

NATURAL RESOURCES COMMISSION

Minutes of August 20, 2002

MEMBERS PRESENT

Michael J. Kiley, Chair
John Goss, Secretary
Jane Anne Stautz
Jack Arnett
Megan Murphy
Jerry Miller
Larry Goode
Raymond McCormick, II

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
Paul Ehret	Executive Office
Carrie Doehrman	Executive Office
Eric Myers	Executive Office
Glen Salmon	Fish and Wildlife
Linnea Petercheff	Fish and Wildlife
Ihor Boyko	Legal
Gary Miller	Parks and Reservoirs
Sam Purvis	Law Enforcement
Bruce Clear	Law Enforcement
Mike Crider	Law Enforcement
Jeff Wells	Law Enforcement
Jerry Shepherd	Law Enforcement

GUESTS

Dale Webster	Mike Bryan	Dick Mercier
Ann Smith	Robert Robertson	Kent Kirby
Philip Smith	Bill Hognes	Paula Kirby
Jeffrey Hammond	Frances Gaynes	Debra Small
Rex Helton	Mike Lodato	Don Small

Gary Doxtater
Doug Hotle
Bill Gilbert

Steve Todd
Peg Todd
Karen Purves

Jacquelyn Tomrich
Charles Tomrich

MONTHLY REPORTS

Michael J. Kiley, Chair, called to order the regular meeting of the Natural Resources Commission at 10:00 a.m., EST, on August 20, 2002, at The Garrison, Fort Benjamin Harrison State Park, Indianapolis, Indiana. With the presence of eight members, the chair observed a quorum.

Jerry Miller moved to approve the minutes of July 17, 2002. Jack Arnett seconded the motion. Upon a voice vote, the motion carried.

John Goss provided the Director's Report. Director Goss thanked the Department of Natural Resources staff for their "heroic efforts. We've almost made it through the season with 25% less summer employees." Goss announced that a survey was taken to gather the public's reaction of the cutbacks. Goss deferred to Eric Myers to give the survey results.

Eric Myers, Executive Director of Indiana Heritage Trust, reported that the survey was taken at the Indiana State Fair, with a "very good" response. Myers reported that of those who took the survey:

90% had visited a DNR property
46% had camped at a DNR property
54% had not camped at a DNR property.

Response to the question: How would you rate your camping experience?

28% excellent 49% good
20% average 3% unsatisfactory

Response to the question: If your camping experience was not good, why?

17% Difficulty making reservations
21% not enough sites available
5% weather
24% cost
13% fellow campers were rowdy
20% restroom/ showers not clean enough

Response to question: Would you like to reserve a DNR campground by calling a toll free number or using the Internet?

70% Yes 30% No

Response to question: Imagine you are the DNR Director for the day. You must reduce the DNR budget or increase revenue by 25%, you would:

- 1) raise fees—22%,
- 2) mow less grass—26%,
- 3) charge for publications—31%
- 4) charge for consulting services—21%.

Myers explained that in the first, second, and third choices, the amount of people who would raise fees diminishes as their second and third choice, as well as for mowing less grass. He said one of the options that does increase as first, second, and third option would be to lay off DNR staff.

Myers said, "I think that this survey validates, in some respect, the actions this Commission has made with regard to raising fees and the Department mowing less grass."

Chairman Kiley asked what the total number of surveys that were taken. Myers replied there were approximately 400 responses. He said the question dealing with raising of fees received the highest responses at 294. He said the question to receive the second highest response of 291 was for mowing less grass.

John Davis pointed out that another high total was in regard to the charging of publications, which was referenced at one of the Commission meetings a year ago. Davis suggested the Commission follow through with charging for publications that DNR currently does not charge.

Myers said one of the questions on the survey asked: What DNR services would you like to see improved? He said that by far the largest respondent suggestion was to use volunteers and prison inmates for property maintenance. Director Goss said the DNR would look for other opportunities to increase customer feedback through various programs and convey the information to the Commission.

Director Goss reported the Summer Study Committee would meet next week. He said new reclamation fees would be proposed to the Committee. "We are looking at a coal combustion waste haul back fee to deal with monitoring the coal ash sites in the future. We are exploring a kilowatt hour fee among several other fees we tried in the last General Assembly that did not pass for the Divisions of Oil and Gas, Entomology, Outdoor Recreation." Goss said that new fees charged by the Division of Nature Preserves and the Division of Historic Preservation and Archeology will also be proposed to the Committee. He said these fees would be appropriated for the cost of permit review research. Goss said that in addition to these fee proposals, the Committee would be looking at the topics of deer farming and Chronic Waste Disease.

Goss distributed newspaper clippings describing twelve states that have closed state parks as part of a budget cut back. "Our philosophy has been not to close the properties. We are doing our best to keep the gate open even at remote properties as much as possible. If we are not faced with additional cut backs, we will be able to continue. This is a nationwide situation."

Goss reported the State Budget Committee approved that the new State Museum's earned income (*i.e.* admission fees, membership fees) will now go into the Museum Foundation. He explained that, in exchange for those monies, the State Budget Committee would consume the DNR budget expenses incurred for marketing, exhibits, and staff training.

Goss reported there was a sewer line break at the DNR State Fair Building during the first week State Fair. He said the State Fair staff and their contractors "incredibly" replaced the sewer line in one day, and commented that DNR was still able to hold the Wild Game Cookout on Saturday morning. He said the DNR is looking to renovate the outside of the DNR building by next year's Indiana State Fair.

Director Goss reported the Prophetstown State Park project is “moving ahead.” He said that the State Budget Committee approved the bond issue allowing DNR to move forward with Phase I. He said the target for completion of Phase I is within two years.

Jerry Miller, Chairman of the Advisory Council for Lands and Cultural Resources, reported the Council had not met since the last Commission meeting.

John Davis, Deputy Director, reported on the Deer Chronic Wasting Disease efforts. He said efforts include sending staff from the Division of Fish and Wildlife to training centers where the staff and personnel from other states are learning to deal with problems in their respective states. Davis said the DNR is getting ready for the cooperative efforts with the Animal Board of Health to perform testing on the deer herd during this hunting season.

Davis reported that DNR has moved closer to finalizing the centralized reservation system for state park campsites. He said DNR has finished negotiations with the contractors and will “hopefully be up and running” with Internet and Call Center Reservation by November 2002.

Davis said on August 1, 2002, the Division of Fish and Wildlife and U.S. Congressman Mark Souder visited Pisgah Marsh located south on Lake Wawasee in Kosciusko County. He observed “it is a great natural area.”

Chairman Kiley asked to what degree the DNR uses inmate labor. Davis replied that inmates from the Department of Corrections’s facility within Chain O’ Lakes State Parks perform park maintenance for both Chain O’ Lakes State Park and Pokagon State Park. Inmate labor from Henryville Correctional Facility is also used at Vallonia State Tree Nursery. Davis said the DNR is working to increase cooperation with prison staff to facilitate opportunities for inmates to fulfill community service requirements. Davis added, “Of course, we only use people from the lowest security rating who have earned their way to some privileges.”

Ray McCormick, Chairman of the Advisory Council for Water and Resource Regulation, reported the Council met on August 8, 2002. He said there were three items of discussion at the meeting. The Council discussed and further reviewed the boat activity rules on Lake Syracuse and Wawasee Lake. He said the Bass Fisherman Organization and local landowners attended the Council meeting. “They seemed to have worked out a favorable compromise with a few possible changes.” He said that the Advisory Council made a unanimous decision to move forward with the proposed rule adoption.

McCormick reported that the Council had discussions concerning modifications of the existing civil penalty schedule for violations of oil and gas production. The modifications would address penalties for failure to timely report oil or salt water spills, as well as failure to perform timely cleanup.

McCormick said his Council discussed the possible reorganization of the two DNR advisory councils. “We look forward to working with the Director trying to fine-tune and perhaps the uniting of the two.”

Paul Ehret, Deputy Director, reported he had attended the Performance Measures Workshop for Title V Surface Mining Enforcement Programs in Washington D.C. He said it was a “good workshop” for DNR’s Mining Regulatory Program.

Ehret said the Governor has proclaimed September 14th through 21st as Indiana’s “Lake Michigan Coastal Week.” He added there would be a ceremony on September 20th to celebrate federal government approval of Indiana’s Coastal Zone Management Program. Ehret said, “this has been a long time coming.” He observed Indiana is not the last state to have an approved Coastal Zone Management program since Illinois does not have one. “We are looking forward to participating in that program.”

Ehret said he attended the public hearing for the proposed ecological zones that would be located on Lakes Wawasee and Syracuse. He said the hearing was well attended. Ehret added that the Commission would be kept apprised of progress with respect to the proposed rule.

Ehret reported he met with interested parties on the proposed boating activity rule for Lakes Wawasee and Syracuse. He said the meeting went “very well.” It was “good dialog and good exchange between the groups.” He said the meeting helped lead to the smooth running of the Advisory Council meeting that followed—and of the Council’s recommendation the rule be given preliminary adoption.

NRC DIVISION OF HEARINGS

Consideration as to Preliminary Adoption of Rule Amendments to Establish a Fishing Tournament Licensing Requirement on Lake Wawasee and Syracuse Lake, to Regulate Major Organized Boating Activities, and to Coordinate with Rules Governing Boat Races and Regattas; Administrative Cause No. 02-084L.

Maj. Samuel Purvis, State Boating Law Administrator, presented this item. He reminded the Commission this proposal had been discussed at the Advisory Council meetings and also meetings with landowners and fishing tournament groups. Another form of the proposal was considered by the Commission on April 24, 2002, at which time there was a tie vote as to whether to give the proposal preliminary adoption.

Purvis said the current proposal has basically two sections. The first section covers rules for fishing tournaments and would establish a licensing requirement for Lakes Wawasee and Syracuse. The second section governs other types of boating activities, such as water skiing competitions and boat races.

Purvis said the proposal would establish a licensing requirement for fishing tournaments on Lakes Wawasee and Syracuse. A license would be required to conduct a fishing tournament between April 1st and September 15th. A license would be required on Lake Wawasee or Syracuse Lake only if a tournament were conducted on a weekend. The number of boats allowed to participate would be 125 boats from April 1st to Memorial Day and after Labor Day. During the period from Memorial Day to Labor Day, 100 boats would be allowed to participate.

Purvis said the number of boats in tournaments held during night hours would be included either on Saturday or Sunday. “We have the latitude—the authority in this rule—to work that latitude

out either day to get the best use of lake resources.” Purvis said between April and September, boating activity is at its heaviest. The proposed rule incorporates general requirements that would limit the number of boats engaged in fishing tournaments during that period.

Purvis explained that an applicant for a fishing tournament license must be at least eighteen (18) years old and a resident of Indiana. The applicant must designate the starting and ending time for an activity, spread starting times among license holders if more than one is approved for a particular waterway, and designate which facilities will be used. “If there are two groups that want to use the same ramp at the same time, we could work that out and change starting times or the facilities.”

Purvis said the existing language at 312 IAC 2-4-7 provides the Department will hold an organization meeting between October 1 and December 15 to establish dates for the following two years on which fishing tournaments or other organized activities can be conducted. He explained the proposed rule shortens the fishing tournament scheduling to one year, unless otherwise specified in a section applying to a specific watercourse. “Generally, we want to change from a two-year period to a one-year period, until we collect all the parties interested in holding tournaments on those lakes every year.” Purvis noted 312 IAC 2-4-7(b) requires that an applicant who receives a reserved dated must submit a completed license application within 30 days of notification and at least 90 days before the scheduled event. He said the proposed rule would amend the 90 days to 60 days.

Purvis said the amended rule would require a license holder to assure reasonable access to all users at the facility. Vehicles and trailers of the contestants must not use more than 75% of the ramp and parking facilities in the staging area of the tournament. The proposed rule would also limit an applicant to one licensed event on the same waterway every 14 days and require that an applicant to act in good faith to fully perform the scheduled event.

Purvis said a boating activity is defined to be an activity other than a boat race, fishing tournament or water skiing event. He said a boating activity would involve 15 or more watercraft, 15 or more watercraft to spectators and would be conducted according to a prearranged scheduled for a limited duration or is reasonable expected to significantly disrupt boat rafting.

Purvis said a new definition for “major organized boating activity” would be added to the proposed rule. He said the language proposed is consistent with language used in Indiana’s MEMORANDUM OF UNDERSTANDING WITH THE U.S. COAST GUARD FOR LAKE MICHIGAN, OHIO RIVER AND OTHER NAVIGABLE WATERS. Purvis said the amendment would allow district managers to manage the waterways of all group activities. “DNR’s interest is purely for the safety of boaters and participants in the activity. We wouldn’t, for example, want to allow a boat race to be held at the same time as a swimming event on the lake.”

Dick Mercier, Indiana Sportsman Roundtable, addressed the Commission. He said the Indiana Roundtable represents approximately one dozen different tournament fishing groups. He said he attended the public hearing and was “very pleased” in seeing the cooperation between the Lake Owners Association and the Bass tournament fishermen. Mercier said, “now that we have eliminated the sailboats, which was the hold up at the last presentation, and we have the reassurance from the DNR biologists that this is not a biological problem, I think this should be taken care of.”

Bob Dickinson, recent past president of the Lake Wawasee Property Owners Association, said, "I would only say that we have had some good meetings with the bass folks and with the Advisory Council, and we support the regulations."

Chairman Kiley stressed, "this is really a tremendous amount of dialogue. It has been ongoing for a couple of years between the property owners and the sport fishermen on the lake, and which originally was a significant amount of controversy between the two groups. There has been a tremendously sensible and rational discussion ongoing. It just shows what good can come out of that kind of dialogue between two groups."

Paul Ehret thanked Dick Mercier, the Indiana Sportsmens Roundtable, Bob Dickinson, and all of his people for working so hard on this initiative. He also commended Sam Purvis, Bill James, and Glen White for their hard work. "There was a lot of staff time that went into this. I think that we have got a pretty good consensus on this rule. I think there's a lot of support for it. I think it's a correct rule whose time has come. I just wanted to acknowledge some staff for participation and also the people that are affected by the rule. I think it was a good effort all the way around. It's nice to see this process work."

Megan Murphy recused herself from participating in this item.

Jerry Miller moved to approve for preliminary adoption the proposed rule to establish a fishing tournament licensing requirement on Wawasee and Syracuse Lakes, to regulate major organized boating activities, and to coordinate with rules governing boat races and regattas. Jane Anne Stautz seconded the motion. Upon a voice vote, the motion carried. Megan Murphy abstained.

Consideration of Recommendation by Hearing Officer for Final Adoption of Rule Amendments; *Fish and Wildlife Nuisance Animal Control Amendments*; Administrative Cause No. 01-223D; LSA #01-444(F)

Sylvia Wilcox, Hearing Officer, introduced this item. She noted that the Commission gave preliminary adoption to the rule in March. Wilcox said the public hearing was held on May 23, 2002. She said the public hearing was "well attended and strong positions were presented by the commenters." Wilcox said the Division of Fish and Wildlife developed an advisory board to create a draft rule. She said that Linnea Petercheff and Glen Salmon facilitated the advisory group meetings.

Wilcox indicated that several topics presented significant controversy. Some include whether animals may be removed before actual damage has occurred to property. Wilcox indicated that several commenters felt the "threat of damage" should be considered. Opposing comments assert that the threat of damage does not warrant removal of the animal. Other controversial issues include the period of time for holding an animal after capture, training and examination of wild animal handlers, and trapping methods. Wilcox recommended that the NRC adopt 312 IAC 9-10-11 amendments as shown in Exhibit A as attached to the report at page four.

Wilcox also noted technical changes to better reflect LSA format that were not included within the written materials. These were to 312 IAC 9-10-11(d) and (m).

Linnea Petercheff, Division of Fish and Wildlife, explained that the advisory group, made up of 13 members, were stakeholders on this issue. Petercheff said that most of the changes in the regulations were by consensus. She said that the group could not agree upon several items; therefore, the Division of Fish and Wildlife came forth with recommended amendments. She said one of the changes suggested by the advisory group was the use AVMA guidelines for euthanasia. The change was not included in the final rule draft. Petercheff explained that the Division of Fish and Wildlife should have control of it. Petercheff said, “basically we tried our best to listen to all sides—a lot of public input from all sides, and we tried to communicate with them and to compromise but yet improvise.” She said that Fish and Wildlife presently does not have guidelines for trapping.

Tim Julien, President of National Wildlife Control Operators Association in Indianapolis addressed the Commission. Julien commended Linnea Petercheff for her hard work on the rule proposal. Julien said that the Association had four issues concerning the amendments. Julien referenced Sec. 11(d) of the rule. He said that 48 hours was not a problem but felt that the rule should only pertain to live animals. He said that disposal of wild animals within 48 hours would be very costly and would lead to higher costs to the public. Julien said that they currently keep the carcasses in freezers until they can be properly disposed, and would like to see that procedure continue. He expressed the need for time limits on captivity of animals, and said that they need 48 hours to reunite the young with their mother. Julien suggested adding the words “held captive or alive” to the rule .

Julien read Section 11(d), “The person who does not hold a permit under subsection (d) may assist a permittee only if the permittee directly supervises the unpermitted person on site.” Julien voiced a strong objection to the wording “on site.” He said, “I don’t need a helper if I have to be there.”

Julien said he recommended a draft change referencing the use of Conibear traps. He said that, through translation, his recommendation was misworded in the draft. He said that currently there are no restrictions on use of traps or methods. “If I can legally possess dynamite, I can throw it in that direction.” He said that the Conibear 330 trap is a large trap used to kill beaver. Julien noted that under fur harvesting rules, these traps are not allowed on dry land. He stressed the importance of the use and the dangers of the Conibear.

He said that Nuisance Wildlife Control Operators Association provides training and has conducted several studies on the use of the Conibear 330 trap. “The Conibear 330 has problems on land. “We don’t want it used on land. When they put the rule in there, they adopted the terminology from the fur trapping law, which affects a lot more than the 330.” Julien suggested that the size of the Conibear of 7 ½ inches be changed to the 8 inches, that the trap may not be set on dry land, and be placed 75% under water. He noted that it is safer to show the trap than to hide the trap.

Julien also referenced in Section (d) the language, “a person who charges a fee for nuisance wild animal control service”. He said, “We think that is completely out of line. We do agree that anybody that offers services to the public should take the test.” Julien stressed that the Municipal Animal Control Officers need to be tested as well as animal welfare volunteer organizations. He suggested language “a person that provides nuisance animal control services to the general public be required to have a permit.”

Rex Helton, Owner of A-1 Wildlife Services and President of the Indiana Animal Management Control Association (IAMCA), said that the IAMCA represents 50% of the nuisance wildlife companies in the state. “We can and do support this new draft proposal, but our group also asks for these modifications that Tim Julien spoke about. It’s going to make our job easier and make our job more efficient to help keep the costs down to the general public. As we stand today, we ask for these modifications and we will support this draft proposal.”

Ray McCormick asked Julien for clarification concerning the 48-hour holding of wild animals. He asked Julien if they were recommending 48 hours to reunite or release a wild animal. Julien responded that the 48 hours only applies to the restriction of holding animals not to the disposal of carcasses. McCormick asked why it should take 48 hours to reunite wildlife families. Julien said that the recommendation is not to hold an animal 48 hours, but to not hold them “no more than” 48 hours. He explained that occasionally it takes time to catch the young wild animals and reunite them with the mother.

Jack Arnett asked Chairman Kiley if staff could respond to the four points presented by Tim Julien. Linnea Petercheff responded that the Division of Law Enforcement did not want the addition of live wild animals. “If we change the wording to live animals only, then it would allow people to hold the carcasses indefinitely and possibly sell them.” Petercheff felt that the term “possession” was consistent with language in other regulations.

Petercheff said that Division of Fish and Wildlife did not have a problem with the issue of the permittee not having to be “on-site.” She added that sub-permittees would be listed on the permit.

Petercheff said that the 7 ½” Conibear trap was consistent with the current trapping laws. She said that the size restriction helps to prevent the capture of non-target animals, whether its dogs otters, or other animals. “I know it was written many years ago and there are new manufacturers that make the bigger Conibear trap, but we do not feel that the change is necessary.”

Ray McCormick said, “I thought they wanted to keep the Conibears off of land and keep them in water to keep from catching non-targeted animals.” He questioned why there is opposition to the language.

Julien offered that the National Wildlife Control Operation Association suggests that the Conibear trap be 2/3 above the water. As the draft stands, “that part of the old rule language changes more than that for us. It also says that the Conibear 330 trap is gone, which prohibits us from using that. So, where we would use a 220 or medium size trap in an attic to stop a raccoon from tearing a roof apart, we can no longer use that. We can’t use those Conibears for activities if we adopt this.” We want to restrict, “voluntarily,” the 330’s use in the water, but this rule restricts all of the traps.”

Jane Stautz asked for clarification whether currently the 7 ½-inch Connibear is not manufactured. Julien indicated that was correct. “We’re using traps in and around homes.”

McCormick asked whether, as the rule is written, the Conibear trapped would not be allowed. Julien said, “We have used a very small Conibear, but it isn’t very effective.”

Jack Arnett asked if there was any objection from staff on changing the Conibear size limit from 7 ½ to 7 ¾. Peterchef replied, “If that’s the change you feel is necessary, then we have no problem with going along with it.”

Dick Mercier, Indiana Sportsman Roundtable, commented that the Roundtable represents two major Indiana trapper associations, The Indiana Trappers and the Fur Protectors of America. Mercier explained that he was opposed to the rule as written, but said he was in favor of regulating the control of nuisance wildlife animals.

Doug Hotle, Director of the Wildlife Advisory Services, said he supported the modifications laid out by Helton and Julien “totally.” He thanked the DNR for their hard work, and in referencing the proposed rule, he said, “It is the best thing I have seen yet and it makes the most sense both from a business standpoint, from a customer service and homeowner’s standpoint, and coming from a biological background.” Hotle said that he “supports” the proposed rule “totally with the modifications.”

Karen Purves from the Indiana Animal Protection Institute addressed the Commission. She began by referencing Section 11(a) of the rule. Purvis said the DNR states in the Hearing Officer’s Report that changing the language “immediate threat” to “threaten to cause damage” is non-substantive. She urged, “However, that change is substantive.”

Purves referred to Section 11(i), an animal must be euthanized with the safest, quickest, and most painless available method as recommended and approved by the Division of Fish and Wildlife. She said that the advisory group raised the question whether to use AVMA guideline language in the rule. “DNR’s reason for not using it is because they are not veterinarians and that to use such language would not necessarily be accurate.” Purves referenced the response by DNR within the Hearing Officer’s Report that DNR gave no reason why DNR did not keep the AVMA language within the proposed rule. She quoted from the Report, “The DNR will have a manual in which approved methods are listed and many of which will adhere to AVMA guidelines.” Purves said that her concern was that “if DNR will have adherence to AVMA guidelines, why not make that clear as to what that manual will be.”

Purves recommended that another section should be included to address consumer protection and education. She said that DNR’s response in the Hearing Officer’s Report for not including the additional consumer protection and education section was, “The DNR will provide additional educational material used by the wildlife animal control permit holder that can be given to homeowners that includes the guidelines and techniques as well as methods of euthanasia available that are economical.” Purves said the Indiana Animal Protection Institute supports the language, but it questions what the guidelines and techniques would entail. Purves asked when the educational material would be available.

Purves said that Laura Nirenberg, Executive Director, Wildlife Orphanage, Inc., was unable to attend the Commission meeting, and she requested permission to read written comments by Nirenberg. The Chair agreed, and Purves read as follows:

Please note that the advisory group spent an entire day focusing on humane aspects of this rule and came to a complete consensus that humane treatment and euthanasia was an essential component for the new rule. It was recommended in Section (i)(2) to insert the language that I just stated about using the AVMA Panel report for specifications of

available methods of euthanasia. This document was specifically focused on because it provides reasonable, cost-effective and efficient methods of euthanasia and is not subject to change. The IDNR, Division of Fish and Wildlife has since removed this substantive element and replaced it with [the language that I suggested. She feels that this language has the potential to adversely affecting thousands of animals in this state [which should not be] left open for interpretation.

Jack Arnett asked the Chairman if it would be appropriate to offer a motion and call for a second motion to initiate discussion. He added, "If I understand staff right, they would not oppose testing of anyone, and I guess I would leave that to someone to clarify. If staff does not object, I would like to insert that into the recommendation, and I would so move."

Wilcox suggested the following language to be inserted in Section 11(d): "A person who charges a fee or provides a service to the public for nuisance wildlife wild animal control services." She explained the language "or provides a service to the public" could be added.

Arnett agreed. "That's exactly the intent of my motion." Kiley asked if there were any other amendments or proposals with the respect to the recommended rule. McCormick recommended that the wording "on site" be removed from Section 11(e).

Jane Anne Stautz recommended clarifying the size limit of the Conibear trap since manufactures have increased the size of the trap. Kiley asked for clarification from Stautz regarding the size specifications within 312 IAC 9-10-11(g)(2)(c) for the Conibear trap. Stautz said the size should be amended from 7 ½ to 7 ¾ inches to reflect the current manufactured trap.

Julien said amending the size to 7 ¾ inches would not address his concerns. He said the current rule draft prohibits the use of traps larger than 7 ½ inches on land. The Conibear traps on the market are manufactured at 7 ¾ inches. Julien said amending the rule to 7 ¾ inches would still disallow use of the currently manufactured traps. He suggested the size limit be increased to eight inches.

Chairman Kiley asked whether DNR staff had concerns with the suggested amendment from 7 ½ inches to eight inches for the size limitation on the Conibear trap. Petercheff said the Division of Fish and Wildlife would not oppose the amendment. Kiley restated the recommendation that 312 IAC 9-10-11(g)(2)(c) should be amended to reference eight inches instead of 7 ½ inches. Kiley asked Stautz whether this proposal "was the tenor of her motion." Stautz said the Chair's summation was correct.

Jack Arnett moved to approve the final adoption of the fish and wildlife nuisance wild animal control permit rules as recommended by the hearing officer and as amended during the meeting. Jane Anne Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of Recommendation for the Findings of Fact and Conclusions of Law with Nonfinal Order by the Panel of Administrative Law Judges. *Charles Scarcy v. DNR*; Administrative Cause No. 00-203L

Chairman Kiley introduced this item. He said that for consideration were objections, by both parties albeit from completely different perspectives, to the majority opinion of the panel of administrative law judges regarding the employment termination of former Conservation Officer

Charles Searcy. He said both parties were represented by counsel, and the attorney would present oral argument to the Commission with respect to their objections, with DNR's attorney speaking first.

Ihor Boyko, attorney for the Department of Natural Resources, outlined his client's perspective on the facts and law. He said a series of events resulted in Searcy being terminated as a Conservation Officer in August 1999. A citizen named Polly Wills was arrested by Indiana State Trooper Brent Clark in Vincennes, Indiana. Boyko said Trooper Clark observed Wills in an alley in Vincennes, Indiana, doing what appeared to be a "hand-to-hand" drug transaction with another individual. He said both individuals ran, and Trooper Clark chased Wills into a nearby park. Boyko explained that in exchange for the name of the other person involved, Trooper Clark agreed to file a public intoxication charge against Wills and booked him into the Knox County Jail at approximately 12:00 midnight. Boyko said Wills was a student at Vincennes University at the time of the arrest and added that Wills was acquainted with Searcy's ex-wife but that Searcy apparently did not know Wills.

Boyko said that Wills telephoned Searcy's ex-wife from the jail and asked if he could borrow \$150 that he lacked to cover his \$300 bond. Searcy was at his ex-wife's apartment helping her move when Wills telephoned. Boyko said that Searcy's ex-wife had never bonded anyone out of jail so she asked Searcy to accompany her down to the jail. Upon arrival at the jail, Searcy entered the jail by entering in a code on a keypad used by law enforcement officers. Boyko said that Ann Bucko was the Jailer's Assistant on duty that night. Boyko informed that at the hearing Ann Bucko testified that Searcy had told her that he was there to bond out Mr. Wills. He said that Bucko also testified that this was a particularly memorable event, because this was the first time, in her experience, that a Law Enforcement Officer had appeared at the jail to bond a prisoner. He said that Searcy went back outside the jail area where he ex-wife was and retrieved the \$150.00 and delivered it back the jailer Ann Bucko.

Boyko said Bucko testified that while filling out the receipt, she asked Searcy whose name to put on the receipt. Bucko said Searcy responded, "Does it make difference?" Bucko replied that the person named on the receipt would receive any amount not used in the court process. Searcy then instructed Bucko to put his name on the receipt.

Boyko said Searcy telephoned the arresting officer, Trooper Clark and asked what he could do for Wills. Trooper Clark told Searcy there was nothing that he could do for Wills. Trooper Clark testified that in five years as a law enforcement officer he had never been contacted by a fellow law enforcement officer on behalf of a person he had arrested.

Boyko said that approximately eight weeks after the jail bonding; Searcy was questioned during an internal investigation. He said Searcy was advised of his procedural rights under the U.S Supreme Court case of *Gary v. New Jersey*. Boyko said, in effect, Searcy was granted immunity from prosecution for any criminal conduct that came to light during questioning. Boyko said that during the questioning Searcy was asked twice if he had ever bonded anybody out of jail. Searcy replied "no" in both instances. Boyko said the internal investigation resulted in Searcy's termination from the DNR as a Conservation Officer based on four allegations of misconduct, all of which were basically related to the incident involving Wills.

Boyko said the Administrative Law Judge Panel was convened and heard evidence last December 2001. He said that the majority of the panel found that Searcy committed one of the

four violations alleged. Boyko said the ALJ Panel also found that this warranted a substantial suspension but not a termination of employment. He said Lt. Col. Jeff Wells filed a dissenting opinion saying that he would terminate Searcy from employment as a Conservation Officer. He said that the majority of the panel found Searcy was guilty of conduct that could result in the citizens of the community or elsewhere not maintaining the proper respect for or cooperation with the Department of Natural Resources.

Boyko read several quotes from the ALJ Panel's Findings of Fact and Conclusions. FINDING 47- "Searcy's participation in the bonding of Poly Wills demonstrated poor judgment and might reasonably cause a member of the public to lack respect for the officer or the DNR." FINDING 51- "By using the key code, Searcy abused a privilege intended exclusively for the law enforcement community in the conduct of their duties and responsibilities. He performed a private favor in violation of a public trust. This action may reflect negatively upon the relationship between the DNR's division of law enforcement and the Knox County Sheriff. FINDING 52 - "When Searcy appeared before Bucko to present the cash bond, she remembers Searcy saying, "I'm here to bond out Poly Wills." Searcy was not in uniform, but she was previously acquainted with him and knew he was a conservation officer. The event was memorable to Bucko because it had "never happened before" that a law enforcement officer bonded out a prisoner." FINDING 55 - "By authorizing that his name be placed on the receipt, Searcy reinforced with Bucko the money was his. By doing so, he compounded his error, both in terms of Bucko and other jail personnel present on August 25, 1999, as well as in terms of other court and clerk personnel who would later process the bond receipt." FINDING 56 - "Searcy further compounded his error by then contacting Clark on behalf of Wills." FINDING 57 - "Clark testified the telephone contact from Searcy seeking assistance for Wills was extraordinary. In five years as an Indiana State Trooper, no law enforcement officer from another agency ever contacted him on behalf of a prisoner who Clark arrested." FINDING 59 - "Searcy's conduct also reflected negatively upon the image of himself and the DNR relative to another law enforcement agency." FINDING 60 - "Clearly, Searcy's participation in bonding out Poly Wills and in later interceding on behalf of Wills represented poor professional judgment that only became worse at every stage. His conduct could reasonably be expected to cause citizens to lose respect for him and for other conservation officers in the DNR." Also, to reinstate Searcy would be a financial burden on the DNR since Searcy would have to be retrained.

Boyko argued by both statute and rule, the Director of the Division of Law Enforcement is given legal authority to discharge a conservation officer. Boyko said, "The Director is in the best position here to evaluate and determine who is qualified to be a conservation officer based on their conduct." He said the panel substituted its judgement for that by the Director by finding that the Claimant should not be terminated. Boyko said the division director has the legal authority to terminate a conservation officer. He said there is no legal right to be a police officer and that employment in Indiana is at will. Boyko said the applicable rules list about 30 general categories that may lead to disciplinary action, including termination. He said, "any one of these may result in termination." Boyko said that both the division director and the dissenting opinion determined that Claimant Searcy's conduct was grievance enough to justify termination. Boyko argued, "these individuals are in the best position to know what the appropriate discipline should be based on the particular conduct of the conservation officer.

Boyko asked the Commission to reinstate the original termination of Claimant Searcy executed by the Director of the Division of Law Enforcement. He stated the Director's legal authority to

terminate an employee should be recognized and given precedence over that of the majority of the ALJ Panel.

Dale Webster, attorney representing Claimant Charles Searcy, addressed the Commission as attorney for Charles Searcy. He said that for the past two and a half years, Searcy has maintained his employment with the Division of Law Enforcement should not have been terminated. He said he and his client “were very pleased that 3–1 majority of the ALJ’s who heard this case agreed with our position.” He said he had no objections to the recommendations or the findings of the ALJ Panel. Webster questioned what was meant by the recommendation of “substantial suspension.” He said, “I would hope one of the things that would be taken into consideration in determining that suspension, would be the fact that from December 1999, when Officer Searcy first initiated his appeal of his termination, until September 2000, this case proceeded, unfortunately under the assumption that it belonged in the jurisdiction of the bureau of appeals.” Webster argued that having a pre-deprivational hearing had not exhausted the administrative remedies within the Law Enforcement Division. He said that in September of 2000, rather than going forward with due process arguments and trying to delay this matter further, Charles Searcy decided to go back to square one and have a pre-deprivational hearing and go forward with the hearing process. “We would hope in determining what the suspension would be that you would take that fact into consideration. He said the bottom line is Charles Searcy wants to return to his position as a Conservation Officer. Webster said that Searcy is prepared to accept the Commission’s suspension and that Searcy will report for duty when he is eligible. “That is what he wants to do. Most of the rest of what I would say on behalf of Charles is really rebuttal, and I would be more than happy to do it now, or I would be happy to sit down and wait for another time.”

Boyko again spoke briefly. “The position of the Department is that Mr. Searcy is not fit to wear a Conservation Officer’s uniform and should be terminated as a Conservation Officer.”

Webster argued, “We believe that the Findings and Facts that were made by the four ALJ’s who heard this case and who are in the majority opinion are supported by the evidence— they are the four hearing people who sat in that room in Jasonville who saw the witnesses, who listened to the witnesses, who were able to judge their credibility by looking them in the eye and hearing their testimony.”

Webster said, “It is very difficult for an attorney or for anyone else to stand in a room several months later and say ‘I remembered this happened, or I remember that happened.’ I think you have to go by the record, and I think that of the three ALJ’s who are Law Enforcement Officers, . . . the majority of the decision was joined in by two of them, their decision should be upheld.”

Webster added, “There are some facts that were cited here earlier today that I think are just totally incorrect. I think that if you read the majority opinion you will find that the only thing that Charles Searcy did at the Knox County Law Enforcement Center, on the evening in question, is take some money from his former wife and walk it to the person at the jail who is responsible for taking that money so that Mr. Wills could be bonded out. That’s the only thing he did. Is it poor judgment for a law enforcement officer to be there? Yes. Was it was poor judgement for him to do that? Yes. Does it necessitate his termination as a law enforcement officer? No. If you look at the Majority Opinion, and the conclusions that they came to after hearing all the evidence, did he lie? There is no evidence to support it. As to the third allegation—that he interfered with the arrest—there is no evidence to support it. As to the

second allegation that he transported this money to his former wife to the person at the jail whom is responsible for taking the bail; that he committed poor judgment, and if he committed poor judgment he should be punished by receiving a substantial suspension.

Webster said, “that is the ALJ’s conclusion. After hearing all the evidence and making the findings that Mr. Boyko read to you, and some of the more important facts that were left out, especially with regard to when Scarcy was questioned.” Webster said his client was asked 64 questions, and 62 were unrelated to the incident at the Knox County Law Enforcement Center. He said the other questions concerned personal matters that occurred at other times and places. Webster noted that twice during the interview, Scarcy was asked if he had ever bailed anyone out of jail. Scarcy said “no”. He said that Scarcy testified under oath at the hearing and said Scarcy was asked, “have you ever bailed anyone out of jail” he said “no”. Webster said, “then that the evidence shows, which is recounted in this majority of opinion, that he didn’t bail Polly Wills out of jail—what he did is walk \$150 for his ex-wife to the Jailer. He shouldn’t have done that—but he didn’t bail him out—and he didn’t lie about bailing him out.” Webster added, “This is not an appropriate case for termination.” He said the suspension Scarcy would receive would more than adequately punish him and send him a message about his conduct once reinstated.

Webster said two issues were interjected into the argument by the DNR that are totally inappropriate. One is the comment in the objections of the Law Enforcement Division in regard to retraining. He said that to say that you must terminate someone because it is going to be inconvenient to retrain that person is not legal ground for termination. Under the administrative code there is no section that allows termination of employment because an officer has been suspended, and because of the suspension, it now becomes inconvenient to train him.

Webster said the second thing is that “somehow the Majority Opinion is not as well informed and is not as entitled to as much credence as the initial decision of the Division Director. My question then is why do we have this procedure in Indiana law? Why is there an administrative procedure where a person can appeal their termination if the Legislature, and if the Commission in adopting rules and regulations, had wanted the Director’s decision to be final. Why would we even have an appeal process? That is not a good reason to terminate a person’s employment. Four people heard this case, they heard the evidence, and they saw the witnesses. Three of them are of the Majority Opinion that basically says Charles Scarcy used bad judgment but does not deserve to be terminated. He deserves to have a very long suspension and be reinstated. That is what Charles wants—that is what we are asking the Commission to do today. We thank you all very much for considering our opinion.”

Jack Arnett moved to approve the Dissenting Opinion and uphold the original discharge. Ray McCormick seconded the motion. The Chair asked for a show of hands of those in favor of the motion. There were six votes in approval of the motion, one opposed, and one abstention.

Michael Kiley asked Steve Lucas to clarify how many votes were required to sustain the motion. Lucas responded that for consideration is oral argument upon objections under AOPA. As a result, IC 4-21.5-3-3 applies, and a majority of those present and voting is sufficient to carry the motion. There were a sufficient number of votes in support of the motion. The Chair then declared the motion carried.

Consideration of Recommendation by Hearing Officer for Final Adoption of Rule Amendments; *Scientific Collector License Amendments*; Administrative Cause No. 00-191D; LSA #02-068(F)

Sylvia Wilcox, Hearing Officer, introduced this item. She explained the proposed rules govern educational qualifications of scientific collectors. It provides for flexibility to administer vaccines, training, and to provide information supporting the main use for the collection.

Wilcox said that the public hearing was held on June 28, 2002, and she said that no one from the public attended. Written comments from the public were received and are contained in the Hearing Officer's Report along with the DNR responses to the amendments.

Wilcox stated that there was a nonsubstantive change to 312 IAC 9-10-6(B)(6). She explained that the section refers to licensing by the U.S. Fish and Wildlife Service under 50 CFR. Wilcox said that 50 CFR is a "very broad" section, and the proposed amendment clarifies specifically the sections of 50 CFR that relate to licensing provisions. This amendment also prevents the rule from being found to be overly vague with the Attorney General's Office. The recommendation is that the Commission adopt the rules as contained in the Commission packet at Exhibit A with the recommended amendment in 312 IAC 10-6-(b)(6) as provided under Exhibit B.

Michael Lodato, from Evansville, Indiana, stated that he had served on the Indiana Department of Natural Resources Technical Advisory Committee for Nongame Animals since its inception in 1984. He said that for the past two decades he has been "actively involved" with endangered species in the state. He commented that he was concerned about the proposed rule. "This is an extremely important regulation, and I generally support the thrust of the regulation. I think there are a few things more important than the conservation, preservation, and management of our endangered species in Indiana. It is important that the state have in place safeguards concerning unscrupulous people, and there are some, who would exploit endangered species."

Lodato stated that his concern was with the proposed language contained in Section 6 subparagraphs (e) and (f). He stated that the regulations as written are "arbitrary and exclusive. There are a number of people in this state who are not in academia, but who come from various walks of life— professional, business, and education—who are accomplished naturalists and have considerable knowledge, dedication, passion, and interest in the fauna of this state, including endangered species." He said these persons have made "significant contributions to our knowledge about the life history, natural history, and distribution of endangered species in this state." He added that the kind of work done by these persons is the kind of projects that "fall below the radar screen of academia anyway."

Lodato suggested the rule be rewritten to allow some discretion on the part of the Director to issue a scientific purposes permit to persons who are "otherwise deemed worthy by virtue of experience, independent study, publications, and recommendations, or any other objective measure. There is a rich resource available within the state, and most of the people I am referring to work independently and are unaffiliated." He stated that the rule as currently proposed eliminates a "rich source" of talent, knowledge and information. "I don't think it serves the purposes of protecting the endangered species in Indiana."

Lodato asked the Commission to allow for a rewriting of subsections (e) and (f) so that the Director has the authority and discretion to allow persons who are otherwise not associated with academia to be allowed to have their permit and continue independent work.

Ray McCormick said the Director may not have the knowledge to review the qualifications of the individuals requesting an exemption under the permit to decide whether someone was “unscrupulous. It sounds like it would be very difficult to have the Director review” these permit. Lodato responded that through the application process credentials and experiences could be outlined and can be independently verified.

Linnea Petercheff said that Division of Fish and Wildlife has had “long” discussions regarding the recommendation for this particular section. She said the statute and state law requires that a license be issued to a properly accredited individual. “We personally will be reviewing applications. We feel that if we leave this open-ended for discretion, we would begin making judgment calls in reviewing the applications. Petercheff stated that just because someone gives a reference or has a membership does not mean that they are qualified to do scientific work. “We have to establish some qualifications and boundaries.” Petercheff said that the Division of Fish and Wildlife believes some qualifications and basic guidelines are necessary to issue the licenses. She noted that one of the reasons the revision process was started was because an applicant wanted to do a collection for fun and did not have qualifications.

Director Goss asked for clarification of the federal permit requirements. Petercheff replied that if a request for permit to collect endangered species applicants are required to have a general federal permit. “If the request is for simply a bird banding or falcon type permit that are not nearly the requirements, but there is reporting and meeting other conditions.” Petercheff added that the proposed rule does allow that if applicants have a federal permit then they would be able to receive a state permit. She also stated that if someone is accredited and “knowledgeable enough it shouldn’t be difficult for him to become affiliated with a museum or a university.”

McCormick suggested changing the language in subsection (i) to read “A person may assist the license holder if the license holder administers and oversees the activities of the person.” Lodato stated that the language might not go far enough. “The kind of people I am referring to are people who are generally unaffiliated, often work independently, and work with their own resources—financial or otherwise.”

Kiley said most comments taken at the public hearing were either from academia or a part of scientific organization. Davis stated that the rule as proposed does not leave the Director or the Department any discretion. “I think that is a problem. I don’t think we solved it with the use of this rule the way that it’s written. We leave it open with the language ‘*or currently pursuing a bachelor’s degree in the biological sciences.*’ He explained that persons would fill out an application, because they are pursuing a Bachelor’s Degree. “If someone can prove that they are in a legitimate pursuit and with a proper background and backing, I would rather have that discussion be available.”

Kiley said he did not want to “discourage those persons like Lodato” from their life’s work because of the proposed requirements. “There’s got to be other people out there.” McCormick added, “I think that is where you get into the dangerous territory is when you have someone that is not supervised and operating independently that doesn’t have perhaps the knowledge or training.” Lodato stated that he agreed that was a legitimate concern. “That is why you have to

have the safeguards written in, but they way the rules are written now, it excludes any possible consideration.”

Kiley asked if it were the will of the Commission to remand the proposed rule back and ask for amended language to incorporate the safeguards but yet not discourage persons like Mr. Lodato and others who have “considerable expertise in this area. It would be a shame for us to lose the benefit of their services and their interest.

McCormick concurred with the Chair. “I think we should correct this and take some time to get it right.”

Chairman Kiley said he would entertain a motion that the item be tabled pursuant to the suggestions made. Ray McCormick moved to table action on final adoption of the rule. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of Report of Hearing Officer, Including Findings and Proposal to the Natural Resources Commission as to its Recommendation to the U.S. Army Corps of Engineers; *Petition for Rate Increase by Traina Enterprises (Four Winds Resort & Marina)*; Administrative Cause No. 02-065P

Sylvia Wilcox, Hearing Officer, introduced this item. Wilcox indicated that the NRC considered a previous petition for rate increase during its meeting of March 21, 2002. At that time, it was determined consideration of the petition was premature under the “Ratemaking Process for Resorts and Marinas under License with the Department of Natural Resources” (Information Item #20). As a result, the earlier petition was dismissed on procedural grounds. Wilcox explained that although that petition was dismissed, the public comments received with the previous petition were considered in this recommendation. In the present petition, Traina requests a seven percent slip fee increase for all slip users and requests approval to meter electricity usage within the marina. Wilcox pointed out that Jeff Hammond was present representing Traina Enterprises.

Wilcox provided that the slip fee increase is requested only after specific work has been completed by Traina. She explained that she toured the facility supporting a finding that much work has been accomplished at the marina while more work is needed to improve boat ramps and shoreline beautification. Work is in progress at the site.

Wilcox indicated that a public hearing was held on July 23, 2002, with the appearance of several interested parties. Written comments and e-mails were accepted through August 4, 2002. On page sixteen of the Report, Gary Miller summarized and reviewed comparable facilities as required by the non-rule policy document. Page eighteen of the Report provides public comment by Phillip Smith and the identification of a motion to deny Traina’s petition based on notice, date of hearing, location of hearing and the date of petition filing. Each of those issues is addressed in the report and warrant discussion.

Wilcox said that Phillip Smith, Anne Smith and Don Small asserted the notice of the petition for rate increase was not sent to all slip users. Jeff Hammond responded and indicated that notices were sent to all users. Wilcox said the persons presenting the argument were present at the public hearing, which Wilcox believed cured their alleged lack of notice. Wilcox said Phillip

Smith argued that the date of hearing did not fall in “early July” as required by the policy document. Wilcox stated that July 23 was not “early July,” but felt that the purposes of the policy were satisfied in providing the public hearing and an opportunity for public comment at the earliest opportunity. Scheduling was based largely upon the availability of facilities.

Wilcox stated that Smith requested petition denial on a third point—the location of hearing. Smith asserts Information Item #20 requires the public hearing be held in Indianapolis. He argued Fort Harrison State Park is located in Lawrence, not Indianapolis. Wilcox explained the US mailing address for the Garrison is Indianapolis, and the requirements of the nonrule policy document were met.

Lastly, Wilcox said Smith requested denial of the petition based on the date of the petition for rate increase. He asserts the petition must be submitted between January 1, 2002 and April 1, 2002. Smith indicates that the petition was submitted in 2001. Wilcox responded the nonrule policy document requires the petition to be submitted “by April 1 of the preceding year,” and does not require that the petition be received between January and April. The petition was received “by April 1.”

Wilcox recommended that, based on review of the public comments from this petition, the previous petition, review of the DNR comparable marina rates, and observations from a site tour of the marina, the NRC recommend approval to the US Army Corps of Engineers of Traina Enterprises’ petition to meter electricity usage within the marina, along with a 4% rate increase for new contracts as recommended by the Department in Exhibit A.

Wilcox explained that the recommendation was conditioned upon the DNR determination that the following are substantially completed:

Installation of a new pump-out system; relocation of the ship store to a floating location; construction complete on a new fueling dock; expanded service offerings; initiation of a shoreline protection, beautification project; initiation of construction on the new boat ramp and parking facilities.

Gary Miller, Assistant Director of the Division of State Parks and Reservoirs, said, “Going through the process, it is very difficult to find comparable rates of marinas throughout the states. We tried to find other large marinas to compare structure. I felt that was the best possible way to get a good comparison.” Miller said he believes a 4% increase is warranted with the repairs going on at this time.

Jeffrey Hammond, General Manager, Four Winds Resort and Marina, said that the ownership approach to the Marina has changed 180 degrees from where it was just over a year ago. “We began planning for the property improvements several months prior to the actual sale.” He said that the approach for improvements continues. “We’re in execution phase, Phase I. We have replaced our pumpout system with a newer high efficiency pumpout. We’re conducting fuel testing for construction of a new fueling dock this week. Replacement of 58 existing slips—all materials are on site and construction is under way—literally as we speak. Expansion of the service department offerings has been completed and continues.”

Hammond said shoreline beautification protection projects are underway and will be initiated in approximately three weeks. “That was Phase I, and that is what we had initially suggested to be

required of us as a ownership operation entity prior to any approved rate increase being allowed to go into effect. These are self-imposed caveats. The reason for this is we understand completely that many of our boaters are understandable apprehensive and skeptical of improvements being made based on history. What we had asked for with official approval based upon the caveat that we do these things is simply because we are not allowed to come back and ask for a rate increase after we done it unless we want to wait until next year. Our last rate increase was five years ago, a time during which the consumer price index has gone up. We technically have 15.1% less money in which to improve the facility than what we did five years ago, and we're asking for half that amount. We've also initiated Phase II of the plan even in advance of the rate increase."

Hammond said Traina Enterprises has begun to install 80-foot bridges to provide better access to the slips. "The bridges are not in their final position but will be soon." He said that the company has also initiated parking engineering. "We now have blue prints that will be delivered to DNR this week for consideration of approval." He said currently there are 218 parking spaces. Phase III will add an additional 204 parking spaces in conjunction with a new boat ramp.

Don Small spoke in opposition to the rate increase at the Four Winds Resort and Marina. He said there had been electrical outages this year, and he would like to see the problem resolved. "We want to see Mr. Hammond be successful. Without his success, we won't be successful with our pleasures that we want down there. All we want to see is more done. As far as the slip fees being increased, 4% probably wouldn't be unreasonable. We want to see things that are affecting the people that are bringing the most money to Four Winds."

Chairman Kiley asked what was being done with respect to the electrical service. Hammond answered saying two electricians had been to the Marina within the past two weeks to evaluate the problem. He said he was not pleased with either of the electricians' recommendations, so there was another electrician at the Marina today.

Gary Miller said that he, along with Howard Stoll from Division of Engineering and the Corps of Engineers, traveled to Four Winds Resort and Marina and met with Jim Roach, property manager and Phil Wilson, Assistant Property Manager, to perform an on-site inspection of the electrical problem. He said he was awaiting a report from the Corps and the DNR's Division of Engineering. He said there would be recommendations in regard to the electrical panels being moved slightly away from the transformers, and "a transformer may be suspect." Miller said there were some old dead electric lines that should be removed. He said the boaters themselves were creating some of the problems—citing as an examples temporary plug-ins "being used 24-7, extra hookups that were not to code, and kitchens and ice-makers on the docks running all hours and scabbed into the electrical system."

Director Goss asked, "are there conditions on the electric pole—improvements in your recommendation now?" Miller replied with the rate increase there would be opportunities to work on that.

John Davis said he believed the hearing officer's recommendation included an allowance for electricity metering. Wilcox responded that her recommendation was to approve electric metering at the marina. Davis then suggested metering was likely to have "a big effect on the suitability on what gets wired to the system. "We have a year's worth of experience with Kent's

Harbor Marina. He is here on another matter. There's another Marina that imposes the metering with the electric system, and the usage went way down. I think there's probably been a lot better compliance as far as who hooks what up to the electrical system than what there was in the past."

Ann Smith said that she has been a boater at Lake Monroe for 30 years. She said, "I want to start out by complimenting Sylvia Wilcox for the hearing she conducted. She was very professional and she seemed to take a genuine interest in learning about what our concerns were." Smith questioned the use by the Division of State Parks and Reservoirs of comparables that had marinas and hotels. She said that she as a weekend boater, she does not use the hotel and "does not quite understand the rationale. The fact that there is a hotel there is neutral to me. I don't quite understand the rationale for looking for specific marina's that have hotels."

John Davis spoke from his experience with real estate transactions. He said the use of comparables is inherently a subjective process. No two properties can ever be exactly the same. The goal is to seek properties that are as similar as practicable, and using other properties that have both marinas and hotels to determine comparables at the Four Winds is a sound practice. The operation at Four Winds is an integrated one and must properly be considered as such.

Philip Smith said, "I have been officially appointed to speak on behalf of the Lake Owners Association at Four Winds. I'm sure all of you will agree this is a serious matter before us today." He argued there were procedural errors with respect to the petition for rate increase. Traina Enterprises did not file a petition during the required period of January through April. "The petition may have been filed in May 2002. If so, either the petition was filed too early or too late. In either case the petition was not filed on a timely basis."

Smith said many slip owners did not receive notice of the public hearing, or a copy of the proposed rates, as required by in Information Bulletin #20. No boaters were able to review the rate petition as required by the Commission's nonrule policy document, since a 2002 petition was never timely filed. He said the state's own analysis of slip rental fees did not support an increase. Four Winds Marina was already in the top 1/3 among rates at comparable facilities. Smith said the hearing was not conducted in early July as required in the nonrule policy document. He added, it was clear from the poll results presented to the Hearing Officer, and the many comments from the boaters in attendance of the hearing, that a number of affected parties were not properly notified of the hearing. Smith said Traina Enterprises acknowledged that it had removed signs inviting boaters to learn about the proposed rate increase. Four Winds characterized the signs that were placed on bulletin boards and at other locations by boaters as "unauthorized."

Smith concluded, "While some of the procedural errors might be considered minor, and have been waived by the Hearing Officer, there are so many errors it becomes difficult to establish if the Commission's non-policy rule has been observed and followed at all. Information Bulletin #20 contains the following language: 'The time frames established by the information bulletin are essential to its effectiveness and implementation.'" Smith urged that the timeframes had not been followed nor had several of the procedural requirements. "We recommend Four Winds' rate increase be denied."

John Davis said members of the DNR Executive Team visited the marina in June and met with some of the slip holders. "I think to judge the current management in terms of past performance would be unfair. Since this new owner has taken possession of the property in the last year, I

have seen more activity than since 1990 that ever happened at Four Winds. I think there's been lots of action as far as accomplishments that occurred. I think there is some fairness in saying, 'Do some performance and we will consider a rate change.'"

Kiley said, "The whole issue appears to be the total failure of performance by the former corporation as lease holder. We had all kinds of problems. The boaters unfortunately are continuing to pay the price of that situation, and hopefully that's been rectified. As to the procedural matters that were raised by Mr. Smith, the Commission might want to look at the findings of Judge Wilcox on page 18 and 19 of her recommended order, I think they addresses those procedural issues, at least in my judgement she satisfies the jurisdiction issues that are raised in that respect which would give her jurisdiction to make the type of recommended order which she has done."

Kiley asked for a motion relative to Sylvia Wilcox's Findings on page 20, paragraph 6(a), and (d) on page 21, relative to the rate increase as shown in Exhibit A.

Jane Stautz moved to approve the Hearing Officer's Findings, including electric metering, and to recommend them to the Army Corps of Engineers for final action. Jack Arnett seconded the motion. Upon a voice vote, the motion carried.

Stautz asked that the DNR continue to monitor the activity to help assure continuing improvements at Four Winds Resort and Marina. Davis said the visit to Four Winds Resort and Marina two months ago "was not a one-time visit. Director Goss has led us to a real partnership." He said the DNR was going to "stay involved."

Consideration of Report of Hearing Officer, Including Findings and Proposal to the Natural Resources Commission as to its Recommendation to the U.S. Army Corps of Engineers; *Petition for Rate Increase by Kent's Harbor Marina*; Administrative Cause No. 02-064P.

Jennifer Kane, Hearing Officer, presented this item. She explained that the petition by Kent's Harbor Marina was governed by the nonrule policy document approved by this Commission in 1998. She stated a public hearing was held on July 23, 2002. Kane said that Kent Reineking, President of Kent's Harbor Marina, spoke on behalf of the rate increase request.

Kane said that Kent's Harbor Marina has not increased slip rates for the past two boating seasons. She noted, however, electrical metering was approved and installed for the 2002 boating season. Kane explained the requested rate increase for the 2003 boating season was in the range of .7% to 2.4% (or \$35 to \$60) depending on slip size. She said that Reineking explained at the July 23 public hearing that the rate increase was primarily based on the escalating insurance costs.

Kane said the Department of Natural Resources, Division of State Parks and Reservoirs' comparable analysis found that the 2003 slip rates fall within the fair market rates charged by operators of other similar privately owned resort developments. Kane said the rates sought by Kent's Harbor Marina for the facilities along with the increase in boat rental fee should be recommended to the U.S. Army Corps of Engineers for approval.

Jane Anne Stautz moved to approve the report and recommendation for rate increase request by Kent's Harbor Marina to the Army Corps of Engineers. Ray McCormick seconded the motion. Upon a voice vote, the motion was carried.

Consideration of Report of Hearing Officer, Including Findings and Proposal to the Natural Resources Commission as to its Recommendation to the U.S. Army Corps of Engineers; *Petition for Rate Increase by Lake Monroe Sailing Association*; Administrative Cause No. 02-063P.

Jennifer Kane, Hearing Officer, presented this item. She stated a public hearing was held on July 23, 2002, to gather comment regarding the request from Lake Monroe Sailing Association to increase marina slip rates for the 2003 boating season. She stated the petition by Lake Monroe Sailing Association was also governed by the nonrule policy document approved by this Commission. Kane stated that Stephen Paul, Commodore, spoke on behalf of the Lake Monroe Sailing Association. She noted that no other member of the public appeared at the hearing or otherwise offered oral or written comment.

Kane explained that Lake Monroe Sailing Association requested an across-the-board slip rate increase of three percent for the 2003 boating season. She noted that the three-percent increase was voted upon and approved by the Board of the Lake Monroe Sailing Association. Kane stated that the comparable rate analysis conducted by the Department of Natural Resources, Division of State Parks and Reservoirs found that the requested slip rate increase falls within fair market rates charged by operators of other similar privately owned resort developments.

Kane said the rates sought by the Lake Monroe Sailing Association for the facilities should be recommended to the US Army Corps of Engineers for approval.

Jerry Miller moved to approve the report and recommendation for rate increase request by Lake Monroe Sailing Association to the Army Corps of Engineers. Ray McCormick seconded the motion. Upon a voice vote, the motion was carried.

OTHER MATTERS

Informational Item—White River Citizens Advisory Council

Carrie Doehrmann presented this item. Doehrmann provided the Commission with a handout of PROPOSED WHITE RIVER RESTORATION PROJECTS. She explained that the Natural Resources Damage Trustees and the Citizens Advisory Council are working from this matrix in spending the settlement money paid by the Guide Corporation under the state and federal lawsuits that were filed about one and half years ago.

Doehrmann explained the format of the matrix. She said the ten projects shaded in gray are projects that have received the approval of the Natural Resources Damage Trustees. "By unanimous resolution, these projects are going forward, and the Trustees have authorized expenditures. Some of the costs are estimated for those projects, but nonetheless the projects are going forward." She said projects that are listed in blue type are also significant, because the projects have the approval of the Federal Court. "These projects were listed in the Consent

Decree and were, in fact, agreed upon by Guide Corporation in settlement. Guide thought that these projects were representative of the losses associated with the fish kill.”

Doehrmann said that the matrix illustrates the “diversity” of the types of projects that are listed as well as the geographic diversity of those projects.” She said the Commission will be updated periodically on the acquisitions and expenditures. She said the current matrix is dated July 10, “but in the last 30 days, we have spent nearly another \$100,000” from the settlement funds. Doehrmann said the total settlement for restoration exceeded \$6,000,000 but does not include any amount that Guide paid for reimbursement to the agencies for costs or civil penalties.

Kiley said he was “pleasantly surprised” to see the DNR obtained “some significant” public access as a result of the settlement. Doehrmann said it is not a goal of the Trustees to seek a punitive resolution. “We just hope to be able to give the public back what they lost, and I think one of the things that we found is we did not all lose the same thing. Some of us lost access; some of us lost boating opportunities; fishing opportunities; and passive use opportunities.” Doehrmann said the matrix was accessible on the DNR and IDEM websites.

Proposed White River Restoration Projects

red - new projects blue - listed in consent decree

July 10, 2002

Name of Project	County	Description	Estimated Cost	Project Status	Trustee Approval	Resolution	Comments
Survey of Bank Erosion and LWD	Madison Hamilton Marion	Conduct a survey of bank erosion and large woody debris in river.	\$85,500.00				USGS
White Owl Restoration	Marion	Restoration of 6.5 acres near 86th Street and White River	\$44,510.00				
Sept 14 Cleanup	Hamilton	Community river cleanup.	?				
Sullivan Wetlands	Marion	Wetland restoration. Indy Parks	?				
Clare Dam Portage	Hamilton	Upgrade existing canoe portage	?				
Main-Jackson Street Site	Madison	Purchase and restore approx 24 acres in Anderson	\$191,300.00	proposed			
Invest in the Banks of the White River	Madison Hamilton Marion	Create support for community based river clean-ups	\$38,225.00	proposed			
Noblesville Property	Hamilton	purchase 80 acres of floodplain property	\$240,000.00	proposed			Appraisal ordered.
River Cleanup from SR 13 to Anderson	Madison	Hire contractor to remove debris from river and river bank	\$415,000.00	proposed			
Indian Creek Property	Madison	Purchase conservation easement. Red Tail Conservancy	\$288,000.00	proposed			under consideration
Fish Community Analysis and Habitat Evaluation	Madison Hamilton Marion	Conduct fish community analysis and habitat evaluation on major tribs of river	?	proposed	yes		US Fish and Wildlife Service set to begin in early August.
Log and Debris Jam Removal	Madison Hamilton Marion	Remove log and debris jams	?	proposed			More details needed
Inner-Urban Rail Piers	Hamilton	Remove piers	?	proposed			
Signs for Bridges	Madison Hamilton Marion	Road signs on bridges visible to river traffic	?	proposed			More details needed
Steckley Property and 206th Street Bridge	Hamilton	Purchase and development of 55+ acres for fishing, trail, picnic areas and parking lot	\$600,000	proposed			

River Cleanup	Madison Hamilton Marion	Removing trash along White River	?	proposed			Working on how restorations funds can help facilitate.
Watershed GIS	Madison Hamilton Marion	Develop White River watershed GIS database. Upper White River Watershed Alliance	\$228,000	proposed			Under revision.
Price Tract	Madison	Purchase and restore 37.5 acres in Anderson. City of Anderson	\$96,615	proposed			under consideration
Delaware Street Environmental Restoration Site	Madison	Purchase and restore 6 acres in Anderson. City of Anderson		removed			
Conservation Club Property	Madison	Purchase property in Anderson for canoe launch and education. City of Anderson and White River Watchers	?	proposed			under consideration
Marott Park	Marion	Remove invasive plant species and plant natives. Indy Parks	\$285,250	proposed			under consideration
Strawtown Park Improvements	Hamilton	Installation of boat ramp and parking lot	?	proposed			
Broad Ripple Dam	Marion	Improvements to parking, installation of handicap access, cables and signage. Indy Parks	\$50,000	proposed			More details needed
Broad Ripple Park	Marion	Improvements to boat ramp, parking lot drainage and handicap accessible pier. Indy Parks	\$75,000	proposed			More details needed
2002 DNR Fish Stocking	Madison Hamilton Marion	Purchase of fish for stocking of White River	\$41,752	ongoing	yes	Resolution #1 Feb 19, 2002	
2002 DNR Project Operation Cost	Madison Hamilton Marion	Division of Fish and Wildlife project-related operating costs	\$60,261	ongoing	yes	Resolution #2 Feb 19, 2002	
Buffer Strip Easements	Madison Hamilton Marion	Purchase property/easements on property adjacent to the river	\$2,100,000	ongoing	yes	Resolution #3 March 14, 2002	Released \$30,000 for appraisals.
Town Run Park	Marion	Remove invasive plant species and plant natives. Indy	\$109,000	ongoing	yes	Resolution #4 March 14, 2002	

		Parks				
Earth Day Indiana Advertisement		Advertisement in the Earth Day Indiana Festival Program Guide describing White River Citizens Advisory Council and purpose.	\$800	completed	yes	Resolution #5 May 15, 2002
FOWR Catch and Release Campaign	Madison Hamilton Marion	Program will encourage anglers to release certain fish species to allow for fishery recovery	\$4,300	ready to begin	yes	Resolution #6 May 15, 2002
White River Rescue 2000	Madison Hamilton Marion	Refund donated money for fish stocking to be used for future river protection.	\$166,164.12	completed	yes	Resolution #7 May 22, 2002
Deerfield Estates	Hamilton	Purchase and restore approx. 53 acres in floodway of river. CILTI	\$233,250	ongoing	yes	Resolution #8 June 3, 2002
White River Watchers	Madison	Year 2002 River Cleanup	\$3,000		yes	Resolution #9 June 3, 2002
Land Acquisition	Madison Hamilton Marion	Purchase property/easements on property adjacent to the river	\$50,000.00	ongoing	yes	Resolution #10 July 8, 2002

Restoration Fund #1

Restoration Fund #2

IDEM Web Page

ADJOURNMENT

At 12:55 p.m., EST, the meeting adjourned.