

THE DRAINAGE TASK FORCE

I.C. 2-5-51-1 et. seq.

Bill Emerson, Jr., PE
Lake County Surveyor
Drainage Task Force Member

May 16, 2023

Drainage Task Force created by I.C. 2-5-51-1 (2022)

Disclaimer:

I am speaking today in my individual capacity and not on behalf of the Drainage Task Force. I was asked by the Indiana MS4 Partnership to speak on the Drainage Task Force generally and update the membership on the presentations that have been given so far.

Second Regular Session of the 122nd General Assembly (2022)

PRINTING CODE: Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type; additions will appear in this style type, and deletions will appear in this style type; Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in this style type. Also, the word NEW will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.
Conflict reconciliation: Text in a statute in this style type or ~~in this style type~~ reconciles conflicts between statutes enacted by the 2021 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 85

AN ACT to amend the Indiana Code concerning agriculture.

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

SECTION 1. IC 2-5-51 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 51. Drainage Task Force

Sec. 1. As used in this chapter, "task force" refers to the drainage task force established by section 2 of this chapter.

Sec. 2. The drainage task force is established.

Sec. 3. (a) The task force consists of the following nineteen (19) members:

- (1) Six (6) members of the senate, appointed as follows:
 - (A) Four (4) members shall be appointed by the president pro tempore.
 - (B) Two (2) members shall be appointed by the minority leader of the senate.
- (2) Six (6) members of the house of representatives, appointed as follows:
 - (A) Four (4) members shall be appointed by the speaker.
 - (B) Two (2) members shall be appointed by the minority leader of the house of representatives.
- (3) One (1) officer or employee of the department of environmental management, appointed by the governor.
- (4) One (1) officer or employee of the department of natural

SEA 85



Drainage Task Force created by I.C. 2-5-51-1 (2022)

19 Members

6 Senators

6 Representatives

1 IDEM officer or employee

1 IDNR officer or employee

1 County Drainage Bd. member

1 County Soil and Water

1 American Society of Farm

Managers and Rural Appraisers

member

1 Rep of a Statewide Farm

Organization

1 County Surveyor

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The task force shall review:

(1) The responsibilities of landowners and state and local authorities under current laws relating to the drainage of land including:

(A) the laws concerning drains, drainage boards, and drainage maintenance and repair districts.

(B) The law concerning federally regulated wetlands,

(C) the law regulating wetland activity in state regulated wetlands.

(D) IC 14-28, the Indiana flood control law.

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The task force shall determine:

- (A) whether authority over drainage matters is shifting from county drainage boards to state authorities;
- (B) the extent to which the objective inherent in the drainage law, that of simply draining agricultural land, is yielding to conservation and pollution control objectives;
- (C) whether the delays and costs associated with regulatory requirements applying to farm conservation projects are too great; and
- (D) whether floodway permit requirements should apply to the installation of fences and the removal of embedded tree limbs and stumps on farmland located in floodways.

Determine whether the balance between state authority and local authority over drainage of agricultural land favors state authority more in Indiana than in neighboring states.

First two meetings held November 21, 2022 and December 21, 2022. Two more meetings are anticipated, but not scheduled yet.

Report of the Drainage Task Force is due December 1, 2023.
https://iga.in.gov/information/archives/2022/video/committee_drainage_task_force/

Review of Existing Law

Jeff Cummins - Associate Director of Policy Engagement
Indiana Farm Bureau

- Gave regulatory overview of drainage law and an agricultural perspective
- Farm Bureau supporting:
 - Local control of drainage issues
 - Minimizing state regulation of regulated drains
 - Efficient debris removal, logjams, and stumps
 - Removal of sediment and natural obstructions
 - Soil health and water quality initiatives
 - Cover crops and conservation practices

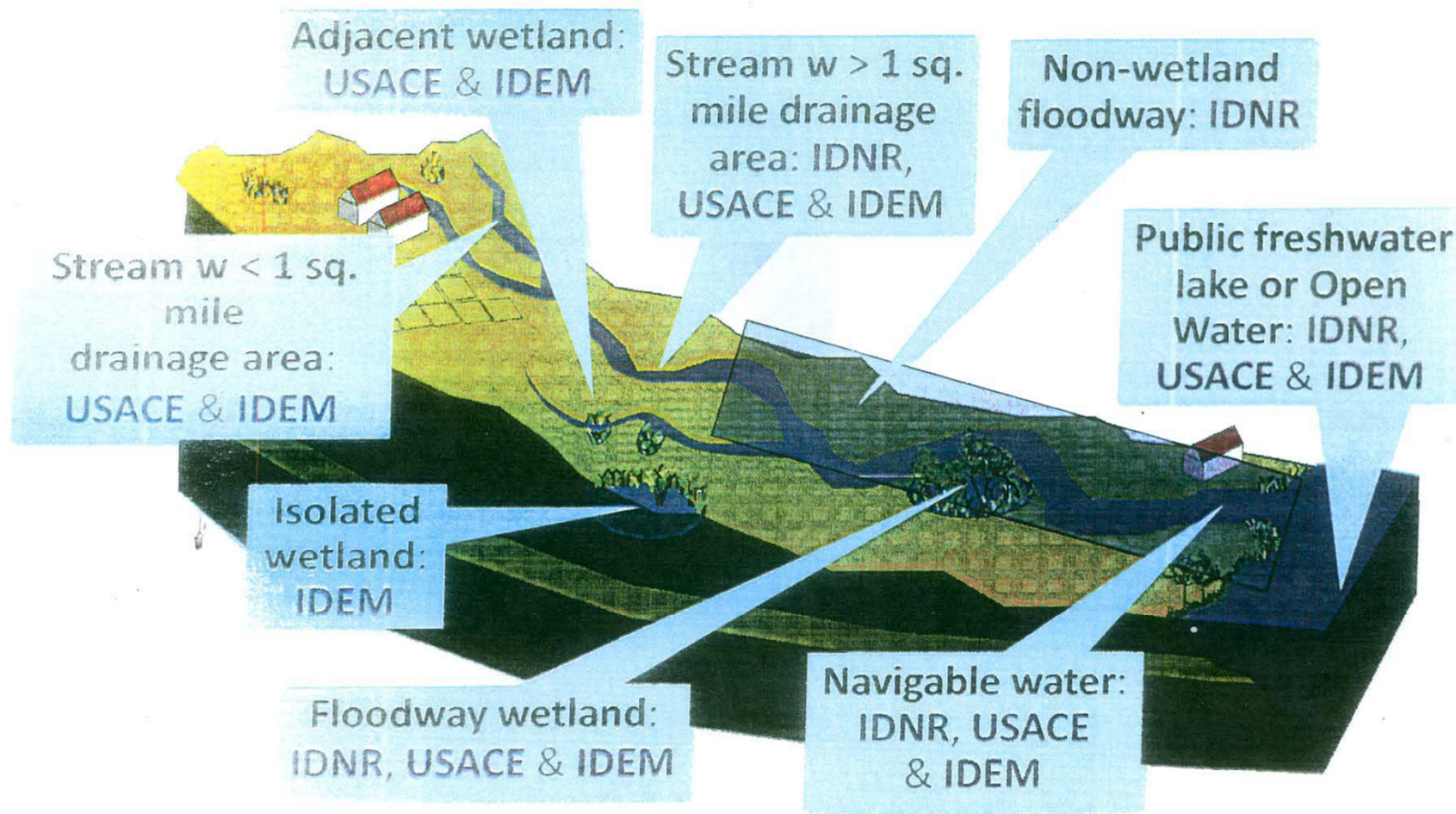
Agricultural Perspective

Steve Slonaker - Appraiser, Consultant, and Farm Manager
Slonaker Farm Management

- Gave perspective of Indiana drainage law from an agricultural perspective
- Presentation discussed:
 - Local control of drainage issues
 - Indiana Drainage Handbook is outdated (rev 1999)



Regulatory Agencies



Steve Slonaker - Appraiser, Consultant, and Farm Manager

Slonaker Farm Management

- Concerns about:
 - Logjam removal permitting:
 - By hand - dangerous
 - Permitting stump removal in floodplain
 - Cost and delay concerns
 - Leaving stumps on ditch banks
 - Hazard for mowing
 - IDNR Best Available Floodplain Layer

Steve Slonaker - Appraiser, Consultant, and Farm Manager Slonaker Farm Management

- Concerns about:
 - IDNR Best Available Floodplain Layer
 - Notice to property owners
 - Requirement that local floodplain admin use
 - Senate Bill 242 (2023) signed into law removes this requirement

Bottom Line: Mr. Slonaker wants to:

1. Remove agricultural land from all permit requirements
2. Rescind SEA 368 requiring agencies to meet on site
3. Rescind IDNR Best Available Floodplain Layer (SB 242)

Drainage Laws of Indiana and Neighboring States

Craig Mortell, Attorney, Legislative Service Agency

- Review of State and Federal Drainage Law
- IC 14-28-1-39 (2022) requires the DNR to adopt a license for:
 - the removal of trees;
 - channel maintenance; and
 - bank reconstruction, repair, and stabilization in a floodway.

Drainage Laws Neighboring States

Craig Mortell, Attorney, Legislative Service Agency

- Agricultural Drainage Law Michigan, Illinois, Ohio, & Kentucky
 - Similar regulation of agricultural drains in MI, IL & OH
 - No laws in KY for agricultural drainage

Wetlands Regulations Neighboring States

Craig Mortell, Attorney, Legislative Service Agency

- Ohio regulates wetlands not subject to federal jurisdiction
 - Established three categories (like IN)
 - Requires mitigation
- Michigan regulates wetlands not subject to federal jurisdiction
 - MI state regulated wetlands based on connectivity to waterbodies or over 5 acres
 - MI and NJ are the only states to assume authority to manage 404 permits from the Army Corps

Wetlands Regulations Neighboring States

Craig Mortell, Attorney, Legislative Service Agency

- Illinois does NOT regulate wetlands not subject to federal jurisdiction
 - IL does have a law that applies to state owned and state funded projects. Zero loss of wetlands and mitigation.
- Kentucky does NOT regulate wetlands not subject to federal jurisdiction

Flood Control Regulations Neighboring States

Craig Mortell, Attorney, Legislative Service Agency

- Illinois Flood Control Law
 - IL has a Flood control law that precedes the 1968 National Flood Ins. Program
 - IL Div of Water Resource Management (DWRM) (Div of IL DNR)
 - Permit required in urban areas – drainage area ≥ 1 sq/mi
 - Rural Areas - drainage area ≥ 10 sq/mi
- Ohio – Flood of 1913 – Miami Conservation District and Conservancy Act
- Michigan – State Floodplain Permit required for drainage areas ≥ 2 sq/mi
- Kentucky – Requires State Floodplain Permits

DNR Presentation

David Knipe

Director of the Division of Water, Indiana Department of Natural Resources

- Floodplain Management 101
- The Indiana Flood Control Act
- The National Flood Insurance Program
- Floodplain Mapping in Indiana
- Other threats (FEH / Urban Flooding)

Switzerland County flooding Labor Day 2022



"We just kept focusing on, we're alive. It was just surreal to see that. In 150 years, the house that we live in has never flooded ever, so this is unprecedented."

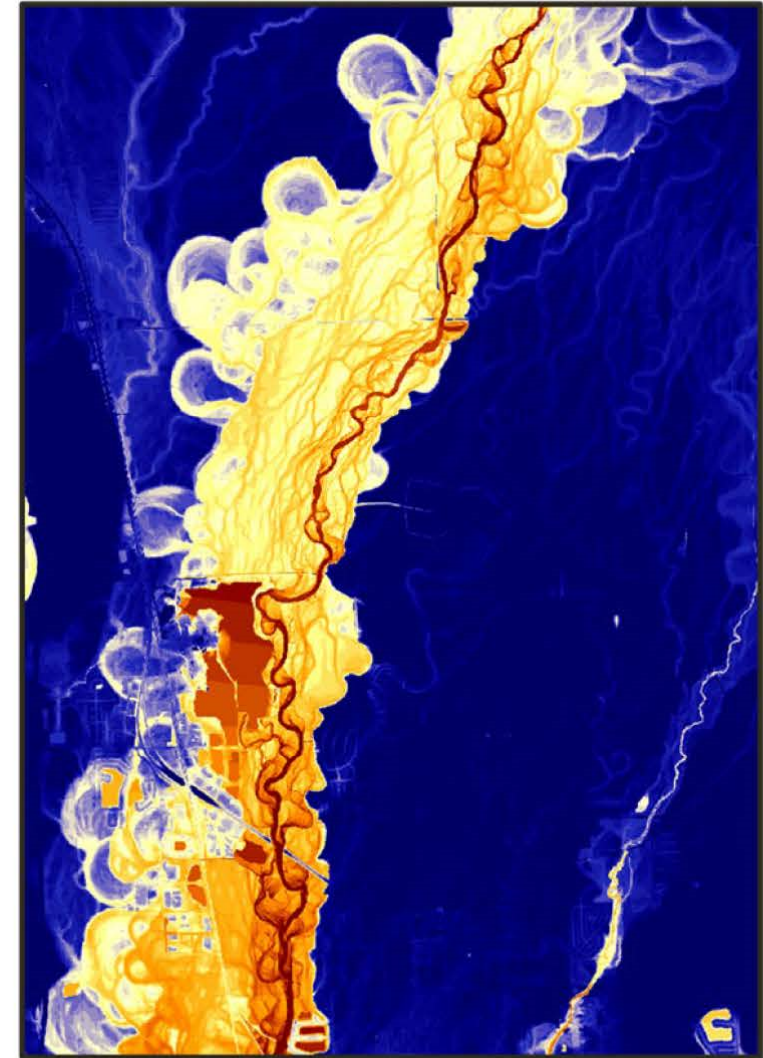
Switzerland County resident Jeremy Robinson called the situation a "nightmare," adding that a creek that hadn't flooded in 30 years overflowed with water. "[I]'s just unimaginable."



Fluvial Erosion Hazards

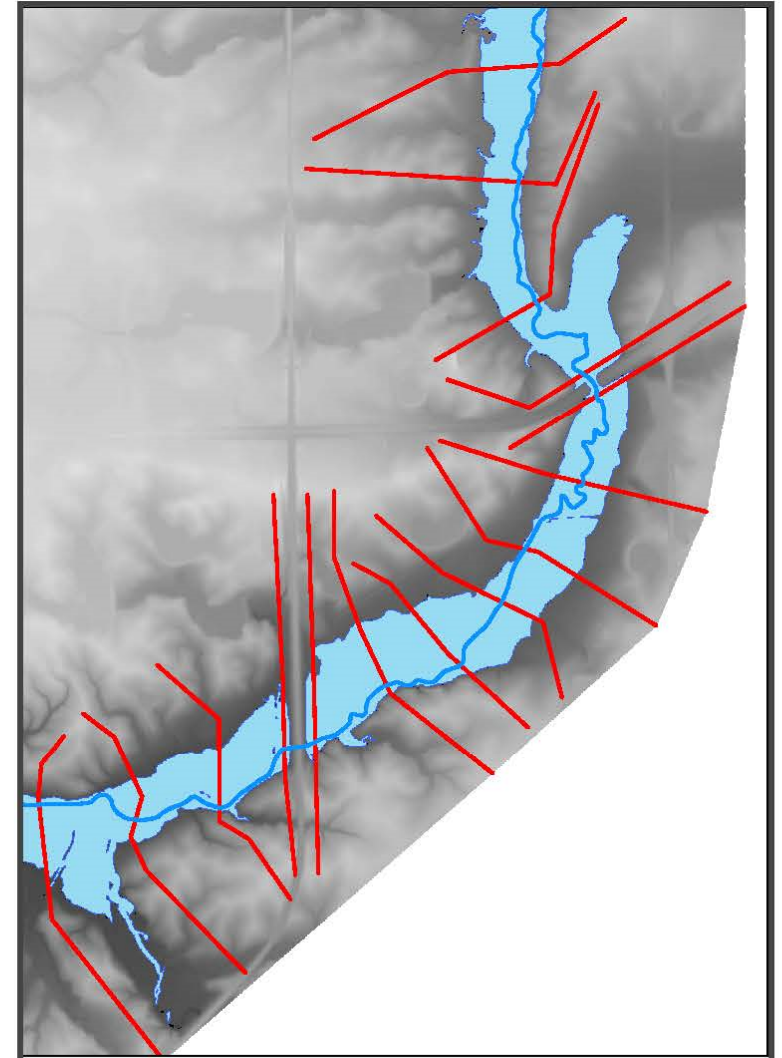


<https://feh.iupui.edu/>



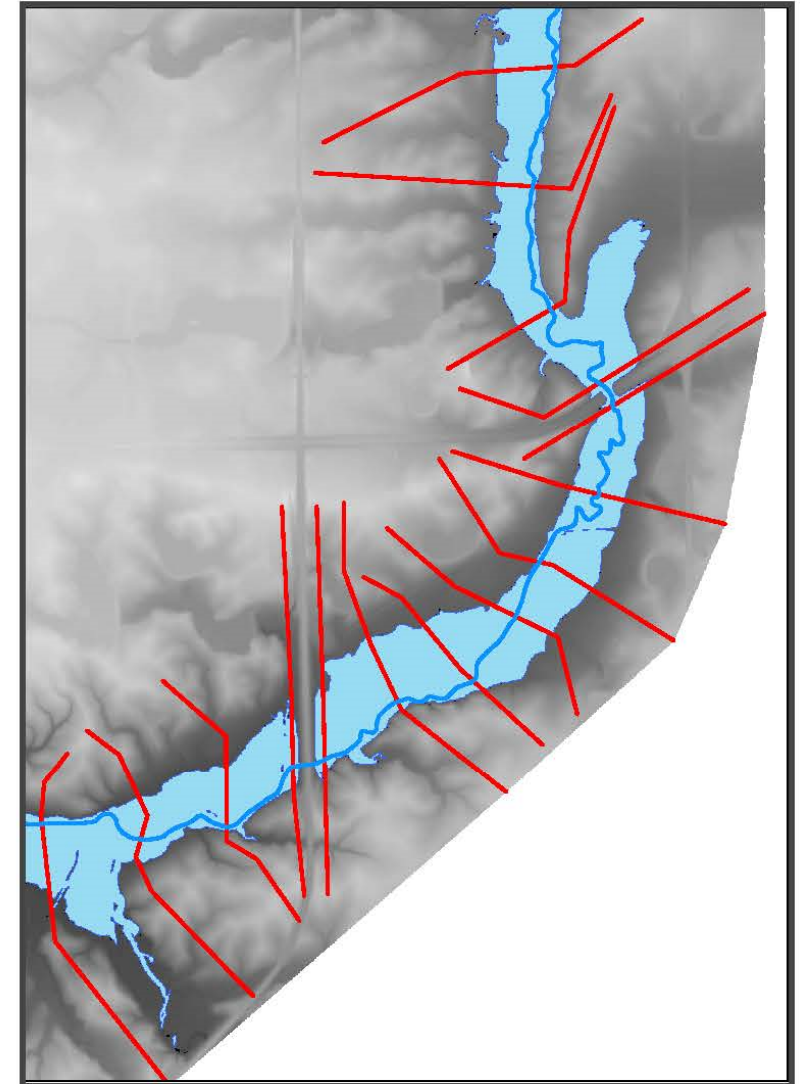
DNR / OCRA Zone A Project

- Previously, landowners that wanted floodplain information that was not on a FEMA map would have to pay to have data collected (DNR would do the studies on their behalf)
- With LiDAR and other mapping advances, DNR saw an opportunity to complete mapping
- Largely funded by OCRA through CDBG disaster block grant funding from 2008 flooding disasters
- FEMA did end up funding a small part of the project not eligible for OCRA funding
- Cost: \$5,000,000+
- 18,500 miles of streams studied, and floodway limits determined, providing regulatory certainty
- Completed October 2018



DNR / OCRA Zone A Project

- The risk is there whether the mapping shows it or not. We are negligent in our duties if we don't depict risk where it exists.
- Having the data readily available saves time & money for landowners, data is at their fingertips
- Proactively providing Base Flood Elevations and Floodway limits gives regulatory certainty, they do not have to perform studies on their own
- Projects are designed and built safely, the risk from flooding is greatly reduced. Costs related to disaster response and recovery are saved.



Urban Flooding (Jewell Woods, South Bend)



IDEM Presentation

Martha Clark Mettler

Assistant Commissioner, Indiana Department of Environmental Management

Discussed IC 14-28-1-37 and IC 14-28-1-38 which called for IDEM and IDNR to work together to “streamline” the permitting processes.



Improvements made as a Result of the Project

- Improved coordination between agencies
 - Regularly scheduled meetings between IDEM & IDNR and IDEM & Army Corps of Engineers
- Combined permit application form
 - (Condensed eight forms into one)
 - IDEM
 - IDNR
 - Army Corps of Engineers
- Created Waterways Inquiry Request tool
 - Online information request tool
 - Provides citizens information when/if projects need permits
 - Generates one response highlighting permit needs from both IDEM and IDNR
 - Soil and Water Conservation districts are trained on how to submit requests



Waterways

About Waterways

Indiana Department of Environmental Management (IDEM) ▼

Indiana Department of Natural Resources (DNR) ▼

Waterways Permitting

IDEM ▼

DNR ▼

Resources

Waterways Permitting Handbook

Application Forms

Affiliated Agencies ▼

Contact Us ▼

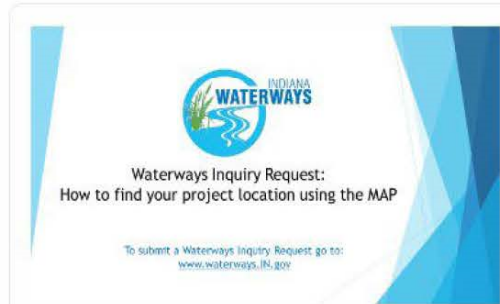
I Want To ▼



For Section 401 Water Quality Certifications, Isolated Wetland permits, Construction in a Floodway permits or other construction along streams, lakes, or dams ONLY.



Instructions for Inquiry Request



Video Instructions

https://www.youtube.com/watch?v=Ant_7ziRrZY

Helpful Tips Before you Begin...

- Know your project location
- Be able to describe your project
- Valid email address required
- Decision will take up to 14 days

Wetlands Task Force Summary

Senate Enrolled Act 389 of 2021

Will Ditzler, chair of the Wetlands Task Force

- Outlined Conclusion of Wetlands Task Force
 - Benefits of isolated wetlands on flood prevention - main issue
 - More frequent intense rain events
 - Reviewed in lieu mitigation program
 - Recommended streamlining permitting process
 - Staffing issues with State agencies - funding

The Indiana Conservation Partnership

Trevor Laureys

Director of the Division of Soil Conservation, Indiana Department of Agriculture

Indiana Conservation Partnership

- United States Department of Agriculture (USDA)
- USDA Natural Resources Conservation Service
- Indiana Association of Soil and Water Conservation Districts
- Indiana Department of Environmental Management
- Indiana Department of Natural Resources
- Indiana State Department of Agriculture
- Indiana State Soil Conservation Board
- Purdue University Extension



PUBLIC COMMENTS

Residents' concerns about DNR's Best Available Floodplain Layer

- David Knipe from DNR addressed concerns about specific areas

Bill Bloomquist – White River Alliance

- Increasing rainfall amounts and frequency over time

Indra Frank – Hoosier Environmental Council

- Wetlands Task Force has a thorough report

QUESTIONS?

Bill Emerson, Jr., PE
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