

## Summary

### FRESH WATER LAKES CONFERENCE

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by

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Many agencies and individuals have for some years been concerned with the problem of ownership and use of fresh water lakes in Florida, with particular emphasis on the question of public access. Previous meetings (formal and informal) concerned with this problem have established a near unanimous agreement on policy and administrative shortcomings in past and present attempts to manage our fresh water lakes in the public interest, and at the same time afford protection for legitimate private interests.

Governor LeRoy Collins, in his opening address to this conference, restated and clarified in a most effective fashion the past deficiencies in management programs for Florida's fresh water lakes. Governor Collins noted the jurisdictional confusion, the lack of concentrated authority and responsibility, and the more critical lack of basic information on which needed reforms in the administrative and policy areas can be made. He called attention to the increasing need for more effective management of Florida's fresh water lakes, a need produced by the rapid urbanization of a steadily growing population. The pressure on our natural resources, including fresh water lakes, is sure to increase as the population of the state increases to a projected 8,000,000 people in 1970. The Governor pointed out that moderate improvements in policy and administration now would forestall the necessity for more drastic programs of government control later. Governor Collins concluded by noting that the very

basis of Florida's appeal, to both tourists and permanent residents, centered to a considerable extent on public access to the state's incomparable fresh water resources, stressing the fact that "public rights are meaningless unless they can be implemented by public use."

A. D. Aldrich, Director of the Florida Game and Fresh Water Fish Commission, clarified a major element of the problem concerning this conference--the right of public access to the state's fresh water lakes. Mr. Aldrich noted the problem raised by the relatively small number of lakes definitely vested with the public interest by virtue of having been meandered in original surveys. Access to many other lakes, equally valuable for public use, either have been closed to public use or threaten to be shut off as more and more lakefront property goes into private ownership.

Mr. Aldrich's statement summed up the heart of the problem by stressing the need "to press forward and pursue all approaches and exhaust all means in determining the right of the public to use many of the unmeandered lakes in Florida. If we are to continue with our lackadaisical attitude in allowing many of our lakes which have been constantly used by the public in the past to be now fenced off or otherwise isolated, we will find ourselves in an untenable position. It could end up in a situation where we have 'water, water everywhere, but not a drop to swim in, fish in, boat on, picnic around, or perhaps to even look at freely.'"

The kind of general agreement on the inadequacies of present policy and administrative arrangements noted above has been outlined at other conferences on water resource problems in recent years. Some encouraging steps have been taken to overcome these deficiencies. Mr. Aldrich called attention to a recent cooperative agreement with the Trustees of the Internal Improvement Fund designed to provide a check on the effect of proposed lake fills or other changes on the fish and game potential of the

lakes involved. Other encouraging developments might be detailed. An informal coordinating group composed of state and federal agencies concerned with natural resources is a case in point. In addition, the work of John Wakefield's Department of Water Resources has initiated coordinative efforts that constitute a large step in the right direction. Few would argue, however, that these advances constitute more than a good beginning.

One major road block to devising new programs for the proper management of Florida's fresh water lakes has been the confusion and uncertainty about the legal picture in regard to these waters. It is the happy circumstance of this conference to have available for the first time the results of a number of years of extensive research into legal problems of Florida's fresh water lakes. This research has been carried on jointly by Dean Frank Maloney of the University of Florida Law School, and Sheldon J. Flager, member of the Law School faculty. For the first time, it is possible to end a conference of this kind without the frustrating realization that progress was unlikely until the legal confusion was clarified, and possible avenues suggested for bringing about an equitable harmonizing of the public interest and the proper rights of private owners.

I am not suggesting that Dean Maloney has cleared up every legal uncertainty involving fresh water lakes--that utopian state will probably never be reached. What Dean Maloney has done, supported by the valuable contributions of panel members, Bob Grafton, Cletus D. Howard, Joe Jacobs, and Ralph McClane, is clarify for the first time just where the legal uncertainties lie, how they developed historically, and how the problems in Florida compare with those of other states. Of perhaps greater importance than this invaluable contribution has been the development by Dean Maloney and the panel of several possible approaches that might be taken in protecting the public

right in fresh water lakes, while at the same time protecting the rights of private owners, where these rights do not conflict unduly with the public interest.

These approaches might be summarized as follows:

1. Statutory extension of navigability--under this approach the experiences in Louisiana and Florida were discussed.

2. Judicial use of a liberal definition of what constitutes navigability--under this heading, experiences elsewhere as well as the attitude to date of the Florida courts were discussed.

3. A declaration of state water policy broad enough to form the basis of public use of lake waters, including at least some non-sea-dered lakes.

4. The use of zoning laws.

5. The use of Spanish Civil Law doctrines to guarantee public rights in certain lakes.

6. Establishing a declaration of easement for public use in certain non-sea-dered lakes (closely related to 3).

7. Special tax benefits to riparian owners who permit public use of lakes.

8. Access to non-navigable lakes by invitation of riparian owners.

None of these alternatives, of course, will apply themselves automatically.

The fine work of Dean Maloney and the others will not lead to the improvements we need unless these suggestions are taken up by interested individuals in state government and elsewhere and pursued with energy and persistence until an adequate basis for guaranteeing the public interest in fresh water lakes, including the critical factor of access, is assured.