

NATURAL RESOURCES ADVISORY COUNCIL

Minutes of October 10, 2007

MEMBERS PRESENT

Patrick Early, Chair
AmyMarie Travis, Vice Chair
Jim Trachtman
Rick Cockrum
William Pippenger
Donald Van Meter

NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas
Jennifer Kane

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Ron McAhrn	Executive Office
Cheryl Hampton	Human Resources
Jim Hebenstreit	Water
Monique Riggs	Water

GUESTS PRESENT

Dick Mercier

Patrick Early, Chair, called the meeting to order at 10:44 a.m., EDT in The Garrison, Fort Harrison State Park, 6002 North Post Road, Indianapolis, Indiana. In the absence of a quorum, he observed that official action could not be taken, but there could be informal discussions of agenda items.

The Chair asked Ron McAhrn, Deputy Director of the Bureau of Resource Regulation, to provide an overview of the agenda items.

Consideration of Recommendation for Preliminary Adoption of Proposed New Rule for Water Withdrawal Contracts from Reservoirs under P.L. 231-2007 and IC 14-25-2; Administrative Cause No. 07-100W

Ron McAhrn said that discussions were held prior to today's meeting regarding the Advisory Council's involvement in the "ambitious" public hearing process required for the sale of water. He noted that currently there are no standards existing for consideration of the "merits of sale proposals" that come to the Department. McAhrn said that a temporary rule "to flesh out the standards" is being drafted for the Director's signature with the intention to present for preliminary adoption a permanent rule at the Commission's November meeting.

McAhron noted that the proposed rule contains a “dynamic” list of lakes and reservoirs in which the statute would be applicable. “That list may expand; it may contract.” He asked that the Advisory Council consider “conceptually” the proposal. McAhron stated that the statute was “clearly aimed” at Brookville, Patoka, and Monroe, “which are the main reservoirs that [the Department] and the Corps have partnered with 50 some odd years ago to put in water supply storage.” He noted that the statute is also seemingly applicable to Brush Creek Reservoir, Versailles Reservoir, Hardy Lake, and “some of the other northern lakes could be added.”

McAhron noted that Brookville, Monroe, and Patoka Lakes have a sediment storage component, a water supply storage component, and a flood storage component “built in.” He then deferred to Jim Hebenstreit.

Hebenstreit noted that a presentation was made to the Advisory Council at its June meeting regarding an amendment to the statute (P.L. 231-2007 and IC 14-25-2) governing sale of water, a program which the Division of Water administers. “A lot of what that bill did was put in a process for public input on proposed requests to buy water.” He explained that previously requests were processed internally, “unlike all our other applications where there has to be a notice to adjoining owners and a public notice.” The new legislation also requires certain information, such as an explanation of the request to be provided at the public meetings. “Right now, we don’t have an application form for requests to buy water.”

Hebenstreit said that the proposed rules address the conduct of the public meetings and provide standards for the submittal of an application. He explained that “minimum quantities of stream flow” would be defined at 312 IAC 6.3-2-5. He noted that the proposed rule incorporates the original federal contracts stated minimum of discharge that has to be maintained particularly with Monroe, Brookville, and Patoka Lakes. He said that the minimum discharges for Brush Creek, Hardy Lake, and Versailles Lake were not stated in the federal contract, and they have been calculated by Division of Water’s engineers.

Rick Cockrum asked, “What drives the stream flow? It’s a contract with the Corps and Indiana?” Hebenstreit responded that the contracts are between Indiana and the U.S. Army Corps of Engineers. Cockrum continued, “Which was developed when the dam was designed?” Hebenstreit answered in the affirmative. Cockrum said, “The reason I am asking is because I think there has been a significant change at Brookville with the development of the trout fishery. Now the U.S. Fish and Wildlife Service is stocking it, and 40 cubic feet per second is a trickle.” Cockrum then asked, “But that would be almost impossible to change because it’s part of the original contract?” Hebenstreit answered, “I’m not sure that it couldn’t be changed. I’m not sure that anybody has brought the issue up. That is something we could probably look into.”

Hebenstreit commented that he was not aware of how the minimum stream flows were calculated in the original federal contracts. “We just asked the Corps six months ago what happens when the original 50-year contract between Indiana and the U.S.

government for Monroe Lake expires. In two or three years, the contract expires. Will we pay more or will we have the ability to sell water, and what can we guarantee users down the road?”

Cockrum noted that “at one point, the fisheries guys had asked the Corps to consider a lower on-flow, and I thought that equilibrium changed pretty dramatically when the U.S. government started stocking. Now you have a sister federal agency that has an investment.” Hebenstreit noted that the contract requires a minimum stream flow, “so if they need to go higher, they could.”

The Chair asked, “Who makes the decision on a day-to-day, week-to-week, month-to-month what the daily stream flow is? Hebenstreit explained that the Corps provides the daily operation on Monroe, Brookville, and Patoka. He said that the Corps will release water to get to the winter pool in the fall, and lower it in the spring for summer pool. Cockrum noted, “If they shut down to 40 cubic feet per second, they would lose probably eight years of stocking.” Hebenstreit said that the “flip side” is there is “always a problem that the Corps has if they release too much then they cause downstream flooding. They balance that.”

McAhrn said, “I think what they are looking at here is when under drought conditions, if there is a competing use.” Cockrum noted that when the contract was entered into, stocking “may not have been an issue. It’s a new factor.” McAhrn noted that Brookville has 20 billion gallons of storage capacity. “We are currently selling 243 million gallons. It’s like one percent of the capacity that’s built into it.” He said the minimum stream flow is “way, way removed from the actuality right now.”

The Chair asked, “This only comes into play when we are selling so much of it that the demand on the water increases.” Hebenstreit said that presently the Department has not received requests to purchase water in the last 20 years “except for a few golf courses. By and large, we have got a bunch of untapped supply available.”

Cockrum noted that the Department has entered into a contract with a power company to allow emergency release for downstream cooling. Hebenstreit said that Indianapolis Power & Light has had an agreement with the Department since the 1980s. “They pay us \$10,000 or \$11,000 a year, and they have never actually used the water.” Cockrum asked, “Does that fall under this, too?” Hebenstreit answered in the affirmative, and he said the proposed rule governs direct withdrawals as well as releases to downstream users for withdrawal.

Hebenstreit said that 312 IAC 6.3-3(b) contains a list of types of information that an applicant would submit to the Department. Some of the information requested is standard for permit applications. He explained that in subsection (7) the proposed term of the contract, in years, “which could be up to 50 years”, would need to be submitted. Hebenstreit noted that with existing contracts the terms have ranged from 20 to 40 years, “depending usually on a bond issue to finance the utilities’ facilities.”

Hebenstreit said that the Department “anticipates” the demand on the lakes is “going to pick up” in the future. The proposed rule requires a justification as to “why the reservoir is the most economic or feasible alternative.” A list of alternative water supply sources and a conservation plan would also need to be submitted. He said that the “conservation plan” requirement was added for drought situations. “If we have committed a lot of the [lake] storage, we may have to have everyone share the hurt and gear back on the withdrawals.”

Hebenstreit explained that 312 IAC 6.3-3-3 sets standards for the conduct of the public meeting, and 312 IAC 6.3-3-4 provides standards for the Advisory Council’s role in the water withdrawal contract process. The Advisory Council would consider the hearing officer’s written summary of the public meeting and recommendations and submit a report to the Commission not later than 30 days from the final public meeting. 312 IAC 6.3-3-5 sets forth the process for Commission action on contracts and subsequent approvals. He said that the contracts “eventually” are sent to the Governor for signature and accompanied by a report on the impact on the recreational facilities of the withdrawal.

Hebenstreit said that proposed 312 IAC 6.3-4-1, which sets standards for water allocation principles and priorities, “may draw some interest”. He explained that the section “spells out” the factors that the Commission will consider regarding water withdrawal applications. Subsection (5) sets priorities for the use of water in the event there is more demand than supply. “This is our staff’s stab at it. There is some statutory basis for drinking water for human beings and drinking water for livestock.... I’m sure that there will be debates on whether industry, agriculture, or power production are more important. We chose to make power production the third priority.... We punted on industry and agriculture and lined them up as even. In the end, I do not see those in the higher priorities with drinking water systems that need water.”

Donald Van Meter asked, “When you say ‘industry and agriculture’ you’re thinking agriculture as being irrigation?” Hebenstreit answered, “Yes.” Van Meter said, “Because agriculture is for livestock and poultry.”

Cockrum said, “I don’t know what this priority means. When it says ‘health and safety’ is that fire suppression? Shouldn’t that rank above drinking water for livestock, poultry, and domesticated animals?” Pippenger suggested amending clause (B) to read “health, safety, and fire suppression.” Cockrum said, “My suggestion is to clarify it and move it up.” Hebenstreit suggested that “health and safety” would need to be defined. Stephen Lucas, Director of the Commission’s Division of Hearings, noted that the first priority has a statutory basis.

The Chair asked, “This isn’t really relevant today, is it?” McAhron responded that the Department does not have any withdrawal contracts that are strictly for fire departments. The Chair clarified, “I’m talking about overall demand.” Hebenstreit said, “We don’t have competing uses now, but that’s why it is good that we are having to do this now,

because I think some day down the road we are going to get to a point for the rule's necessity."

Cockrum suggested including the recognition of the impacts of withdrawals on recreational use of the lakes. Hebenstreit noted that there are purposes defined in the agreements between the Indiana and the federal government for the use of the lake. "Monroe, for instance, does not include recreation. So, there will be a point in time when we could have contracts entered into that, in a drought, we will reduce the water levels at a point where all of our boat ramps that DNR has invested in are probably going to be out of use and maybe potential impacts on fisheries. That's probably a policy call that needs to be looked at." Cockrum said, "It just seems like it should be one of the considerations." Hebenstreit noted that subsection (2) requires the review of the "likelihood of adverse effects to public safety, the environment, or navigation. "That is a factor the Commission would consider." Cockrum suggested, "Could you add 'recreation' in there and assume that would include angling, boating?" Hebenstreit answered in the affirmative.

McAhrn said that other Department divisions will be reviewing the potential impact of a sale of water. "I think it makes sense to include" recreation.

Hebenstreit explained that 312 IAC 6.3-5-2 allows the Department director to declare drought alerts. Levels of severity would be assigned to a drought situation. He said the state prepared a Water Shortage Plan in 1994 that categorizes droughts by "watch, warning, and emergency. This section reflects the numbers that are assigned to these different indices." Hebenstreit noted that, in preliminary reviews of the proposed rule, it was questioned whether the Palmer Hydrologic Drought Index is the correct index to use. He also noted that the Department has had discussions with the office of the Indiana State Climatologist, and a different indicator index may be preferred. "In all likelihood, this section will need to be revised."

Cockrum asked for clarification for the use of the term "director" in the rule proposal. Lucas explained that a query was made as to who should have the authority to reflect upon there being a need to rescind a contract because of a violation. "The discussion was, well, whose contract is it? The way it was originally written it was the director of the Department. The Governor approves the contract, but the statute says essentially it is the Commission's contract. So, to try to be parallel with that thought process—and maybe by doing so we became unparallel otherwise—we reflected since it is the Commission's contract, it would be the Secretary of the Commission that would be taking the action." Lucas noted that, "by tradition and not by statute", the Director of the Department and the Secretary of the Commission is the same person.

Cockrum then asked, "So, in this capacity of enforcement, the Secretary is acting as an extension of the Commission?" Lucas answered in the affirmative. The rule would help administer a process for evaluating contracts and is not regulatory. By statute, the Commission does not make initial licensure decisions. The Director or his designee does. The underlying statute for water sale contracts provides that the Commission does,

however, make this contracting decision, although it is subject to conditions subsequent of approvals by the Attorney General and by the Governor.

William Pippenger suggested amending 312 IAC 6.3-3-1 to “reverse” subsection (9) and subsection (10). “Why don’t we make [the applicants] look at all the alternatives before they try to justify” that the reservoir as the most economic or feasible water supply source. Hebenstreit said, “That makes sense.”

Hebenstreit provided Council members with a schematic illustrating the cross-section of a reservoir. He explained, “At the lowest part of the reservoir is the sediment pool. There is some expectation that sedimentation will occur on all the reservoirs. So, they have allocated that the reservoirs could be filled from the natural bed up to the lower elevation of the water supply storage, which is above the sedimentation pool and extends to the winter pool level and flood storage capability of the reservoir is the uppermost portion.”

Van Meter asked, “Do you have any idea how much of the sediment pool is already filled on any of the reservoirs? Hebenstreit responded it was his understanding that the Corps is required to do periodic surveys. “They might have done some work in Monroe, but I don’t think they have found that there had been much sedimentation.” He added, “We don’t think we have a problem, but that question was raised at a study committee the other day about whether or not sedimentation is starting to encroach into the water supply storage.” Hebenstreit said he would contact the Corps for additional information.

McAhron introduced Monique Riggs, with the Division of Water, who was a major participant in drafting the proposed rules. “The whole staff has worked very hard. This is a complicated matter. It’s never been a big problem for us. We have been able to float along.... The statute sort of woke us up.” He also thanked the Advisory Council for helping to “fine tune” the rule proposal. “The main thrust of the legislation was the series of public meetings, but we tried to put some other meat on here for consideration. We appreciate your feedback.” Hebenstreit asked Council members, if after today’s meeting they had additional feedback, to forward it to himself or Steve Lucas.

Consideration of Recommendation for Approval to the Natural Resources Commission of a Nonrule Policy Document with respect to Riparian Zones within Public Freshwater Lakes and Navigable Waters; Administrative Cause No. 07-045A

This item is the product of an Advisory Council Committee. David Lupke served as Chair, and Donald Van Meter, Richard Cockrum and Phil French were members. In addition, Jim Hebenstreit from the DNR’s Division of Water and others in the agency participated. Don Van Meter suggested Steve Lucas, Director of the Commission’s Division of Hearings, provide an overview of the proposed nonrule policy document.

Lucas expressed his appreciation of Advisory Council members and DNR staff for working on the document for identifying riparian zones within public freshwater lakes

and navigable waters. Considering riparian rights disputes “is probably the hottest single issue that the Division of Hearings deals with in adjudications, and trying to draw what the riparian lines are” is a critical element. Lucas said the nonrule policy document “is the first good step” in providing guidance to the public “in a coherent fashion”. He noted that if the Commission approves the nonrule policy document, the document would be posted to the INDIANA REGISTER, and a link would be subsequently added to the Commission’s website.

Lucas noted that the definitions of terms and other information contained in the proposed document are largely existing information, but the nonrule policy document “brings it all together in one place.” He said a riparian owner acquires rights to public waters from a fee title which extends at least to the shoreline. He noted that easements to exercise riparian rights can be conveyed to another, and “that’s one of the places where we get into issues—the relationship between the easement and the fee owner and sometimes the relationship between easement and the neighboring fee owner.”

Lucas indicated that the nonrule policy document references the “test of reasonableness”, which resulted from a 1992 case on Bass Lake called *Zapffe v. Srbeny*, 587 N.E.2d 177. He explained that *Zapffe* found, “If you are a riparian owner, you don’t own to the center of the lake.” He also noted that in 1947 the General Assembly gave the public freshwater lakes to “all the people”.

Lucas said that the diagrams contained in the nonrule policy document “probably takes us forward the most in terms of being able to talk to people and give people ideas about how things will work.” He noted, however, there is subjectivity to the diagrams. “There is no way you can take the subjectivity out, but we hope that the document gives some principles.” The principles “mostly” result from reported decisions from the Court of Appeals of Indiana, but “somewhat” from CADDNAR. In addition, a key Indiana Court of Appeals decision, “*Bath v. Courts* [459 N.E.2d 72 (Ind. App. 1990)], applied the first of three elements in a Wisconsin case, *Nosek v. Stryker*.” Cases in CADDNAR and the proposed nonrule policy document also draw from the *Nosek* decision, including its second and third elements as well as the first.

Lucas noted that the “simplest” case is illustrated in Diagram 1. This diagram illustrates the *Bath* decision and the first element of *Nosek*. He explained that if the property lines intersect the shoreline in “pretty much a straight line”, the property lines are extended out into the lake at the same angle as the “property line approaches the lake. To be noted is that this approach does not result in perpendiculars.” He said Diagram 1 “probably applies in the majority of situations, particularly on the bigger lakes, and a lot of the issues on public freshwater lakes come from the bigger lakes.” In addition, Diagram 1 would apply on most of the Indiana shoreline of Lake Michigan. Often where Diagram 1 applies, the parties do not seriously dispute how the riparian lines should be drawn.

Lucas explained that the first Diagram 2a illustrates a scenario where the shore approximates a straight line, and where onshore boundaries approach the shore “not in a perpendicular. In that situation, instead of extending the property lines to determine

riparian zones, you extend a line perpendicular to the shoreline out into the lake.” This diagram illustrates the principles of the second element of *Nosek* and a few decisions in CADDNAR.

Lucas noted that the second Diagram 2b approximates the previous scenario, “except where there is the instance of two property lines meeting at a funny angle” near the shoreline. This problem arises more frequently in adjudications than might be expected, and the problem may be aggravated because legal descriptions sometimes referenced the “meander” line of a lake or the border of a common area, rather than the shoreline. He explained that earlier surveyors drew measurements from the “meander lines of the lake” to form tangents to various curves on the lake in order to define riparian ownership or neighboring riparian ownership. “There is precedent that says what you do in this situation is split the angle.” The Chair asked whether the landowners of the land that meets the shoreline at a point in the second Diagram 2a would have riparian rights. Lucas explained that a landowner whose property ended in a point at or just landward of the shoreline typically would not have riparian rights.

Lucas said that situations depicted in Diagram 3a illustrate where the shoreline is not straight or forms a cove, which occurs on both rivers and on lakes. “It’s actually a fairly common river situation in states that have a lot of development along rivers. Indiana doesn’t have much litigation of that yet, but I suspect we will have more and more.” He said in these situations a surveyor would locate the approximate center of the lake or cove, and the riparian zones would be drawn to the center point. Lucas emphasized “that the riparian zones do not go to the center point, but the center point is used to draw the zone.” This situation and Diagrams 3b and 3c are illustrations of the third element of *Nosek*.

Lucas explained that Diagram 3b is sometimes referred to as the “long lake principle”, which is also generally applicable to streams. He said these situations occur on Indiana streams and lake channels, such as Lake Wawasee. “What you are really doing in this scenario is a surveyor would determine the center line for the long lake or the stream, and from that center line to the property line would [draw] a perpendicular” line.

Lucas explained that the Diagram 3c scenario is from a case decided by the Commission’s AOPA Committee. He directed the Advisory Council’s attention to the most northeasterly parcel. Litigation involved the owners of the land immediately west of that parcel and the owners of the land immediately south of that parcel. The owners of the land immediately west of the northeast parcel sought to define their riparian zone as an extension of the boundary between these two properties, to which the owner of the land south of the northeast parcel objected. The AOPA Committee’s decision provided for the bisection of the angle of the southwestern corner of the northeasterly parcel, similarly to the process described for Diagram 2b.

The Chair requested clarification of the Advisory Council’s role regarding the consideration of the proposed nonrule policy document. He noted that the nonrule policy document was “pulled together by the members of the Committee, Steve Lucas, and

DNR staff. If we agreed with [the draft] we would recommend to the Commission that the Commission consider adoption of this nonrule policy?” Lucas answered in the affirmative.

Pippenger said, “I know we can’t move that, but I will support it.” The Chair asked the Advisory Council members present whether there was any “disagreement” with the proposed nonrule policy document as presented. No member voiced opposition. The Chair then said, “What I can pass on to the Commission is that the members in attendance, and the members that participated in the draft of the nonrule policy document, were all in favor of passing it on to the Commission.”

Consideration of the Development of a Strategy for Developing a Rule to Address Temporary Pier Standards on Public Freshwater Lakes and Navigable Waters; Administrative Cause No. 07-197A

Ron McAhrn noted that there has been a “proliferation” of piers and development in the public freshwater lakes and “to a lesser extent perhaps” in the navigable streams. He also noted that the Legislature is again reviewing this subject matter. McAhrn explained that Department staff and Steve Lucas have been reviewing the riparian issues relating to marina and group piers. “We just wanted to see if we could get some volunteers to help us work on a re-visitation of the pier rules in general.”

Rick Cockrum reflected that he had talked to Chair Early previously. Cockrum said, “I have run into some of these issues previously sitting on the Commission. Personally, living on White River, I would love to be a part” of the review of the rules because the rules “are really confusing to the public in trying to figure out what is a ‘marina’ and what is a ‘group pier’, and how to have input on the decision making process.”

The Chair asked, “Is this the same group we talked about a couple months ago?” Lucas said that the Committee chaired by Advisory Council member David Lupke was formed to do the “line drawing” process to illustrate riparian zones as contained in the attachment for Item 4 of the Council’s agenda. “It was my thought that if the Advisory Council is satisfied with this nonrule policy document, that Committee’s job is finished.”

The Chair noted that he “had the feeling” that the members in the previous Committee “wanted to be involved in the broader issues”. He asked for clarification, “So this is the pier issue, and no longer the marina issue?”

Lucas responded, “I think it’s a good idea to not just have [the new committee] open-ended. If you want to define the work of the committee as being to look at piers, and issues relating to piers on public freshwater lakes and navigable waters, that would be certainly a worthwhile initiative, and there would be a lot to it.” Lucas said that to consider anything pertaining to user conflicts on public waters would be daunting, and the breadth of issues might make the work of a new committee unmanageable.

The Chair indicated a focused Committee is “what I would envision. With the groups consent, we could define” the parameters. Cockrum said it was the Chair’s prerogative, but “you could say that the group has met its goal and reconstitute a new group, or give another assignment to the existing group.”

Lucas reflected there was a tendency of the Committee that worked on the “line drawing, and others who were interested, to talk about its work as being pier issues. Certainly, identifying riparian zones is relevant to piers, and that’s currently a hot button, but it’s not just piers. Identifying riparian zones is relevant to anything, really, that’s in the water. It can be a mooring buoy; it can be a diving platform; it can be fill or excavation. It’s anything where you are defining the private landowner interests versus their neighbors’ interests or versus the public interest. It’s not exclusively piers.”

The Chair said, “I understand the distinction. This is addressing standards for temporary piers?” Lucas said, “Yes, that is right.”

Chairman Early then said that the members that served on the previous committee, “if they are so inclined,” were welcome to continue, “as is anyone else.” He noted that AmyMarie Travis, Phil French, and Rick Cockrum indicated that they wished to join the committee. Don Van Meter also indicated that he wished to remain on the committee. The Chair then said that he would “send by email an invitation to join” the committee to those Advisory Council members not present today.

Lucas asked for confirmation that the Chair was appointing Rick Cockrum, AmyMarie Travis, Donald Van Meter, and Phil French to the new or reformed committee. The Chair said, “Yes. I don’t know if David Lupke envisioned that his involvement would continue on to pier standards, but I will check with him.” The Chair then said, “That was the whole purpose of Agenda Item 5 was to determine who that group would be.” Lucas requested Chairman Early, at his convenience, to identify who would serve as Committee Chair. Pat Early noted that Rick Cockrum had previously volunteered to serve as Chair of the Committee, and he then appointed Cockrum to be the Committee Chair.

Chairman Early asked for an overview of what the new committee would be addressing. “What are the issues going to be? Is it going to be construction issues, the way they are anchored, or is it going to be visual?” Lucas explained that the issues addressed by the committee would be the Chair’s prerogative. “As to pier placements, there are a myriad of issues. It could be just about anything you said. It would be what priorities you wanted or what priorities the committee decided that it wanted to pursue.” The Chair said, “I envision that you are the most knowledgeable staff person of what the myriad of problems that arise are. It would be helpful for you to summarize what you deal with most frequently, what those issues are. I think you are right, you can get into anything. I think what is important is solving 90% of the problem as opposed to trying to do everything in the world.”

Lucas said that the Commission's Division of Hearings mostly deals with citizens who are at odds with their neighbors or at odds between the fee simple owner and the easement holder as to pier placement. Pier placement also "interfaces with DNR, and the Division of Law Enforcement, in particular, relative to how those structures can be placed to accommodate navigation, to accommodate a reasonable public usage of near-shore and far-shore areas for recreational purposes. This is an issue that I believe is near and dear to the heart of Senator Meeks who has talked about his frustration not being able to take his grandchildren around the lake and get anywhere near the shore because of the density of structures." Lucas said that most common issues before the Division of Hearings are a "mixture of navigation, public trust, riparian rights, with a social aspect." From an aquatic resources, standpoint, "fisheries biologists might indicate their greatest concern is for how coverage of piers affects the environmental quality and character of a lake. That's probably a legitimate concern, but to date, these kinds of issues have not frequently come before the Division of Hearings."

McAhron said that the Department has a "vast number of piers" that are dealt with under a general license for individual property owners. "Trying to administer a pier-by-pier permitting program would be unbelievable for us." He noted that the general license also covers group piers. "Through the years, 'group piers' have become synonymous, at least to some of us, with this concept of 'funneling'." McAhron said that in 2005 a permit for a group pier was no longer issued under the general license, but "we have never put a rule in place for standards for group piers. That has rolled on over to this 'marina' [versus] 'group pier' issue." He requested that the workgroup assist the Department in formatting rules governing group piers.

Hebenstreit said that with the review of pier placements, environmental impacts should also be considered. "There should be some environmental criteria as to when is too much coverage enough." He underlined McAhron's observation that the Department does not have rules that provide standards for the issuance or denial of a permit for a group pier.

Cockrum said, "I almost envision this as a zoning issue. You've got to weigh development versus impact to the community. It's going to be difficult, but getting a parameter around some policy so the staff has some guidance would be the objective."

Dick Mercier, representative of the Sportsmen's Roundtable, asked, "Isn't the Lake Management Work Group working on this same issue? Isn't there a good deal of overlap here?" Cockrum responded, "If so, I think we would have to coordinate that."

Lucas responded that the Lakes Management Work Group, "at least to date, and they may get into this more, but its focus has been on broad policy considerations, on the one hand, and specific legislative proposals, on the other hand." Lucas noted that he did not believe the Work Group had developed "propositions directed to what rules could be written within the current statutory framework. They have so much on their plate that I'm not sure that they will be able to get into that."

Hebenstreit said that he “sits” on the Lake Management Work Group and noted that it had discussed pier issues. “If we can get something through the Advisory Council, we could certainly bring it to [the Work Group]. You are right, they overlap, but we are not making progress on the pier thing. I think the problems are becoming more and more frequent. We need to make some headway.”

Lucas said that a subcommittee of the Work Group has expressed interest and the subcommittee chair has requested to review any document resulting from Advisory Council initiatives. Lucas said he had previously promised to pass along the riparian zones nonrule policy document following today’s consideration by the Advisory Council.

Jim Trachtman asked, “What percentage of problems or issues that you have is on lakes versus other waterways?” Lucas responded that issues on public freshwater lakes are “by far the predominant ones, but we are starting to hear about it in other contexts.” Hebenstreit added, “We are probably where we need to be on navigable waterways, but on lakes we are probably five years behind.”

Chairman Early requested Rick Cockrum to Chair the new committee and to consider issues as outlined in the day’s discussions. He appointed AmyMarie Travis, Donald Van Meter, and Phil French as additional members and reflected other members of the Advisory Council would be invited to participate. The Chair asked that the DNR professions and those in the Commission’s Division of Hearings assist the Committee with its work.

Consideration of Aggregate Extractions from Rivers and Streams

Richard Cockrum expressed interest in the regulation of stone and gravel from rivers and streams. He indicated an understanding the activity could have an adverse impact on fish, wildlife and botanical resources within these waterways. Cockrum asked about the status of this regulatory activity and whether the Flood Control Act applied.

Ron McAhron responded that there have been discussions concerning creek bed extractions of stone. His understanding is that, at one time, there was an informal DNR committee looking into the feasibility and legality of developing rules to address this issue. A decision from the Switzerland County Circuit Court, which was later affirmed by the Court of Appeals of Indiana, may have cast some doubt on the agency’s ability to regulate these extractions.

Steve Lucas acknowledged the case referenced by McAhron. He noted the DNR was not a party to the decision. The case was the affirmation of the rejection of an infraction by the Switzerland Circuit Court, and was an important interpretation by the Court of Appeals, but he did not believe the agency was foreclosed from considering regulatory options.

McAhron reflected that he would confer with his staff concerning this subject. A report would be provided to the Advisory Council concerning the results of discussions, including the possibility of rule adoption.

Adjournment

At approximately 12:15 p.m., the meeting adjourned.