CONSERVATION DEPARTMENT: Whether body of water impounded by power dam across a river remains a river or should be considered a lake.

September 20, 1933.

Hon. Kenneth M. Kunkel,
Director, Fish and Game Division,
Conservation Department,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of September 18, 1933, asking whether your department, in administering the various duties imposed upon it by law, should consider large bodies of water, backed up by the placing of power dams across rivers, as lakes or whether such bodies of water should still be considered as rivers. You cite as illustrations, Lakes Freeman and Shaffer, so-called, which are formed by the erection of power dams across the Tippecanoe River.

A "lake" has been defined generally as a considerable body of standing water retained in a natural basin, or in a depression of the land below the ordinary drainage level of the region.

American and English Encyc. of Law (2d Ed.), Vol. 18, p. 130;
Black's Law Dictionary;
Scheafer v. Marthaler, 34 Minn. 487;
Webster's New International Dictionary.

Clearly, the bed of such a body of water as you inquire about, would not be a natural basin, or a depression below the ordinary drainage level, as is best illustrated by the fact that a dam was necessary to impound the water at such spot and to prevent it from draining off into still lower levels.

The Supreme Court of Michigan has distinguished between "lakes" and "rivers" as follows:

"A 'lake' occupies a basin of greater or less depth, and may or may not have a single prevailing direction. A 'river' is characterized by its confining channel banks, which give it a substantially single course throughout."

Jones v. Lee, 77 Mich. 35.
It is a matter of personal knowledge, particularly as to the two bodies of water cited as illustrations, and generally as to all bodies of water created by the damming of streams, that while at many points the natural channel banks of the stream are submerged by the water impounded, still the body of water generally follows the meanderings of the original river bed and maintains a "substantially single course throughout."

In New Hampshire, it is said: "The fact that a river swells out in broad pond-like sheets does not make that a lake which would otherwise be a river." (14 N. H. 477; my italics.)

The answer to your question, of course, depends upon the language used in each specific act under consideration, and the object sought to be achieved by the legislation. But, in the absence of a clear showing to the contrary, it is my opinion that the word "lake" should be presumed to have been used by the legislature in its natural and generic sense, and that so-called "lakes" produced by unnatural means were not intended to be included.


September 22, 1933.

Hon. Wayne Coy,
Under Secretary to the Governor,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter inclosing copy of "Points of Agreement between the Indiana Historical Society and the Indiana State Library and Historical Board Relating to the William Henry Smith Memorial Library."

This copy purports to have been executed by "the Indiana Library and Historical Board" and "Executive Committee of the Indiana Historical Society" under date of June 12, 1931. You request an opinion as to what board or commission representing the state is authorized to enter into this agreement with The Indiana Historical Society.

I call your attention to the fact that by act approved March 6, 1925, there was created and established a department of