

# NATURAL RESOURCES COMMISSION

Minutes of April 24, 2002

## MEMBERS PRESENT

Michael J. Kiley, Chair  
John Goss, Secretary  
Damian Schmelz  
Jack Arnett  
Jane Anne Stautz  
Rick Cockrum  
Jerry Miller  
Megan Murphy  
Raymond McCormick, II  
Beth Admire

## NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas  
Sylvia Wilcox  
Jennifer Kane  
Debbie Michaels

## DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Carrie Bales	Executive Office
John Davis	Executive Office
David Vice	Executive Office
Paul Ehret	Executive Office
Jim Wichman	Forestry
Burnell Fisher	Forestry
Glen Salmon	Fish and Wildlife
Gwen White	Fish and Wildlife
Linnea Floyd	Fish and Wildlife
Glenn Lange	Fish and Wildlife
Bruce Clear	Law Enforcement
Samuel Purvis	Law Enforcement
Jeff Wells	Law Enforcement
Dan Mathis	Legislative Liaison
Jim Ray	Soil Conservation
Doug Noble	State Museum
Gerald Pagac	State Parks and Reservoirs
John Bergman	State Parks and Reservoirs
Gary Miller	State Parks and Reservoirs
Jim Hebenstreit	Water
Bruce Thomson	Water

## **GUESTS**

Val Frazee	David Culp	Bob Myers	Chip Garver
Dick Mercier	Mary Culp	Steve Tuchman	Matt Price
Jim Weir	Gilbert Keppin	Jeff Schmabel	
Steve Bourquein	Bob Herdrick	Brad Wagner	
David Lichtenhauer	Tom Yoder	Paul C. White	

## **MONTHLY REPORTS**

Michael J. Kiley, Chair, called to order the regular meeting of the Natural Resources Commission at 10:10 a.m., EST, on April 24, 2002, at The Garrison, Fort Benjamin Harrison State Park, Indianapolis, Indiana. With the presence of ten members, the chair observed a quorum.

Jerry Miller moved to approve the minutes of March 21, 2002. Jane Anne Stautz seconded the motion. Upon a voice vote, the motion carried.

John Goss provided the Director's Report. Goss reported that the Department of Natural Resources properties are open this season. He said that DNR has hired "several hundred" less" intermittent staff for summer 2002. Goss said the interpretive centers will be "minimally staffed" due to the cut of intermittent employees. Goss reported that mowing would be kept at a minimum at the state parks this summer, focusing on the maintenance of campsites and picnic areas.

Director Goss said that he was "glad" to report that DNR has "survived with no layoffs of permanent employees," and "hopefully that is going to stand through the rest of this budget crisis." He said that DNR's capital improvement projects would be "very limited," and explained health and safety projects "will be allowed to move forward" such as "sewage treatment and water lines that are critical in the next two years."

Director Goss reiterated that the priorities for the DNR are to focus on user fees to develop a financial independence from a tax-based budget. Director Goss said, "we are looking for ways in which to make more efficient the central office operation and our human resources."

Director Goss introduced Doug Noble, Chief Executive Officer of the new Indiana State Museum. Noble gave a quick over-view of the status of the museum. He commented, "It's big, it's bad, and when it opens, I'm glad." He reported that progress is being made in staffing the 270,000 square-foot complex, which includes the IMAX Theatre.

Noble also reported that the new museum complex would open on May 22, 2002. Noble noted that the "grand opening" admission price would be a canned good "to help feed the hungry." He said \$28 million worth of exhibits are being installed that have been funded largely by the private sector. Noble said that they are in the midst of dealing with a host of practical issues. "We have with permission and 100% consent of the Commission of

our admission fees.” He noted that there are two “magnificent” restaurants in the complex—the Ayres Tea Room and the Crossroads Café. Noble distributed informational material to the Commission members. He said the premier exhibit is dinosaur bones on loan from China— “Chinasaurus.”

Noble said, “there is a lot to be done, but we are very excited. We’ll be a tourist attraction, because of its location, its proximity to the wonderful Convention Center, and the downtown hotels.” Noble said that the new complex is also going to be a “huge educational amenity.” Free admission will be provided to school groups. “We have invested a lot of money into distance learning for those schools setup to do that. Areas “not seen by many” such as collection rooms will be accessible by television.

Noble concluded saying that the new Indiana State Museum is the last piece to the completion of the White River State Park. ““Oh Wow!”—is the response we are getting when persons enter” the museum. Noble said the museum will be open seven days a week, and asked the Commission to make a “special effort” to visit the museum. Chairman Kiley said the Commission would be there on opening day.

Jerry Miller, Chairman of the Advisory Council for Lands and Cultural Resources, reported the Advisory Council met on April 9, with discussion of three items. Miller said that one item discussed was the consideration of State Forestry price increases, which he would comment on when the item came up for discussion during today’s meeting. Miller said that the other two items were passed.

John Davis, Deputy Director for the Bureau of Lands, Recreation, and Cultural Resources, addressed the boat ramp and campground closings. He said responses are coming in from the public with inquires on what they can do to help keep the campgrounds and ramps open, or to help with the financial problems.

Davis said that DNR has entered into a program at Lake Monroe and Patoka Lake to look at maintenance that cannot be done by DNR staff due to financial constraints. Groups are coming forward to “lend a hand” to police the areas, cut grass, and maintain the bathrooms. Davis said that DNR is “taking people up” on their offers.

Davis reflected that the Commission heard at its March meeting an offer by the Indiana Trail Rider’s Association to assist the DNR in maintaining the horsemen’s campground at Potato Creek State Park. Davis reported that he and Jerry Pagac, Director of State Parks, traveled to Potato Creek and accepted a \$9,000 check from the Association. Davis said the funds will allow DNR to keep the campground open. “We are extremely pleased with the help that is coming forward.”

Davis announced that the Division of Forestry is holding open houses at three different locations on April 25 (Greene-Sullivan State Forest), May 1 (Starve Hollow State Recreation Area), and May 8 (Selmier State Forest). He explained that each open house would have an exhibit venue depicting the uniqueness of the area illustrating the area history, the purpose of the state forest, and the future of the forest. Davis said another exhibit display at each open house would be the Indiana Heritage Trust Program. The exhibit will show the parcels that have been purchased by Indiana Heritage Trust funds.

Davis also announced that DNR has acquired its 200<sup>th</sup> Indiana Heritage Trust parcel—McCloud Park—a local park in the Hendricks County parks system. He noted that Hendricks County is a “really under-served county. Now there is a great park out there which Indiana Heritage Trust has made possible.”

Damian Schmelz commented that he was pleased that there would be less mowing at the parks this year. He said, “we don’t need a golf course kind of manicure. Schmelz also asked whether the dedicated funds were still in tact. Goss indicated that the dedicated funds were “still intact;” however, there are persons “advocating for those funds.” Kiley commented that there would be a “negative impact on federal funds” if the dedicated dollars were appropriated. Goss said, “We believe it would take legislative action to actually tap any of our DNR dedicated funds. We must be vigilant about that in the future.”

Damian Schmelz asked whether the closing of the parks and ramps would be a permanent situation. Davis replied that it is not known whether the closing will be permanent. “We will find out how much the parks are missed.” Davis said that some of the ramps would probably be blocked off. “We’re going to find out that those campgrounds are terribly missed.”

Jack Arnett asked whether the closed ramps are actually closed to access. Davis explained that ramps at Monroe and Patoka would not be gated, but will be “left to deteriorate depending on how much help is provided on the local level.” Davis said that the ramp at Mississinewa and other boat ramps would be blocked off, but safety will be maintained. He concluded, “We are trying to keep as many as possible open.”

Ray McCormick, Chairman of the Advisory Council for Water and Resource Regulation, reported that the Advisory Council met on April 10. Discussions were held on three items, one being the proposed rule on group boating activities on Lakes Wawasee and Syracuse. He commented the Maj. Samuel Purvis in his presentation “carefully explained the alternatives.” McCormick said that in attendance was representation from the lakes Homeowner’s Associations, bass fishermen, and the sailing community. He said ultimately the Advisory Council recommended “establishment of flat fees for non-motorized craft and motorized craft contests, double the density restrictions for motorized events on holidays and holiday weekends, and such events to end by 1:00 p.m.”

McCormick said that Dr. Robert Waltz, Director of the Division of Entomology and Plant Pathology, presented an update on the Gypsy Moth program. McCormick said that the gypsy moths are spreading from a northeasterly direction across the state, and that modern technology is being used to counteract the devastating effects of the gypsy moths. “This is a long-term problem.”

McCormick said the proposed rule governing nuisance wild animal control permits was revised and passed. He also reported the Council voted to support the letter from Director Goss requesting the Animal Board of Health to restrict the importation of servant animals—hoofed animals such as elk and deer—into the state because of Chronic Wasting Disease. McCormick said the disease is a problem that is occurring throughout the West and the upper Midwest. He explained that the disease basically attacks the brain

of hoofed animals. “We want to take a proactive stance to protect the Indiana deer herds.”

David Vice, Deputy Director for the Bureau of Resource Management, reported that muskie and walleye broodstock and egg collection resulted in nearly one million eggs taken during three weeks on Lake Webster. He said that nearly 41 million walleye eggs were collected over the first three weeks in April at Brookville Reservoir. Vice also reported the draft environmental assessment for limiting field trials on selected fish and wildlife areas (Glendale, Tri-County, Winamac and Pigeon River) is about to enter the public input stage.

Vice reported that the Division of Fish and Wildlife held two one-day meetings in Warsaw and Spring Mill State Park to present their annual awards, and announced that John Castrale was presented the Biologist of the Year award. Glenn Salmon was awarded one of five “Taking Wing” awards, which were handed out nationally by the U.S. Forest Service. Vice said that Division of Fish and Wildlife’s Public Access South crew restored over 100 acres of wetland habitat along the Lost River within the boundaries of the Hoosier National Forest.

David Vice reported that the Division of Law Enforcement was involved in Thunder Over Louisville held the weekend of April 20<sup>th</sup>. He said that there was approximately 800,000 spectators and reported that there were no fatalities or serious injuries. Vice noted that the districts have completed their annual inspections and are continuing their firearms training and defensive tactics.

Paul Ehret, Deputy Director for the Bureau of Resource Regulation, reported that discussions were held with the Office of Surface Mining (OSM). For consideration were possible national rules to govern the handling and disposal of coal combustion waste. He said he also attended a meeting with the Interstate Mining Compact Commission and had an opportunity to meet with the new director of OSM in Washington. “All the meetings went very well. I feel we are making some progress on some very difficult issues.”

Ehret reported that on April 1, 2002, Division of Reclamation started “what is probably the largest abandoned mine land project—reclamation of the Lynnville Mine gob pile.” The estimated cost of the reclamation is \$5.2 million dollars. He explained the funds for the reclamation originates on the federal level coming into Indiana from the coal tax. “It’s a rather amazing site.”

Ehret reported that Division of Water would be meeting in Fort Wayne on May 15<sup>th</sup> and on May 23<sup>rd</sup> in Crawfordsville with the county officials and drainage surveyors to “re-examine and re-tool the permit process.”

Ehret reported that he has assisted David Vice and John Davis in searching for possible sites to run field trials. He explained that because field trials require large tracts of land, discussions were being held with several coal-mining companies for possible sites.

## **PERMANENT APPOINTMENTS AND PERSONNEL INTERVIEWS**

### **Permanent Appointment for the Position of State Historic Site Property Manager at Vincennes.**

Jack Arnett presented this item. Arnett said that he and Jerry Miller interviewed the two candidates. Arnett said the position was “more than just a site manager. It’s also a regional supervisor’s position, which entered into the decision process.” Arnett noted that neither candidate were current DNR employees; however, both candidates have been interviewed for previous positions within the Department. Arnett stated that Bruce Beesley was selected for the manager position.

Jack Arnett moved to approve Bruce Beesley for permanent appointment as Property Manager of the Vincennes State Historic Site. Jerry Miller seconded the motion. Upon a voice vote, the motion carried. Chairman Kiley thanked Bruce Beesley for his dedication and added, “We look forward to working with you.”

## **BUREAU OF LANDS, RECREATIONAL AND CULTURAL RESOURCES**

### **DIVISION OF FORESTRY**

#### **Consideration of a request by the Division of Forestry to raise the price of conservation seedlings.**

Jim Wichman, Nurseries Supervisor, presented this item. Wichman said, “what we’re coming to you for today is to ask for a price increase that will bring our revenue to approx. 77% of our total operating cost. He stated that Forestry’s currently program involves the planting trees and shrubs that do not have any immediate problems that provide environmental benefits. He said that the other part of the program provides a diverse group of native species for this reforestation.

Wichman said that the Division of Forestry is primarily serving reforestation within the state and are hoping that the 5.3 million trees go for soil and water protection, inward protection of wildlife habitat, wind breaking.

Wichman explained that the program is very labored and expensive. He expressed that tree seedling and shipping takes a lot of labor. The Department of Corrections is one of Forestry’s biggest providers of labor. Other laborers include intermittent clerks, laborers, and management staff.

Wichman said that the yearly expenditures total approximately 1.8 million dollars, which is for full time salaries, intermittent salaries, and the department of corrections, equipment and supplies. He said that this year’s revenue totals 1.2 million.

He said, “what we’re aiming at is a 15% increase in the average seedling price. Our average seedling price is 22 cents per 100. In addition, we’re asking for a \$10 handling

charge on seed orders to offset the cost of handling. What that would do is bring our revenue to 1.4 million or 77% of the total cost of the operating program.

The Division of Forestry recommends approval for the price increase of conservation seedlings.

Jerry Miller moved to approve the price increase of conservation seedlings. Jane Anne Stautz seconded the motion. Upon a voice vote, the motion carried.

## **DIVISION OF NATURE PRESERVES**

### **Consideration of the Dedication of The Narrows Nature Preserve, Harrison County.**

John Bacone, Director of the Division of Nature Preserves, presented this item. He said the proposed nature preserve is a 75-acre property southwest of Milltown in Harrison County. The proposed preserve contains “dramatic” limestone cliffs and mesic upland forest on a narrow backbone forming a loop along the Blue River.

He said the tract was owned by the state of Indiana and managed by the Division of Nature Preserves. The land was purchased from the Indiana Natural Heritage Protection Campaign and the Blue River Corridor Program, with assistance from The Nature Conservancy. Bacone said the Division of Nature Preserves recommended dedication of the site.

Damian Schmelz moved to dedicate The Narrows Nature Preserve in Harrison County. Rick Cockrum seconded the motion. Upon a voice vote, the motion carried.

### **Consideration of the Dedication of The Buddha Karst Nature Preserve, Lawrence County.**

John Bacone also presented this item. He said the proposed Buddha Karst Nature Preserve is a 37-acre property located in Lawrence County. The site includes caves, springs, sinkholes, and karst geological features. Buddha Cave is a “classic” Indiana cavern and remains in relatively pristine condition. The cave is one of only two known locations for an as yet undescribed species of cave beetle of the genus *Pseudanophtalus*.

Bacone said the property is owned and managed by the Indiana Karst Conservancy. The Conservancy would control and limit access to the property. In response to a question from the Commission, he said the reason was because of the great sensitivity of the cave and species in the cave to damage if not closely protected. He recommended the property for dedication.

Damian Schmelz moved to approve dedication of The Buddha Karst Nature Preserve located in Lawrence County. Beth Admire seconded the motion. Upon a voice vote, the motion carried.

# BUREAU OF RESOURCE MANAGEMENT

## DIVISION OF FISH AND WILDLIFE

### **Consideration of Request for Preliminary Adoption of Amendments to 312 IAC 9 Concerning Scientific Collector Permits; Administrative Cause Number 00-191D; LSA #02-68.**

Linnea Floyd, Environmental Protection and Operations Staff Specialist in the Division of Fish and Wildlife presented this item. She explained that the Division of Fish and Wildlife issues over 150 scientific collectors licenses each year. In 1999, the Division received a request from an individual to collect fish in a stream that contains several endangered species. Floyd said the applicant gave no purpose for the proposed collection, "other than the his house was along this stream and he wanted to investigate what species were present." The applicant could not provide documentation to verify his qualifications to be able to identify an endangered species. Floyd noted that a DNR biologist surveyed the stream the previous year. She explained that the Division was not "able to deny the request due to the fact that no language exists in the rule for denying a license." As a result of this incident, a focus-group was formed to discuss rule amendments. "Our fisheries staff also wanted to better coordinate with scientists doing surveys in their district."

Floyd said letters were circulated in July of 2000 to scientific collectors and members of the nongame technical advisory committees asking for their input. "We received 28 letters, many of which expressed concerns over the qualifications of collectors and the possible effects on endangered species through proposed collection methods and locations." She said the comments received were used to draft amendments, and subsequently the draft rule was re-circulated for additional comment. Floyd noted reported that several of the amendments are already in practice.

Floyd explained that the major changes being proposed include requiring an applicant to use the specimens for scientific and educational purposes. The applicant must possess a degree in the biological sciences or have relevant experience and be affiliated with one of the institutions listed in the rule. She said any specimen treated with hormones or any other type of chemical must provide documentation that the drug is being used in compliance with requirements for all extra-label drug use as required by the Food and Drug Administration. Floyd noted that the sale of specimens collected under this license is also prohibited.

Floyd said the proposed rule would give the Department the ability to suspend, deny, revoke or not renew a license if the collection or release of a specimen is likely to threaten the welfare of the wild animal population, persons, or if false information is provided and the license holder fails to comply with state statutes or any provisions of the rules.

Damian Schmelz moved for preliminary adoption of amendments to 312 IAC 9 concerning scientific collector permits. Jerry Miller seconded the motion. Upon a voice vote, the motion carried.



## DIVISION OF LAW ENFORCEMENT

### **Consideration of Recommendation for Preliminary Adoption of Amendments to 312 IAC 2-4 that Governs Watercraft Engaged in Organized Activities and Tournaments on Designated Public Waters; LSA Document #02-73**

Maj. Samuel Purvis, State Boating Law Administrator, presented this item. He said for consideration were proposed amendments to 312 IAC 2-4 that governs watercraft engaged in organized activities and tournaments. The proposal would “amend some of the general rule provisions and add Lakes Wawasee and Syracuse to the list of public waters requiring permits.” Purvis said there were some typographical errors within the document of the proposed rule. In 312 IAC 2-4-4(d), “September 1” should be amended to read “September 15;” and in 312 IAC 2-4-13(b)(1), “(25)” should be amended to read “(255).”

Purvis said the current rules became effective January 2002. In reviewing the current proposal to amend the rules, DNR staff from at least eight different divisions met bi-monthly for the past year. There were several factors that had to be considered. The Division of Law Enforcement went to outside sources, mainly the sailing club, property owners associations, and tournament directors “to pull in some of the information that needed to be considered on Lakes Wawasee and Syracuse.” Purvis said that he and four other staff members traveled to Syracuse and met with interested persons.

Purvis said the proposed rule amendments would modify the basic procedural provisions but would also establish site specific watercraft contests licensing requirements on Lake Wawasee and Syracuse Lake. With changes to 312 IAC 2-4-1, boat races and ski events would be considered when considering maximum numbers for organized boating activities. 312 IAC 2-4-2 would include a definition for contests, and 312 IAC 2-4-4 would establish a time period in which a permit would be required. “This is outside the normal requirements for boat races and ski events, but describes time periods and how acreage is determined into a maximum number of boats that would be allowed for an activity, which basically would be weekends and holidays between April 1<sup>st</sup> and September 15<sup>th</sup>. Weekday activities would not require a permit, thus pushing activities to the less crowded time of the week.” Purvis said 312 IAC 2-4-6 would establish an application fee of \$25. The \$25 fee would be for each day of the contest and would not be required at the time of the advanced date approval. An activity would be exempted from the fee where each contestant is less than seventeen (17) years old.

Purvis said 312 IAC 2-4-13 would be a new section to establish site-specific requirements on Lake Wawasee and Syracuse Lake. The section would set a baseline of 50 for fishing tournaments and sailboat races to assure neither would be locked out on a particular weekend.

Jerry Miller asked Purvis how the acreage of a body of water was determined. Purvis deferred to Stephen Lucas. Lucas answered, “Basically, that number incorporates everything within the lake at normal pool level. So, for example, if there are channels, as there are on Lake Wawasee, those should be included in the acreage.”

Jerry Miller asked Purvis why April 1<sup>st</sup> was chosen as the starting date for the limited number of watercraft activities on a public freshwater lake. Purvis explained it was due to the popularity of bass tournaments that usually start during this time period. Miller stated that as early as March 1<sup>st</sup>, other states including Ohio and Illinois come to Indiana for fishing tournaments. Purvis explained that looking at the database for the fishing tournaments held on the public freshwater lakes, there are only a few tournaments starting before April 1<sup>st</sup>. Miller added that a number of tournaments take place at Patoka Lake and Lake Wawasee prior to April 1<sup>st</sup>. Purvis said, “they got into higher numbers after April 1<sup>st</sup>; it seems like the sheer number of tournaments raised after that, so we went from there.”

Chairman Kiley addressed Major Purvis: “Sam, I want to be sure that if in fact this rule becomes law that it protects the interest of the sailing public in regard to the use of public freshwater lakes, and the activities that they have traditionally held on the lakes for decades.” He said, “as I understand it, we have a 50-boat limit for each event. We have up to 50 boats for sailors for each weekend that they file an application for?” Purvis replied, “No actually, that’s a reserve for just sailing. That’s taken off of the top in reserving 50 for the sailing, and it’s doing exactly what I think you’re asking. It’s protecting that interest by reserving 50 for the sailing events, and another 50 for fishing tournaments.” The balance would be available for drawing for any organized boating activity. Kiley said, “as a practical matter there isn’t a balance. I mean what you’re looking at, it seems to me, are basically bass tournaments on one-hand and sailboat races, on the other, sharing the body of water. Are we ever going to run into a problem, for instance, where sailors can’t sail on Saturdays and Sundays at Lake Wawasee?”

Purvis deferred Chairman Kiley’s question to Paul Ehret who said the Advisory Council came up with a number to make it an “open competition role.” There was “a great deal of concern from the public that someone may get locked out of the lake.” He said one of the things, which came partially out of Advisory Council discussions, was a guarantee to honor some of those traditions that so long as reservations were turned into the department, “you would have 50 slots for sailing and 50 slots for fishing tournaments. We didn’t want anybody to get locked off the lake. The only time you would lose that reservation is if you did not apply for it, then it would become anybody’s group activities use.” Ehret added it “doesn’t mean they couldn’t have 100 boats, but there’s a minimum of 50 boats for each type activity on every day of the week that we regulate.” Ehret said the number of boats was based on public input.

Jerry Miller questioned Major Purvis about the 15-boat minimum in order to file an application for a permit. Miller explained that many bass clubs only have five to 15 boats. “At Lake Wawasee, you could have ten tournaments come in one day without filing an application, you got 60-70 boats. Is there any way you could include a permit even if they don’t have to pay a fee for a small tournament?” Purvis explained that in researching Lake Wawasee, the small clubs were taken into consideration. The small clubs had voluntarily registered their tournaments on a web site. “We’ve gone there and to the town of Syracuse to find what organized activities have taken place and have come up with a number of those small tournaments.”

Purvis questioned Lucas about the discussions concerning small tournaments. Lucas replied, “Basically, 15 is a threshold number. If it’s fewer than 15 vessels, we’re not

considering it an event.” Lucas said there was a lot of discussion of what the minimum number should be before the existing rules currently were adopted, both during the public hearing and later before the Commission when given final adoption. He said there seemed to be about as many people who thought 15 was too big a number as who thought 15 was too small a number.

Purvis concluded by saying “We took the Advisory Council’s recommendation, asking that those events be over by 1:00 p.m. We opened that and added it to the rule before we brought it here today.”

Rick Cockrum asked Purvis to explain why Syracuse and Wawasee Lakes were singled out. Purvis replied the DNR had received a petition to set licensing requirements on these lakes for organized boating activities. Although the petition was denied because it violated the spirit of rules subsequently adopted by the Commission, since the petitioners were not local government activities, the DNR also promised to take the proposal forward on its own. The reason these lakes were singled out is because it was here that the agency received interest in establishing licensing requirements. Also, Syracuse Lake and Lake Wawasee are mutually accessible and are together the largest freshwater lakes with the most activity.

Rick Cockrum asked Ehret which groups asked for the petition. He responded it was the Syracuse and Wawasee Property Owners Association and the Foundation. Ehret added there was a lot of supposition on the filing the petition that dealt with the damage to the fishery resource. The Division of Fish and Wildlife biologists indicated, however, there was no damage to the fishery. Despite the pressure on these lakes, the fishery is extremely healthy and vibrant. Ehret said DNR believes there is no biological reason to regulate tournaments on the lakes. Without a biological reason, DNR looks at the rule as a social issue. “DNR is a natural resources management agency, and we are kind of put a little out of our normal box when we try and come up with a balanced rule that meets our guidelines relative to what the statute says and deals with the other issues that we are getting into more and more.”

Chip Garver spoke on behalf of the Wawasee Yacht Club. Other representatives for the yacht club included Jeff Schmahl and Brad Wagon. Also present were representatives from several other sailing organizations. Garver said, “The Wawasee Yacht Club is here today to ask that you not include sailboat racing in the proposed changes to the administrative rule.” He said while the yacht club could appreciate the position of the Property Owners Association, and could understand the concern of the bass tournament organizers, the Wawasee Yacht Club does not feel that sailboat racing and fishing tournaments should be treated as the same type of activity. The Wawasee Yacht Club’s argument was as follows:

- 1) It has conducted sailboat races on Lake Wawasee for 100 years without incident.
- 2) Most of the boats in the races are stored on the lake.
- 3) Participants use their own parking facility, boat ramp, and dock for visitors.
- 4) Boats are not motorized.
- 5) Boats or activity have no environmental or esthetic impact on the lake.
- 6) Boat races do not interfere with other lake activities.
- 7) Boats make very little noise.

- 8) Sailboats take up very little space.
- 9) Sailboats are currently regulated by DNR under IC 312-IAC 5-3-2 (which can limit and balance activities based on factors weighed by the agency).
- 10) There is no record of complaints to warrant further regulation.

Garver concluded, "We're just a bunch of people trying to relive a bit of history and enjoy the time on the water." He asked the Commission to allow sailboat races to be managed under the current rules.

Chairman Kiley asked Garver how many races the yacht club has during the summer months? Garver replied that they might have two races on a given Sunday, one race every Wednesday and additional races on Saturdays throughout the summer months.

Jerry Miller asked how many boats are involved in the race. Garver said that on Saturdays and Sundays there is an average of 18 to 25 boats.

Rick Cockrum asked Garver if the yacht club has a facility that includes parking, ramps, and storage, or if the private individuals have their own facilities. Garver replied the club has been a property owner on the lake for a great number of years. Most of the boats park at the club. Some of our members also have property along the shore, and many sail from their homes to the site of the race. Cockrum said, "so your point would be that you are not using public resources and a public ramp?" Garver replied the yacht club does not use public resources for any of their events.

Chairman Kiley asked a member of the Indianapolis Sailing Club if it lists all seasonal activities with the current permit application. The individual replied, "Yes."

Cockrum asked Purvis and Ehret if motorized versus non-motorized boats were part of the discussion in determining the rule making. Ehret answered the statute does not differentiate between motorized and non-motorized.

Dave Lichtenhauer, past President of Wawasee Property Owner's Association told the Commission "I have been emotionally involved with this for a great number of years." He said the Association "was supported through the Governor's Task Force the development of Title 312 and it's passing in the legislature to empower the DNR on freshwater lakes to help us with what we perceived to be in the future escalating problems." Lichtenhauer said he was present at the meeting to speak in place of the current President of the Wawasee Property Owner's Association, Bob Dickinson, who was currently out of state. Also present for the Association was Tom Yoder, Chairman and President from the Wawasee Area Conservancy Foundation; Bob Myers, past Director of the Wawasee Property Owners Association and past Chairman of the Conservancy Foundation; Steve Tuchman, representing the Syracuse Lake Association; and David Culp, who was on the DNR's original task force on tournament fishing.

Lichtenhauer read a letter from Bob Dickinson, President, Wawasee Property Owner's Association. Dickinson's letter started, "I apologize for my absence at this very important meeting, but it was not possible for me to be here today and because of the short notice of the agenda for this meeting, we have been unable to have members of our board here to here to represent us. I did attend the council meeting on April 10 at which

time I protested the regulation of sailing events on our lake and having received a copy of the regulations to be submitted today, I am very disappointed that our voice was not heard. I have polled my board and we are prepared to stand firm behind the following position in regard to title 312 NRC Proposed Rule LSA Document #2-73.”

Dickinson said that board is not opposed to bass tournament events on Lake Wawasee. Its concerns include excessive use of the lake by out-of-state bass fishermen during the spawning season and the effect of multiple tournaments every month, during the season, on the lake’s environment. He said another concern was that most tournaments originate and end on Lake Syracuse where the catch is released, where some fish die, and few return to Lake Wawasee. “We respectfully request that these issues be reconsidered and addressed in the regulation.”

Dickinson noted that sailing events have been a tradition on Lake Wawasee for over 90 years and have never posed any threat to the lake’s environment, never endangered lives or property on the lake, and never been the subject of any complaints from boaters or property owners. He said the proposed rules would impose annual fees in excess of \$700 on the participants, and there is no justification for these fees. Dickinson further noted he proposed rules would limit the hours during which a sailing event may be held, for which he sees no logic.

Dickinson added that the Wawasee Property Owner’s Association respectfully requests that the sailing events be exempted from the proposed rules. “Further, should you proceed without our requested exemption, we will be compelled to fight the proposed regulation at the public hearings and we are determined to prevail on this issue.” The Association requested that the proposed rules be returned to the council for further study, including open discussion among all parties involved. Dickinson thanked the Commission for the opportunity to express its views.

Lichtenhauer concluded, “I’m glad to be here, and my observation is somehow the focus on the fish got translated that we are going to focus on the traffic. That is not why we came to you and that is not our problem. We’d like you to get back and focus on natural resources and focus on the fish—that’s where we need your help.”

Jim Weir represented the Eagle Creek Sailing Club for the Lake Wawasee Yacht Club. “It’s unclear to me if the regulations that you are passing here is just for Lake Wawasee and Syracuse Lake or if they would apply state-wide.” He said that the Eagle Creek Sailing Club has a very active program, racing 46 to 50 boats every Wednesday night and Sunday afternoon on Eagle Creek Reservoir. Weir said the sailing club is currently regulated in length to 26 feet and to 10 horsepower engines. He said the members of the Eagle Creek Sailing Club total 250 boat owners. He added the club has five regattas during the year involving surrounding states, which have totaled as many as 90 boats. Weir concluded, “We just want to be sure that because what is a program in one area would mean the same for us.”

Sam Purvis responded the proposed rules would not apply to Eagle Creek. Currently, lakes managed by the DNR’s Division of State Parks and Reservoirs are governed, and these amendments would also apply to Lake Wawasee and Syracuse Lake. They would not apply to any other body of water.

Dick Mercier of Indiana Sportsman Roundtable addressed the Commission. He said, "We now recognize that the legislators have mandated that boating activities be regulated on certain lakes in the State of Indiana, and we concur with the amendments of the proposed rule today." Mercier thanked Deputy Director Paul Ehret, Maj. Sam Purvis, Stephen Lucas, and the Advisory Council for their involvement in drafting a balanced rule.

Mr. Tuchman, attorney for Syracuse Lake Association addressed the Commission. Tuchman said, "there is nobody one on the Syracuse Lake Association Board that received notice of this in a timely fashion to be able to be here." Tuchman added, "I do have to endorse the general sentiment that was communicated to you by Mr. Lichtenhauer, that this is such a nearly 180 degree twist from what by all perceptions in my observation has been the good will of all people coming together trying to address a problem." He said Lake Syracuse "specifically is the last gem in the Wawasee watershed of ten lakes. "If you're going to look at this at all, I would encourage you to take a holistic approach."

Tuchman said that overall he believes it is a wise and good idea to clump the two bodies of water together. Most of the tournaments seem to focus on Lake Syracuse. "When you are putting the hundreds of boats that you are permitting for a single tournament, designated for the entire lake body, they are coming onto the water on Wawasee and the Syracuse town limit." He there are twelve additional parking spaces for 100 boats, and there is no logical congregation location for all the boats. If you look at Lake Syracuse, which is approximately 800 acres, and apply the formula in Title 312, "you're going to have a significantly fewer number of boats that would be coming onto the lake at that site." He said if ecology were not an issue, he would be happy to go back to the Association and suggest "they step away from the regulation" and just keep boat traffic 200 feet away from the wetlands.

Tuchman concluded, "I think this is important enough to do more than just throw a stake in the sand, especially for the sake of a \$25 dollar permit. I would advocate it's not worth the resources of this Commission to bother with, and I'm sure based upon the way this is going, the Property Owner's Association have some reason to regret they ever came here. I would hope that by the end of this exercise, everybody could feel good about the efforts that they did attempt to make for the sake of this fantastic resource."

Gwen White, Fish and Wildlife, Fishery Staff Specialist, addressed the Tuchman's biological concerns. She said the impact on tournament angling has been studied for the past decade, by the Fisheries Section and by district biologists. White reported that currently there is no evidence the impact of tournament anglers as opposed to all anglers on the lake throughout the season have an adverse and unduly strong impact on the fish population. She said DNR continues to monitor tournaments, and the potential impact they might have due to the handling or catching of the fish. DNR will continue to monitor approximately 15 lakes, including Wawasee and Syracuse, through the summer. She reflected there are three other rules the Commission has passed that have a positive environmental impact on the potential effects on tournament fishing. Those rules are as follows:

1. DNR has instituted a new rule on the handling of fish. The rule requires the fish released back into the water be handled appropriately so that they are kept in healthy condition.
2. A new rule requires that fish in a dead or dying state cannot be released back into the water. The new rule also addresses questions anyone may have on fish released back into the water after the weigh-in.
3. Preliminary adoption has been given to designated protective zones on Lake Wawasee and Syracuse Lake to help address the impact of high-speed boating in shallow areas and to wetlands.

White said the Fisheries Section has addressed the impacts on the fisheries population through these rules. “What you are seeing here today is a watercraft regulation, which in particular is looking at congestion of boat ramps and parking facilities, but we feel we are already addressing the fishing and ecological issues through the sets of rules.”

Beth Admire asked White if the Division of Fish and Wildlife would be releasing a report on ecological studies conducted on the fisheries. Admire also questioned where those studies could be obtained or found. White responded the division generates reports after each study is conducted and could provide the report to the Commission.

Dave Lichtenhauer addressed the Commission, “I have the utmost respect for Jed Pierson because he does so much with the little amount that he is given to work with—and we’ve followed all the studies on the impact of the fish and it’s interesting coming from a medical background, and having to adhere to pharmaceutical investigations under the FDA scrutiny, I would have to say that the studies that have been done, while well intended, are not the kind of things that are statistically significant enough to tell us what we want to know. There are just little samplings here and there. It’s the residents that live on the lake at the shore, who take dead fish out of the water.

Dave Culp said, “This is a particularly opportune time, and if we don’t seize the moment, we won’t have it again probably in our lifetime. We’ve had the study and the comments from the public where Senator Meeks held meetings up in Angola and we were recorded and documented and then studied by commissions. The problems were surfaced and were delegated for study, and, hopefully, solutions. Most of what you’re doing today was not the recommendation of that study. You’re not solving the problem of bass tournaments; you’re not solving the problem of over-fishing.

Culp said bass tournaments are a fairly new phenomenon and are a group of people who represent 6% of the fishing population in Indiana. He said that the other 94% do not belong to bass clubs. Bass tournament people are not speaking only for themselves. “These problems at both Wawasee property owners and Syracuse property owners did not dream up—it was from public meetings at Senator Meeks held. In our case at Wawasee, this is a particularly important moment in that bass studies were held by the DNR for the first time in many years.”

Culp said based on the results of the project, it was concluded at the end of the meetings that, “large amounts of bass exploitation is approaching a critical level at Wawasee and

Syracuse Lake.” Culp added, “I don’t think I could read any words that speak clearer. It’s reached a critical state and yet I hear ‘no problem.’”

Culp said he contacted the Fisheries Division of the State of Michigan and Texas Tech. Both told him the conclusion of the study means, “You’re headed for a critical state for size or quantity in a critical way.” Culp said that using the statistics from Jed Pearson’s report, and other figures from DNR for delayed mortality, the bass tournament fishermen account for 37.4% of the kill of bass. Bass tournament fisherman practice “catch and delayed release rather than catch and release.” He said the muskie fishermen practice catch and release. “We probably have the most of everything, therefore, we’re having to cope with this, and we need your help.”

Culp concluded saying, “We do think that it is an ecological thing, and we use the studies that DNR made and at least think we should have the chance to hear a rebuttal.”

Chairman Kiley directed the proposal for consideration by the Commission. Megan Murphy recused herself from participation.

Jerry Miller moved to exempt all non-motorized boats from application of the rule. There was no second to the motion.

Jack Arnett moved to adopt the proposed amendments as proposed by the Division of Law Enforcement. Cockrum seconded the motion. He then asked Steve Lucas if the rules could be amended in the future.

Lucas answered if the rule were given preliminary adoption, it would be published in the INDIANA REGISTER and scheduled for a public hearing. Modifications could be made to the language given to the preliminary adoption within certain parameters. Because the ability to make modifications was not unlimited, to the extent possible, the Commission should give direction as to basic policy at preliminary adoption.

Paul Ehret told the Commission eight divisions within the DNR contributed to the studies of the proposed rule amendments, and there was also public involvement. “I think it’s our obligation to come up with some sort of a rule.” He added, “I’m not saying that we have the perfect solution. We did do a lot of soul searching, and asking ourselves questions about what’s right and what’s wrong.” Ehret said the Advisory Council looked at the issues from a biological standpoint and included the perspectives of Jed Pearson. He said “I’m not saying that the fishing tournaments do not have an impact on the fishery, but Jed Pearson maintains that the fisheries are very healthy at Lake Wawasee.”

Ehret said some of the northern states have a one boat to ten-acre ratio, which is probably double the numbers in Indiana. “This is not a tournament rule per se, and tournaments certainly would be regulated as part of this, but if we use an extremely low number and we are regulating all activities, that makes a very small pie to start cutting shares out of. I think part of the recognition is that since we’re doing more than regulating fishing tournaments, we felt as though the number had to be higher to accommodate the wide variety of group activities that occur on that lake. I would say that if we were to limit this just to tournaments, it would make sense that these numbers were potentially lower relative to the overall number of boats.” He added the statute provided no guidance



relative to motorized and non-motorized. Ehret said that the Council did not feel “it was in a position to make the call between motorized and non-motorized boats.” He said that it was “certainly a point for consideration, but that is why you all are here—to provide that kind of guidance to us.”

Chairman Kiley asked for a show of hands on the motion. Four voted in favor of passage, and four voted in opposition. There was one abstention, and one recusal. He reported the motion did not carry but could be brought back at any time.

Director Goss said, “for everyone present, I think we should stay focused on this, get input from everybody about the numbers of boats, motorized questions and take it back to Advisory Council within a couple of meetings.” Goss said there was “no time pressure” for the approval of the proposed rule amendments. “We want it to be something that is going to be good for long-term and will set a wise precedent for other lakes in the state.”

## **BUREAU OF RESOURCE REGULATION**

### **DIVISION OF WATER**

#### **Consideration of Approval of Transfer of Contract for Water Supply from Monroe Lake to Eagle Pointe Golf Course; Contract No. MWS-90-3**

James Hebenstreit, Assistant Director of the Division of Water, presented this item. He said in 1976, the State of Indiana entered a contract with The Pointe Associates (formerly Caslon Development Company) for the sale of raw water from Monroe Lake. The contract was updated in 1991 and transferred in 1996 to Brennan Holdings LLC, after which the resort was renamed Eagle Pointe Golf Course. Eagle Pointe Resort LLC is now purchasing the assets of Brennan Holdings, and the contract needs to be restructured to reflect the change. He indicated rates were largely dictated by statute, that the water usage would not adversely impact the purposes of Monroe Lake, and that the Division of Water recommended approval.

Jerry Miller moved to approve the transfer of the contract for water supply from Monroe Lake to Eagle Pointe Golf Resort as recommended by the Division of Water. Jack Arnett seconded the motion. Upon a voice vote, the motion carried.

#### **Consideration of Approval of New Contract for Water Supply from Brookville Lake to Buck Point Golf Course; Contract No. BL-02-1**

James Hebenstreit also presented this item. He said Buck Point Golf Course is requesting approval to purchase raw water from Brookville Lake to irrigate an 18-hole golf course. He said the course is being developed on the east shore of Brookville Lake, a mile north of the causeway across the lake. The land is leased by Brookville Enhancement Partners, who in turn subleased to Buck Point Boys, Inc. Work was halted on the site in March 2002 when it was discovered to be proceeding without necessary permits for construction in a floodway. An after-the-fact application has since been filed. The DNR inspectors

also determined a water withdrawal facility was in place without a contract for the purchase of water.

Rick Cockrum expressed concern with the apparent disregard of the developers for compliance with state law. Hebenstreit said enforcement was being vigorously pursued and strict compliance was a condition for approval of the contract. Gerald Pagac, Director of the Division of State Parks, added that the violations were by the sublessee, not the lessee. The agency was working directly with the lessee, however, to rectify the problem and to help assure it is not repeated.

Damian Schmelz moved to approve the new contract for water supply from Brookville Lake to Buck Point Golf Course as recommended by the Division of Water. The motion was seconded by Jerry Miller. Upon a voice vote, the motion carried.

## **LEGAL PROCEEDINGS**

### **NRC DIVISION OF HEARINGS**

#### **Consideration of Recommendations by Hearing Officer for Final Adoption of Proposed DNR Property Use Amendments (Adding Definitions, Possession of Firearms on DNR fishing Access Sites, Pet Attendance, Quiet Time at Campgrounds, Horse Tag Requirements, Use of Parking Facilities); Administrative Cause Number 01-150A (LSA #01-412(F)).**

Stephen Lucas, Hearing Officer, presented this item. He said the proposal would give final adoption to several amendments to the rules that govern the use of DNR properties by citizens. Included would be new definitions for public road, snowmobile, off-road vehicle, and vehicle. The amendments would also clarify a person who otherwise lawfully possesses a firearm at a fish and wildlife access site would not be prohibited by the rules from possessing the firearm. "Quiet time" at campsites would be extended one hour from 6 am to 7 am. Pets would be required to be attended at all times. Vehicles could be left in DNR parking lots only while using a DNR property or an adjacent navigable water or public freshwater lake.

Lucas said the proposed amendments were not expected to be controversial and did not attract great interest. One citizen did offer a suggested modification or clarification. Judge Thomas Webber of the Porter Superior Court asked that the general 14-consecutive night limitation on staying in campgrounds be modified to allow a person to remain for good medical cause. Lucas said he recommended the change, but he also anticipated the existing language places discretion in property managers, possibly making the amendment unnecessary.

John Bergman, Assistant Director for Operations at the Division of State Parks and Reservoirs, spoke briefly. He said the Division did not object to an extended stay at a campground where needed for medical reasons, but he said he believed the current rules would allow adequate discretion for this purpose.

The Chair said he believed sensitivity to the issue was important. Judge Webber had identified what is presumably a rare situation but one worthy of consideration.

Jerry Miller moved to give final adoption to the amendments to 312 IAC 8 as recommended by the hearing officer and set forth in the Commission packet. The motion was seconded by Jack Arnett. Upon a voice vote, the motion carried.

### **Consideration of Recommendation for Delegation of the Statutory Process for Rule Recodification by Re-adoption; Administrative Cause Number 02-051A.**

Stephen Lucas, Director of the NRC Division of Hearings, presented this item. When the NRC and DNR were subjected to the “Sunset” process between 1989 and 1992, several legislative changes resulted to clarify the relationship of the NRC and the DNR and the legal roles of the respective agencies. One of these changes caused all DNR rules at 310 IAC to be recodified as NRC rules at 312 IAC. This lengthy process was concluded last year.

In a separate development, the Indiana General Assembly recently enacted new legislation requiring all agency rules to be re-codified on a period basis or be “Sunsetted.” The Legislative Services Agency calls the new process “recodification by re-adoption.”

Lucas said a major role of the Division of Hearings is to manage and conduct rule adoption processes for the Commission. This role is managed by Jennifer Kane, and an outline of current and recently-adopted rules is contained in the Commission materials. He said “recodification by re-adoption” is a new wrinkle in the process, and the Division of Hearings hopes to manage it in a manner that minimizes bureaucracy without restricting the Commission’s policy-making role for rule adoption. The recommendation of the Division of Hearings was that any recodification incorporating changes be handled the way rule adoptions are handled generally, but for those recodifications where no changes to language are proposed, he recommended delegation to the Division Director for preliminary actions. In all instances, rules would come before the Commission for final action.

Rick Cockrum said he favored “applying the least bureaucratic approach” to dealing with rule recodifications. At the same time, he wants to be assured the Commission had oversight over the substance of agency rules. Lucas responded that when a rule is presented for final action on recodification without modification, the full text of the rule could be attached for Commission review, facilitating any instructions by the Commission on initiating a new adoption process to incorporate substantive changes. Cockrum expressed satisfaction with this approach.

Jack Arnett moved to approve the Consideration of Recommendation for Delegation of the Statutory Process for Rule Recodification by Re-adoption. The motion was seconded by Jane Anne Stautz. Upon a voice vote, the motion carried.

## **ADJOURNMENT**

At 1:15 p.m., EST, the meeting adjourned.

## **FUTURE MEETINGS**

May 22, 2002, 10:00 a.m., Indiana State Museum, Indianapolis.

June 19 and 20, 2002 at Inn of the Four Winds, Bloomington, Indiana