWG is to present to legislature how important lakes are to economic future of Indiana. Will talk to Lt. Governor about why lakes currently aren't tied to tourism.

At Organization Day this week, the legislature was presented with budget shortfalls and how hard this session is going to be. Even in hardest times, there still exists a need to plan for future. Perhaps could get funding for a study in the mix, even if just get legislation as a placeholder until funding is available in the future. Maybe legislature can be advocate for DNR if need administrative support.

Pratt – An example of how we can be creative is Indianapolis approach to Combined Sewer Overflow (CSO) issue. Indy has lots of septic tanks, children playing in raw sewage. Went to IDEM and EPA to convince them to use part of CSO funds to remove septics. What about using some of CSO funds to reduce nutrients at sewage plants? Between IDEM, DNR try to be more creative in how we spend funds that we're required to spend on CSOs.

5) Preliminary report on accomplishments of LMWG and discussion of future direction

Sen. Buck – Since he's unfamiliar with work of group, the report was eye-opening to him. Hope to broaden group to include Dept of Tourism so they hear what's going on and see impacts of other aspects of tourism.

Biberdorf – Steve Lucas provided input on specifics of legislation that work group was involved with over past ten years. Report is still DRAFT – want input from work group members to make sure we didn't miss anything. Work group has had a hand in several pieces of legislation: ban of P in dishwashing detergents, rule changes for DNR and other items through the years.

Question – what format does the group want this report to be in? Use as basis for final report due June 30?

Rep. Dembowski – One of pluses of this group is that we don't have a narrow focus, but includes input from a broad range of people.

Krevda – One thing the group lacks is direct line of communication with Governor's administration. Also need more involvement with soil conservation and watershed issues. We're missing that expertise and input. Now that Jed Pearson's off group, we lack expertise of a biologist. Wants to see group get back to where we started – representatives of lake users. Look at septic systems, CSO issues, get away from pier issues (political, doesn't impact quality of lakes).

Sen. Buck – If going to do any kind of major work, it's very beneficial to make sure you have bond for it or to do something with state money, if administration is not aware of value, need to get legislature

involved in seeing lakes are taken care of because they create the budget. Ultimately lack of maintenance on lakes will have an impact. Requires money, so trying to put group in position to get money dedicated to doing work rather than just talking about issues. People need to contact their legislators to show them specific issues on their lake.

Biberdorf – Back to Krevda's point about involving soil conservation, pointed out Jerod Chew, Jennifer Boyle Warner, and Darci Zolman being present. Have been strong advocates for watershed approach.

Hippensteel – One of the challenges we've faced is that lakes are centered in about 10% of IN counties. It's not a concern of many legislators. To get LARE funds set up in beginning was a big challenge and to get them reinstated will be hard. Have special interests that should get special legislative priority.

Sen. Buck – Legislators that don't have lakes in their district need to be shown bigger picture of how lakes impact overall state's economy. Example of Toyota plant in southern Indiana, none of his constituents work there but saw benefit to overall state. Legislators don't typically ignore issues brought to them, especially if we can show economic impact to the state, not just the lakes region. Those states that are flourishing are those that are increasing their population and have revenue to support costs.

Discussion then followed on the future direction of the Work Group?
Is meeting 4 times per year sufficient?

Krevda – Subgroups should meet more to work on addressing specific issues. When group was very active and accomplishing things, the group was meeting monthly.

Sen. Buck – Is the purpose of this group for those involved in lake management to provide input to legislators, not the other way around? Rep. Dembowski confirmed, and to get input from public.

Hippensteel – Group has also been forum for IDNR to address development of new rules, non-rule policies and to work through internal management challenges.

Authority of group – give recommendations, not to actually pass rules, as such it is a work group with an advisory role. At 26 members, the Lake Management Work Group is one of the largest work groups assembled under any statute in Indiana. By contrast, the Summer Study Committee's largest group is 25 people. They sometimes have trouble getting good attendance, and many of those that show up are lobbyists.

Biberdorf restated charge of work group from legislation:

> *Sec. 2. The activities of the work group must be directed to problems and issues associated with lakes that meet the definition of a public freshwater lake under IC 14-26-2-3. (IC 2-5.5-3-2)*

Rep. Dodge – Have had 4 openings for almost 2 years that haven't been filled. Have made recommendations to Governor's office but no action has been taken at this time.

Sen. Buck – We need add "fiscal impact" to wording of LMWG legislation to bring more attention.

Biberdorf – Noted that legislation would be needed to extend the work group beyond June 30, 2011. He read through the listing of representatives appointed to group.

ACTION: Sen. Buck – will send letter about getting vacancies filled.

ACTION: Follow-up on creation of legislation for reauthorization of group.

Sen. Buck – Who is the advocate at IDNR for LARE funds?
What info does DNR Director have to present to Governor regarding need for LARE funds?

Biberdorf –LARE staff present proposed grant awards to IDNR executive office, then IDNR Director approves awarding of grants. Funds were reverted in June, so that no funds were available for grants awards in July.

Sen. Buck – What scope of study do we need in order to make better fiscal decisions regarding maintenance of lakes?

Biberdorf – Bill Jones might be able to provide some information on this subject.

Krevda – Group sent letter regarding LARE funds last year. Got response from Budget Agency and DNR, passing the buck back and forth, in his opinion we have no advocate for LARE funds. Statement made by Governor on a television report that water quality was not being impacted by lack of LARE funding, don't know where he got that info.

Sen. Buck – What is the cost of running the work group?

Biberdorf- About $4000 for travel reimbursements and IDNR provides staff support.

Pratt – At last legislative session he made suggestion that the group be made permanent. They said the group should study that and make recommendations regarding permanency.

Sen. Buck-He talked with Sen. Mishler and can make a pitch that meeting of work group and getting input has merit. Critical that we tie it to fiscal impact. Number of people with jobs tied to lakes, see what happens when lakes deteriorate and see how many jobs we lose.

Pratt – Hypoxia in Gulf of Mexico is an issue the whole state will be faced with in future. State needs to be prepared to capture federal money for addressing hypoxia. Passing P-fertilizer ban would demonstrate to feds that IN is committed to this.

Sen. Buck – State needs to set aside money for state match to federal funds. Need to make pitch that dedicating state funds are important to be able to take advantage of these programs.

Sen. Buck intends to recommend continuation of group.

Rep. Dembowski – Give presentation that builds on Biberdorf's presentation regarding economic value of lakes when make recommendation to continue group.

Jennifer Boyle Warner – Group needs to think about what issues are coming up that they would like to address, and include that in presentation on value of group. Need to explain what group does in order to justify continuing group. Lack of external understanding of what group does. Then need to follow up and work on issues in group over the next year.

Clark – Attended Marshall County economic development conference. Marshall County recognizes the economic value of 14 lakes in county (realtors, businesses). Would be happy to contribute info to presentation.

Chew – Problem of assigning value to natural resources, "ecosystem services". Have struggled to assign value to saving soil on the ground. Cost of cleaning up drinking water supplies (Geist, Eagle Creek), cost of drinking water treatment plants. Appreciates conversation on how to value natural resources, would benefit many different state agencies, not just IDNR.

Sen. Buck – PCARET (Purdue Council for Agricultural Research, Extension and Teaching) used to invite legislators to visit a farm, to showcase building buffers, reducing sediment runoff, streambank stabilization. Very educational to see visuals. They have not done that in years. If we have lake that is in trouble, or if lake is doing great after dredging, legislators need to see that.

ACTION: Send interim report and economic value report/presentation to speaker, pro-tem, chairs of house and senate natural resource committees, chairman of ways and means, fiscal, appropriations, agriculture. LARE staff will finalize and send to Sen. Buck for distribution.

Madden – Have $4000 budget, perhaps tie reconstitution of group to study economic impact of lakes. See if Bill Jones would be willing to create a report, have a grad student work on it. May be able to get seed money from Tourism. Group needs to continue to handle issues like Phosphorus. What federal programs, grant money is out there that we're not taking advantage of? May be funding out there to fund economic impact study.

Pratt – Recommends not waiting three months until next meeting, maybe meet in January.

Sen. Buck – January is very hectic for legislators. Could work to get presentation made to committees, but not a good time for next work group meeting.

ACTION: Make presentation to the committees in mid-January, regarding past activities of work group and recommended continuation.

6) Other Business

County Sheriffs and Lake Patrols:

Sen. Buck – Had issue where county sheriff did not want to sign off on distribution of grant funds for lake patrol. Lake association is stuck if sheriff won't approve funding. Tried to rectify in last session, but IDNR was opposed to amendment.

Major Hensley – Was not involved in this particular issue, so he was not familiar with the specifics of it. Marshall County was operating with special deputies. He believes that new sheriff will want to have a conversation about this program once he takes office.

Sen. Buck - Brought attention to issue of if sheriff wants to say no to funds, and lake association meets all requirements (liability insurance, etc), the association has no recourse. Will add an amendment to a bill if needed.

Major Hensley – In some counties where grants are being used, there is more than one lake. Impossible for each lake association to request grant for patrols on each lake. It is preferable if sheriff will submit grant request so can cover more than one lake and have county-wide participation.

Sen. Buck – IDNR does not assign someone to each lake on each day, if have a lake association that's willing to take that on, then should take them up on it.

Madden noted how Lake Lemon hires off-duty police officers, have a dock for the use of the police officers. A lake association could buy their own patrol boat and hire off-duty officers to operate a patrol.

Driver's Licenses for Boat Operators:
Madden – Recommended that a written boat operator's license be required and/or an endorsement on regular driver's license. He noted that a person can drive a jet ski at 65 mph with no license at all, for instance. There are folks on lakes that do not know how to operate a boat, and don't know the rules of boating. He noted that there is an online course with a certificate. He suggested that current boat owners would be grandfathered, but that new people coming in should have an endorsement on their driver's license. This is a safety issue on the lakes.

Major Hensley- Was familiar with the double fatality on Lake Monroe and a fatality on the Ohio River where a girl on a jet ski died after hitting a barge. The mother of the girl is seeking to get legislation introduced to accomplish that. She was referred to Chris Smith. He noted that there are 7 different websites where a "certificate" will be accepted by state standards, including Indiana.

Madden-Aren't there 14 or 15 states where it is on the license now?

7) Next Meeting
Late March meeting proposed for Conference Center at the Indiana Government Center South.

Meeting was adjourned at 1:10 pm.
Notes recorded by Angela Sturdevant

INDIANA LAKES MANAGEMENT WORK GROUP

Natural Resources Education Center, Fort Harrison State Park
Indianapolis, Indiana
Wednesday, June 15, 2011, 10:00 am to 1:30 pm EST

NOTES

Members Present:
Sen. James Buck, Senate District 21, Chair
Rep. Nancy Dembowski, House District 17
Rep. Richard Dodge, House District 51
Lee Bridges, Office of Water Quality, Assessment Branch, IDEM
Larry Coplen, Coplen Construction, Inc, At-large Member
Jim Hebenstreit, Assistant Director, Division of Water, IDNR
Pete Hippensteel, Steuben County Lakes Council
William Jones, Indiana University, Clean Lakes Program
Jeff Krevda, Dredging Technologies, CD5
Robert Meeks, CD3
Robert Myers, Simonton Lake, CD2
Doug Nusbaum, Lake and River Enhancement (LARE) Program, Division of Fish and Wildlife, IDNR

Others Present:
Tony Bailey, USDA Natural Resources Conservation Service
Greg Biberdorf, IDNR LARE
Jennifer Boyle Warner, Indiana Association of Soil and Water Conservation Districts
Kathy Clark, Lake Maxinkuckee Environmental Council
Rod Edgell, IDNR LARE
Steve Lucas, Director, Division of Hearings, Natural Resources Commission
Ann McIver, Citizens Energy Group
Richard Miller, Conservation Chair, Hoosier Chapter, Sierra Club
Sarah Page, Environmental Coordinator, Citizens Energy Group
Matt Pearson, Office of Indiana State Chemist
Sara Peel, Wabash River Enhancement Corporation and President, Indiana Lakes Management Society
Glenn Pratt, Sierra Club
Leslie Raymer, Administrator, LaGrange County Lakes Council, Inc.
Barbara Simpson, Executive Director, Indiana Wildlife Federation
Chris Smith, IDNR Executive Office, Legislative Liaison
Steve Tennant, Tennant's Industrial Dredging
Dr. Robert Waltz, State Chemist, Office of Indiana State Chemist
Marija Watson, Indiana Wildlife Federation

Sen. Buck as Chair convened the meeting at 10:10 am.

1) **Lake Management Work Group re-authorization**
   Senator Buck noted that the Lake Management Work Group (LMWG) was authorized for a one-year extension after much urging to the legislative leadership. As such, the final report will be due by June 30, 2012. This extension was included in H.E.A. 1097 signed by the Governor on May 16 as Public Law 181 (2011).

2) **Notes from 11/18/10 meeting**
The Work Group accepted by consensus the notes of the November 18, 2010 meeting as presented.

3) **Letter regarding vacancies on LMWG**
Senator Buck noted there was no response to the letter to the Governor's office on filling the vacancies on the LMWG.

4) **Legislative update**
Chris Smith reviewed some legislation of interest to the group from the session just concluded. HEA 1097 reauthorized the LWMG for one year, not the two year extension as in the original bill. Robert Meeks noted this is a very inexpensive group to operate.

HB 1051 would have authorized a Task force to examine topics concerning Versailles Lake. Passed house, died in Senate after First Reading.

HB 1198 would have authorized LARE funds for use of logjam removal. This was rolled into HB 1343.

HEA 1343 allows money in the lake and river enhancement fund to be used in projects such as sediment removal, control of exotic or invasive plants or animals, or removal of logjams or obstructions. (This bill was signed by Governor on May 10 as Public Law 207).

Robert Meeks commented on the philosophy that brought about the LARE funds addition and the discussion that brought about the creation of the LMWG in the first place and that with the 48 recommendations, that Indiana still has lake-related problems that need to be addressed.

HB 1425 would have placed restrictions on the application of fertilizer material that contains phosphorus. It died in house after first reading.

SEA 157 reassigns duties from the Great Lakes task force to the environmental quality service council to review and discuss various topics related to the supply and quality of water in the Great Lakes. (This bill was signed by Governor on April 26 as Public Law 62).

SEA 306 provides the opportunity for a fiscal body of a county to submit request for boat patrol grants if the county sheriff does not. These funds are generated by the Lake and River Enhancement fee collected by BMV from boat registrations annually. Senator Buck was the author of this bill. It was signed by the Governor on May 13 at Public Law 217.

SB 379 would have provided that the money in the lake and river enhancement fund is available in subsequent years. This bill died after first reading in the Senate.

SB 532 encompassed a large number of natural resources matters. (This bill was signed by the Governor on May 10 as Public Law 165. One component addressed is the implied consent when a boater is under suspicion of boating while intoxicated. Another component referred to the safety issue of wake-boarding near boat propellers. Another component referred to the taking of invasive species (specifically with Asian Carp in mind) with different means such as firearms.

5) **LMWG Interim Report due July 1, 2011**
Greg Biberdorf discussed a draft of the interim report noting the issues that were discussed. The group discussed the draft and suggested wording changes on the references to meeting attendance. The group also suggested adding a listing of the interested parties that have attended, participated in discussion and provided input during the time period of the interim report. Biberdorf noted the changes to be added and promised to get that to the Chair during the week of June 20th. Additional changes to be sent to Biberdorf by Monday, June 20th. Senator Buck will ensure that the interim report and letter will go to Senator Mishler, Chair of Natural Resources Study Committee and Senate Agriculture and Natural Resources Committee and Representative Eberhart, Chair of the House Natural Resources Committee as well as the appropriate staff of the Legislative Services Agency for posting to the IGA website by the deadline of June 30, 2011.

6) **Lake and River Enhancement (LARE) program update**
Greg Biberdorf, Doug Nusbaum, and Rod Edgell provided LARE program update. LARE staff consists of these three and Ashlee Haviland, an intermittent aide whose work efforts include production of the online bathymetric maps of selected Indiana lakes. The update included video footage of the carp fence installed at Fort Wayne during recent flooding conditions, a PowerPoint presentation of LARE-funded projects throughout the state, and an update on LARE funds status.

Biberdorf noted that $3,242,379.87 in encumbered funds have been utilized since September, 2009 to complete LARE-awarded projects statewide. Out of 137 projects, 97 have been completed, 40 are active, and nearly $651,000 is remaining to complete projects in progress. Biberdorf is optimistic that funds will be released for new LARE awards in late July, hopefully to address projects for dredging, biological and engineering, and watershed land treatment projects that were applied for by January 15, 2011. He was optimistic about having funds available in March 2012 to award for Aquatic Vegetation Management and Log jam removal. Policies for logjam removal and aquatic vegetation control in rivers will be developed this fall with solicitation of public input.

7) **Update on Phosphorous-free fertilizer issue**
The group discussed the issue of the P-free fertilizer and how the bill died in the session. It was noted that Farm Bureau opposition to the bill was key in its defeat, even though the bill specifically exempted fertilizers for agricultural purposes. Some opposition from the lawn care industry was also noted.

Dr. Robert Waltz, Indiana State Chemist for the Office of the Indiana State Chemist (OISC) discussed the issue from the standpoint of how the OISC regulates. Their emphasis is on getting the right amount of the right nutrient to the right place and at the right time. The idea of addressing having Phosphorous where it is not needed or not properly applied is of concern to the OISC.

8) **Another report on Economic Value of Lakes**
Pete Hippensteel, retired professor of Biology at Tri-State (now Trine) University discussed briefly results of research he conducted. He found that the amount of tax revenue generated by lake properties seems related to the size of the lake, specifically if it is a skiing lake. The larger the lake, the more valuable is the property around it as determined by tax revenues.

Jeff Krevda conducted a recent dredging project in Warsaw area and he was told the reason some companies stay in Kosciusko County is the proximity to Chicago and the proximity to lakes for the benefit of their employees.

9) LMWG Plans for 2011-2012

Senator Buck plans to send another letter to have the vacant positions filled. He asked for attendance records of the meetings to be provided to him. (*Done 6/17/2011)

The group discussed whether a field meeting or a meeting away from Indianapolis should be considered. Meeting potential locations included Trine University at Angola, the North East Regional Office of IDNR at Columbia City, and meeting in Senator Luke Kenley's district at either Geist or Morse Reservoir area. Ideas tossed around included having a town hall meeting format, inviting gubernatorial candidates to get their stand on lakes, seeing projects in the field constructed with LARE funds

The need for the subgroups to come back together to discuss issues before the full group meeting was addressed. As one of the sub-group chairs, Pete Hippensteel noted the need for the subgroups to go through and prioritize what their issues should be. One issue that seems to be heating up this summer is blue-green algae. Bill Jones noted that he can be a contact for persons who want information about sampling in addition to Dr. Tedesco at IUPUI, IDEM and Indiana State Board of Health.

It was suggested a letter extolling the benefits of continuing the efforts of the Work Group in some form, if not as a currently operating. Perhaps as part of the summer study committees or other options would exist, if the Work Group is indeed not authorized again beyond the June 30, 2012 deadline.

Larry Coplen volunteered to be part of a group to work towards meeting with key legislators including Senator Mishler, Representative Wolkins. Representative Espich, Senator Kenley.

10) Other Business

Greg Biberdorf noted that William Jones is retiring from Indiana University as of June 30, 2011, but will remain with the Work Group this year. The group applauded Bill's many years of work with the Indiana Clean Lakes program and his contributions to the LMWG all along.

11) Next Meeting

Representative Dodge as the presumed Chair of the Work Group as of July 1, 2011, will propose dates for four meetings throughout the year to enable members to plan attendance in advance.

Meeting was adjourned at 1:30 pm.

Notes recorded by Greg Biberdorf

INDIANA LAKES MANAGEMENT WORK GROUP (LMWG)

North East Regional Office, Department of Natural Resources
Columbia City, Indiana
Thursday, September 15, 2011, 12:30 pm to 3:30 pm EST

NOTES

Members Present:
Rep. Richard Dodge, House District 51, Chair
Sen. James Buck, Senate District 21
Sen. James Arnold, Senate District 8
Lee Bridges, Office of Water Quality, Assessment Branch, IDEM
Larry Coplen, Coplen Construction, Inc, At-large Member
Pete Hippensteel, Steuben County Lakes Council
William Jones, Indiana University, Clean Lakes Program
Jeff Krevda, Dredging Technologies, CD5
Robert Meeks, CD3
Robert Myers, Simonton Lake, CD2
Doug Nusbaum, Lake and River Enhancement (LARE) Program, Division of Fish and Wildlife, IDNR
Dave Tyler, ILMS
Shannon Zezula, USDA Natural Resources Conservation Service

Others Present:
Jeff Bell, Lake James Association
Greg Biberdorf, LARE, IDNR Division of Fish and Wildlife
Diana Castell, Wawasee Area Conservancy Foundation
Kathy Clark, Lake Maxinkuckee Environmental Council
Reggie Cornett, Green Industry Alliance
Lyn Crighton, Tippecanoe Watershed Foundation
Tony Cunningham, Clarke Aquatics
Rod Edgell, LARE, IDNR Division of Fish and Wildlife
Chuck Farris, Crooked Lake Association
Natalie Fierek, Tippecanoe Watershed Foundation
Heather Harwood, Wawasee Area Conservancy Foundation
Bill Keith, Barbee Lakes
Mike Lattimer, Lake Tippecanoe Property Owner's Association, and Tippecanoe Watershed Foundation
Jane Loomis, Tippecanoe Watershed Foundation
Jodi Lozier, Ridinger Lake Property Owners Association
Steve Lucas, Director, Division of Hearings, Natural Resources Commission
Judy Matthewson, Four Lakes Association
Tom Matthewson, Four Lakes Association
Richard Miller, Conservation Chair, Hoosier Chapter, Sierra Club
Ron Miller, Barbee Lakes
Sarah Page, Environmental Coordinator, Citizens Energy Group
Jed Pearson, IDNR, Division of Fish and Wildlife
Matt Pearson, Office of Indiana State Chemist
Sara Peel, Wabash River Enhancement Corporation and President, Indiana Lakes Management Society
Glenn Pratt, Sierra Club
Leslie Raymer, Administrator, LaGrange County Lakes Council, Inc.

Neil Schwartz, Barbee Lakes
Joe Skelton, Marshall County Lakes & Waters Council
Barbara Simpson, Executive Director, Indiana Wildlife Federation
Chris Smith, IDNR Executive Office, Legislative Liaison
Kathie Tennant, Tennant's Industrial Dredging
Steve Tennant, Tennant's Industrial Dredging
John Ulrich, Marshall County Lakes
Marija Watson, Indiana Wildlife Federation

NOTE: The Structures and Density Subgroup discussed current issues from 10:00 am-11:30 am. The notes from that session follow these notes of the full work-group meeting.

Rep Dodge convened the meeting at 12:30 pm.

1) Follow-up-Presentation on Fertilizer Use Draft rule

Matt Pearson of the Office of the Indiana State Chemist presented the fertilizer use draft rule. The rule was drafted to help ensure that fertilizer materials are distributed and used effectively and safely as plant nutrients and in a manner that protects water quality. The proposed Rule is LSA Document #11-364 and can be accessed online at this link: http://www.in.gov/legislative/iac/20110622-IR-355110364NIA.xml.html

The information on the hearing on this rule is at this link: http://www.in.gov/legislative/iac/20110727-IR-355110364PHA.xml.pdf will be *on December 6, 2011, at 9:00 a.m., at the William H. DanielsTurfgrass Research and Diagnostic Center, 1340 Cherry Lane, West Lafayette, Indiana, the State Chemist of the State of Indiana will hold a public hearing on a proposed rule to establish staging, setback, and application requirements for fertilizer material and to further establish record keeping requirements for fertilizer material application. The proposed rule would impose record keeping requirements for fertilizer material application under IC 4-22-2-24(d) (3). Copies of these rules are now on file at the Office of Indiana State Chemist, Purdue University, 175 South University Street, Room A151, West Lafayette, Indiana and Legislative Services Agency, Indiana Government Center North, 100 North Senate Avenue, Room N201, Indianapolis, Indiana and are open for public inspection.*

2) Notes from the June 15, 2011 meeting

Rep. Dodge had members of the LMWG introduce themselves. The notes from the June 15, 2011 meeting of the LMWG were accepted without change by acclamation.

3) Follow-up on phosphorous-free lawn fertilizer issue

Rep. Dodge opened the meeting up for more discussion on the issue of phosphorus in fertilizer. Reggie Cornett spoke on behalf of the Green Industry Alliance, whose members include the Indian Golf Course Superintendents Association, Indiana Professional Lawn and Landscape Association, Indianapolis Landscape Association, and the Indiana Nursery and Landscape Association. He stated that many professionals in the green industry businesses are cutting back on Phosphorous use to reduce costs and also be proactive. He noted that the GIA is opposed to restrictions on applications of phosphorous in fertilizers. They are working to help educate their members and promote responsibility.

Hippensteel noted that the LMWG should continue to support Rep. Dodge's efforts on a bill restricted phosphorous in lawn fertilizer.

4) **Public Trust Doctrine Presentation**
Steve Lucas, Director, Division of Hearings for the Natural Resources Commission (NRC) presented a proposed non-rule policy document that the NRC will consider on September 20, 2011. This document is being tendered to the NRC as an amendment to their current non-rule policy document. He related the history of the public trust doctrine from its beginnings in the Northwest Ordinance of 1787. The concept of the public freshwater lakes in Indiana dates from 1947, and protections for Public Freshwater Lakes as navigable waters dates from the 1980's. One issue that was key was defining "what is a lake?" A case related to Mount Zion Mill Pond in 1993 concluded that lake had to exist in 1947 and be at least 5 acres in size.

Lucas noted that it was the Lake Management Work Group that proposed and encouraged the listing of Public Freshwater Lakes that now resides on the Natural Resources Commission web site (http://www.in.gov/legislative/iac/20110601-IR-312110313NRA.xml.pdf)

Lucas noted that the usual challenge on pier placement is not between the citizen and DNR but is more often a dispute between neighboring landowners residing on a lake.

5) **Lake and River Enhancement (LARE) program update**
Greg Biberdorf provided LARE program update. He handed out a copy of the press release noting that new LARE grants were awarded to 23 projects involving 15 counties. The projects include sediment removal, engineering feasibility and design projects, construction projects and watershed land treatment projects totally $891,171. He also noted that over $600,000 in active projects are still ongoing. Funds for all of these are encumbered in the state's accounting system. The goal is to have grant awards in March of 2012 for Aquatic Vegetation management projects, more sediment removal projects and potential logjam removal projects. The LARE staff is currently working on developing guidelines and criteria for Aquatic Vegetation management in river environments as well as logjam removal projects that may be addressed by LARE.

6) **Plans for producing final report for the Work Group**
Rep. Dodge noted that the final report of the Work Group is due by June 30, 2012, not 2011 as presented in the agenda. The discussion on a potential extension of the work group's existence by legislation noted that it would require a lot of work and would have to overcome objections of some legislators.

Krevda noted that he has been attending LMWG meetings for 13 years and has watched over the last 21 years at lakes declining due to a lake a management. He stated that the loss of soil conservation from IDNR has hurt protection efforts.

7) **Structures and Density Subgroup Discussion summary and proposals**
Pete Hippensteel, retired professor of Biology at Tri-State (now Trine) University noted the discussion at the subgroup meeting from 10 am -11:30 am. The group would like to see some changes in the aquatic vegetation control statute.
1) A better definition of aquatic vegetation.
2) A change to protect drinking water supplies
3) A change to allow the NRC to set fees for aquatic vegetation control permits.

Hippensteel moved and Tyler seconded and the motion passed for the group to encourage the recommendations to be submitted in legislation.

Rep. Dodge will report back in November on the possibility of a bill along these lines.

8) Other Business

a) Biberdorf passed out post-cards with information about the Healthy Rivers Initiative (HRI) which involves working with willing landowners to permanently protect 43,000 acres in the floodplain of the Wabash River and Sugar Creek in west-central Indiana, and another 26,000 acres of the Muscatatuck River bottomlands in southeast Indiana. The website is www.healthyrivers.in.gov Part of the information strategy includes social media such as Facebook and Twitter as well as more traditional internet access.

b) Rep. Dodge noted that there are still 7 vacancies on the LMWG. He spoke to Andrew Norris in the Governor's office about trying to get these filled. Rep. Dodge asked for names of potential candidates for membership to be sent to him. Current vacancies exist include representatives of Congressional Districts 4, 6, 7, 8, and Agricultural Organization and one At-Large position.

c) Leslie Raymer of the LaGrange County Lakes Council announced a Lakes Fall Forum open to the public to be held on Saturday, October 15, 2011 at the Lakes Missionary Church, 9030 US Highway 20 West in Angola from 9:00 am until 2:15 pm. The agenda includes a presentation by Nate Thomas, IDNR on lake rules, Pete Hippensteel on property values related to lakes, and discussion on fund raising for lake associations among other items. She noted that people can call 260-665-1730 for reservations.

d) Reference was made to a letter received by Rep. Dodge from Bill Schmidt of the Steuben County Lakes Council, Inc. (SCLC) noting the growing concerns about mute swans. The SCLC would like to have the LMWG investigate the impact of the swan population on the ecology of the lakes. They express a growing concern about E-coli contamination of natural resources, and that many people feel that the swan population is major source. The SCLC takes no position on whether swans are good or bad, but question the impact of this non-native species, the mute swan. They look forward to a response of the work group. Rep. Dodge will refer this issue to the biology subgroup.

e) Lyn Crighton of the Tippecanoe Watershed Foundation (TWF) noted two initiatives their organization is involved in. The first is the Clear Choices-Clean Water campaign (www.ClearChoicesCleanWater.org). The goal of this campaign is to increase awareness about choices made and their impacts on streams and lakes. This was started by TWF with the Upper White River Watershed Alliance and the IUPUI Center for Earth and Environmental Sciences.

   Their other initiative is the Healthy Shorelines project to encourage homeowners with small grants for shoreline and lawn projects that improve water quality, improve shoreline habitat, reduce erosion, or reduce runoff. Their web link is: http://telwf.org/HealthyShorelines.aspx

f) Glenn Pratt brought up the issue of federal grant funds available with relatively small amount going to Indiana. *

*This is apparently a reference to Great Lakes Restoration Initiative. Projects funded in Indiana are noted below from: http://greatlakesrestoration.us/

The first project is currently providing funds to combat exotic invasives including hydrilla, starry stonewort and parrot feather which were being treated by utilizing LARE funds in the recent past. This project thus frees up Indiana funds for other LARE projects while at the same time dealing with invasives that have the potential for devastating impacts on Indiana Lakes.

Project title: Implementation of Indiana ANS Management Plan
Organization: Indiana Department of Natural Resources
Amount: $1,432,000.00

The other projects that have Indiana ties are:

Project title: Hobart Marsh Restoration Project
Organization: Save the Dunes Conservation Fund
Amount: $200,000.00

Project title: Calumet & Ivanhoe South Ridge and Swale, IN
Organization: Dept. of Defense-U.S. Army Corps of Engineers
Amount: $120,000.00

Project title: Partners for Fish & Wildlife Program - Indiana
Organization: Dept. of Interior-U.S. Fish and Wildlife Service MN
Amount: $38,800.00

Project title: Northwest Indiana Wetlands, IN
Organization: Dept. of Defense-U.S. Army Corps of Engineers
Amount: $120,000.00

Project title: Lake Michigan LaMP and AOC Capacity
Organization: Indiana Department of Environmental Management
Amount: $1,718,321.00

9) Current Plans for Future Meetings

Thursday, November 10, 2011, NREC, Fort Harrison State Park, Indianapolis

Thursday, March 15, 2012, NREC, Fort Harrison State Park, Indianapolis

Thursday, June 14, 2012, NREC, Fort Harrison State Park, Indianapolis

Meeting was adjourned at 3:15 pm. Notes recorded by Greg Biberdorf

STRUCUTURES AND DENSITY SUBGROUP
OF THE
INDIANA LAKES MANAGEMENT WORK GROUP

North East Regional Office, Department of Natural Resources
Columbia City, Indiana
Thursday, September 15, 2011, 10:00 am to 11:30 am EST

LMWG members present:

Pete Hippensteel, Sub-group chair
Larry Coplen
Rep. Dick Dodge
Jeff Krevda
Doug Nusbaum
Dave Tyler
Shannon Zezula

Non-LMWG members drifted in during the discussion. Persons present for some part of the day are listed in the LMWG notes.

Informal discussions by members of the "Structures and Density Subgroup" on several issues were held from 10-11:30 prior to the start of the Lake Management Work Group.

Hippensteel noted that a large stressor on lakes is shoreline alterations. He asked how to improved education of public to encourage them to be better stewards of the lakes?

Krevda noted the practice of utilizing glacial stone riprap in front of seawalls to dissipate wave action.

A demonstration on Lake Wawasee was noted in which 19 of 20 landowners left rock in after the demonstration was concluded.

Kathy Clark of Lake Maxinkuckee noted success with glacial stone in front of seawalls and would like to see a requirement for glacial stone in front of seawall where major construction is proposed.

Jeff Bell noted this issue is not brought up at Lake James much.

Krevda noted that seawalls without the glacial stone in front tend to allow nutrients to continue to move in water more.

Hippensteel asked if there is a brochure about adding glacial stone to seawalls.

Jodi Lozier asked if there was a flier produced, maybe it could go out with property tax bills locally.

Coplen noted that if a video was produced it might visually show the effects of the glacial stone on reducing wave action and erosion.

Hippensteel asked how we could facilitate to getting this information to a wide variety of people.

Tyler noted that it is DNR responsible for permitting activities lakeward of the shoreline, but local authority shoreward.

Lyn Crighton noted the Healthy Shorelines Initiatives that the Tippecanoe Watershed Foundation is working with to provide grants to install glacial stone and native plants. It was a success with 50 applications in 5 weeks. People like the look and it reduces muskrat and goose problems.

Rep. Dodge noted he has 200 feet of shoreline without a seawall and is trying to determine what to do. There is a lot of information on the web, but it is hard for the average person to know where to start.

Hippensteel asked if something could be added to the LARE website.

Joe Skelton asked what the cost is and what other alternatives are there.

Zezula noted there should be a focus on education provided to contractors.

Hippensteel noted it could be a workshop similar to the lakescaping workshop for contractors specifically.

Krevda noted it is important to be aware of recommendations.

Jeff Bell noted that Associations are good ways to extend information.

Tyler asked if DNR has a policy on whether concrete seawalls are going to be approved. Is there a policy on seawalls?

Coplen would like to see if re-surfacing is being proposed is it only allowed with glacial stone in front?

Tyler asked if there is no one in DNR suggesting glacial stone. Is there a policy? Is there a procedure? Should LMWG suggest that?

When the question of who would do education, Biberdorf noted that LARE grants have been used in the past for sponsoring workshops, specifically, ILMS got a grant for lakescaping workshops.

Kathy Clark noted the lakescaping workshop they had was very popular.

Hippensteel then noted another issue for discussion was dealing with requirements that a dredging permit would require a weed management permit. It was noted that there is some redundancy now.

Hippensteel noted that a legislator would need to propose any change in the code.

Krevda noted that it is a good idea to avoid repetitive actions.

The subgroup voted to support changing the code and to inform the LWMG of the subgroup's recommendations.

Kathy Clark asked why vegetative permits are not posted online.

Biberdorf will try to check into it.

Clark asked how does code enforcement follow up if the rules don't meant anything to some people.

Jed Pearson noted that the violation of the weed control regulations is a misdemeanor and goes to the county prosecutor.

Hippensteel is looking for items on future issues for structures and densities subgroup.

Indiana Lake Management Work Group
Thursday, December 15, 2011
Training Room, Natural Resources Education Center (NREC)
Fort Harrison State Park, 5785 Glenn Road
Indianapolis, Indiana

Representative Richard Dodge, Chair

Indiana Lake Management Work Group members present:
Representative Dick Dodge, Chair
Representative Nancy Dembowski
Senator James Buck
Tony Bailey, NRCS for Shannon Zezula
Lee Bridges, IDEM
James Hebenstreit, IDNR, Division of Water
William Jones, IU SPEA Program, Emeritus
Robert Madden, Lake Lemon Conservancy District
Robert Meyers, Simonton Lake
Douglas Nusbaum, IDNR, LARE, Division of Fish and Wildlife
Dave Tyler, ILMS
Darci Zolman, Kosciusko SWCD

Other persons present:
Greg Biberdorf, IDNR, LARE, Division of Fish and Wildlife
Lyn Crighton, Tippecanoe Watershed Foundation
Rod Edgell, IDNR, LARE, Division of Fish and Wildlife
Dean Farr, Geist Fall Creek Watershed Association
Nathan Long, Aquatic Control
Marija Watson, Indiana Wildlife Federation
Sara Peel, ILMS
Glenn Pratt, Sierra Club
Leslie Raymer, LaGrange County Lakes Council
Justin Schneider, Indiana Farm Bureau
Angela Sturdevant, The Nature Conservancy
Steve Tennant, Tennant Industrial Dredging
Richard Williams, Sierra Club

1. The Chair convened meeting at 1:10 with introductions.

Old Business

2. September 15, 2011 meeting notes

Upon a motion by Senator Buck to approve, seconded by Dave Tyler and carried, the notes were approved.

3. Lake Management Work Group Vacancies Status

The Chair reported that he did not receive a response to a list of potential appointees to the work group that he submitted to the Governor's office in October.

New Business

4. Legislation update

The Chair reported that he had legislation prepared to extend the date for a final report for 2 more years, thus extending the Work Group's existence.

The Chair requested a change of the next meeting date to Thursday, March 29, 2012 after the 2012 General Assembly is concluded. Angela Sturdevant noted that the Indiana Lakes Management Society Conference will be held on March 23-24 at Brown County State Park in the week preceding.

The Chair has also drafted legislation to reintroduce a bill on phosphorus-free fertilizer for lawns.

Sen Buck asked what the alternative be if the Work Group was not extended? He suggested that maybe the Senate Subcommittee studying natural resources could create a permanent sub-committee, but that would require legislation. Find out what the real objection is and try to address it.

5. Lake and River Enhancement (LARE) Program Status

Greg Biberdorf, LARE Program Manager of the Division of Fish and Wildlife, IDNR relayed information on the interim policies for the sediment removal, invasive aquatic vegetation control (including on rivers) and the new logjam removal projects. He noted the interest in logjam removal projects and how these projects were focused on those that are causing erosion or bank undercutting and where there are no other sources of funding to address it. LARE's purpose is not to replace other funding sources.

One issue that will arise is whether a logjam is actually causing flooding by raising hydraulic head, or just causing some localized ponding. Additionally, LARE's purpose is to enhance and not totally removing aquatic habitat. Finally, a sponsoring entity is a necessity to help bear the cost and to maintain a financial stake in the project.

The invasive aquatic vegetation control on rivers is similar to that on lakes, primarily on impounded areas and not to utilize aquatic harvesters to remove biomass. It doesn't kill the plant, just potentially sends fragments downstream, which isn't a good use of LARE money.

Applications for LARE funding are already coming in.

For the sediment removal projects, the main change is the increase on the amount provided towards a sediment removal plan to $7,500.

LARE works from a plan first. The plans for LARE grants in 2012 are for projects in

March for Sediment removal, invasive aquatic vegetation control, and logjam removal. Grants in July would be for watershed land treatment, biological and construction projects. This assumes that the economy is still moving along positively and that grants are able to be made.

Biberdorf noted that federal Great Lakes Restoration Initiative (GLRI) funds are being used to treat hydrilla on Lake Manitou and other invasives including Starry Stonewort and Parrotfeather on lakes including Lake Wawasee, Lake George, Wall Lake, and Meserve Lake.

6. Plans or strategy for producing final report for the work group by June 30, 2012

The Chair opened discussion on plans for producing a final report. The report that Steve Lucas developed was very concise and would serve as a good basis for the final report for this group. Bill Jones agreed to serve as Chair for the final report "sub-group". Dave Tyler offered to help. Bill will look to Steve Lucas and LARE staff for assistance.

7. Biology Subgroup summary-Bill Jones, Biology Subgroup
   (Note the Biology Subgroup notes follow the notes of the full group)

Bill noted the difficulty of holding a subgroup meeting with so many vacancies on the full group, leaving fewer persons able to serve on sub-groups.

a. Follow-up on hearing conducted Dec. 6, 2011 at West Lafayette regarding changes to Indiana Fertilizer rules (see notes from September 15, 2011 Meeting and note agenda item from Biology Subgroup above).

b. Discussion of impact of mute swans on lakes in response to a letter from Bill Schmidt Steuben County Lakes Council regarding potential e-coli problems

Bill relayed this information garnered from DNR Waterfowl Specialist Adam Phelps: Mute swans are non-native, larger than native swans, aggressive, displace native waterfowl, consume mass quantities of up to eight pounds of submerged aquatic vegetation per day, and are very messy. They pull up large amounts of shoreline vegetation so that works against shoreline stabilization. They produce a large quantity of waste. Their numbers are much less than those of Canada geese. It is a misguided notion that they control Canada geese. The issue is what to do about this invasive?

Other states have programs to reduce their population, Indiana does have an option to issue permits for control of them from IDNR Division of Fish and Wildlife.

Jones noted that by the next meeting we will be able to have more information and see what kind of help might be provided to DNR on this issue.

c. Blue-Green Algae Sampling at Indiana Lakes in 2011-Cyndi Wagner, Cyndi Wagner, Chief, Targeted Monitoring Section, Watershed

Assessment and Planning Branch, Office of Water Quality, Indiana Department of Environmental Management.

Cyndi Wagner discussed the blue-green algae issues that she had shared with the biology subgroup. Her presentation in PDF format is attached to these notes.

She noted that the growth of the blue-green algae is a result of their ability to utilize phosphorus and nitrogen when it is available.

Bill Jones noted that the Clean Lakes Program has performed lake assessments for 22 years for up to 80 lakes per summer. In 2010 they sampled lakes more randomly and collected water samples to analyze for microcystin.

IDEM looked at recreation areas, specifically the swimming beaches at DNR lakes in State Parks and State Recreation Areas, monthly from June through August. If the sample showed high readings of over 100,000 cells per milliliter, sampling was increased to every two weeks. She noted that their results are posted at www.algae.in.gov .

Wagner discussed the issues of toxins of the cyanobacteria, the cell counts, how they sampled and reported some of the results. See the presentation attached for specifics. She noted that IDEM doesn't have the capability to test more lakes, an issue of resources and numbers of skilled biologists needed to do the analysis.

What is the concern with the blue-green algae? High cell counts can cause dermatitis, and toxins can cause liver problems. Some discussion on the need to better educate doctors and veterinarians was noted.

Senator Buck noted a need to provide this information to a legislative study group. Following discussion, Rep. Dodge asked for a copy of the slide presentation.

(A PDF version is attached to these notes. To obtain the PowerPoint version, please contact LARE staff at lare@dnr.IN.gov)

Justin Schneider related information about the Fertilizer hearing at Purdue. He noted that most issues were related to the staging of poultry manure. Comments are due by January 7, 2012.
Note this communication was provided by Matt Pearson of the Office of the Indiana State Chemist following the meeting: "We had the hearing and received several comments. The public comment period will remain open until close of business January 7th, 2012. We welcome any additional comment until that date."

8. Plans for future meetings:
   Thursday, March 29, 2012 at the NREC, Fort Harrison State Park in Indianapolis
   Thursday, June 14, 2012, at the NREC, Fort Harrison State Park, Indianapolis

   The Chair adjourned the meeting at 3:30 pm.

Meeting Notes-Biology Subgroup of the
Indiana Lake Management Work Group-
Thursday, December 15, 2011
Training Room, Natural Resources Education Center (NREC)
Fort Harrison State Park, 5785 Glenn Road
Indianapolis, Indiana

Bill Jones-Subgroup Chair

Prior to the full group meeting the Biology Subgroup met from 10:15AM-11:45 AM
Subgroup Chair, Bill Jones introduced those present.
Work Group members: Bill Jones, Darci Zolman, Lee Bridges, Dave Tyler
Others present: Sara Peel, Cyndi Wagner, Rod Edgell, Lyn Crighton, Richard Miller, Doug Nusbaum, Greg Biberdorf, Glenn Pratt, Lyn, Marija Watson, Steve Lucas, and Steve Tennant

Sub-group agenda items:

1. Presentation and discussion on IDEM Report on Blue-Green Algae Sampling at Indiana Lakes in 2011-Cyndi Wagner, Cyndi Wagner, Chief, Targeted Monitoring Section, Watershed Assessment and Planning Branch, Office of Water Quality, Indiana Department of Environmental Management(IDEM)

   Cyndi presented information (see attachment to these notes) about blue-green algae and IDEM's sampling program, including defining the problem; effects of cyanobacteria; types of cyanobacteria present in samples; and sampling results summary from several years.

   The cause of algal blooms is a function of the phosphorus and nitrogen in the water column and sediments. Sampling was done by IU Bloomington, IUPUI and IDEM.

   IDEM received an EPA grant to examine the recreational exposure to blue-green algae through the sampling of DNR beaches at some State Parks once a month. They conducted a cell count and measured microcystin levels. If the cell count exceeded 100,000 cells/mL, then samples were increased to once every two weeks.

   IDEM sampled swimming beaches from June to end of August, funded by EPA in 2010 and 2011 to search for recreation exposure to blue-green algae.

   She noted that they looked for guidance from the World Health Organization (WHO) since no state has set specific legal limit, neither have the Centers for Disease Control (CDC) nor US EPA. IDEM chose to use 6 Microgram/Liter level based on Ohio ratings.

They collected samples on Mondays and Tuesdays, analysis was conducted on Wednesday and Thursdays and information was released on Fridays. She showed slides of Cylindrospermopsin, how the sampling was conducted, the equipment used, and samples of the IDEM webpage in how the information is shared. They hope to be able to have test kits to be able to test for the toxin from Cylindrospermopsin next year.

In questions that followed Cyndi's presentation, it was noted that in 2011, not many instances of toxin was produced. She also noted that IDEM doesn't sample the bloom itself, but samples the water column. Ohio does sample the scum and the bloom.

It was noted that Cylindrospermopsin does not form surface blooms, it will bloom below the surface and is brown in color, not green so it is hard to see in lakes. It wouldn't be recognized as something to avoid.

It was noted that other lakes are interested in getting their water sampled for blue-green algae, but at this time, there only seems to be labs in Ann Arbor and Florida that will analyze for blue-green algae.

Question on whether there is potential for satellite imaging to define blooms. Mainly it is a tool for larger water bodies such as Lake Erie. The blooms won't show up on a lake much smaller than Monroe Reservoir.

Plans for 2012 sampling were discussed; IDEM may drop Summit and pick up another DNR lake. Grant funding got this projects started, and IDEM has budgeted to conduct sampling and analysis in 2012.

The portable quick test kits are a bit expensive, about $480.00 for 20 test kit. It was noted that the bottleneck in doing more sampling is the number of people who can be trained to do the counts and analysis.

Ohio has the mandatory reporting by physicians and veterinarians. Jones noted how it would be helpful if we could get veterinarians to know the symptoms of algae poisoning and report them.

2. Discussion of impact of mute swans on lakes as a follow-up from letter from Bill Schmidt of the Steuben County Lakes Council to Rep. Dodge. The potential e-coli from mute swans was a concern. Bill visited in Bloomington with Adam Phelps, Waterfowl biologist, IDNR Division of Fish and Wildlife to get some background material which was provided to LMWG members and interested parties before this meeting.

   Mute swans are non-native, aggressive, pulls up mass amounts of submerged aquatic vegetation, much of which goes to waste. They are destructive of habitat for other species. It is a misguided notion that they chase away Canada geese.

Most of the mute swans come into Indiana from Michigan at this time. Other states control population, but they move around and re-populate.

Swans eat 8 lbs of submerged aquatic vegetation daily which then becomes an issue of e-coli in waste products.

Bill noted that we are not in a position to make any recommendations to the full group. Possibly next meeting could have a presentation by Adam.

He noted that we should be in contact with the "Save our Swans" group before the next meeting.

Dave Tyler asked if someone from DNR could recount the facts of the mute swan control controversy at next meeting.

3. Potential follow-up on the Public Hearing held December 6, 2011, at 9:00 a.m., at the William H. Daniels, Turfgrass Research and Diagnostic Center, 1340 Cherry Lane, West Lafayette, Indiana, by the State Chemist of the State of Indiana re: proposed rule to establish staging, setback, and application, requirements for fertilizer material and to further establish record keeping requirements for fertilizer material application. The proposed rule would impose record keeping requirements for fertilizer material application under IC 4-22-2-24(d)(3).

   Nothing was noted during the meeting, but this communication was provided by Matt Pearson of the Office of the Indiana State Chemist following the meeting: "We had the hearing and received several comments. The public comment period will remain open until close of business January 7th, 2012. We welcome any additional comment until that date."

The Subgroup adjourned at 11:45 AM for lunch before the full group met at 1:00 PM.

Indiana Lake Management Work Group
Thursday, March 29, 2012
Training Room, Natural Resources Education Center (NREC)
Fort Harrison State Park, 5785 Glenn Road
Indianapolis, Indiana

Representative Richard Dodge, Chair

Indiana Lake Management Work Group members present:
Representative Dick Dodge, Chair
Representative Nancy Dembowski
Senator James Buck
Lee Bridges, IDEM
James Hebenstreit, IDNR, Division of Water
William Jones, IU SPEA Program, Emeritus
Robert Madden, Lake Lemon Conservancy District
Robert Meyers, Simonton Lake
Douglas Nusbaum, IDNR, LARE, Division of Fish and Wildlife
Major Michael Portteus, IDNR, Division of Law Enforcement
Dave Tyler, ILMS
Shannon Zezula, USDA-NRCS
Darci Zolman, Kosciusko SWCD

Other persons present:
Greg Biberdorf, IDNR, LARE, Division of Fish and Wildlife
Dean Farr, Geist Fall Creek Watershed Association
Matt Pearson, Office of the Indiana State Chemist
Sara Peel, ILMS
Glenn Pratt, Sierra Club
Chris Smith, Legislative Director, IDNR
Angela Sturdevant, The Nature Conservancy

The Chair convened meeting at 10:10 A.M. with introductions.

Old Business

1. December 15, 2011 meeting notes

Upon a motion by Dave Tyler to approve, seconded by Robert Myers and carried, the notes were approved.

New Business

2. Legislation update

The Chair reported that he had authored HB 1064 which would have extended the date for a final report for 2 more years, thus extending the Work Group's existence. It passed the house 96-0, but received no hearing in the Senate Natural Resources Committee.

Therefore the group will cease to be legislatively authorized, and the final report of the Lakes Management Work Group will be due by June 30, 2012.

One way the functions of this Work Group could be continued would be as an advisory committee to the Natural Resources Study Committee. Discussion on this followed.

The Chair also noted that the bill to limit Phosphorus in Lawn Fertilizer did not get a hearing.

Rep. Dodge and Rep. Dembowski are among at least 29 members of the general assembly who are retiring from the legislature.

The Chair asked Greg Biberdorf, Lake and River Enhancement (LARE) Program Manager of the Division of Fish and Wildlife, IDNR to update the group on LARE Status. Biberdorf noted the LARE staff is working on the process to commence $955,000 in new LARE grant awards for Invasive Aquatic Vegetation control, Sediment Removal Plans and Projects, and Logjam Removal projects. He noted that a long-term LARE staff vacancy should be filled soon.

3. Plans or strategy for producing final report for the work group by June 30, 2012

The Chair opened discussion on plans for producing a final report. A draft format for the final report was presented that included these items:

I. Preface
II. Executive Summary
III. Membership Roster
IV. Statutory Directive
V. Status on the Recommendations from December 1999 Report
VI. Results of Legislation Supported by the Work Group
VII. Final Recommendations
VIII. Appendix-Summaries of Lakes Management Work Group Meetings from 2000-2012 (Under separate cover)

Pete Hippensteel had e-mailed a list of recommendations ahead of time as he could not attend the meeting. He noted that these are common issues that keep reoccurring at the board meetings of the Steuben County Lakes Council and contacts he receives regularly by phone and email from citizens who live in the lake communities of Northeastern Indiana.
They were:

a) DNR and IDEM need to expand their efforts to prevent and reduce the impact of invasive species.

b) Increased efforts are needed to reduce the growth of Blue-Green Algae and their toxins in Indiana's lakes and reservoirs

c) A source of funding for the maintenance of dams that control the legal lake level of the natural lakes needs to be developed and a regular maintenance program implemented.

d) Critical watersheds need to be identified and funds provided to establish best management practices within these watersheds.

e) Aggressively expand the education of the riparian owner related to the importance of the condition of the shoreline to the health of the lake or river. This would also apply to other groups such as local plan commissions that have jurisdiction over shoreline zoning.

f) Continue efforts to reduce phosphorus in lawn fertilizer for both lawn use along the shoreline and in urban areas with runoff into lakes or reservoirs.

g) Dredging should be encouraged in selected critical areas, usually at the mouth of inflows where BMPs have been implemented upstream.

The Group discussed some of these items and decided to add another part to the Final Report to be labeled "Unresolved Issues".

After discussion by the group, it was the group's consensus that the final report should reflect the group as a whole, as opposed to being a listing of individual recommendations from members.

As part of the discussions the following points and issues were brought to the group: Sara Peel served as ad hoc recorder and recorded these items on flip charts from the group's discussion:

Recommendations:
-Continuation of ILMWG as subcommittee
-Boating endorsement for driver's license (include grandfather clause)
-Floodwater retention system water quality/quantity
-Work with Indiana Conservation Partnership to address watersheds where water quality activities are not currently occurring (lake-related)
-Bridge watershed lake owner/landowner/user gap
-Include dam recommendation from IDNR & P. Hippensteel

Include in Report:
List of organizations that have been interested over the years.
Attempt to include members as well.
Include all legislators that have been involved.

Senator Buck noted that abandoned railroad bridge trestles create some logjams. He questioned if it might be possible to utilize soils from creating holding ponds to create a park-like setting, utilizing bridge trestles. He asked for suggestions on how to facilitate such a removal. Chris Smith noted that the moving of a bridge has been done through some efforts of the Divisions of Historic Preservation and Outdoor Recreation.

Senator Buck noted the presence of a likely candidate on the Wabash River in Cass County.

Smith noted there is a program, but funding for projects like this are the big question.

William Jones noted the issue of dam repair and the expense involved. James Hebenstreit noted that DNR Water does still inspect low hazard dams.

Dave Tyler noted the need for a new section of the report titled "Unresolved Issues/Areas of Concern.

Biberdorf pledged to insert the rest of the recommendations, results and the new section and get the draft to LMWG members by May 1st. They will have time to review and finalize the report at June 14th meeting which will be the final meeting of the Indiana Lake Management Work Group.

4. Other business-Dean Farr noted that the Fall Creek Watershed Alliance appreciated the efforts of the Work Group and looks forward to the final report. The Chair expressed appreciation to the Greg Biberdorf and the LARE Staff for assistance in conducting the Work Group's business. Biberdorf expressed his appreciation to the Legislators, their Legislative Aides, and the entire Work Group for their service and dedication to this effort.

5. Plans for final meeting:
   10:00 A.M., Thursday, June 14, 2012, at the NREC, Fort Harrison State Park, Indianapolis

   The Chair adjourned the meeting at 12:35 P.M.

   Notes recorded by Greg Biberdorf

B. Lists of Lake Management Work Group Members from 2000-2012

Representative Tiny Adams
Representative Nancy Dembowski
Representative Dick Dodge
Representative Dennis Kruse
Representative Claire Leuck
Senator James Arnold
Senator James Buck
Senator Robert Meeks
Senator Marlin Stutzman
Senator Katie Wolf
Tony Bailey
Mike Baise
Lisa Barnese-Walz
Lee Bridges
Larry Coplen
Stephen Cox
Bart Culver
Brian Daggy
Jack Dold
Robert Eddleman
Major Felix Hensley
Charles Gill
John Goss
Bob Gross
James Hebenstreit
David Herbst
Pete Hippensteel
Tina Hissong
Ryan Hoff
Jill Hoffman
Orv Huffman
Kyle Hupfer
R. Jan Henley
William Jones
Richard Kemper
Jeffrey Krevda
Holly LaSalle
Kim Liebel
Robert Madden
Thomas McCornish
Paul McFeaters
Robert Meyers
Michael Portteus
Mark Mongin
Carol Newhouse
Douglas Nusbaum
Paul Oakes
Jed Pearson
Dale Pershing
Samuel Purvis
Donald Seal
Tim Smith
Bill Snyder
Deborah Snyder
Jim Stahl
Ralph Taylor
Dave Tyler
Dave White
Julia Wickard
Shannon Zezula
Darci Zolman

C. Organizations attending and supporting Lake Management Work Group efforts 2000-2012

Attendees at Lake Management Work Group Meetings in 2000 through 2012
This is a list of the various organizations and groups who have been represented at one (at least) of the LMWG meetings in 2000 through 2011. A detailed listing by meeting follows this listing:

Aquatic Vegetation Control contractors
Barbee Lakes
Bart's Watersports
Citizens' Energy Group
Clear Lake
Clean Lakes Program
Crooked Lake Association
Division of Hearings-Natural Resources Commission
Dredging contractors
Dredging Technology
Four Lakes Association
Geist Fall Creek Watershed Association
General Assembly-Senate and House
Green Industry Alliance
IDEM-Office of Water Quality
IDNR-Division of Fish and Wildlife
IDNR-Division of Water
IDNR-Executive Office
IDNR-Law Enforcement
Indiana Association of Soil and Water Conservation Districts
Indiana Farm Bureau, Inc.
Indiana Lakes Management Society
Indiana Marine Trade Association
Indiana Office of the State Chemist
Indiana State Department of Agriculture
Indiana University-School of Public and Environmental Affairs
Indiana Wildlife Federation
Individual Lake Associations
Kosciusko County Surveyors Office

LaGrange County Lakes Council
Lake Lemon Conservancy District
Lake Maxinkuckee Environmental Council
Lake of the Woods
Lake George
Marshall County Lakes and Waters Council
Purdue University-Agronomy Department, School of Agriculture
Ridinger Lake Property Owners Association
Sierra Club
Simonton Lake
Sportsman Roundtable
Strebig Construction
Steuben County Lakes Council
Sudlows Pier Shop
Tennant Industrial Dredging
The Nature Conservancy
Tippecanoe Watershed Foundation
USDA-Natural Resources Conservation Service
Wabash River Enhancement Corporation
Wawasee Area Conservancy Foundation

D. Lists of Attendees at Lake Management Work Group Meetings 2000-2012

September 14, 2000 Meeting:
Present

Rep. Claire Leuck, Chair
Rep. Dennis Kruse
Sen. Robert Meeks
Stephen Cox
Robert Eddleman, USDA, NRCS
Charles Gill
R. Jan Henley
David Herbst, Deputy Director, IDNR
Jeffrey Krevda, Dredging Technologies
Holly LaSalle, TELWF (Lake Tippecanoe)
Robert Madden, Lake Lemon Conservancy District
Dale Pershing
Donald Seal
Lt. Ralph Taylor, IDNR, Division of Law Enforcement
Gwen White, IDNR, Division of Soil Conservation, LARE

October 4, 2001 Meeting:
Present

Senator William Alexa
Senator Robert Meeks
Lee Bridges, IDEM, Office of Water Quality
Brian Daggy
Robert Eddleman, USDA, NRCS
David Herbst, Deputy Director, IDNR
Holly LaSalle, TELWF (Lake Tippecanoe)
Robert Madden, Lake Lemon Conservancy District
Thomas McComish
Jed Pearson, IDNR, Division of Fish and Wildlife
Dale Pershing
Lt. Ralph Taylor, IDNR, Division of Law Enforcement
Gwen White, IDNR, Division of Soil Conservation, LARE

November 15, 2001 Meeting:
Present

Representative Tiny Adams
Representative Dennis Kruse
Senator Robert Meeks
Lisa Barnese-Walz
C. Lee Bridges, IDEM, Office of Water Quality
David Herbst, Deputy Director, IDNR
Jeffrey Krevda, Dredging Technologies
Holly LaSalle, TELWF (Lake Tippecanoe)
Robert Madden, Lake Lemon Conservancy District
Thomas McComish
Jed Pearson, IDNR, Division of Fish and Wildlife
Gwen White, IDNR, Division of Soil Conservation, LARE

October 30, 2002 Meeting:
Present

Representative Dennis Kruse
Senator Robert Meeks
Lee Bridges, IDEM, Office of Water Quality
Bob Eddleman, USDA, NRCS
Jeff Krevda, Dredging Technologies
Bob Madden, Lake Lemon Conservancy District
Dan Mathis
Carol Newhouse, IDEM, IDEM Lake assessment program
Jed Pearson, IDNR, Division of Fish and Wildlife
Sam Purvis – IDNR Division of Law Enforcement, Boating Law Administrator
Jim Ray, IDNR, Division of Soil Conservation, LARE
Lynn Stevens
Don Seal
Ralph Taylor, IDNR, Division of Law Enforcement
Gwen White, IDNR, Division of Soil Conservation, LARE

June 21, 2004 Meeting:
Members Present

Senator Robert Meeks
Tony Cunningham
Bart Culver

Robert Eddleman, USDA, NRCS
Art Garceau (for Carol Newhouse)
John Goss, Executive Director, Indiana Wildlife Federation
James Hebenstreit, IDNR, Division of Water
Peter Hippensteel, Lake James
Jill Hoffmann
William Jones, IU SPEA
Richard Kemper, Kosciusko County Surveyor
Jeffrey Krevda, Dredging Technologies
Robert Madden, Lake Lemon Conservancy District
Ralph Taylor
Jed Pearson, IDNR, Division of Fish and Wildlife
Sam Purvis, IDNR, Division of Law Enforcement

Others Present

Paul Ehret, Deputy Director, IDNR
Matt Hopper
Ann Knotek, IDNR Legal
Jim Ray, IDNR, Division of Soil Conservation, LARE
Cecil Rich, IDNR, Division of Soil Conservation, LARE
3 residents of Lake Tippecanoe

August 5, 2004 Meeting:
Members Present

Tony Cunningham
Bart Culver
John Goss, Executive Director, Indiana Wildlife Federation
Jim Hebenstreit, Division of Water
Pete Hippensteel, Lake James
Jill Hoffmann
Richard Kemper, Kosciusko County Surveyor
Bob Madden, Lake Lemon Conservancy District
Jed Pearson, IDNR Fisheries
Ralph Taylor, IDNR Division of Law Enforcement
F/Sgt. Bill Snyder, DNR Conservation Officer, District 2

Others Present

Paul Ehret, Deputy Director, IDNR
Matt Hopper

Ann Knotek, IDNR, Staff Attorney
Janet Parsanko, IDNR, Staff Attorney
Jim Ray, IDNR, Division of Soil Conservation, LARE
Cecil Rich, IDNR, Division of Soil Conservation, LARE

September 4, 2004 Meeting:
Members Present

Bart Culver
John Goss, Executive Director, Indiana Wildlife Federation
Jim Hebenstreit, Division of Water
Pete Hippensteel, Lake James
Jill Hoffmann
Bill Jones, IU SPEA
Richard Kemper, Kosciusko County Surveyor
Jeff Krevda, Dredging Technologies
Bob Madden, Lake Lemon Conservancy District
Carol Newhouse, IDEM, Lake assessment program
Jed Pearson, IDNR Fisheries
Sam Purvis – IDNR Division of Law Enforcement, Boating Law Administrator
Ralph Taylor, IDNR Division of Law Enforcement
Julia Wickard

Others Present

Paul Ehret, Deputy Director, IDNR
Ann Knotek, DNR Staff Attorney
Steve Lucas, Director, Division of Hearing, Natural Resources Commission
Jim Ray, IDNR, Division of Soil Conservation, LARE
Cecil Rich, IDNR, Division of Soil Conservation, LARE
Stu Shipman, IDNR, Division of Fish and Wildlife
F/Sgt. Bill Snyder, IDNR, Division of Law Enforcement

November 10, 2004 Meeting:
Members Present

Bart Culver
Tony Cunningham
Jack Dold
Paul Ehret (for John Goss), Deputy Director, IDNR
Pete Hippensteel, Lake James

Tina Hissong, LMEC (Lake Maxinkuckee)
Jill Hoffmann
Bill Jones, IU SPEA
Richard Kemper, Kosciusko County Surveyor
Jeff Krevda, Dredging Technologies
Bob Madden, Lake Lemon Conservancy District
Carol Newhouse, IDEM, Lake assessment program
Jed Pearson, IDNR Division of Fish and Wildlife
Sam Purvis, IDNR, Division of Law Enforcement
Ralph Taylor, IDNR, Division of Law Enforcement
Dave Tyler, ILMS

Others Present
Ann Knotek, DNR Staff Attorney
Jim Ray, IDNR, Division of Soil Conservation, LARE
Mike Reeder
Cecil Rich, IDNR, Division of Soil Conservation, LARE

August 25, 2005 Meeting:
Members Present

Bart Culver
Jim Hebenstreit, IDNR, Division of Water
Tina Hissong, LMEC (Lake Maxinkuckee)
Pete Hippensteel, Lake James
Jill Hoffmann
Richard Kemper, Kosciusko County Surveyor
Jeff Krevda, Dredging Technologies
Bob Madden, Lake Lemon Conservancy District
Ron McAhron, Deputy Director, IDNR (for Kyle Hupfer)
Carol Newhouse, IDEM, Lake assessment program
Jed Pearson, IDNR, Division of Fish and Wildlife
Sam Purvis, IDNR, Division of Law Enforcement
Ralph Taylor, IDNR, Division of Law Enforcement
Dave Tyler, ILMS
Dave White

Others Present

Ann Knotek, DNR Staff Attorney
Steve Lucas, Director, Division of Hearings, Natural Resources Commission
Mike Lattimer

Holly LaSalle, TELWF (Lake Tippecanoe)
Jim Ray, IDNR, Division of Fish and Wildlife, LARE
Cecil Rich, IDNR, Division of Fish and Wildlife, LARE
Stu Shipman, IDNR, Division of Fish and Wildlife
1Sgt Bill Snyder, IDNR, Division of Law Enforcement
Dick Swennumson, LMEC (Lake Maxinkuckee)
Kay Young, WPOA (Lake Wawasee)

October 20, 2005 Meeting:
Members Present

Bart Culver
Jack Dold
Pete Hippensteel, Lake James
Jill Hoffmann
Bill Jones, IU SPEA
Richard Kemper, Kosciusko County Surveyor
Bob Madden, Lake Lemon Conservancy District
Carol Newhouse, IDEM, Lake assessment program
Jed Pearson, IDNR, Division of Fish and Wildlife
Ralph Taylor, IDNR, Division of Law Enforcement
Dave Tyler, ILMS

Others Present

Dave Heckamann, Sudlow's Pier Shop
Ann Knotek, IDNR Staff Attorney
Holly LaSalle, TELWF (Lake Tippecanoe)
Jim Ray, IDNR, Division of Fish and Wildlife, LARE
Cecil Rich, IDNR, Division of Fish and Wildlife, LARE
Stu Shipman, IDNR, Division of Fish and Wildlife
Dick Swennumson, LMEC (Lake Maxinkuckee)

December 15, 2005 Meeting:
Members Present

Tina Hissong, LMEC (Lake Maxinkuckee)
Jill Hoffmann
Bill Jones, IU SPEA
Richard Kemper, Kosciusko County Surveyor
Jeff Krevda, Dredging Technologies

Bob Madden, Lake Lemon Conservancy District
Carol Newhouse, IDEM, Lake assessment program
Dave Tyler, ILMS

Others Present

Greg Biberdorf, IDNR, Division of Fish and Wildlife, LARE
Burgess Brown
Larry Coplen (Kosciusko County)
Dave Heckaman (Lake Wawasee)
Ann Knotek, IDNR Staff Attorney
Holly LaSalle (Lake Tippecanoe)
Steve Lucas, Director, Division of Hearings, Natural Resources Commission
Ron McAhron, Deputy Director, IDNR
Jim Ray, IDNR, Division of Fish and Wildlife, LARE
Cecil Rich. IDNR, Division of Fish and Wildlife, LARE
Dan Richards (Kosciusko County)
Ted Schenberg (Lake Maxinkuckee)
Gwen White, IDNR, Division of Fish and Wildlife, LARE

February 16, 2006 Meeting:
Members Present

Lee Bridges, IDEM, Office of Water Quality
Bart Culver, Bart's Watersports
Jim Hebenstreit, IDNR, Division of Water
Peter Hippensteel, Steuben County Lakes Council
Tina Hissong, LMEC (Lake Maxinkuckee)
Bill Jones, Indiana University
Richard Kemper, Kosciusko County Surveyor
Jeff Krevda, Dredging Contractor
Bob Madden, Lake Lemon Conservancy District
Jed Pearson, IDNR, Division of Fish and Wildlife
Samuel Purvis, IDNR, Division of Law Enforcement
Jim Ray, IDNR, Division of Fish and Wildlife, LARE, Facilitator
F/Sgt. Bill Snyder, IDNR, Division of Law Enforcement
Ralph Taylor, Sportsmen's Roundtable
Dave Tyler, TELWF (Lake Tippecanoe)

Others Present
David L. Heckaman, Sudlow's Pier Shop
Ann Knotek, IDNR Staff Attorney

Holly LaSalle, TELWF (Lake Tippecanoe)
Steve Lucas, Director, Division of Hearings, Natural Resources Commission
Ron McAhron, Deputy Director, IDNR
Dan Richard, Kosciusko County Area Plan Commission Director
Dick Swennumson, LMEC (Lake Maxinkuckee)
Kay Young, WPOA (Lake Wawasee)
Gwen White, IDNR, Division of Fish and Wildlife, LARE, Recorder

---

April 6, 2006 Meeting
Members Present

Pete Hippensteel, Steuben County Lakes Council
Jill Hoffmann
Richard Kemper, Kosciusko County Surveyor
Jeff Krevda, Dredging Technologies
Bob Madden, Lake Lemon Conservancy District
Jed Pearson, IDNR Division of Fish and Wildlife
Ralph Taylor, Allen County
Dave Tyler, TELWF (Lake Tippecanoe)

Others Present

Dave Heckaman, Sudlow's Pier Shop
Ann Knotek, IDNR Staff Attorney
Holly LaSalle, TELWF (Lake Tippecanoe)
Ron McAhron, Deputy Director, IDNR
Jim Ray, IDNR, Division of Fish and Wildlife, LARE, Facilitator
Jim Sweeten
Gwen White, IDNR, Division of Fish and Wildlife, LARE, Recorder

---

November 13, 2006 Meeting:
Members Present

Senator Robert Meeks, Senate District 13, Chair
Representative Richard Dodge, House District 51
Mike Baise, Agriculture, Indiana Farm Bureau, Inc.
Larry Coplen, At-large member, Coplen Construction, Kosciusko County
Bob Gross, CD1, Cedar Lake
Jim Hebenstreit, IDNR, Division of Water
Pete Hippensteel, At-Large member, Steuben County Lakes Council

Bill Jones, Environment, IU-School of Public & Environmental Affairs
Jeff Krevda, CD5, Dredging contractor, Marion, Indiana
Mark Mongin, Indiana Lakes Management Society, President
Bob Madden, CD9, Lake Lemon Conservancy District
Paul McFeaters, CD8, Martin County
Carol Newhouse, IDEM, Lake assessment program
Paul Oakes, CD3, Ball Lake, Steuben County Lakes Council
Jed Pearson, IDNR, Division of Fish and Wildlife
Tim Smith, US Army Corps of Engineers, Louisville District
1Sgt Bill Snyder, IDNR, Division of Law Enforcement
Ralph Taylor, at large member, Retired Conservation Officer, Allen County
Gene Weaver, Soil & Water Conservation Districts, IASWCD President, Ohio County
Shannon Zezula, USDA, Natural Resources Conservation Service

Others Present

Lee Bridges, IDEM, Office of Water Quality
John Davis, Deputy Director, IDNR
Tom Flatt, IDNR, Division of Fish and Wildlife
Ann Knotek, IDNR, Staff Attorney
Ron McAhron, Deputy Director, IDNR
Sam Purvis, IDNR, Division of Law Enforcement
Jim Ray, IDNR, Division of Fish and Wildlife, LARE, Coordinator
Angela Sturdevant, IDNR, Division of Fish and Wildlife, LARE
Gwen White, IDNR, Division of Fish and Wildlife, LARE, Recorder and Facilitator

---

March 16, 2007 Meeting:
Members Present

Sen. Robert Meeks, Senate District 13, Chair
Rep. Dick Dodge, House District 51
Mike Baise, IN Farm Bureau
Lee Bridges, IDEM, Office of Water Quality
Larry Coplen, Coplen Construction
Jim Hebenstreit, IDNR, Division of Water
Pete Hippensteel, Lake James
Orv Huffman
Bill Jones, IU SPEA
Jeff Krevda, Dredging Technologies
Kim Linkel
Bob Madden, Lake Lemon Conservancy District
Mark Mongin (Indiana Lakes Management Society) – ILMS President

Paul Oakes, Ball Lake, Steuben County Lakes Council
Jed Pearson, IDNR Division of Fish and Wildlife
Tim Smith, US Army Corps of Engineers, Louisville District
Ralph Taylor
Shannon Zezula

Others Present

Tom Flatt, IDNR Division of Fish and Wildlife
Maj. Felix Hensley, IDNR, Division of Law Enforcement
Doug Keller, IDNR, Division of Fish and Wildlife
Holly LaSalle
Jim Ray, IDNR Division of Fish and Wildlife, LARE, Facilitator
Angela Sturdevant, IDNR Division of Fish and Wildlife, LARE
Gwen White, IDNR Division of Fish and Wildlife, LARE, Recorder

---

June 22, 2007 Meeting:
Members Present

Senator Robert Meeks, Senate District 13, Chair
Representative Dick Dodge, House District 51
Bill Snyder, IDNR, Division of Law Enforcement
Jim Hebenstreit, IDNR, Division of Water
Tim Smith, US Army Corps of Engineers, Louisville District
Jed Pearson, IDNR, Division of Fish and Wildlife
Larry Coplen, Coplen Construction
Lee Bridges, IDEM, Office of Water Quality
Mark Mongin, Indiana Lakes Management Society, President
Ralph Taylor, Retired IDNR Division of Law Enforcement
Bob Madden, Lake Lemon Conservancy District
Bill Jones, IU SPEA
Jeff Krevda, Dredging Technologies
Shannon Zezula, USDA, NRCS, State Resource Conservationist

Others Present

Greg Biberdorf, IDNR, Division of Fish and Wildlife, LARE
Valerie Carter
Maj. Felix Hensley, IDNR, Division of Law Enforcement
Ann Knotek, IDNR, Staff Attorney
Jim Ray, IDNR Division of Fish and Wildlife, LARE, Coordinator

Glenna Shelby
Angela Sturdevant, IDNR, Division of Fish and Wildlife, LARE
Dick Swennumson, LMEC (Lake Maxinkuckee)
Dave Tyler, ILMS
Gwen White, IDNR, Division of Fish and Wildlife, LARE, Recorder

---

October 3, 2007 Meeting:
Members Present

Representative Nancy Dembowski, House District 17, Chair
Senator Robert Meeks, Senate District 13
Representative Dick Dodge, House District 51
Mike Baise, Indiana Farm Bureau
Lee Bridges, IDEM, Office of Water Quality
Bob Gross, Pine Crest Marine
Jim Hebenstreit, IDNR, Division of Water
Pete Hippensteel, Lake James
Bill Jones, IU SPEA
Jeff Krevda, Dredging Technologies
Bob Madden, Lake Lemon Conservancy District
Mark Mongin, Indiana Lakes Management Society, President
Paul Oakes, Ball Lake, Steuben County Lakes Council
Jed Pearson, IDNR, Division of Fish and Wildlife
Tim Smith, US Army Corps of Engineers, Louisville District
Ralph Taylor, Retired IDNR, Division of Law Enforcement

Others Present

Kathy Clark, Lake Maxinkuckee
Lyn Crighton, Tippecanoe Watershed Foundation
Gerard Gausselin, Lake Wawasee
Dave Heckaman, Lake Wawasee
Doug Nusbaum, IDNR, Division of Fish and Wildlife, LARE
Jim Ray, IDNR, Division of Fish and Wildlife, LARE, Coordinator
Stu Shipman, IDNR, Division of Fish and Wildlife
Carol Skelton, Hoosier Environmental Council, Northwest Indiana
Joe Skelton, Lake of the Woods
1Sgt Bill Snyder, IDNR, Division of Law Enforcement
Angela Sturdevant, IDNR, Division of Fish and Wildlife, LARE
Dick Swennumson, Lake Maxinkuckee
Kent Tracey, IDNR, Division of Fish and Wildlife, LARE
Dave Tyler, Tippecanoe Watershed Foundation

Gwen White, IDNR, Division of Fish and Wildlife, LARE, Recorder

---

April 24, 2008 Meeting:
Members Present

Rep. Nancy Dembowski, House District 17, Chair
Rep. Richard Dodge, House District 51
Sen. Robert Meeks, Senate District 13
Lee Bridges, IDEM, Office of Water Quality
Larry Coplen, Coplen Construction
Jim Hebenstreit, IDNR, Division of Water
Pete Hippensteel, Lake James
Bill Jones, IU SPEA
Jeff Krevda, Dredging Technologies
Bob Madden, Lake Lemon Conservancy District
Paul Oakes, Ball Lake, Steuben County Lakes Council
Jed Pearson, IDNR, Division of Fish and Wildlife
Dave Tyler, Tippecanoe Watershed Foundation

Others Present

Kathy Clark, Lake Maxinkuckee
Lyn Crighton, Tippecanoe Watershed Foundation
John Davis, Deputy Director, IDNR
Lynn Dennis, The Nature Conservancy
Ryan Hoff, IDNR
Ellen Jacquart, The Nature Conservancy
Steve Lucas, Director of Hearings, Natural Resources Commission
Ron McAhron, Deputy Director, IDNR
Carol Meeks, LaGrange County
Mike Neyer, IDNR, Division of Water
Doug Nusbaum, IDNR, Division of Fish and Wildlife, LARE
Jim Ray, IDNR, Division of Fish and Wildlife, LARE, Coordinator
Angela Sturdevant, IDNR, Division of Fish and Wildlife, LARE
Gwen White, IDNR, Division of Fish and Wildlife, LARE, Recorder

---

July 10, 2008 Meeting:
Members Present

Representative Dick Dodge, House District 51, Acting Chair
Tony Bailey, USDA, NRCS

Larry Coplen, Kosciusko County
Jim Hebenstreit, IDNR, Division of Water
Maj. Felix Hensley, IDNR, Division of Law Enforcement
Ryan Hoff
Jeff Krevda, Dredging Technologies
Bob Madden, Lake Lemon Conservancy District
Jed Pearson, IDNR, Division of Fish and Wildlife
Jim Stahl, proxy for Lee Bridges
Ralph Taylor

Others present
John Baugh, Agricultural Service Purdue
Kathy Clark, Director LMEC
Mary Jo Fitzenrider, Clear Lake
Tom Flatt, IDNR, Division of Fish and Wildlife
Mark Hansbarger, realtor
Steve Lucas, NRC
Mark Mongin (Indiana Lakes Management Society) – ILMS President
Jim Ray, IDNR, Division of Fish and Wildlife, LARE
Jane Red, Lake Maxinkuckee Assoc
Bill Schmidt, Steuben Co Lakes Council
Katie Staffer, Green Industry
Angela Sturdevant, IDNR, Division of Fish and Wildlife, LARE
Dave Tyler, Lake Tippecanoe
Bob Waltz, Indiana State Chemist
Gwen White, IDNR, Division of Fish and Wildlife, LARE
Darcy Zolman, Kosciusko County SWCD

October 13, 2008 Meeting:
Members Present

Senator Robert Meeks, Senate District 13, Chair
Representative Dick Dodge, House District 51
Lee Bridges, IDEM, Office of Water Quality
Larry Coplen, Coplen Construction, Kosciusko County
Jim Hebenstreit, IDNR, Division of Water
Pete Hippensteel
Bob Meyers
Jed Pearson, IDNR, Division of Fish and Wildlife
Major Felix Hensley, IDNR, Division of Law Enforcement
Ralph Taylor
Dave Tyler

Others present

Randy Pippenger (R& S Boats)
Greg Bender (South Bay Pontoons)
Jan Barkley (Crooked Lake)
Mark Hansbarger
Jeremy Price, IDNR, Division of Fish and Wildlife
Jim Ray, IDNR, Division of Fish and Wildlife, LARE, Coordinator
Stu Shipman, IDNR, Division of Fish and Wildlife
Angela Sturdevant IDNR, Division of Fish and Wildlife, LARE
Gwen White, IDNR, Division of Fish and Wildlife, LARE, Recorder

---

November 25, 2008 Meeting:
Members Present

Rep. Nancy Dembowski, House District 17, Chair
Rep. Dick Dodge, House District 51
Larry Coplen, Coplen Construction
Bob Gross, Pine Crest Marine
Jim Hebenstreit, IDNR, Division of Water
Major Felix Hensley, IDNR, Division of Law Enforcement
Pete Hippensteel, Lake James
Ryan Hoff, CD7
Bill Jones, IU SPEA
Jeff Krevda, Dredging Technologies
Bob Madden, Lake Lemon Conservancy District
Bob Meeks, CD3

Bob Meyers, Simonton Lake
Jed Pearson, IDNR, Division of Fish and Wildlife
Jim Stahl, IDEM
Ralph Taylor, Retired, IDNR, Division of Law Enforcement
Dave Tyler, ILMS
Shannon Zezula, USDA, NRCS, State Resource Conservationist
Darci Zolman, Kosciusko County SWCD

Others Present

Lyn Crighton, Tippecanoe Watershed Foundation
Kathy Clark, Lake Maxinkuckee Environmental Council
Tom Flatt, IDNR, Division of Fish and Wildlife
Steve Lucas, Director of Hearings, Natural Resources Commission
Ron McAhron. Deputy Director, IDNR
Jim Ray, IDNR, Division of Fish and Wildlife, LARE, Coordinator
Chris Smith, DNR legislative liaison
Angela Sturdevant, IDNR, Division of Fish and Wildlife, LARE
Tim Tyler
Bob Waltz, Indiana State Chemist
Gwen White, IDNR, Division of Fish and Wildlife, LARE, Recorder

---

March 4, 2009 Meeting:
Members Present

Rep. Nancy Dembowski, House District 17, Chair
Rep. Richard Dodge, House District 51
Sen. Marlin Stutzman, Senate District 13
Lee Bridges, IDEM, Office of Water Quality
Bob Gross, Pine Crest Marine
James Hebenstreit, IDNR, Division of Water
Ryan Hoff, CD7
Jeff Krevda, Dredging Technologies
Bob Madden, Lake Lemon Conservancy District
Bob Meyers, Simonton Lake
Jed Pearson, IDNR, Division of Fish and Wildlife
Ralph Taylor
Dave Tyler, ILMS
Captain Dave Windsor (for Felix Hensley) IDNR Division of Law Enforcement

Others Present

Terry Archbold
Jeff Bell, Lake James Association
Mike McBride
Glenn Pratt, Sierra Club
Angela Sturdevant, IDNR, Division of Fish and Wildlife, LARE
Jim Ray, IDNR, Division of Fish and Wildlife, LARE
Gwen White, IDNR, Division of Fish and Wildlife, LARE, Recorder

---

May 4, 2009 Meeting:
Members Present

Sen. Marlin Stutzman, Senate District 13, Chair
Rep. Nancy Dembowski, House District 17
Rep. Richard Dodge, House District 51
Lee Bridges, Office of Water Quality
Larry Coplen, Coplen Construction
Jim Hebenstreit, IDNR Division of Water
Maj. Felix Hensley, IDNR Division of Law Enforcement
Pete Hippensteel, Lake James
Jeff Krevda, Dredging Technologies
Robert Madden, Lake Lemon Conservancy District
Robert Meeks, CD3
Bob Meyers, Simonton Lake
Jed Pearson, IDNR Fisheries
Ralph Taylor, Retired, IDNR Division of Law Enforcement
Dave Tyler, ILMS
Darci Zolman, Kosciusko County SWCD

Others Present

Terry Archbold, Indiana Marine Trade Association
Greg Biberdorf, IDNR, Division of Fish and Wildlife, LARE
Steve Lucas, Natural Resources Commission
Jim Ray, IDNR, Division of Fish and Wildlife, LARE, Coordinator
Chris Smith, DNR legislative liaison
Randy Strebig, Strebig Construction
Angela Sturdevant, IDNR, Division of Fish and Wildlife, LARE
Gwen White, IDNR, Division of Fish and Wildlife, LARE, Recorder

---

August 6, 2009 Meeting:
Members Present

Representative Richard Dodge, House District 51, Chair
Representative Nancy Dembowski, House District 17
Senator Marlin Stutzman, Senate District 13
Lee Bridges, IDEM, Office of Water Quality
Larry Coplen, Coplen Construction, Kosciusko County
Felix Hensley, DNR Division of Law Enforcement
Pete Hippensteel, Steuben County Lakes Council
Jeff Krevda, Dredging Technologies contractor
Bob Meeks, retired State Senator, CD3
Bob Myers, CD2
Jed Pearson, DNR Division of Fish & Wildlife
Dave Tyler, Lake Tippecanoe & ILMS

Others Present

Nathan Long, Aquatic Control and ILMS
Richard Miller, Sierra Club, retired professor, Butler University
Matt Pearson, Indiana State Chemist's Office
Chris Smith, DNR legislative liaison
Angela Sturdevant, IDNR, Division of Fish and Wildlife, LARE
Gwen White, IDNR, Division of Fish and Wildlife, LARE, Recorder

---

October 21, 2009 Meeting:
Members Present

Representative Nancy Dembowski, House District 17, Chair
Representative Richard Dodge, House District 51
Lee Bridges, IDEM
Larry Coplen, Coplen Construction, Kosciusko County
Jim Hebenstreit, IDNR, Division of Water
Felix Hensley, IDNR, Division of Law Enforcement
Pete Hippensteel, Steuben County Lakes Council
Bill Jones, IU SPEA
Jeff Krevda, Dredging Technologies
Bob Meeks, CD3
Bob Myers, CD2
Jed Pearson, IDNR, Division of Fish & Wildlife
Dave Tyler, Lake Tippecanoe & ILMS
Darci Zolman, Kosciusko Co SWCD

Others Present

Greg Biberdorf, IDNR Division of Fish and Wildlife, LARE, Coordinator
Lyn Crighton, Tippecanoe Watershed Foundation
Deb Fairhurst, ISDA, Division of Soil Conservation
Michael Hancock, Office of Indiana State Chemist
Steve Lucas, Director of Hearings, Natural Resources Commission
Richard Miller, Sierra Club, retired professor Butler University
Doug Nusbaum, IDNR Division of Fish and Wildlife, LARE
Sara Peel, Wabash River Enhancement Corporation & ILMS
Dave Stang, Lake George, Steuben Co
Angela Sturdevant, IDNR Division of Fish and Wildlife, LARE, Recorder
Kent Tracey, IDNR, Division of Fish and Wildlife, LARE

March 24, 2010 Meeting:
Members Present

Representative Nancy Dembowski, House District 17, Chair
Representative Richard Dodge, House District 51
Lee Bridges, IDEM, Office of Water Quality
Larry Coplen, Coplen Construction
Jim Hebenstreit, IDNR, Division of Water
Jeff Krevda, Dredging Technologies
Bob Madden, Lake Lemon Conservancy District
Robert Meeks, CD3
Bob Meyers, Simonton Lake
Jed Pearson, IDNR, Division of Fish and Wildlife
Dave Tyler, ILMS
Darci Zolman, Kosciusko SWCD

Others present:

Terry Archbold, Indiana Marine Trade Association, Angola
Sarah Archbold, Indiana Marine Trade Association, Angola
Jeff Bell, Lake James Association
Greg Biberdorf, IDNR, Division of Fish and Wildlife, LARE, Coordinator
Kathy Clark, Executive Director, Lake Maxinkuckee Environmental Council
Sandy Clark-Kolaks, IDNR, Division of Fish and Wildlife
Steven Donabauer, IDNR, Division of Fish and Wildlife, IDNR
John Goss, Executive Director, Indiana Wildlife Federation
Sara Peel, Vice-President, Indiana Lakes Management Society

Glenn Pratt, Sierra Club
Justin Schneider, Staff Attorney, Indiana Farm Bureau, Inc.
Chris Smith, Legislative Liaison, IDNR Executive Office
Nate Thomas, IDNR, Division of Fish and Wildlife

June 9, 2010 Meeting:
Members Present

Representative Nancy Dembowski, House District 17, Chair
Representative Richard Dodge, House District 51
Lee Bridges, IDEM, Office of Water Quality
Larry Coplen, Coplen Construction, Kosciusko County
Jim Hebenstreit, IDNR, Division of Water
Major Felix Hensley, IDNR, Division of Law Enforcement
Pete Hippensteel, Steuben County Lakes Council
Bill Jones, IU SPEA
Jeff Krevda, Dredging Technologies
Bob Madden, CD9
Robert Meeks, CD3
Bob Meyers, CD2
Doug Nusbaum, IDNR, Division of Fish & Wildlife
Dave Tyler, Lake Tippecanoe & ILMS

Others present:

Jeff Bell, Lake James Association
Greg Biberdorf, IDNR, Division of Fish and Wildlife, LARE
Sara Christensen, Indiana State Department of Agriculture, Division of Soil Conservation
Sandy Clark-Kolaks, IDNR, Division of Fish & Wildlife
John Goss, Indiana Wildlife Federation
Brian Jones, Lake James Association
Steve Lucas, Natural Resources Commission
Richard Miller, Sierra Club, retired professor Butler University
Matt Pearson, Office of the Indiana State Chemist
Sara Peel, Wabash River Enhancement Corporation & ILMS
Glenn Pratt, Sierra Club
Dave Scott, Office of the Indiana State Chemist
Justin Schneider, Indiana Farm Bureau
Chris Smith, IDNR, Legislative Liaison
Angela Sturdevant, IDNR, Division of Fish and Wildlife, LARE, recorder
Steve Tennant, Tennant Industrial Dredging

Nate Thomas, IDNR, Division of Fish and Wildlife
Kent Tracey, IDNR, Division of Fish and Wildlife, LARE

September 10, 2010 Meting:
Members Present:

Sen. James Buck, Senate District 21, Chair
Rep. Nancy Dembowski, House District 17
Rep. Richard Dodge, House District 51
Tony Bailey, USDA, Natural Resources Conservation Service (for Shannon Zezula)
Lee Bridges, IDEM, Office of Water Quality
Larry Coplen, Coplen Construction, Kosciusko County
Jim Hebenstreit, IDNR, Division of Water
Pete Hippensteel, Steuben County Lakes Council
Jeff Krevda, Dredging Technologies
Robert Madden, CD9
Robert Myers, CD2
Doug Nusbaum, IDNR, Division of Fish and Wildlife, LARE
Dave Tyler, Indiana Lakes Management Society
Darci Zolman, Kosciusko Soil and Water Conservation District

Others Present:

Greg Biberdorf, IDNR, Division of Fish and Wildlife, LARE, Coordinator
Cale Bigelow, Agronomy Department, Purdue University
Jennifer Boyle Warner, Indiana Association of Soil and Water Conservation Districts (IASWCD)
Sara Christensen, Indiana State Department of Agriculture, Division of Soil Conservation
Kathy Clark, Lake Maxinkuckee Environmental Council (LMEC)
Reggie Cornett, Green Industry Alliance
Nikki Hendrickson, Green Industry Alliance
Mike Leppert, Green Industry Alliance
Nate Long, Aquatic Control, ILMS
Sara Peel, Wabash River Enhancement Corporation (WREC), and ILMS
Glenn Pratt, Sierra Club
Justin Schneider, Indiana Farm Bureau
Dave Scott, Office of the Indiana State Chemist
Glenna Shelby, SDS Group
Chris Smith, Legislative Liaison, IDNR Executive Office
Angela Sturdevant, IDNR, Division of Fish and Wildlife, LARE
Steve Tennant, Tennant Industrial Dredging

November 18, 2010 Meeting:
Members Present:

Sen. James Buck, Senate District 21, Chair
Rep. Nancy Dembowski, House District 17
Rep. Richard Dodge, House District 51
Lee Bridges, IDEM, Office of Water Quality
Jim Hebenstreit, IDNR, Division of Water
Major Felix Hensley, IDNR, Division of Law Enforcement
Pete Hippensteel, Steuben County Lakes Council
Jeff Krevda, Dredging Technologies
Robert Madden, CD9
Robert Myers, CD2
Doug Nusbaum, IDNR, Division of Fish and Wildlife, LARE
Darci Zolman, Kosciusko Soil and Water Conservation District

Others Present:

Greg Biberdorf, IDNR, Division of Fish and Wildlife, LARE, Coordinator
Jennifer Boyle Warner, Indiana Association of Soil and Water Conservation Districts
Jerod Chew, Indiana State Department of Agriculture, Division of Soil Conservation
Kathy Clark, Lake Maxinkuckee Environmental Council
Reggie Cornett, Green Industry Alliance
Rod Edgell, IDNR, Division of Fish and Wildlife, LARE
Matt Pearson, Office of Indiana State Chemist
Sara Peel, Wabash River Enhancement Corporation and ILMS
Glenn Pratt, Sierra Club
Justin Schneider, Indiana Farm Bureau
Angela Sturdevant, IDNR, Division of Fish and Wildlife, LARE, Recorder
Marija Watson, Indiana Wildlife Federation

June 15, 2011 Meeting:
Members Present:

Sen. James Buck, Senate District 21, Chair
Rep. Nancy Dembowski, House District 17
Rep. Richard Dodge, House District 51
Lee Bridges, IDEM, Office of Water Quality
Larry Coplen, Coplen Construction, Kosciusko County
Jim Hebenstreit, IDNR, Division of Water
Pete Hippensteel, Steuben County Lakes Council
William Jones, Indiana University, Clean Lakes Program

Jeff Krevda, Dredging Technologies, CD5
Robert Meeks, CD3
Robert Myers, Simonton Lake, CD2
Doug Nusbaum, IDNR, Division of Fish and Wildlife, LARE

Others Present:

Tony Bailey, USDA, Natural Resources Conservation Service
Greg Biberdorf, IDNR, Division of Fish and Wildlife, LARE, Coordinator
Jennifer Boyle Warner, Indiana Association of Soil and Water Conservation Districts
Kathy Clark, Lake Maxinkuckee Environmental Council
Rod Edgell, IDNR, Division of Fish and Wildlife, LARE
Steve Lucas, Director, Division of Hearings, Natural Resources Commission
Ann McIver, Citizens Energy Group
Richard Miller, Conservation Chair, Hoosier Chapter, Sierra Club
Sarah Page, Environmental Coordinator, Citizens Energy Group
Matt Pearson, Office of Indiana State Chemist
Sara Peel, Wabash River Enhancement Corporation and President, Indiana Lakes Management Society
Glenn Pratt, Sierra Club
Leslie Raymer, Administrator, LaGrange County Lakes Council, Inc.
Barbara Simpson, Executive Director, Indiana Wildlife Federation
Chris Smith, Legislative Liaison, IDNR Executive Office
Steve Tennant, Tennant's Industrial Dredging
Dr. Robert Waltz, State Chemist, Office of Indiana State Chemist
Marija Watson, Indiana Wildlife Federation

Sept 15, 2011 Meeting:
Members Present:

Rep. Richard Dodge, House District 51, Chair
Sen. James Buck, Senate District 21
Sen. James Arnold, Senate District 8
Lee Bridges, IDEM, Office of Water Quality
Larry Coplen, Coplen Construction, Inc, Kosciusko County
Pete Hippensteel, Steuben County Lakes Council
William Jones, Indiana University, Clean Lakes Program
Jeff Krevda, Dredging Technologies, CD5
Robert Meeks, CD3
Robert Myers, Simonton Lake, CD2
Doug Nusbaum, IDNR, Division of Fish and Wildlife, LARE
Dave Tyler, ILMS
Shannon Zezula, USDA, Natural Resources Conservation Service

Others Present:
Jeff Bell, Lake James Association
Greg Biberdorf, LARE, IDNR Division of Fish and Wildlife
Diana Castell, Wawasee Area Conservancy Foundation
Kathy Clark, Lake Maxinkuckee Environmental Council
Reggie Cornett, Green Industry Alliance
Lyn Crighton, Tippecanoe Watershed Foundation
Tony Cunningham, Clarke Aquatics
Rod Edgell, LARE, IDNR Division of Fish and Wildlife
Chuck Farris, Crooked Lake Association
Natalie Fierek, Tippecanoe Watershed Foundation
Heather Harwood, Wawasee Area Conservancy Foundation
Bill Keith, Barbee Lakes
Mike Lattimer, Lake Tippecanoe Property Owner's Association, and Tippecanoe Watershed Foundation
Jane Loomis, Tippecanoe Watershed Foundation
Jodi Lozier, Ridinger Lake Property Owners Association
Steve Lucas, Director, Division of Hearings, Natural Resources Commission
Judy Matthewson, Four Lakes Association
Tom Matthewson, Four Lakes Association
Richard Miller, Conservation Chair, Hoosier Chapter, Sierra Club
Ron Miller, Barbee Lakes
Sarah Page, Environmental Coordinator, Citizens Energy Group
Jed Pearson, IDNR, Division of Fish and Wildlife
Matt Pearson, Office of Indiana State Chemist

Sara Peel, Wabash River Enhancement Corporation and President, Indiana Lakes Management Society
Glenn Pratt, Sierra Club
Leslie Raymer, Administrator, LaGrange County Lakes Council, Inc.
Neil Schwartz, Barbee Lakes
Joe Skelton, Marshall County Lakes & Waters Council
Barbara Simpson, Executive Director, Indiana Wildlife Federation
Chris Smith, Legislative Liaison, IDNR Executive Office,
Kathie Tennant, Tennant's Industrial Dredging
Steve Tennant, Tennant's Industrial Dredging
John Ulrich, Marshall County Lakes
Marija Watson, Indiana Wildlife Federation

December 15, 2011 Meeting:
Members Present:

Representative Dick Dodge, House District 51, Chair
Representative Nancy Dembowski, House District 17
Senator James Buck, Senate District 21
Tony Bailey, USDA, NRCS for Shannon Zezula
Lee Bridges, IDEM, Office of Water Quality
James Hebenstreit, IDNR, Division of Water
William Jones, IU SPEA Program, Emeritus
Robert Madden, Lake Lemon Conservancy District
Robert Meyers, Simonton Lake
Douglas Nusbaum, IDNR, Division of Fish and Wildlife, LARE
Dave Tyler, ILMS
Darci Zolman, Kosciusko SWCD

Other persons present:

Greg Biberdorf, IDNR, Division of Fish and Wildlife, LARE, Coordinator & Recorder
Lyn Crighton, Tippecanoe Watershed Foundation
Rod Edgell, IDNR, Division of Fish and Wildlife, LARE
Dean Farr, Geist Fall Creek Watershed Association
Nathan Long, Aquatic Control
Marija Watson, Indiana Wildlife Federation
Sara Peel, ILMS
Glenn Pratt, Sierra Club
Leslie Raymer, LaGrange County Lakes Council
Justin Schneider, Indiana Farm Bureau
Angela Sturdevant, The Nature Conservancy

Steve Tennant, Tennant Industrial Dredging
Richard Williams, Sierra Club

March 29, 2012 Meeting:
Members Present

Representative Dick Dodge, House District 51, Chair
Representative Nancy Dembowski, House District 17
Senator James Buck, Senate District 21
Lee Bridges, IDEM, Office of Water Quality
James Hebenstreit, IDNR, Division of Water
William Jones, IU SPEA Program, Emeritus
Robert Madden, Lake Lemon Conservancy District
Robert Meyers, Simonton Lake
Douglas Nusbaum, IDNR, Division of Fish and Wildlife, LARE
Major Michael Portteus, IDNR, Division of Law Enforcement
Dave Tyler, ILMS
Shannon Zezula, USDA-NRCS
Darci Zolman, Kosciusko SWCD

Others Present

Greg Biberdorf, IDNR, Division of Fish and Wildlife, LARE, Coordinator & Recorder
Dean Farr, Geist Fall Creek Watershed Association
Matt Pearson, Office of the Indiana State Chemist
Sara Peel, ILMS
Glenn Pratt, Sierra Club
Chris Smith, Legislative Director, IDNR Executive Office
Angela Sturdevant, The Nature Conservancy

June 14, 2012 Meeting:
Members Present

Others Present