

Members

Rep. David Cheatham, Chair  
Rep. Steven Stemler  
Rep. Joseph Pearson  
Rep. William Friend  
Rep. Jack Lutz  
Rep. Richard Dodge  
Sen. Greg Walker, Vice-Chair  
Sen. Randall Head  
Sen. Edward Charbonneau  
Sen. Robert Deig  
Sen. James Lewis  
Sen. Richard Young



# WATER RESOURCES STUDY COMMITTEE

Legislative Services Agency  
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Indianapolis, Indiana 46204-2789  
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Bernadette Bartlett, Fiscal Analyst for the  
Committee  
Irma Reinumagi, Attorney for the Committee

Authority: IC 2-5-25

## MEETING MINUTES<sup>1</sup>

Meeting Date: October 28, 2010  
Meeting Time: 1:00 p.m.  
Meeting Place: State House, 200 W. Washington St.,  
Room 404  
Meeting City: Indianapolis, Indiana  
Meeting Number: 3

**Members Present:** Rep. David Cheatham, Chair; Rep. William Friend; Rep. Jack Lutz;  
Rep. Richard Dodge; Sen. Greg Walker, Vice-Chair; Sen. Edward  
Charbonneau; Sen. James Lewis; Sen. Richard Young.

**Members Absent:** Rep. Steven Stemler; Rep. Joseph Pearson; Sen. Randall Head; Sen.  
Robert Deig.

**Call to Order.** Rep. Cheatham, Chair of the Committee, called the meeting to order at 1:10 p.m. Rep. Cheatham asked for discussion of the issues covered in the draft final report. (See Attachment A.)

**Removal of Sand and Gravel from Creek Beds.** In response to a question from the Committee, Ron McAhrn, Department of Natural Resources (DNR), explained that because of testimony heard in the Committee, DNR plans to change its existing rule, in which the amount of gravel that can be removed is based on parcels of land, to one in which the amount that can be removed is based on the linear feet of stream owned as a starting point. By voice vote, the Committee acknowledged that DNR is working on a rule change in response to concerns raised in the Committee.

**Dedicated Funding for Conservation.** The Chair explained that one option would be to set up a task force made up of various conservation organizations to examine funding mechanisms and to carry out an assessment of conservation needs in Indiana. Jennifer Boyle, Indiana Association of Soil and Water Conservation Districts, explained that the assessment of needs is

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<sup>1</sup> These minutes, exhibits, and other materials referenced in the minutes can be viewed electronically at <http://www.in.gov/legislative>. Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for hard copies.

Water Resources Study Committee  
**DRAFT**  
Membership Roster

Representatives

David Cheatham, Chair  
North Vernon

Richard Dodge  
Pleasant Lake

William Friend  
Macy

Jack Lutz  
Anderson

Joe Pearson  
Hartford City

Steven Stemler  
Jeffersonville

Senators

Ed Charbonneau  
Valparaiso

Robert Deig  
Mt. Vernon

Randall Head  
Logansport

James Lewis  
Charlestown

Greg Walker  
Columbus

Richard Young  
Milltown

Legislative Services Agency Staff

Bernadette Bartlett, Fiscal Analyst  
Irma Reinumagi, Staff Attorney

November 2010

**FINAL REPORT**  
**DRAFT**  
**Water Resources Study Committee**

## **I. STATUTORY DIRECTIVE**

The Indiana General Assembly enacted legislation (IC 2-5-25-5) directing the Water Resources Study Committee (WRSC) to study and may make recommendations concerning all matters relating to the surface and ground water resources of Indiana, including the following:

- (1) The usage, quality, and quantity of water resources.
- (2) Issues concerning diffused surface water, the common enemy doctrine of law, and runoff.

IC 14-25-14-2 requires the Water Shortage Task Force (WSTF) to report each year to the WRSC.

The Legislative Council did not assign topics to the 2010 Water Resources Study Committee.

## **II. INTRODUCTION AND REASONS FOR STUDY**

The Committee met to receive the Department of Natural Resources' (DNR) annual progress report on the work of the WSTF, and to study other issues concerning the usage of water resources in Indiana.

## **III. SUMMARY OF WORK PROGRAM**

The WRSC met three times during the 2010 interim. At the first meeting, held on August 26, 2010, the WRSC discussed issues pertaining to the removal of Sand and Gravel from Creek Beds; dedicated Funding for Conservation; and Conservancy District Expenses. At the second meeting, held on September 30, 2010, the WRSC discussed drainage issue and the Common Enemy Doctrine and heard testimony pertaining to the projected lack of water resources. At the third and final meeting, the WRSC considered recommendations and voted on the final report.

## **IV. SUMMARY OF TESTIMONY**

**Removal of Sand and Gravel from Creek Beds.** Patty Geyman, Jefferson County, believed that the rules governing gravel and debris removal are unduly restrictive on landowners who own creekside property. Representatives of the Department of Natural Resources (DNR) provided an overview of the history and development of the law that governs removal of sand and gravel from a floodway. DNR rules limit the amount of creek rock that can be removed from the floodway because the removal of material from the creek could flood other people's property, result in habitat loss, impact fisheries, destabilize the stream and bank, and result in downstream flooding. Removal of creek

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rock could change the course of the creek and increase the flow of the creek. Paul Ogden, an attorney, and Paul Buchanan, citizen, who has been hauling gravel from creek beds for commercial purposes since the late 1950s, indicated that obstructions could increase flooding in surrounding areas. Bob Kraft, Indiana Farm Bureau, stated that gravel and debris removal from streams is an ongoing concern for Farm Bureau members.

**Dedicated Funding for Conservation.** Jennifer Boyle, Executive Director of the Indiana Association of Soil and Water Conservation Districts, provided information about surrounding states' natural resources conservation funding. A diverse group of Indiana conservation organizations encourages the Legislature to study funding mechanisms for conservation purposes.

Ray Chattin, Knox County Soil and Water Conservation District and Master Farm Conservationist, explained that for the past 60 years Indiana has witnessed soil loss in excess of 100 million tons. In addition, the use of commercial fertilizer has been essentially unrestricted. Recent occurrences of phosphate pollution and blue-green algae in Geist Reservoir and the potential danger that toxins associated with these organisms can pose are alarming. In Indiana, more money will have been spent on a football stadium than on the Clean Water Indiana Program for the entire century if nothing changes. He supports the creation of a sustainable natural resource funding advisory committee.

Glenn Pratt, Sierra Club, stated that the Sierra Club shares the goals of the group seeking dedicated funding.

Lynn Dennis, The Nature Conservancy, proposed that Indiana create a new Sustainable Resources Funding Advisory Committee similar to what Iowa did in 2006. The advisory committee would be charged with the following responsibilities:

- Collect data regarding natural resource protection programs, funding, and funding mechanisms in other states.
- Collect programmatic and funding data on current natural resource protection programs in Indiana.
- Explore options for creating a conservation funding mechanism.
- Determine the natural resource needs in Indiana and what would be accomplished if the conservation funding initiative were implemented.
- Complete an analysis of Indiana citizens' willingness to pay for such an initiative.

**Conservancy District Expenses.** Alan Hux, Association of Indiana Conservancy Districts, explained that IC 14-33-2-20 requires conservancy districts to reimburse DNR for certain fees. DNR has not sought reimbursement in the past. The General Assembly considered repealing the statute during 2010, but did not. After the session, DNR put forth a non-rule document that sets forth how the fees will be determined. Dick

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Thompson stated that a newly created conservancy district should not be hampered by additional fees. Mr. McAhron stated that when the DNR discovered that it had not been collecting the fees as required, the DNR developed the non-rule document. Mr. McAhron stated that DNR may be able to request the Natural Resources Commission to stay the implementation of the document pending the next legislative session, during which the section may be amended.

**Drainage Issues.** Bob and Sarah Clapp, citizens, explained the difficulties they have had trying to get help from various governmental agencies at the state and local level with a flooding problem caused by a neighbor. Because their home is within two miles of the city, they were told by county officials to take the matter to the city officials. The city declined to intervene. The Clapps seek a solution where clear authority is given to an official or governmental agency to help in these matters.

Representative Milo Smith stated that he has had multiple constituents who have faced similar situations as the Clapps. Problems can arise from plans that have been approved by a governmental authority. He would like to the county surveyor be given the authority to devise an appropriate solution.

Rhonda Cook and Jodi Wood, Association of Cities and Towns, had concerns with creating a solution that creates more government and more expense to the taxpayers if the government is given the role of settling storm water nuisance issues. The state's cities and towns cannot be guarantors that building developments will not cause unforeseen drainage problems.

Rick Wajda, Indiana Home Builders Association, stated that Rep. Smith's original bill (HB 12012010) would have abrogated the common law rule of the Common Enemy Doctrine. Mr. Kraft, IFB, stated that drainage issues are a long-standing problem, and there are no easy solutions. Mark Thornburg, IFB, clarified that there was a distinction in the Common Enemy Doctrine between diffused surface water and channelized water.

**Water Resources and Demand.** Art K. Umble, Ph.D., P.E., BCEE, Director of Process Engineering, Greeley and Hansen LLC, Indianapolis, detailed the quality and quantity of the freshwater supply and the gaps in global demand. In the next twenty years the world's demand for water will double. The demand in North America will increase 43% over the next two decades. Dr. Umble talked about the embedded cost of water in the cost of the production of goods, services, and agricultural products. The concept of "virtual water" refers to the cost (or use) of local water in the preparation of goods for export. Approximately 12,000 gallons of water are needed to produce one pound of beef. Water will have more value in the future. The global water crises is now and is growing. Business as usual water management is not sustainable.

Glen Pratt, Sierra Club, stated the Sierra Club has worked with groups to develop

drought plans. Dr. Umple's presentation is more evidence of the pressing need to look into the water resource issue.

**Water Resources Task Force.** Mr. McAhron, DNR, presented a status report of the Water Resources Task Force. The Task Force met for the first time on August 27, 2010. The report contains the names of the members and minutes from their first meeting.

#### **V. COMMITTEE FINDINGS AND RECOMMENDATIONS**

The Committee made the following recommendations:

**[TO BE COMPLETED]**

WITNESS LIST

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Jennifer Boyte, Executive Director, Indiana Association of Soil and Water Conservation

Districts

Paul Buchanan, Citizen

Ray Chattin, Knox County Soil and Water Conservation District and Master Farm  
Conservationist

Sarah and Bob Clapp, Citizens

Rhonda Cook, Association of Cities and Towns

Lynn Dennis, The Nature Conservancy

Patty Geyman, Citizen, Jefferson County

Alan Hux, Association of Indiana Conservancy Districts

Bob Kraft, IFB

Ron McAhron, Deputy Director, Indiana Department of Natural Resources

Paul Ogden, Attorney

Glenn Pratt, Sierra Club

The Honorable Milo Smith, State Representative

Dick Thompson, Citizen

Mark Thornburg, IFB

Art K. Umble, Ph.D., P.E., BCEE, Director of Process Engineering, Greeley and Hansen  
LLC, Indianapolis

Rick Wajda, Indiana Home Builders Association

Jodi Wood, Association of Cities and Towns



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**PRELIMINARY DRAFT**  
**No. 3475**

**PREPARED BY**  
**LEGISLATIVE SERVICES AGENCY**  
**2011 GENERAL ASSEMBLY**

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DIGEST

**Citations Affected:** IC 34-13-3-3; 20IC 36-9-27.4.

**Synopsis:** Storm water management. Provides that a governmental entity that issues a building permit is not liable for damage caused by water runoff from the structure for which the building permit was issued. Grants authority to the drainage board to receive complaints concerning, investigate, and order the removal of certain storm water related nuisances caused by artificial conveyances directed at or near the property line. Provides that, regarding removal of storm water nuisances and right of entry, the county drainage board and the county surveyor have similar authority as with respect to obstruction of mutual drains and natural surface watercourses. Prohibits construction of the law as authorizing a person to engage in activity requiring a permit from a state or federal agency before the person obtains the permit.

**Effective:** July 1, 2011.



A BILL FOR AN ACT to amend the Indiana Code concerning local government.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 34-13-3-3, AS AMENDED BY P.L.86-2010,  
2 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2011]: Sec. 3. A governmental entity or an employee acting  
4 within the scope of the employee's employment is not liable if a loss  
5 results from the following:

6 (1) The natural condition of unimproved property.

7 (2) The condition of a reservoir, dam, canal, conduit, drain, or  
8 similar structure when used by a person for a purpose that is not  
9 foreseeable.

10 (3) The temporary condition of a public thoroughfare or extreme  
11 sport area that results from weather.

12 (4) The condition of an unpaved road, trail, or footpath, the  
13 purpose of which is to provide access to a recreation or scenic  
14 area.

15 (5) The design, construction, control, operation, or normal  
16 condition of an extreme sport area, if all entrances to the extreme  
17 sport area are marked with:

18 (A) a set of rules governing the use of the extreme sport area;

19 (B) a warning concerning the hazards and dangers associated  
20 with the use of the extreme sport area; and

21 (C) a statement that the extreme sport area may be used only  
22 by persons operating extreme sport equipment.

23 This subdivision shall not be construed to relieve a governmental  
24 entity from liability for the continuing duty to maintain extreme  
25 sports areas in a reasonably safe condition.

26 (6) The initiation of a judicial or an administrative proceeding.

27 (7) The performance of a discretionary function; however, the  
28 provision of medical or optical care as provided in IC 34-6-2-38  
29 shall be considered as a ministerial act.

30 (8) The adoption and enforcement of or failure to adopt or enforce  
31 a law (including rules and regulations), unless the act of



- 1 enforcement constitutes false arrest or false imprisonment.
- 2 (9) An act or omission performed in good faith and without  
3 malice under the apparent authority of a statute which is invalid  
4 if the employee would not have been liable had the statute been  
5 valid.
- 6 (10) The act or omission of anyone other than the governmental  
7 entity or the governmental entity's employee.
- 8 (11) The issuance, denial, suspension, or revocation of, or failure  
9 or refusal to issue, deny, suspend, or revoke any permit, license,  
10 certificate, approval, order, or similar authorization, where the  
11 authority is discretionary under the law.
- 12 (12) Failure to make an inspection, or making an inadequate or  
13 negligent inspection, of any property, other than the property of  
14 a governmental entity, to determine whether the property  
15 complied with or violates any law or contains a hazard to health  
16 or safety.
- 17 (13) Entry upon any property where the entry is expressly or  
18 impliedly authorized by law.
- 19 (14) Misrepresentation if unintentional.
- 20 (15) Theft by another person of money in the employee's official  
21 custody, unless the loss was sustained because of the employee's  
22 own negligent or wrongful act or omission.
- 23 (16) Injury to the property of a person under the jurisdiction and  
24 control of the department of correction if the person has not  
25 exhausted the administrative remedies and procedures provided  
26 by section 7 of this chapter.
- 27 (17) Injury to the person or property of a person under supervision  
28 of a governmental entity and who is:
- 29 (A) on probation; or  
30 (B) assigned to an alcohol and drug services program under  
31 IC 12-23, a minimum security release program under  
32 IC 11-10-8, a pretrial conditional release program under  
33 IC 35-33-8, or a community corrections program under  
34 IC 11-12.
- 35 (18) Design of a highway (as defined in IC 9-13-2-73), toll road  
36 project (as defined in IC 8-15-2-4(4)), tollway (as defined in  
37 IC 8-15-3-7), or project (as defined in IC 8-15.7-2-14) if the  
38 claimed loss occurs at least twenty (20) years after the public  
39 highway, toll road project, tollway, or project was designed or  
40 substantially redesigned; except that this subdivision shall not be  
41 construed to relieve a responsible governmental entity from the  
42 continuing duty to provide and maintain public highways in a  
43 reasonably safe condition.
- 44 (19) Development, adoption, implementation, operation,  
45 maintenance, or use of an enhanced emergency communication  
46 system.



1 (20) Injury to a student or a student's property by an employee of  
 2 a school corporation if the employee is acting reasonably under a  
 3 discipline policy adopted under IC 20-33-8-12.

4 (21) An act or omission performed in good faith under the  
 5 apparent authority of a court order described in IC 35-46-1-15.1  
 6 that is invalid, including an arrest or imprisonment related to the  
 7 enforcement of the court order, if the governmental entity or  
 8 employee would not have been liable had the court order been  
 9 valid.

10 (22) An act taken to investigate or remediate hazardous  
 11 substances, petroleum, or other pollutants associated with a  
 12 brownfield (as defined in IC 13-11-2-19.3) unless:

13 (A) the loss is a result of reckless conduct; or

14 (B) the governmental entity was responsible for the initial  
 15 placement of the hazardous substances, petroleum, or other  
 16 pollutants on the brownfield.

17 (23) The operation of an off-road vehicle (as defined in  
 18 IC 14-8-2-185) by a nongovernmental employee, or by a  
 19 governmental employee not acting within the scope of the  
 20 employment of the employee, on a public highway in a county  
 21 road system outside the corporate limits of a city or town, unless  
 22 the loss is the result of an act or omission amounting to:

23 (A) gross negligence;

24 (B) willful or wanton misconduct; or

25 (C) intentional misconduct.

26 This subdivision shall not be construed to relieve a governmental  
 27 entity from liability for the continuing duty to maintain highways  
 28 in a reasonably safe condition for the operation of motor vehicles  
 29 licensed by the bureau of motor vehicles for operation on public  
 30 highways.

31 **(24) Damage to a person's property caused by runoff (as**  
 32 **defined in IC 36-9-27.4-7.3) from property of another person**  
 33 **who:**

34 **(A) has constructed or modified a structure for which a**  
 35 **building permit was issued by a governmental entity; and**

36 **(B) is not the governmental entity that issued the building**  
 37 **permit.**

38 SECTION 2. IC 36-9-27.4-0.3 IS ADDED TO THE INDIANA  
 39 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 40 [EFFECTIVE JULY 1, 2011]: **Sec. 0.3. (a) As used in this chapter,**  
 41 **"artificial conveyance" means a manmade structure in or into**  
 42 **which storm water runoff or floodwaters flow, either continuously**  
 43 **or intermittently.**

44 **(b) The term includes piping, ditches, swales, curbs, gutters,**  
 45 **catch basins, channels, storm drains, downspouts, roadways, and**  
 46 **any other structure using a similar method.**



1 SECTION 3. IC 36-9-27.4-0.5 IS ADDED TO THE INDIANA  
 2 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 3 [EFFECTIVE JULY 1, 2011]: Sec. 0.5. As used in this chapter,  
 4 "channel" means a part of a natural watercourse or artificial  
 5 conveyance that:

- 6 (1) periodically or continuously contains moving water; and
- 7 (2) has a defined bed and banks that serve to confine the  
 8 water.

9 SECTION 4. IC 36-9-27.4-7.3 IS ADDED TO THE INDIANA  
 10 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 11 [EFFECTIVE JULY 1, 2011]: Sec. 7.3. As used in this chapter,  
 12 "runoff" means the part of precipitation that flows from a  
 13 drainage area on the land surface, in open channels, or in storm  
 14 water conveyance systems.

15 SECTION 5. IC 36-9-27.4-7.5 IS ADDED TO THE INDIANA  
 16 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 17 [EFFECTIVE JULY 1, 2011]: Sec. 7.5. As used in this chapter,  
 18 "storm water conveyance system" means all methods, natural or  
 19 manmade, used for conducting storm water to, through, or from a  
 20 drainage area to any of the following:

- 21 (1) Conduits and appurtenant features.
- 22 (2) Canals.
- 23 (3) Channels.
- 24 (4) Ditches.
- 25 (5) Storage facilities.
- 26 (6) Swales.
- 27 (7) Streams.
- 28 (8) Culverts.
- 29 (9) Roadways.
- 30 (10) Pumping stations.

31 SECTION 6. IC 36-9-27.4-7.6 IS ADDED TO THE INDIANA  
 32 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 33 [EFFECTIVE JULY 1, 2011]: Sec. 7.6. As used in this chapter,  
 34 "storm water nuisance" means a condition:

- 35 (1) that arises out of or is related to storm water that is  
 36 transferred through an artificial conveyance that:
  - 37 (A) is directed to the property of another person;
  - 38 (B) discharges storm water at or near the property line of  
 39 another person; and
  - 40 (C) accelerates or increases the flow of storm water onto  
 41 another person's property; and
- 42 (2) to which one (1) or both of the following apply:
  - 43 (A) The condition is injurious to health.
  - 44 (B) The condition substantially obstructs the free use of  
 45 property.

46 SECTION 7. IC 36-9-27.4-7.7 IS ADDED TO THE INDIANA



1 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 2 [EFFECTIVE JULY 1, 2011]: Sec. 7.7. As used in this chapter,  
 3 "swale" means an elongated depression in the land surface that:

- 4 (1) is at least seasonally wet;
- 5 (2) is usually vegetated;
- 6 (3) is a conduit for storm water flow; and
- 7 (4) conducts storm water into primary drainage channels.

8 SECTION 8. IC 36-9-27.4-9 IS AMENDED TO READ AS  
 9 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 9. If:

- 10 (1) a person who owns a tract of land seeks the removal of:
  - 11 (A) a storm water nuisance; or
  - 12 (B) an obstruction from a drain or natural surface watercourse
  - 13 located outside the person's tract in order to promote better
  - 14 drainage of the person's tract; and
- 15 (2) the owner of the land on which the storm water nuisance or
- 16 obstruction is located, upon request, does not remove the storm
- 17 water nuisance or obstruction;

18 the person seeking the removal of the storm water nuisance or  
 19 obstruction may file a petition under this chapter asking the drainage  
 20 board in the county in which the storm water nuisance or obstruction  
 21 is located to remove, or authorize or order the removal of, the storm  
 22 water nuisance or obstruction under this chapter.

23 SECTION 9. IC 36-9-27.4-10 IS AMENDED TO READ AS  
 24 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 10. A petition filed by  
 25 a person described in section 9(1) of this chapter must include the  
 26 following:

- 27 (1) A general description of the tract of land owned by the
- 28 petitioner.
- 29 (2) A general explanation of the need for the removal of the
- 30 storm water nuisance or obstruction.
- 31 (3) A general description of the site of the storm water nuisance
- 32 or obstruction.

33 SECTION 10. IC 36-9-27.4-12 IS AMENDED TO READ AS  
 34 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 12. (a) If a petition filed  
 35 under this chapter alleges a storm water nuisance or the obstruction  
 36 of:

- 37 (1) a drain; or
- 38 (2) a natural surface watercourse;

39 the county surveyor of the county in which the storm water nuisance  
 40 or obstruction is alleged to exist shall promptly investigate whether the  
 41 storm water nuisance or obstruction exists.

42 (b) If the county surveyor, upon investigation, finds an existing:

- 43 (A) storm water nuisance; or
- 44 (B) obstruction in a drain or natural surface watercourse;

45 in the location alleged in the petition, the county surveyor shall report  
 46 the existence of the storm water nuisance or obstruction to the



1 drainage board.

2 (c) Upon receiving a report from the county surveyor under  
3 subsection (b), the drainage board shall:

- 4 (1) set a date for a hearing on the petition; and  
5 (2) serve notice of the hearing on each owner of the land on which  
6 the **storm water nuisance or** obstruction exists who can be  
7 identified in the records of the county. ~~recorder.~~

8 (d) The hearing must be held at least thirty (30) days but less than  
9 ninety (90) days after the date of the filing of the petition.

10 (e) Notice of a hearing must be mailed to each respondent with  
11 return receipt requested.

12 SECTION 11. IC 36-9-27.4-14 IS AMENDED TO READ AS  
13 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 14. (a) If, after a  
14 hearing held under this chapter **with respect to an obstruction**, the  
15 drainage board finds that:

- 16 (1) the obstruction of a drain or a natural surface watercourse  
17 that is alleged in the petition exists; and  
18 (2) the removal of the obstruction will:  
19 (A) promote better drainage of the petitioner's land; and  
20 (B) not cause unreasonable damage to the land of the  
21 respondents;

22 the drainage board shall find for the petitioner.

23 (b) If, after a hearing held under this chapter, the drainage board is  
24 unable to make the findings described in subsection (a), the drainage  
25 board shall deny the petition.

26 SECTION 12. IC 36-9-27.4-14.5 IS ADDED TO THE INDIANA  
27 CODE AS A NEW SECTION TO READ AS FOLLOWS  
28 [EFFECTIVE JULY 1, 2011]: Sec. 14.5. (a) **If, after a hearing held**  
29 **under this chapter with respect to a storm water nuisance**, the  
30 drainage board finds that:

- 31 (1) **the storm water nuisance that is alleged in the petition**  
32 **exists; and**  
33 (2) **the removal of the storm water nuisance will:**  
34 (A) **remove the negative effect of the storm water nuisance**  
35 **from the petitioner's land; and**  
36 (B) **not cause unreasonable damage to the land of the**  
37 **respondents;**

38 the drainage board shall find for the petitioner.

39 (b) **If, after a hearing held under this chapter, the drainage**  
40 **board is unable to make the findings described in subsection (a),**  
41 **the drainage board shall deny the petition.**

42 SECTION 13. IC 36-9-27.4-15 IS AMENDED TO READ AS  
43 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 15. If the drainage  
44 board finds for the petitioner under section 14(a) or 14.5(a) of this  
45 chapter, the board shall determine, based upon a preponderance of the  
46 evidence, whether the:



1           **(1) storm water nuisance; or**

2           **(2) obstruction of the drain or natural surface watercourse;**  
3 was created intentionally by any of the respondents.

4           SECTION 14. IC 36-9-27.4-16 IS AMENDED TO READ AS  
5 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 16. (a) If the drainage  
6 board finds:

7           (1) for the petitioner under section 14(a) **or 14.5(a)** of this  
8 chapter; and

9           (2) under section 15 of this chapter that the:

10           **(A) storm water nuisance; or**

11           **(B) obstruction of the drain or natural surface watercourse;**  
12 was created intentionally by at least one (1) of the respondents;  
13 the drainage board shall enter an order directing the respondents to  
14 remove the **storm water nuisance or** obstruction at their own expense,  
15 or directing the county surveyor to remove the **storm water nuisance**  
16 **or** obstruction at the expense of the respondents.

17           (b) A respondent against whom an order is entered under subsection  
18 (a) is subject to an action under section 22 of this chapter if the  
19 respondent fails to pay the amount for which the respondent is  
20 responsible under the order.

21           SECTION 15. IC 36-9-27.4-17 IS AMENDED TO READ AS  
22 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 17. If the drainage  
23 board:

24           (1) finds for the petitioner under section 14(a) **or 14.5(a)** of this  
25 chapter; and

26           (2) does not find under section 15 of this chapter that the:

27           **(A) storm water nuisance; or**

28           **(B) obstruction of the drain or a natural surface watercourse;**  
29 was created intentionally by any of the respondents;  
30 the drainage board shall enter an order under section 18 or 19 of this  
31 chapter concerning the removal of the **storm water nuisance or**  
32 obstruction.

33           SECTION 16. IC 36-9-27.4-19 IS AMENDED TO READ AS  
34 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 19. (a) If:

35           (1) a petition filed under this chapter concerns a drain **or the**  
36 **removal of a storm water nuisance;** and

37           (2) the drainage board:

38           **(A) finds for the petitioner under section 14(a) or 14.5(a)** of  
39 this chapter; but

40           **(B) does not find under section 15 of this chapter that the**  
41 **storm water nuisance or** the obstruction of the drain was  
42 created intentionally by any of the respondents;

43 the drainage board shall enter an order under subsection (b).

44           (b) Upon a determination made under subsection (a), the drainage  
45 board shall enter an order:

46           (1) authorizing the petitioner to remove the **storm water**



- 1           **nuisance or obstruction;**  
 2           (2) authorizing the respondents to remove the **storm water**  
 3           **nuisance or obstruction;**  
 4           (3) directing the county surveyor to remove the **storm water**  
 5           **nuisance or obstruction;** or  
 6           (4) directing that the **storm water nuisance or obstruction** be  
 7           removed through the joint efforts of at least two (2) of the persons  
 8           referred to in this subsection.

9           (c) If an order is issued under subsection (b), the costs of removing  
 10          the obstruction **or the storm water nuisance** must be borne by the  
 11          owners of all the tracts of land that are benefited by the drain **or that**  
 12          **would be benefited by the removal of the storm water nuisance.**

13          The order of the board must do the following:

- 14           (1) Identify all tracts of land that are benefited by the drain **or**  
 15           **would be benefited by the removal of the storm water**  
 16           **nuisance.**  
 17           (2) Identify the owners of the tracts of land referred to in  
 18           subdivision (1):  
 19                (A) who are known to the drainage board; or  
 20                (B) whose identity can be determined through the records of  
 21                the county auditor.  
 22           (3) Apportion the costs of removing the obstruction among the  
 23           tracts of land that are benefited by the drain **or would be**  
 24           **benefited by the removal of the storm water nuisance,**  
 25           assigning to each tract a certain percentage of the total costs.  
 26           (4) Order the owners of each tract of land referred to in  
 27           subdivision (1) to pay an amount equal to the product of the total  
 28           costs of removing the obstruction multiplied by the percentage  
 29           assigned to the tract under subdivision (3).

30          (d) The percentage of the total costs assigned to a tract under  
 31          subsection (c)(3) must correspond to the ratio of the total length of the  
 32          drain to the length of the particular segment of the drain that benefits  
 33          the tract.

34          SECTION 17. IC 36-9-27.4-23 IS AMENDED TO READ AS  
 35          FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 23. (a) ~~If the drainage~~  
 36          ~~board finds for a petitioner after a hearing held under this chapter,~~  
 37          **Either a petitioner or** a respondent may file an action in the circuit or  
 38          superior court of the county in which the alleged **storm water**  
 39          **nuisance or** obstruction exists, seeking to have the order entered by the  
 40          drainage board vacated.

41          (b) An action filed under subsection (a) must be based on at least  
 42          one (1) of the following assertions: ~~by the respondent:~~

- 43           (1) The drainage board lacked authority to act under this chapter.  
 44           (2) The drainage board erred in making the findings described in  
 45           section 14(a) of this chapter.  
 46           (3) ~~The respondent~~ **Compensation** should have been awarded



1 compensation for harm and inconvenience, or the amount  
2 awarded to the respondent for harm and inconvenience is  
3 insufficient.

4 (4) The drainage board did not follow the procedure required by  
5 this chapter.

6 SECTION 18. IC 36-9-27.4-24 IS AMENDED TO READ AS  
7 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 24. (a) In an action  
8 filed under section 23 of this chapter, the court:

9 (1) shall enter an order vacating the order of the drainage board  
10 directing the county surveyor to remove the **storm water**  
11 **nuisance or** obstruction; and

12 (2) may issue an injunction against the removal of the **storm**  
13 **water nuisance or** obstruction;

14 if the court makes a finding under subsection (b).

15 (b) The court is required or authorized to act under subsection (a)  
16 if the court finds that the drainage board:

17 (1) was clearly in error in making its findings under section 14(a)  
18 of this chapter with respect to the alleged **storm water nuisance**  
19 **or** obstruction; or

20 (2) exceeded its authority or discretion under the law in  
21 authorizing the removal of the **storm water nuisance or**  
22 **obstruction.**

23 SECTION 19. IC 36-9-27.4-25 IS AMENDED TO READ AS  
24 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 25. (a) For the purposes  
25 of this chapter:

26 (1) a county surveyor;

27 (2) a member of a drainage board; or

28 (3) an authorized representative of a county surveyor or drainage  
29 board;

30 has a right of entry over and upon a tract of land containing a drain,  
31 **artificial conveyance, or** natural surface watercourse, **or storm water**  
32 **nuisance** that is the subject of a petition filed under this chapter.

33 (b) The right of entry granted by this section is limited to the land  
34 lying within seventy-five (75) feet of the drain, **artificial conveyance,**  
35 **or** natural surface watercourse, **or alleged cause of the storm water**  
36 **nuisance.** The seventy-five (75) feet must be measured at right angles  
37 to:

38 (1) the center line of any tiled drain; and

39 (2) the top edge of each bank of an open drain; and

40 (3) the edge of any **artificial conveyance or** natural surface  
41 watercourse **or of the alleged cause of the storm water**  
42 **nuisance;**

43 as determined by the county surveyor.

44 (c) A person exercising a right of entry under this section shall, to  
45 the extent possible, use due care to avoid damage to:

46 (1) crops, fences, buildings, and other structures located outside



1           the right-of-way; and  
2           (2) crops and approved structures located inside the right-of-way.  
3           (d) Before exercising a right of entry under this section, an  
4 individual must give oral or written notice of the entry on the land to  
5 the property owner of record. The notice must state the purpose for the  
6 entry.  
7           (e) A right of entry under this section is not criminal trespass under  
8 IC 35-43-2-2, and an individual exercising a right of entry under this  
9 section may not be arrested or prosecuted for criminal trespass under  
10 IC 35-43-2-2.  
11           SECTION 20. IC 36-9-27.4-26 IS ADDED TO THE INDIANA  
12 CODE AS A **NEW SECTION TO READ AS FOLLOWS**  
13 **[EFFECTIVE JULY 1, 2011]: Sec. 26. This chapter may not be**  
14 **construed as authorizing a person to engage in activity requiring**  
15 **a permit from a state or federal agency before the person obtains**  
16 **the permit.**

