

STATE OF INDIANA) IN THE MARSHALL CIRCUIT COURT
)SS:
COUNTY OF MARSHALL) 2023 CALENDAR TERM

IN RE THE ESTABLISHMENT OF) CAUSE NO. 50C01-2308-MI-000079
THE LAKE OF THE WOODS OF)
MARSHALL COUNTY)
CONSERVANCY DISTRICT)
) Natural Resources Commission
) Administrative Cause No.23-051C

**PROPOSED REPORT OF THE NATURAL RESOURCES COMMISSION WITH
RESPONSE TO THE PETITION FOR THE ESTABLISHMENT OF THE
LAKE OF THE WOODS CONSERVANCY DISTRICT**

I. Petition and Summary of Evidence Received at the Public Hearing

A. Petition:

A Petition for the Creation of the Lake of the Woods of Marshall County Conservancy District (LOTWCD) in twelve counterparts was filed in the Marshal Circuit Court on August 11, 2023. A copy of the Petition is attached hereto as Exhibit A.¹ The Petition defines the territory to be served by the LOTWCD as “[a]ny and all parcels of real estate having frontage on Lake of the Woods and/or the channels associated therewith.” (Exhibit A, para. II). The Petition also alleged:

III. Said Conservancy District shall be established for the purposes of improving and maintaining the quality of Lake of the Woods through strategies designed to enhance and improve water quality, improving drainage, flood prevention and control, preventing the loss of topsoil from injurious water erosion and the operation, maintenance, and improvement of works of improvement associated therewith. Strategies are anticipated to include but not necessarily be limited to dredging in various areas of the lakes and ditched entering the lake, aeration of the lake to remove organic materials and increase lake depth, ditch chemical mitigation, studies of ditches and filter implementation, weed eradication programs, use of Phos Loc to contain the phosphorus at the bottom of the lake, dam inspections, repairs and maintenance and such other potential protects as may from [sic] be deemed necessary and appropriate for the betterment of the lake.

¹ Pursuant to Ind. Code § 14-33-2-6, a petition for the establishment of a conservancy district “may be circulated [for freeholder signatures] in several counterparts and still constitute a single petition.” The twelve counterparts filed in this matter contain the same allegations but different freeholder signatures. Exhibit 11 contains one copy of the allegations and the signature pages from the twelve counterparts.

IV. The creation of the proposed conservancy district is necessary and proper so as to create an entity responsible for overseeing, protecting and enhancing lake quality through implementation of the strategies identified herein.

V. In addition to the above reasons, the establishment of the district will promote the general health, safety, and welfare of the area as well as surrounding communities.

VI. The cost and damages of the district will be less than the beneficial value to the residents and territories involved.

VII. This Petition is not conditioned upon the award of any particular, Federal or state grant.

VIII. All conditions attached to any federal and/or state law are acknowledged to be acceptable to the individual property owners if and as required by the federal and/or state government as conditions of any grant award or participation in project funding.

IX. It is anticipated that maintenance and operation of any works of improvement constructed and operated by the proposed conservancy district will be funded by a combination of user charges as well as potential assessment of special benefit taxes and possible exceptional benefit taxes as such may be determined appropriate from time to time by the Board of Directors and which are consistent with the laws of the State of Indiana.

On November 29, 2023, the Honorable Curtis Palmer, Judge, Marshall Circuit Court, issued an order referring the Petition to the Commission. The Marshall County Drainage Board filed a "Notice of Interest by Marshall County Drainage Board" with the Marshall Circuit Court on the same date.

The referral from the Marshall Circuit Court was processed as required by IC § 14-33-2-17, IC § 14-33-2-19, and Information Bulletin #36 (Eleventh Amendment), *Procedural Guidelines for the Interpretation of the Conservancy District Article*, DIN: 20220601-IR-31220180NRA (IB 36) Elizabeth Gamboa was appointed as the Hearing Officer for the Commission and a copy of the Petition was forwarded to the Department of Natural Resources Division of Water.

A public hearing was scheduled for March 12, 2024 at the County Offices of Marshall County in Plymouth Indiana. Notice of the hearing was published in the Pilot News, a newspaper of general circulation in Marshall County. The public hearing was held as scheduled. Colby Barkes represented the proposed LOTWCD at the meeting. The Department was represented by Ken Smith and Kristi Johnson from the Department's Division of Water. James Clevenger represented the Marshall County Drainage Board (Drainage Board) at the meeting. Craig Cultice also appeared for the Drainage Board.

The hearing officer opened the public hearing to receive testimony and comments on the proposed LOTWCD. The Hearing Officer announced that Colby Barkes would present the LOTWCD evidence first. Thereafter, comments from the public in favor of the conservancy district would be received followed by public comment opposed to the proposed LOTWCD.

Approximately sixty members of the public appeared at the March 12, 2024 public meeting. There was insufficient time to hear all comments and an additional public meeting was scheduled for May 2, 2024. Notice of the May 2, 2024 hearing was published in the Pilot News, a newspaper of general circulation in Marshall County. The meeting was held as scheduled at the County Office of Marshall County. Colby Barkes represented the proposed LOTWCD, Ken Smith and Kristi Johnson appeared on behalf of the Department Division of Water, and James Clevenger appeared on behalf of the Marshall County Drainage Board.

Approximately thirty members of the public attended the May 2, 2024 public meeting. The hearing officer announced that Mr. Barkes would present additional evidence on behalf of the LOTWCD. Comments in favor of the proposed district would be accepted first followed by comments from those opposed. The meeting was concluded after all attendees were provided an opportunity to comment. The hearing officer also received public comments that were emailed to the Commission before May 2, 2024. The hearing officer announced at the close of the May 2, 2024 meeting that the comment period was closed. At both the March 12, 2024 and the May 2, 2024 public meetings, the hearing officer announced that the date of the Commission meeting at which the hearing officer report would be presented was not certain. Instructions on where to find the meeting information on the Commission's website was provided.

After an order granting the Commission's motions for enlargement of time, the Commission's report is due to be filed with the Marshall Circuit Court by July 28, 2024.

B. Summary of the Evidence:

Jennifer Jermalowicz-Jones, Ph.D., CLP: Dr. Jermalowicz-Jones, Ph.D., CLP is a Water Resources Director with expertise in several areas of inland lake management and restoration. In 2019, Jermalowicz-Jones prepared the *Lake of the Woods Improvement Study and Management Plan* (LOTW Study) for the Lake of the Woods Property Owners Association (LOWPOA). A summary of her testimony follows:

Lake of the Woods (LOTW) includes six major tributaries or drains. LOTW has a watershed or area directly draining into the lake of approximately 7,043 acres, which is considered large. The overall lake water quality is high for nutrients, is low in water clarity, and had dissolved oxygen depletion in all three deep basins when the lake is thermally stratified. The lake is considered to be hypereutrophic due to excessive algae growth, high phosphorus concentrations, low water clarity, and dissolved oxygen depletion. Jermalowicz-Jones also provided lake improvement methods "to reduce invasive aquatic plants, reduce the transport of invasive species, reduction of nuisance algae, improvements in water quality, reductions in the lake sedimentation and nutrient transport, and proper immediate watershed management."

Jermalowicz-Jones found that the LOTW shorelines are eighty percent developed and have had a sixty-six percent reduction in vegetation coverage. The LOTW Study identified vegetative and shoreline best management practices that could be implemented to reduce injurious water development.

A Lake of the Woods Aquatic Vegetation Management Plan (LOTW Management Plan) was prepared by Aquatic Weed Control in 2022 for the LOWPOA. The report was prepared as part of the Department's Lake and River Enhancement (LARE) program and outlined strategies to manage the invasive plants of Eurasian watermilfoil, starry stonewort, and curly-leaf pondweed within the lake.

The LOTW Study and the LOTW Management Plan both identify problematic aquatic invasive species including Eurasian Watermilfoil, curly-leaf pondweed, starry stonewort, purple loosestrife, and zebra mussels.

Michael Nate is the current president of the Lake of the Woods Property Owners' Association (LOWPOA.) He testified that the conservancy would provide dedicated funds to address the problems with the lake. The proposed district would share the cost among all lake residents who would benefit from the work. About 28.2% of the residents currently support the LOWPOA, which operates solely on donations and through fundraisers and voluntary dues. In 2023, LOWPOA spent \$31,604 and received only \$31,103.78. This model is not sustainable. Further, it is impossible to know from one year to the next how much the LOWPOA will receive in donations. The formation of a conservancy district would allow dedicated funding from everyone in the district's area. Those funds could be anticipated and budgeted. Nate estimated the budget for the first two years would be approximately \$150,000 annually. It would be up to the conservancy district to determine how the budget is allocated.

Julie Boynton is the current secretary of LOWPOA. She testified that LOTW is a natural resource and is the second largest lake in Marshall County. LOTW supports the local communities by providing opportunities for recreation and drainage outlets for agricultural lands. LOTW suffers from significant water quality issues such as high phosphorus and nutrient levels, PCPs and mercury in fish tissues, low oxygen levels, and poor water quality. It is an impaired waterway. Costs for removal of invasives are skyrocketing and there is no money available for remedial efforts. Currently, only 28% of property owners support the LOWPOA. The signatures of fifty-six percent of the property owners were obtained for the Petition. The proposed LOTWCD is crucial for the continued health of the lake.

Joseph Skelton was the LOWPOA treasurer. He summarized the ecological problems on the lake and the need for weed control and dredging. Grants to conduct these activities are becoming smaller and smaller. The proposed LOTWCD will provide a sustainable source of income for weed management, dredging, and aeration. The benefit to the stakeholders would far outweigh the cost. Starry stonewort causes significant problems with boats because it can get caught in propellers and cause damage. In addition, piers must be placed further into the water to reach water sufficiently free of algae and starry stonewort for their watercraft.

Rick Keller testified he purchased his LOTW property in 2004 and moved in 2018. He is a professional civil engineer with experience in many aspects of water management. He has been active in LOWPOA since 2004. He is in favor of the conservancy district because of the value it would add to the community. In late summer, there is no oxygen nine feet below the surface of the water resulting in smelly gases being released and causing stress to fish and aquatic life. Starry stonewort has expanded, making the lake difficult to navigate and is expensive to manage. The Department of Natural Resources does not care for the lake and is not helping to maintain it. Further, the dam at the lake will need to be maintained. The responsibility for the care of the lake must be borne by the community because the efforts of individual residents are not working. The proposed conservancy district would provide sustainable income to obtain grants that require matching funds. The proposed district would also have the resources to obtain bonds on projects that require them and to obtain loans when necessary. According to Keller, more than enough people signed the petition. Keller also believes that property values have increased on other lakes where a conservancy district has been formed. Keller believes the proposed conservancy district is necessary and that the benefits from the district would exceed the costs.

Carol Skelton was the LOWPOA treasurer from 2001 to 2005. She testified a conservancy district is needed because, although property owners have been working to eradicate overabundance of weeds and algae, the lake's water quality has gotten worse. There is no longer a sandy-bottom beach on the lake. Children cannot play in shallow water by the shoreline and starry stonewort causes problems with boat propellers. The LOWPOA has been able to spray for certain weeds, but the cause of the problems needs to be addressed. The lack of funds has prevented LOWPOA from implementing solutions. A conservancy district would provide the opportunity to obtain grants. Riparian owners would benefit from improvements to the lake. The lakefront property owners would benefit most from these improvements.

An auditor's affidavit, showing the number of freeholders who signed the Petition and the assessed valuation of the freeholds was also submitted by Mr. Barkes.

Mr. Barkes presented two additional documents at the May 2, 2024 public meeting. The first is a listing of the properties in the proposed LOTWCD area with assessed values and approximate annual assessment per assessed property according to Michael Nate, the approximate average annual assessment is \$550.00 per property.

The second document was prepared by David Hollenback, an attorney from the law firm of Blachly, Tabor, Bozik & Hartman, LLC, entitled *Real Estate Property Tax Assessment for Implementation of Conservancy District Plan* (Assessment Plan). Hollenbeck explained the process for approval of the district's budget and assessments as follows: The conservancy district submits a proposed annual budget to the Indiana Department of Local Government Finance (IDLGF). The IDLGF is responsible for approving the annual budget. The conservancy district then proposes a tax rate and levy based on the approved budget after a public meeting of the conservancy district. The budget is submitted to the IDLGF for review. IDLGF then prepares a final budget order which is submitted to the county auditor to prepare and distribute the tax bill.

Hollenback estimated the first-year costs for remediation of the lake at \$281,050. The proposed LOTWCD has \$30,000 in estimated administrative costs, making the first year budget estimate

\$311,050. The total aggregate assessed value for all property located within the proposed conservancy district is \$102,000,000. A tax rate of \$.30 per \$100 of assessed value is projected, resulting in approximately \$306,000 income for the first year. The tax rate for years two through five is projected at \$.24 per \$100 of assessed value or \$244,800 in years two through five.

Alternatively, the proposed conservancy district could implement a flat rate for each freehold within the district boundaries. This would result in an assessment of \$550.00 per freehold. A conservancy district may also create a cumulative improvement fund as another source of property tax-related revenue and may borrow funds in anticipation of money to be received by the district. This would allow the district to borrow a portion of the initial costs and spread the payments out over a period of time.

As indicated in the LOTW Study, invasive aquatic plant management is estimated to cost \$66,435 annually. Jermalowicz-Jones estimated the expenses for recommended projects would be \$281,050 for the first year and \$221,650 for subsequent years. This amount includes \$20,000 per year for invasive species treatment, \$145,000 for maintenance of a whole-lake laminar flow aeration system, \$8,000 for drain filter maintenance, \$28,5000 for professional services, and \$20,150 for contingency.

Kenneth Smith for the Department Division of Water asked Mr. Barkes how the goal of improving water quality fits within the statutory purposes of the Conservancy District Act. Barkes explained that improving the water quality would increase the public's ability to use the water. The improvements would assist in drainage and flood control. The proposed conservancy district could maintain improvements to the drainage system to support the ultimate goal of flood control. Barkes admitted that flood control is not a stated purpose in the petition but that the petition could be amended as necessary.

The following Exhibits were accepted into evidence during the public meetings:²

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| Exhibit 1 | Lake of the Woods Improvement Study Management Plan, Marshall County, Indiana |
| Exhibit 2 | Curriculum Vitae, Jennifer L. Jermalowicz-Jones, Ph.D., CLP, Water Resources Director |
| Exhibit 3 | Lake of the Woods Aquatic Vegetation Management Plan 2022 Update |
| Exhibit 4 | Photographs in 5 parts |
| Exhibit 6 | Summary of Joseph Skelton testimony |
| Exhibit 7 | Summary of Carol Skelton testimony |

² For the purpose of this report, the exhibits have been numbered consecutively. These exhibits will be filed with the Marshall Circuit Court.

Exhibit 8	Auditor's Affidavit
Exhibit 9	List of properties/assessed values
Exhibit 10	Real Estate Property Tax Assessment for Implementation of Conservancy District Plan

The following exhibits were not placed into evidence at the public meetings but are attached to this Report:

Exhibit A	Petition for the Creation of the Lake of the Woods of Marshall County Conservancy District
Exhibit B	Comments from State agencies
Exhibit C	Statement from Farm Bureau
Exhibit D	Report from the Department Division of Water

II. Comments from State Agencies, Other Governmental Entities, and Members of the Public.

A. State Agencies:

As contemplated by IC § 4-33-2-21 and IB 36, the Commission sought assistance from any state and local agency that might have jurisdiction over the subject matter of the proposed district. The Commission solicited input from the following governmental agencies: Indiana Department of Environmental Management (IDEM); Indiana Utility Regulatory Commission (IURC); Indiana State Department of Health; Indiana Department of Agriculture; Indiana Department of Local Government Finance; Marshall County Council; Marshall County Department of Health; Marshall County Soil and Water Conservancy District; Town of Culver; Culver Town Council, and the City of Plymouth Utility Superintendent and City of Plymouth City Attorney.

Emily Faust responded on behalf of IDEM, indicating that IDEM had no comments but advised that some LOTWCD “activities may require notice or a permit application to be submitted to IDEM.” The IURC responded that it had no concerns because there appear to be no IURC-regulated water or wastewater utilities in the proposed district’s territory. Jeffery Houin, counsel for the City of Plymouth replied that the City of Plymouth does not plan to take a position on the LOTWCD. These comments are attached hereto and made a part hereof as Exhibit B.

Marshall County Surveyor Craig Cultice gave a presentation during the public meeting on March 12, 2024. Cultice’s presentation outlined the jurisdiction of the Drainage Board and highlighted

the significance of Lake of the Woods (LOTW) watershed to Marshall County. Cultice explained that the main concern of the Drainage Board is ensuring that the Drainage Board will maintain full jurisdiction over county drains flowing into and out of the LOTW and LOTW itself, which are part of the county's drainage system. The Drainage Board is opposed to any part of the petition that would grant authority over those drains to another entity.

Mike Smith of the Marshall County Farm Bureau stated the Farm Bureau adopted a resolution regarding conservancy districts. The resolution includes the following statements:

1. Conservancy districts cannot influence or overrule operation of drainage ditches, tiles, and lake level control structures;
2. All fresh water Lake control structures must be maintained by the DNR at the functioning level that was intended or mandated by the legal system;
3. Conservancy districts cannot overreach the powers of the county surveyor and drainage board;
4. Conservancy districts must work with local farms/landowners on water quality issues;
5. Conservancy districts taxation cannot overreach into adjoining properties;
6. Conservancy district cannot stretch the original petition's intended purpose by including "proposals" and "strategies" that go beyond the statute [sic] and which would have a disproportionate negatively impact surrounding farmland owners;
7. Any conservancy funds collected cannot be used for litigation or four court.

B. Public Comments:

Comments in Favor of the Conservancy District:

Many of the comments in favor of the conservancy district focused on the condition of the lake. Several comments noted the invasive nature of starry stonewort and how difficult and expensive it is to treat. Residents pointed to the toxicity of the lake water and how piers must be extended further into the lake to avoid the weeds and muck at the shoreline. Some commentators opined a conservancy district would provide a reliable income stream to treat the invasives and to take measures to remediate the lake. Because all lakefront property owners would benefit, according to many comments, all should participate in the costs, rather than the few who have donated to the LOWPOA. Continuing to rely on voluntary membership in the LOWPOA and donations is not sufficient to manage the lake.

Comments Opposed to the Conservancy District:

Those opposed to the proposed LOTWCD pointed to the lack of information on how much their properties would be assessed and the lack of a clear plan as to how the money would be spent. Some commentators agree that the lake does need management, but they do not trust the leadership of the LOWPOA, the driving force behind the proposed LOTWCD. Some of those commenting questioned why only property owners with lakefront property are included in the district when there are others who benefit from use of the lake through easements or public boat launches.

Some commented that the individuals accessing the lakes using those means should also be charged.

Further criticism of the proposed LOTWCD included: the boundaries of the district are stated in vague terms and need to be clarified; the district should be expanded to include the entire watershed because the watershed will benefit from the district; the conservancy district as proposed would violate a 1986 court order establishing seasonal lake levels; the district's purposes exceed what is allowed by statute; no feasibility studies have been conducted and no budget has been proposed. Some commented that the district would be cost-prohibitive and result in an unfair tax burden. Comments focusing on the dam structure on the lake argued that the conservancy district should not be involved in dam maintenance because that is the sole responsibility of the Department of Natural Resources.³

Several individuals signed a petition containing questions regarding various aspects of the conservancy district. Among the complaints noted by those signing the petition are: 1) not all properties with lake access are included in the proposed district; 2) there is no budget in the petition; and 3) there is no clear plan of the work to be done by the district in the petition. Many were interested in lake management but want it to be affordable.

C. Report from the Department Division of Water:

The Department Division of Water provided its report to the Commission on June 12, 2024, which is attached as Exhibit D. In summary, the Department determined that the formation of the LOTWCD appears to be necessary for the purposes of improving drainage, flood prevention and control, preventing the loss of topsoil from injurious water erosion, and operation, maintenance, and improvement of a work of improvement that is built for any other purpose authorized by this section. The Department recommended the LOTWCD add the purpose of “developing forests, wildlife areas, parks, and recreational facilities if feasible in connection with beneficial water management” as allowed by IC § 14-33-1-1(a)(6).

The Department determined that the establishing the LOTWCD offers public entity status, direct local oversight, and affordable financing options for the district to enhance water management and recreational possibilities that can be shared by all freeholders. The Department also noted that the planned units of work could be implemented in phases so that costs would be within the annual LOTWCD budget.

A couple of proposed units of work appear to the Department to be economically/engineering unfeasible, such as the installation of a whole-lake laminar flow aeration system. The annual cost for installation and maintenance of the system was estimated at \$145,000. Also, installation of drain filters to Private, Martin, Stephey, and Seltentright drains would most likely not be allowed due to IDEM and USACE requirements. However, the proposed LOTWCD included feasible projects that would result in benefit to the lake.

³ The legal question of the responsibility for maintaining/repairing the dam is not within the scope of this hearing officer's responsibilities under I.C. § 14-33.

III. Proposed Findings and Recommendations:

Under Ind. Code § 14-33-1-1, a conservancy district may be established for any of the following purposes:

1. Flood improvement and control;
2. Improving drainage;
3. Providing for irrigation;
4. Providing water supply, including treatment and distribution, for domestic, industrial and public use;
5. Providing for the collection, treatment, and disposal of sewage and other liquid wastes;
6. Developing forests, wildlife areas, parks and recreational facilities if feasible in connection with beneficial water management;
7. Preventing the loss of topsoil for injurious water erosion;
8. Storage of water for augmentation of stream flow;
9. Operation, maintenance and improvement of:
 - A. a work of improvement for water based recreational purposes; or
 - B. other work of improvement that could have been built for any other purpose authorized by this section.

Pursuant to Ind. Code § 14-33-2-17, the Commission's determination and recommendations to the Marshall Circuit Court are limited to the following considerations:

1. Whether the proposed district appears to be necessary;
2. Whether the proposed district holds promise of economic and engineering feasibility;
3. Whether the proposed district seems to offer benefits in excess of costs and damages;
4. Whether the proposed district proposes to cover and serve a proper area; and
5. Whether the proposed district could be established and operated in manner compatible with established: (A) conservancy districts; (B) flood control projects; (C) reservoirs; (D) lakes; (E) drains; (F) levees; and (G) other water management or water supply projects.

The LOTWCD petition requests the district be established for the following purposes:

1. Flood prevention and control;
2. Improving drainage;
3. Preventing the loss of topsoil from injurious water erosion;
4. Operation, maintenance, and improvement of works of improvement; and
5. Improve water quality.

The purpose of improving water quality is not included in the statutory list of purposes for which a conservancy district may be established; therefore, this purpose will not be considered in the Hearing Officer's analysis.

A. Whether the Proposed District Appears to be Necessary:

The Petition does not include specific details on the activities related to the alleged purposes for the conservancy district. Additional details were provided during testimony at the hearings on March 12, 2024 and May 2, 2024 and through the exhibits placed into evidence. Regarding flood prevention and control, the evidence indicates that proper dredging of the canals and debris removal would promote flood prevention. In addition, there is a dam located on the southern part of the lake to maintain court-established legal lake limits. The conservancy district would be in a position to ensure proper maintenance of the dam.

The testimony indicated that the drainage ditches are expensive to maintain and only maintained when there is money to do so. While the proposed LOTWCD may not interfere with the authority and jurisdiction of the drainage board, the district may be able to maintain the drains. Further, there are seven canals on the lake. Although it appears efforts by individual property owners have not been effective, the conservancy district could conduct the dredging and debris removal to improve drainage.

Dr. Jermalowicz-Jones recommended implementing vegetative and shoreline best management practices to reduce injurious water erosion. LOTW shorelines are eighty percent developed and have an average of sixty-six percent reduction in vegetation coverage. Engaging in best management practices is likely to reduce the injurious water erosion.

Expert testimony described the problematic invasive species present at the lake as Eurasian Watermilfoil, curly-leaf pondweed, starry stonewort, purple loosestrife, and zebra mussels. The overall lake water quality is high for nutrients, has low water clarity and has dissolved oxygen depletion. Further, the lake is considered hypereutrophic due to excessive algae growth, high phosphorus concentration, low water clarity, and dissolved oxygen depletion. It is recommended that the internal phosphorus loading should be reduced, dissolved oxygen levels should be increased with depth, cyanobacteria blooms should be reduced, and water clarity should be improved. It was also determined that the six major drains had elevated nutrient levels which contribute nutrients and sediment to the lake.

Specific activities related to the operation, maintenance, and improvement of a work of improvement for water-based recreation purposes, or other work of improvement that could have been built for any other purpose authorized by this section, were not included in the petition. However, evidence was presented as to the need for maintenance of the dam, which was installed by court order to maintain seasonal legal lake levels. The proposed conservancy district would be in a position to ensure the dam is properly maintained.

The Petition does not include the purpose of “developing forests, wildlife areas, parks and recreational facilities in connection with beneficial water management” as listed in IC § 14-33-1-1(a)(6). Based on the evidence presented, it appears this purpose is contemplated by those who testified and the inclusion of the purpose in the Petition would allow the proposed LOTWCD to approve projects aimed at carrying out this purpose.⁴

⁴ Under I.C. § 14-33-2-24(a), the court “may permit amendments to a petition to conform to the findings of the commission.”

B. Whether the District Holds Promise of Economic and Engineering Feasibility:

It appears that the district holds promise of economic feasibility. The evidence presented sets out estimated costs for units of work and estimated costs to the freeholders as outlined above. The current method of funding projects through LOWPOA is not sustainable as the LOWPOA operates at a deficit and therefore may not be financially able to continue funding lake projects. Comments made at the public hearing expressed concern over the lack of a specific budget being included within the Petition. As explained in the Real Estate Property Tax Assessment for Implementation of Conservancy District Plan, the budget approval process is set out in Ind. Code 14-33 and requires local oversight of the budgeting process. As indicated in the Department's report, establishing a conservancy district would provide public-entity status to the LOTWCD, which requires local oversight and makes affordable financing options available to conduct beneficial units of work. Freeholders' concerns about lack of specificity could be addressed by limiting the initial budget to that outlined in the Real Estate Property Tax Assessment for Implementation of Conservancy District Plan, and complying with IC 14-33-7-3 regarding special benefits tax rates.

The installation of a whole-lake laminar flow aerations system appears to be unfeasible both economically and engineering-wise. The estimated maintenance cost for the system is \$145,000 per year. Adding drain filters to the Private, Martin, Stephey and Seltenright rights will not likely be permitted by IDEM and USACE for these waters if they drains are considered waters of the United States. However, there was evidence of proposed work units that appear to be feasible. If the LOTWCD is approved, more detailed plans would need to be provided in the District Plan as required by statute.

C. Seems to Offer Benefits in Excess of Costs:

It appears that the establishment of the LOTWCD would offer benefits in excess of costs. Drainage, flood control, erosion, and operation and maintenance of the dam were all identified as concerns with the lake. Improvement in the overall quality of the lake would have a sustaining positive benefit on property values. Problems such as damage to boat propellers, the need to extend piers further into the lake, and the inability to use parts of the lake for recreation would be addressed by the proposed district and benefit all properties on the lake.

D. Proposes to Serve the Public Health:

While there was no evidence of specific goal of the LOTWCD to serve the public health, it appears that reducing toxic elements in the lake would benefit the property owners and the public using the lake and contribute to the overall health of the watershed.

E. Proposes to Cover and Serve a Proper Area:

Pursuant to IC § 14-33-3-1, "any area may be established as a District if each part of the District is contiguous to another part." The Petition describes the proposed district boundaries as follows:

II. The territory to be included lies generally in its entirety within the County of Marshall, Indiana, as is more particularly described as follows:

Any and all parcels of real estate having frontage on Lake of the Woods and/or the channels associated therewith.

The Petition does not include a detailed map of the proposed district.⁵ After reviewing the list of properties submitted by the LOTWCD, the Department determined that there may be parcels missing from the proposed district. A detailed map of the district is necessary to determine whether the proposed district includes the lake and channels associated with the lake and covers all parcels of real estate having frontage on LOTW and the channels associated therewith.

F. Could be Established and Operated in Manner Compatible with Established Conservancy Districts, Flood Control Projects, Reservoirs, Lakes, Drains, Levees, and Other Water Management or Water Supply Projects:

There are no other conservancy districts that would overlap with the proposed LOTWCD. The Marshall County Drainage Board expressed concern that it had not been consulted before the Petition was filed but did not object to the formation of the LOTWCD provided that the LOTWCD does not interfere with the jurisdiction of the Drainage Board. The proposed conservancy district would also be subject to any permitting or notification that may be required by local, state, or federal jurisdictions. It appears that the proposed district could be operated in a manner compatible with already established conservancy districts, flood control projects, reservoirs, lakes, drains, levees, and other water management or water supply projects.

IV. Conclusion:

While the Petition filed by the proposed LOTWCD may not contain the expected the level of detail generally expected with such petitions, the evidence presented provides much of the information necessary for review of the proposed conservancy district pursuant to I.C. § 14-33-2-17. The Commission therefore recommends the establishment of the proposed LOTWCD upon amendment of the Petition to include the following:

- That the following purpose under I.C. § 14-33-1-1(a)(6) be added:
“developing forests, wildlife areas, parks, and recreational facilities if feasible in connection with beneficial water management.”
- That the Petition be amended to include a detailed map of the proposed district that clearly outlines the complete boundaries of the district, including the lake itself and/or the channels associated therewith and all parcels of real estate having frontage on LOTW and/or the channels associated therewith, proving the contiguous nature of the district.

⁵ The Commission was provided marked-up versions of the Marshall County Beacon system which outlined the properties around LOTW that would be included. It does not appear that the same information was included in the Petition. Further, it cannot be determined from the mark-up whether each part of the proposed district is contiguous to another part.

Further, the following recommendations of the Department should be considered:

- A detailed District Plan with feasible units of work be developed and submitted to the Department Division of Water for review and approval within 120 days of the court order establishing the LOTWCD that includes a budgeting plan.
- The District Board should coordinate with the Marshall County Drainage Board on units of work.
- The initial assessment is not above what was proposed in the letter by Blachly, Tabor, Bozik & Hartman, LLC, and the rates must conform with IC 14-33-7-3.
- The district plan should clearly outline the boundaries of the District and ensure that the district covers all parcels of real estate having frontage on LOTW and/or the channels associated therewith.
- The District consider expanding the boundaries in the future to effectively address District concerns.

DATED: July 8, 2024



Elizabeth Gamboa, Division Director and
Chief Administrative Law Judge
Natural Resource Commission Division of Hearings
Indiana Government Center North
100 N. Senate Avenue, Room N103
Indianapolis, IN 46204
(317) 232-4699

EXHIBIT A

Marshall Circuit Court

AGENDA ITEM #15

STATE OF INDIANA)
) SS:
COUNTY OF MARSHALL)

IN THE MARSHALL CIRCUIT COURT

IN RE: ESTABLISHMENT OF)
THE LAKE OF THE WOODS OF)
MARSHALL COUNTY)
CONSERVANCY DISTRICT)

CAUSE NO. _____

**PETITION FOR THE CREATION OF THE
LAKE OF THE WOODS OF MARSHALL COUNTY CONSERVANCY DISTRICT**

COUNTERPART NO. 1

We, the undersigned, freeholders of Marshall County, Indiana, and each and all of us being freeholders of the land included in the boundaries described in Paragraph II of this Petition, desire the establishment of a Conservancy District under and pursuant to “an Act Relating to Conservancy Districts,” being Chapter 308, Indiana Acts of 1957 as amended and supplemented from time to time; and currently codified at IC 14-33; and we hereby petition the Marshall Circuit Court of Marshall County, Indiana, to order its establishment in accordance with the provisions of said Act as amended and supplemented, according to the facts and provisions hereinafter set forth.

I. The name of the conservancy district shall be the Lake of the Woods of Marshall County Conservancy District.

II. The territory to be included lies generally in its entirety within the County of Marshall, Indiana, as is more particularly described as follows:

Any and all parcels of real estate having frontage on Lake of the Woods and/or the channels associated therewith.

III. Said Conservancy District shall be established for the purposes of improving and maintaining the quality of Lake of the Woods through strategies designed to enhance and improve water quality, improving drainage, flood prevention and control, preventing the loss of topsoil from injurious water erosion and the operation, maintenance and improvement of works of improvement associated therewith. Strategies are anticipated to include but not necessarily be

limited to dredging in various areas of the lakes and ditches entering the lake, aeration of the lake to remove organic materials and increase lake depth, ditch chemical mitigation, studies of ditches and filter implementation, weed eradication programs, use of Phos Loc to contain the phosphorus at the bottom of the lake, dam inspections, repairs and maintenance and such other potential projects as may from be deemed necessary and appropriate for the betterment of the lake.

IV. The creation of the proposed conservancy district is necessary and proper so as to create an entity responsible for overseeing, protecting and enhancing lake quality through implementation of the strategies identified herein.

V. In addition to the above reasons, the establishment of the district will promote the general health, safety, and welfare of the area as well as surrounding communities.

VI. The cost and damages of the district will be less than the beneficial value to the residents and territories involved.

VII. This Petition is not conditioned upon the award of any particular, Federal or state grant.

VIII All conditions attached to any federal and/or state aid are acknowledged to be acceptable to the individual property owners if and as required by the federal and/or state government as conditions of any grant award or participation in project funding.

IX. It is anticipated that maintenance and operation of any works of improvement constructed and operated by the proposed conservancy district will be funded by a combination of user charges as well as potential assessment of special benefit taxes and possible exceptional benefit taxes as such may be determined appropriate from time to time by the Board of Directors and which are consistent with the laws of the State of Indiana.

X. Five (5) directors shall be appointed to serve on the Board of Directors. After the initial appointment, the election shall be by those individuals legally entitled to vote. The qualifications for and length of terms of each director shall be determined by the law in effect at the time of the creation of the conservancy district and as such requirements may be amended from time to time.

XI. Upon creation of the conservancy district, the Marshall County Circuit Court will be asked to divide the conservancy district into subdistrict areas which must be equal to the number of members of the Board of Directors.

[Signature]

Freeholder's Name (signature)

Brian Teall

Printed

[Signature]

Freeholder's Name (signature)

Edward J. Dumas

Printed

[Signature]

Freeholder's Name (signature)

Kelley D Kitchen

Printed

[Signature]

Freeholder's Name (signature)

David Veurink

Printed

[Signature]

Freeholder's Name (signature)

MARK GUGUST

Printed

[Signature]

Freeholder's Name (signature)

NANCY GUGUST

Printed

[Signature]

Freeholder's Name (signature)

Printed

MPN 6/15/23

Both Resigned

5018 W. Shore Drive, Bremen, IN 46506

Address

50-43-07-000-110.000-005

Parcel

~~5018 W. Shore Drive, Bremen, IN 46506~~

Address

3861 LAKE SHORE DRIVE ⁴⁶⁵⁰⁶ BREMEN, IN

50-43-06-000-304.000-005

Parcel

3183 Cottonwood Lane Bremen, IN ^{MPN Duplicated 6-15-23} 46506

50-43-06-000-071.000-005

Parcel

~~3183 Cottonwood Lane Bremen, IN 46506~~ ^{VOID MPN 6-15-23} ^{Edo} ^{SAND} ^{IN 46506} ²

3608 W. Shore Drive

Parcel

50-42-01-000-105.000-009

Address

Parcel

9035 N SHORE DRIVE

Address

50-42-01-000-033.000-009

Parcel

9107 N. Shore Drive

Address

50-42-01-000-019.002-009

Parcel

MPN 6/15/23

Two sided * ↓

Vickie Porter
Freeholder's Name (signature)

Vickie Porter
Printed

Deborah Symon
Freeholder's Name (signature)

Deborah Symon
Printed

Resign * Kim Hochstetler
Freeholder's Name (signature)

Dennis Ryan
Printed

Thomas R Evans
Freeholder's Name (signature)

Thomas R Evans
Printed

Jason Smessaert
Freeholder's Name (signature)

Jason Smessaert
Printed

Norman O. Rickard
Freeholder's Name (signature)

NORMAN O. RICKARD
Printed

Donna J Chaney
Freeholder's Name (signature)

Donna J Chaney
Printed

4010 West Shore Dr
Address Bremen IN 46506

5042-12-000-025.001-009
Parcel

3987 Lakeshore Drive
Address Bremen, IN 46506

50-43-06-000-440.000-005
Parcel

4026 Liberty St
Address Resign incorrect *

4734 West Shore
Parcel

3281 Lake Shore Dr
Address Bremen IN 46506

50-43-06-000-104.000-005
Parcel

3268 Lakeshore Dr
Address Bremen In 46506

50-43-06-000-103.000-005
Parcel

3449 LAKESHORE DRIVE
Address BREMEN IN 46506

50-43-07-000-174.000-005
Parcel

3674 West Shore Dr
Address Bremen IN 46506

50-42-01-000-111.001-009
Parcel

* Turn Over
Names on back side

AGENDA ITEM #15

Kelley D Kitchen
Freeholder's Name (signature)

Kelley D Kitchen
Printed

Kelley D Kitchen
Freeholder's Name (signature)

Kelley D Kitchen
Printed

Kelley D Kitchen
Freeholder's Name (signature)

Kelley D Kitchen
Printed

Thomas R Evans
Freeholder's Name (signature)

Thomas R Evans
Printed

Nicol Fick
Freeholder's Name (signature)

Nicol Fick
Printed

Mark Berta
Freeholder's Name (signature)

Mark Berta
Printed

Crista Nuh
Freeholder's Name (signature)

Austin Nielsen
Printed

3183 Cottonwood Lane Bremen IN
Address
50-43-06-000-071.000-005
Parcel

3183 Cottonwood Lane Bremen IN
Address
50-43-06-000-072.000-005
Parcel

3183 Cottonwood Lane Bremen IN
Address
50-43-06-000-073.000-005
Parcel

3281 Lake Shore Dr
Address

50-43-06-000-104.000-005
Parcel

3634 W. Shore Dr. Bremen, IN 46506
Address

50-42-01-000-107.000-009
Parcel

5122 W Shore Dr Bremen IN
Address

50-43-07-000-149.000-005
Parcel

3976 Liberty St. Bremen
Address

50-43-07-000-030.000-005
Parcel

Duplicate

MUUNO

293 600

3405 lake sl...
lake sl...

504306 000 162 000 005

504806 000 172 000 005

150100

VERIFYING AFFIDAVIT

COUNTERPART NO. 1

STATE OF INDIANA) IN THE MARSHALL CIRCUIT COURT
) SS:
COUNTY OF MARSHALL)

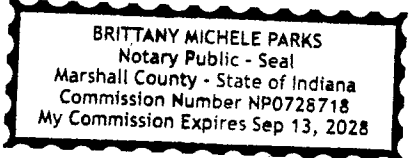
Michael P. Nate Jr., being first duly sworn, upon his/her oath deposes and says:

That he/she circulated the attached counterpart of the Petition for Establishment of the Lake of the Woods of Marshall County Conservancy District under and pursuant to "an act relating to conservancy districts", being Chapter 308, Indiana Acts of 1957 as amended and supplemented from time to time and currently codified as IC 14-33; that all of the signatures appearing on the attached counterpart of said petition were affixed in his/her presence and are the true and lawful signatures of the persons signing said counterpart.

Michael P. Nate Jr.

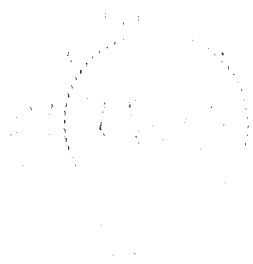
STATE OF Indiana)
) SS:
COUNTY OF Marshall)

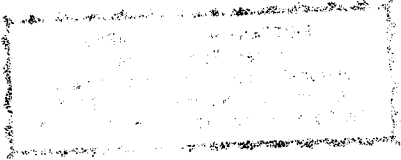
Subscribed and sworn to before me this 17th day of June, 2023.



Brittany M Parks, Notary Public

My Commission Expires: Sept 13, 2028
Resident of Marshall County, Marshall







We Protect Hoosiers and Our Environment.

100 N. Senate Avenue • Indianapolis, IN 46204

(800) 451-6027 • (317) 232-8603 • www.idem.IN.gov

Eric J. Holcomb
Governor

Brian C. Rockensuess
Commissioner

VIA ELECTRONIC MAIL

January 12, 2024

Billie Franklin, IRP
Paralegal
Natural Resources Commission, Division of Hearings
100 N Senate Avenue, Room N103
Indianapolis, IN 46204

Dear Ms. Franklin,

RE: Petition for the Establishment of
the Lake of the Woods of Marshall
County Conservancy District.
Marshall Circuit Court Cause No.
50C01-2308-MI-000079 (Admin
Cause No. 23-051C)

The Indiana Department of Environmental Management (“IDEM”) Office of Water Quality has received the Petition for the Establishment of the Lake of the Woods of Marshall County Conservancy District dated January 11, 2024. IDEM has reviewed the petition contents as presented and has no comments.

Some Conservancy District activities may require notice or a permit application to be submitted to IDEM. If you have any questions regarding IDEM involvement with a specific activity, please contact me at (317) 232-5727.

Respectfully,

Emily Faust
RSD Coordinator
Office of Water Quality



AGENDA ITEM #15

From: [Faust, Emily E](#)
To: [Franklin, Billie J](#)
Subject: RE: Petition for Establishment of the Lake of the Woods Conservancy District (Admin Cause No. 23-051C)
Date: Friday, January 12, 2024 1:50:13 PM
Attachments: [Lake of the Woods Conservancy District Petition approval.pdf](#)
[image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

Good afternoon,

I've attached the review of the Petition for the Establishment of the Lake of the Woods of Marshall County Conservancy District.

Please let me know if you have any questions.

Thank you!
Emily



Emily Faust
Regional Sewer District Coordinator
Office of Water Quality
(317) 232-5727 • efaust@idem.IN.gov

     www.idem.IN.gov

From: Franklin, Billie J <BiFranklin@nrc.IN.gov>
Sent: Thursday, January 11, 2024 12:07 PM
To: Faust, Emily E <Efaust@idem.IN.gov>
Subject: Petition for Establishment of the Lake of the Woods Conservancy District (Admin Cause No. 23-051C)

Good afternoon:

In response to an order received from the Marshall Circuit Court, the Natural Resources Commission is requesting your assistance in its review of the proposed establishment of the Lake of the Woods Conservancy District. I have attached the Petition and other pertinent documents.

Let me know if you have any questions.

Thank You,

Billie Franklin, IRP
Natural Resources Commission, Division of Hearings
Indiana Government Center North
100 North Senate Avenue, Room N103
Indianapolis, IN 46204
317.232.0156
BiFranklin@nrc.IN.gov
<https://www.in.gov/nrc/>

STATE of INDIANA



INDIANA UTILITY REGULATORY COMMISSION
101 WEST WASHINGTON STREET, SUITE 1500 EAST
INDIANAPOLIS, INDIANA 46204-3419

www.in.gov/iurc
Office: (317) 232-2701
Facsimile: (317) 232-6758

January 31, 2024

Billie Franklin
Natural Resources Commission
Division of Hearings
100 North Senate Avenue, Room. N103
Indianapolis, IN 46204-2273

Re: Petition for the Establishment of the Lake of the Woods Conservancy District,
Marshall County Circuit Court Cause Number 50C01-2308-MI-79
(Administrative Cause No. 23-051C)

Dear Ms. Franklin:

The Office of General Counsel and the Water/Wastewater Division (together "IURC Staff") of the Indiana Utility Regulatory Commission ("IURC") have reviewed the petition regarding the establishment of the Lake of the Woods Conservancy District ("LOTW"). Under Indiana law, a district established for the purposes of providing for the collection, treatment, and disposal of sewage and other liquid wastes that proposes to serve users outside of the district boundaries must petition the IURC for territorial authority. Ind. code §14-33-1-2(a). It appears that LOTW does not intend to provide water and/or wastewater utility services within or outside of its proposed district boundaries; therefore, the IURC does not have authority over the petition.

There are no IURC-regulated water or wastewater utilities in the proposed territory for this proposed conservancy district. IURC Staff does not have any concerns with the establishment of this proposed conservancy district.

Should you have questions, comments, or require additional information, please do not hesitate to contact me at (317) 232-2092.

Sincerely,

A handwritten signature in cursive script that reads "Beth E. Heline".

Beth E. Heline
General Counsel

cc: Curt Gassert, Director, IURC Water/Sewer Division
Ken Smith, Department of Natural Resources (kesmith@dnr.IN.gov)

From: [Jeffery Houin](#)
To: [Franklin, Billie J](#)
Subject: RE: Petition for Establishment of the Lake of the Woods Conservancy District (Admin Cause No. 23-051C)
Date: Tuesday, January 16, 2024 11:47:03 AM

****** This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. ******

Billie,

Thanks you for this notice. After reviewing, the City of Plymouth does not plan to take a position on this matter and will not be submitting any comment.

Jeff Houin

Jeffery Houin

Plymouth City Attorney
124 N. Michigan St.
Plymouth, IN 46563
574-936-2948
www.plymouthin.com



From: Franklin, Billie J [mailto:BiFranklin@nrc.IN.gov]
Sent: Thursday, January 11, 2024 12:14 PM
To: cityattorney <cityattorney@plymouthin.com>
Subject: Petition for Establishment of the Lake of the Woods Conservancy District (Admin Cause No. 23-051C)

Good afternoon:

In response to an order received from the Marshall Circuit Court, the Natural Resources Commission is requesting your assistance in its review of the proposed establishment of the Lake of the Woods

AGENDA ITEM #15

Conservancy District. I have attached the Petition and other pertinent documents.

Let me know if you have any questions.

Thank You,

Billie Franklin, IRP
Natural Resources Commission, Division of Hearings
Indiana Government Center North
100 North Senate Avenue, Room N103
Indianapolis, IN 46204
317.232.0156
BiFranklin@nrc.IN.gov
<https://www.in.gov/nrc/>

**Marshall County Farm Bureau Inc.**

1600 N. Oak Dr. • Plymouth, IN 46563-3404

Phone: 574-936-3143 or 800-276-6365 • Fax: 866-651-8381 • www.infarmbureau.org

Marshall County Farm Bureau Resolutions 2024**Support:**

1. Conservancy districts cannot influence or overrule operation of drainage ditches, tiles, and lake level control structures.
2. All fresh water Lake control structures must be maintained by the IDNR at the functioning level that was intended or mandated by the legal system.
3. Conservancy districts cannot overreach the powers of the county surveyor and drainage board.
4. Conservancy districts must work with local farmers /land owners on water quality issues.
5. Conservancy districts taxation cannot overreach into ~~adjoining~~ *adjoining* properties.
6. Conservancy districts cannot stretch the original petition's intended purpose by including "proposals" and "strategies" that go beyond the statute and which would have a disproportionately negative impact on surrounding farmland owners.
7. Any conservancy funds collected cannot be used for litigation or court.

Oppose

1. DNR stating they do not own or will not maintain any freshwater lakes and control structure in Marshall County, or any other county in the state of Indiana.



**Division of Water
Memorandum**

EXHIBIT D

Date: June 11, 2024

To: Elizabeth Gamboa, Administrative Law Judge
Division of Hearings, Natural Resources Commission

From: David Knipe, P.E. *DK*
Director, Division of Water

RE: Establishment of the Lake of the Woods of Marshall County Conservancy District –
Marshall County

On August 11, 2023, the petition for the establishment of the Lake of the Woods Conservancy District (District) was filed in the Marshall County Circuit Court. Under Cause Number 50C01-2308-MI-000079, this petition was deemed complete as to form and content and referred to the Natural Resources Commission on November 29, 2023. The petition was forwarded to the Department of Natural Resources-Division of Water for review and comment.

The proposed District will be located in Marshall County, Indiana. The proposed District is comprised of any and all parcels of real estate having frontage on Lake of the Woods and/or the channels associated therewith. It would consist of around 315 parcels with most of them being residential with single family homes.

According to IC 14-33-2-2, the petition to establish must be signed by 30% or more of the freeholders owning land in the proposed District. The proposed District includes 270 freeholders (Exhibit A) with representatives from 152 freeholders signing the petition. The representative is 52.47% of the owners of the assessed valuation of the real estate located within the boundaries of the proposed District. The freeholders have satisfied the statutory requirements required according to the Marshall County Circuit Court. According to IC 14-33-2-18(d), the commission or court cannot hold having only one freeholder as a sufficient reason to question the establishment of the District.

The petition requests the District be established for the purposes of:

- 1) Improving drainage;
- 2) Flood prevention and control;
- 3) Preventing the loss of topsoil from injurious water erosion;
- 4) Operation, maintenance, and improvement of works of improvement; and
- 5) Improve water quality.

"Improve water quality" is not a specific legislated purpose for establishment detailed under IC 14-33-1. While the need appears to have merit and is a common problem with many public freshwater lakes in the State, it cannot directly be listed or used as a proposed purpose for formation. This report, therefore, will make no direct findings related to the petitioners' proposed purpose number five.

A public hearing was held by the Commission on March 12, 2024, to allow the Petitioner to provide evidence and witness testimony concerning the establishment of the District and for any interested person the right to be heard. There were enough public comments at the March 12 public hearing that not everyone had the right to be heard; therefore, a second public hearing occurred on May 2, 2024. Overall, there were many individuals that provided comments in favor and against the establishment of the District.

As directed by the Indiana Conservancy Act (IC 14-33-2-17), the proposed establishment of the District in Marshall County, Indiana, the Division of Water offers the following comments:

1) Appears to be necessary

The petition proposes the District to be established for four legislated purposes, 1) Improving drainage; 2) Flood prevention and control; 3) Preventing the loss of topsoil from injurious water erosion; and 4) Operation, maintenance, and improvement of works of improvement.

During the hearing, studies of Lake of the Woods titled "Lake of the Woods Improvement Study and Management Plan Marshall County, Indiana" by Restorative Lake Sciences and "Lake of the Woods Aquatic Vegetation Management Plan 2022 Update" by Aquatic Weed Control were submitted as exhibits and were the topic of much professional and lay testimony. The findings of these studies were discussed during the public hearings on March 12 and May 2, 2024. The study by Restorative Lake Sciences discussed how the overall lake water quality was high for nutrients, had low water clarity, and had dissolved oxygen depletion in all three deep basins when the lake is thermally stratified. The Restorative Lake Sciences study considered the lake to be hypereutrophic due to excessive algae growth, high phosphorus concentrations, low water clarity (Secchi depth measurements was only 3.7-3.9 feet), and dissolved oxygen depletion.

Overall, the study recommended internal phosphorus loading should be reduced, dissolved oxygen levels should be increased with depth, cyanobacteria blooms should be reduced, and water clarity should be improved. The study also indicated that the lake had a large watershed of 7,043 acres with six major drains that flow into the lake. These drains had elevated nutrient levels and contribute nutrients and sediment to the lake.

Both studies described the problematic aquatic invasive species that are present at the lake which include Eurasian Watermilfoil (*Myriophyllum spicatum*), curly-leaf pondweed (*Potamogeton crispus*), starry stonewort (*Nitellopsis obtuse*), purple loosestrife (*Lythrum salicaria*), and zebra mussels (*Dreissena polymorpha*).

Purpose: Flood prevention and control IC 14-33-1-1 (a) (1)

Clearly defined specific activities related to the intent of this purpose were not identified within the petition but presented in the exhibits and testimony during the public hearing on March 12, 2024. While it was not indicated that there were specific known flooding issues, it was mentioned that proper dredging of the canals and debris removal would assist with preventing flooding. There is also a lake outlet structure (dam) located on the southern part of the lake that seeks to maintain the two court established seasonal legal average lake levels of Lake of the Woods. Forming a District would allow for the proper maintenance, repair, operation and future possible replacement of that lake outlet structure (dam).

Purpose: Improving drainage IC 14-33-1-1 (a) (2)

Clearly defined specific activities related to the intent of this purpose were not identified within the petition but presented in the exhibits and testimony during the public hearing on March 12, 2024. There are seven canals that are connected to Lake of the Woods. These canals are apparently prone to sediment accumulation and excessive weed and algae growth. There is a Marshall County Drainage Board that maintains the regulated drains (but not the canals) in the county. It was indicated in testimony that dredging of the canals does not always occur properly and sometimes has to be paid by the landowners on the canals. The petitioners indicated that the formation of a District would allow for the canals to properly be dredged which would allow improved drainage and recreation access.

Purpose: Preventing the loss of topsoil from injurious water erosion IC 14-33-1-1 (a) (7)

Clearly defined specific activities related to the intent of this purpose were not identified within

AGENDA ITEM #15

the petition but presented in the exhibits and testimony during the public hearing on March 12, 2024. The report by Restorative Lake Services mentioned that the Lake of the Woods shorelines were eighty percent developed and that developed lands are typically more prone to topsoil loss with developed lands having an average a sixty-six percent reduction in vegetation coverage. The Restorative Lake Services report identified implementing vegetative and shoreline best management practices to reduce injurious water erosion.

Purpose: Operation, maintenance, and improvement of a work of improvement for water-based recreation purposes; or other work of improvement that could have been built for any other purpose authorized by this section IC 14-33-1-1 (a) (9) (A) and (B)

Clearly defined specific activities related to the intent of this purpose were not identified within the petition; however, they were discussed during the hearing on March 12, 2024. During the public hearing it was noted that a low hazard lake outlet structure ID#50-1 was at the southern end of the lake where the lake drains into Isaac Sells Ditch. This structure comprises of two fixed crest concrete weirs with one operable center weir gate that is used to seek to maintain the two court established seasonal legal average lake levels. It was indicated that if formed, the District would inspect, operate, repair, maintain, and in the future if needed possibly replace the structure.

Overall, the formation of the District for the petitioners' four purposes of improving drainage, flood prevention and control, preventing the loss of topsoil from injurious water erosion, and operation, maintenance and improvement of a work of improvement that is built for any other purpose authorized by this section appears to be necessary.

Many of the exhibits, testimony, and discussion at the public hearings focused on water quality issues and recreational needs, and it appears to be important and necessary to address these issues and needs with beneficial water management. Through IC 14-33-2-24 Amendments to petition, Sec. 24 (a) states the court may permit amendments to a petition to conform to the findings of the commission.

Therefore, it is recommended that the following fifth purpose be added to the district (replacing the petitioners' non-legislated fifth purpose):

- "developing forests, wildlife areas, parks, and recreational facilities if feasible in connection with beneficial water management" (as listed in IC 14-33-1-1 (a) (6)).

2) Holds promise of economic and engineering feasibility

The petitioners seek establishment of a District to finance units of work and operating costs to achieve the purposes stated in the petition.

Currently, there is a Lake of the Woods Property Owners Association (LOWPOA) that provides some funding for units of work with a budget of around \$30,000 a year. Membership is not mandatory, and their yearly budget can fluctuate and has gone down over the years according to comments at the March 12 and May 2, 2024 public hearings. It was indicated that LOWPOA and individual property owner funding for units of work was not enough to maintain or improve the Lake of the Woods watershed.

A letter from Blachly, Tabor, Bozik & Hartman, LLC indicates that the costs associated with the proposed works of improvement will most likely be paid for by a flat rate fee on each freehold estimated around \$550 a year or a first year tax rate of \$0.30 per \$100 of assessed valuation of each property in the proposed District with the tax rate lowering to \$0.24 per \$100 of assessed valuation after the first year. A flat rate fee of \$550 for 270 freeholders would be \$148,500 annually while the tax rate of \$0.30 per \$100 of assessed valuation with the property valuation in the proposed District of \$102,000,000 would be \$306,000 annually and \$244,800 for the \$0.24 tax rate.

No formal budget was provided as part of the petition, but the Aquatic Weed Control study listed that the yearly cost for invasive aquatic plant management would be around \$66,435. The study completed by Restorative Lake Sciences estimated first year expenses for overall Lake of the Woods Conservancy District projects at \$281,050 for the first year and the following years at \$221,650 annually which included a budget of \$20,000 a year for invasive species treatment. However, those budget estimates do not factor in other units of work that were discussed during the public hearings like dam maintenance, dredging, and BMP implementation. Of the \$221,650 estimated annual costs, \$20,000 was for invasive species treatment, \$145,000 for maintenance of a whole-lake laminar flow aeration system, \$8,000 for drain filter maintenance, \$28,500 for professional services, and \$20,150 for contingency.

Establishing a District offers public entity status, direct local oversight, and affordable financing options to the petitioner while also enhancing water management and recreational possibilities that can be shared by all freeholders. Most potential units of work that were presented in the exhibits and public hearings could be implemented in phases so costs could be covered in the annual District budget.

There were a couple of proposed units of work that appeared to be economically or engineering unfeasible. For example, the installation of a whole-lake laminar flow aeration system should be re-examined since the annual maintenance cost was estimated at \$145,000 a year. Also, the installation of drain filters to Private, Martin, Stephey, and Seltentright drains will most likely not be allowed to be permitted by IDEM and USACE for these waters if they are Waters of the United States. While these two projects themselves may not be the most economic or engineering feasible, other more feasible projects that would result in similar effects could be implemented instead. It is recommended:

- that more detailed economic and engineering feasible units of work be presented in the district plan if the District is approved.

It appears that the proposed District mostly holds promise of economic and engineering feasibility if works of improvements are implemented at a rate that does not create a financial burden to the freeholders.

Multiple statements were made during the public hearings that it was unclear how much each freeholder would be charged. If the District is to be established, it is recommended:

- that the tax rates are not initially above what was proposed in the letter by Blachly, Tabor, Bozik & Hartman, LLC and
- that the rates be in conformance with IC 14-33-7-3 special benefits tax rate.

3) Seems to offer benefits in excess of costs

According to public comments received at the public hearings on March 12 and May 2, 2024, some property owners were concerned that property values would substantially decline if Lake of the Woods continued to degrade. There were some comments from the public that lived on the canals that if the sedimentation and vegetation was too high in the canals then they would not be able to enter the lake with their watercrafts therefore lowering their property value. There were also comments on the dense invasive aquatic vegetation beds that impeded watercrafts. Propellers can get stuck in the thick plant growth making those parts of the lake unusable for recreational boating or swimming.

Adequate lake outlet structure (dam) maintenance to retain operational viability and reduce flood damages is also needed to maintain property values and economic sustainability in the District.

Based on the exhibits, testimony, and comments presented during the public hearings on March 12 and May 2, 2024, it is anticipated that the establishment of the District for the four stated purposes (and the recommended fifth purpose) will have offer benefits in excess of costs for drainage, flood control, erosion, and operation and maintenance. It is also anticipated that the establishment of the District for the stated purposes would have a sustaining positive effect on property values.

4) Proposes to serve the public health

None of the proposed purposes apply to IC 14-33-2-1(c)(4).

5) Proposes to cover and serve a proper area

IC 14-33-3-1 states that "any area may be established as a District if each part of the District is contiguous to another part". No detailed map of the exact proposed district boundaries was provided by the petitioners' to confirm the contiguous nature of the proposal. The petition filed on August 11, 2023 (50C01-2308-MI-000079) states that the proposed District boundaries include any and all parcels of real estate having frontage on Lake of the Woods and/or the channels associated therewith.

It was noted that Exhibit B in the affidavit dated November 28, 2023 and the list of property assessments values presented during the May 2, 2024 public hearing was missing some of the of the adjoining parcels that seem to be needed for a contiguous District according to the petition. These missing parcels include parcel identification numbers 50-42-01-000-005.000-009, 50-42-12-000-135.000-009, 50-43-06-000-415.000-005, 50-43-06-000-050.000-005, 50-43-06-000-054.000-005, 50-42-12-000-033.000-009, and 50-43-07-000-281-000-005.

Due to this, the boundaries of the proposed Lake of the Woods in Marshall County Conservancy District is unknown to be contiguous within Marshall County, Indiana.

The District boundaries as described in the petition narrative would only appear to cover and serve a proper area in Marshall County, Indiana in order to achieve the proposed purposes, if the lake itself is included in the district boundaries. If the District is to be established, it is recommended:

- A map be created by the petitioners' and amended to the petition, clearly outlining the complete boundaries of the District, including the lake itself and/or the channels associated therewith, proving the contiguous nature of the district.
- The District covers all parcels of real estate having frontage on Lake of the Woods and/or the channels associated therewith.

Further, it is recommended that if the District is formed, the District considers expanding its boundaries to include more freeholders that use the lake and live nearby. This could help better address the flooding, erosion, sedimentation, and nutrient concerns that occur when water enters the lake.

6) Could be established and operated in a manner compatible with established Conservancy Districts, flood control projects, reservoirs, lakes, drains, levees, and other water management or water supply projects

There are no other conservancy Districts whose boundaries overlap those of the proposed District. The proposed District could be established and operated in a manner compatible with other already established Districts and local government.

There was public comment at the March 12, 2024 public hearing that the Marshall County Drainage Board had not been consulted with about the formation of the District. However, the Marshall County Drainage Board did not speak out in opposition and it is recommend that:

- the District Board coordinate with the Marshall County Drainage Board on units of work.

Department's Recommended Findings:

While the level of detail that is normally expected for a petition was not provided, the Department finds that the documentation, testimony, statements, and exhibits presented by the petitioners mostly answer the questions from IC 14-33-2-17, and thus supports the overall establishment of the District.

It is recommended by the Department that the petition not be established by the Court unless the following amendments to the petition to the Court are made:

- The following fifth purpose be added to the district (replacing the petitioners' non-legislated fifth purpose)
 - "developing forests, wildlife areas, parks, and recreational facilities if feasible in connection with beneficial water management" (as listed in IC 14-33-1-1 (a) (6)).
- A map be created by the petitioners' and amended to the petition, clearly outlining the complete boundaries of the District, including the lake itself and/or the channels associated therewith and all parcels of real estate having frontage on Lake of the Woods and/or the channels associated therewith, proving the contiguous nature of the district.

It is further recommended by the Department that if the District is established:

- A detailed District Plan with feasible units of work be developed and submitted to the DNR Division of Water for review and approval, within 120 days of establishment that includes a budgeting plan.
- The District Board coordinate with the Marshall County Drainage Board on units of work.
- That the tax rates are not initially above what was proposed in the letter by Blachly, Tabor, Bozik & Hartman, LLC, and that the rates be in conformance with IC 14-33-7-3 Special benefits tax rate.
- The district plan should clearly outline the boundaries of the District and make sure that the District covers all parcels of real estate having frontage on Lake of the Woods and/or the channels associated therewith.
- The District considers expanding the District boundaries in the future to be able to effectively address District concerns.

Should you have questions concerning the above comments, please contact Kristi Johnson, Project Development Section at 463-261-6195.