

NATURAL RESOURCES COMMISSION

Minutes of September 16, 2003

MEMBERS PRESENT

Michael Kiley, Chair
Rick Cockrum, Vice Chair
John Goss, Secretary
Damian Schmelz
Jerry Miller
Elizabeth Admire
Jane Anne Stautz
Raymond McCormick, II
Vaneeta Kumar

NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas
Jennifer Kane

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Krystal Wethington	Executive Office
Paul Ehret	Executive Office
John Davis	Executive Office
Bob Waltz	Entomology and Plant Pathology
Glen Salmon	Fish and Wildlife
Gregg McCollam	Fish and Wildlife
Mark Reiter	Fish and Wildlife
Jerald Jackson	Law Enforcement
John Bacone	Nature Preserves
Cliff Chapman	Nature Preserves
Jerry Pagac	State Parks and Reservoirs
Gary Miller	State Parks and Reservoirs
Terri Swoveland	Water

GUESTS

Gwen White	Glenn Pratt	Steve Mobley
James Reynolds	Dale Pershing	Louis J. Calli, Jr., M.D.
David Vice	Richard Thompson	

REGULAR REPORTS

Michael J. Kiley, Chair, called to order the regular meeting of the Natural Resources Commission at 10:11 a.m., EST, on September 16, 2003, at the Garrison, Fort Harrison State Park, Indianapolis, Indiana. With the presence of nine members, the chair observed a quorum.

Chairman Kiley requested that a moment of silent prayer be offered in memory of “our friend and leader Governor Frank O’Bannon.”

John Goss briefly outlined the schedule for services for Governor Frank O’Bannon: September 18, a calling from Noon to 10:00 p.m., in the Statehouse; September 19, an interfaith service on west steps of the Statehouse; September 20, a calling service at the Corydon United Methodist Church; and September 21, a memorial service at the bandstand on the grounds of the first state Capitol in Corydon.

Chairman Kiley congratulated Fr. Damian Schmelz on celebrating his 50th year (Jubilee) as Benedictine.

Jerry Miller moved to approve the minutes of July 22, 2003. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

Jerry Miller, Chair of the Advisory Council for Lands and Cultural Resources, stated that he was not able to attend the Joint Advisory Councils meeting. He said Ray McCormick chaired the meeting and would speak to the agenda items.

Raymond McCormick, Chair of the Advisory Council for Water and Resource Regulation, stated that the Advisory Councils met on August 27 at the home of Clarence Long. “We had an enjoyable day.” He noted that Clarence Long was a long-time Advisory Council member. “We sat in an atmosphere in which we could hear the birds outside calling.” McCormick also noted that it was “great” whenever the Commission or the Advisory Councils can meet in a setting less formal. McCormick said the Advisory Councils considered eight items, seven of which are on today’s Commission agenda. “All those we did vote in favor of, with some changes.” He said a presentation on aquatic nuisance species was also given. “That was another program of great interest and discussion.”

McCormick said having both Advisory Councils together at once is “quite efficient and works very well. We certainly get a lot of knowledge from those that attend, because their experience is great.” He added that he would relay further Advisory Council comments as agenda items were presented.

Paul Ehret, Deputy Director, presented a photograph depicting a well blowout that occurred on the right-of-way of U.S. Highway 41 near Sullivan. He noted that since the well was not recorded, authorities could not identify the structure type. Ehret said the well had accessed into an underground coal mine that was no longer operational. “It blew out, and it was literally in a gentleman’s front yard immediately adjacent to the right-of-way. It was fountaining methane gas into the air”—a highly explosive gas.” He said staff worked on the geyser “virtually all weekend. Both Directors Mike Nicholaus (Division of Oil and Gas) and Bruce Stevens (Division of Reclamation) were on the site all weekend. “They were putting in 15-hour days.” He said experts were brought in from Oklahoma and Texas. “This was not ignited, but it was very dangerous in proximity to the highway.” Ehret said DNR “worked closely” with IDEM and INDOT. “My staff has been extremely complimentary of the cooperation of all governmental agencies including our conservation officers.”

Ehret noted that the State Soil Conservation Board conducted a public outreach meeting for the extension of the Lake and River Enhancement Program (LARE) with approximately 70 persons in attendance. He explained the LARE fee was extended, which includes “money to be spent specifically on control of aquatic invasive species and sediment. “The amount of money that’s available annually would probably

be about \$1.2 million. We are in the process of establishing funding procedures and priorities for the public to make grant applications to the State to access those LARE funds.” Ehret said that winter is the target for program activation to be “ready for when the funds start accumulating.”

Ehret said the DNR staff has been working “very hard” on legislative study committee issues. One “major” issue is seawall jurisdiction. He explained that DNR’s jurisdiction is at the shoreline. He said individuals have constructed retaining walls “as close as six inches or a foot behind the shoreline,” then allow the shoreline to erode to “create a seawall in areas where we believe it would be unlawful otherwise to have a seawall.” Ehret said DNR has asked a legislative study committee to extend DNR’s jurisdiction beyond the shoreline “for those types of construction situations.”

Ehret added that there are drainage issues before a legislative study committee. He noted that the Surveyor’s Office of Noble and LaGrange Counties declared the Elkhart River a legal drain. In part because DNR owns “a lot” of property along the Elkhart River, “we are looking for some avenue to negotiate a change in state law which will allow, perhaps, drainage supervisors to do less than full-blown projects they very often do.” He said this is a “very sensitive” issue, and discussions are ongoing with the Indiana Farm Bureau and other interested persons.

Ehret asked Chairman Kiley to “table” consideration of the proposed amendments to rules governing oil and gas wells (Item 5). He said discussions have taken place with the oil and gas industry on some issues, and “we are tweaking the rule. We are hoping by November we will have all the bugs worked out.”

Rick Cockrum, Commission Member, asked for further explanation of a legal drain declaration. “Does the county drainage board now have jurisdiction over clearing log jams? Ehret answered that Indiana has “actually spent a fair amount of money historically in the Elkhart River watershed removing log jams.” He explained logjam problem exists on the Elkhart River, but the removal of the logjams requires state funding. “The State has not been very good on funding issues lately, because of the economic situation.” He said the creation of a legal drain would allow the counties to assess property owners in the watershed to provide funding for the river projects the state has previously funded. He also noted that legal drains potentially give county drainage boards the ability to do “a whole lot more than just log jam removal.” Ehret noted that Noble and LaGrange Counties have stated their disinterest in dredging the Elkhart River; however, the declaration of Elkhart River as legal drain gives the both counties dredging authority. He explained that the legislative proposal would allow a drainage board to seek more modest authority and thus limit its powers to stated purposes. “They would limit themselves to what they can do.” Kiley added that a legal drain “not only impacts us from the standpoint of our state property, it impacts every riparian owner on that river or stream.”

John Davis, Deputy Director, stated there was a “very nice” joint meeting of the Advisory Councils at Clarence Long’s house. “A lot of old friends that were there—people that have been on the Advisory Councils in the 60s, 70s, and 80s.” Davis then deferred to Glen Salmon.

Glen Salmon, Director of Division of Fish and Wildlife, said the Division of Fish and Wildlife was likely, in the near future, to seek a hunting, fishing, and trapping license fee increase. He acknowledged that the Commission approved an increase in 2001. He said license sales directly or indirectly funds 100% of Division of Fish and Wildlife and 50% of Division of Law Enforcement. “We knew at that point that that would get us through the next couple of years.” He said the DNR hopes to “bring on 25 new law enforcement officers. We are looking at trying to keep our programs fully funded and operating.” Salmon said the fee increase proposal would likely come before the Commission at its November meeting. “We are looking at our projected needs both for law enforcement and fish and wildlife. What do we need to keep our programs going? We’ve cut back about \$4.6 million within the two divisions.” Salmon said the fee increase proposal was brought before the joint meeting of the Advisory Councils in July. Meetings would be held with the Fish and Wildlife Conservation Committee in October and with other interested parties.

Chairman Kiley requested a status report on the current recruitment class of the Division of Law Enforcement. Salmon said that he believed 25 were still in the class. Kiley inquired about the graduation timeline. Officer Jerald Jackson stated that the recruitment class is in its second week of school. “They are in River Rescue right now. They come out right before hunting season around November. They will be available, and then they go back for their last six weeks, and then they will graduate.” Officer Jackson said the Division of Law Enforcement has not had a recruitment class for several years. The new recruits would fill “just fill the vacant holes that we have been working with for a long time.”

Damian Schmelz, Commission Member, asked whether the fee increase would include senior citizens. Salmon said the proposal would not include fee for senior citizens, but just an across-the-board increase. A statutory change would be needed to include seniors, and he added that discussions are ongoing with the Indiana General Assembly concerning the “possibility of a senior license and maybe a junior license. The reason we are looking at that is not so much that the dollar amount would be a great big boon to our fund, it would be that there is a bunch of federal money—over a million dollars in federal aid money—out there that we are not capturing because we are not selling enough licenses.” Salmon explained that the amount of federal dollars received is based on the area of Indiana and the licenses sold. “If we could sell a very inexpensive senior license, we could capture quite a bit of federal aid money.”

Rick Cockrum asked for clarification of federal aid criteria. Salmon explained that federal aid is based on the total number of certified licenses sold. Cockrum also asked whether the previous increase impacted license sales. Salmon answered that “license sales are down. The dollar amount that we charged kind of kept us going.” He said deer license sales were down 41% from last year. “That was a pretty serious concern.” He said talks were ongoing with the “deer hunting public” to gather ideas to increase sales.

McCormick asked whether the Commission approved a license fee increase last year. Salmon said the Commission considered license increase in 2001 that became effective 2002. “We are talking about it in 2003 and it wouldn’t be effective until 2004.” Kiley stated, “The people will not mind paying the fee, if they get something for it. We have to demonstrate that that money goes immediately back into the various programs.” Salmon said the current recruit school expenses were paid through fish and wildlife fund account, as well as equipment purchases. “We are looking at trying to get that revenue back into that account so we can continue to do our job.”

DIVISION OF NATURE PRESERVES

Consideration of Dedication of the Violet and Louis J. Calli, Sr. Nature Preserve, Jennings County

John Bacone, Director of the Division of Entomology and Plant Pathology, presented this item. “We are really pleased to bring you this preserve for dedication, because it is such a unique and interesting partnership.” He presented color photographs to give perspective concerning the special features of the proposed preserve, which is located adjacent to North Vernon on the Mascatatuk River. He said the area contains a number of rare species, scenic waterfalls, and small pockets of old-growth woods. “Equally important, this preserve was donated by Dr. Calli.” Bacone also noted that the donation was through the Jennings County Community Foundation in partnership through the Lilly Endowment, which is an “incredible win-win situation for the DNR and for the County.”

Bacone explained that a small endowment has been established to assist the DNR in maintaining the preserve. He said a nature trail will be opened “in the very near future” along with a parking area. Bacone introduced Louis Calli, Jr., M.D.

Calli stated, “I feel very blessed to be able to be in the position to donate this beautiful land that I spent much time on growing up.” He said the area was approximately 180 acres, and “if you travel in southern Indiana, I don’t think there is a prettier spot.” He noted that when he was young child a botanist and a

graduate student from the University of Louisville came to observe the hemlock stand “that was thought to be the only stand left in Indiana.” He said the graduate student’s thesis was based on the hemlock stand.

Calli said there were two waterfalls on the property, along with great horned owls and several species of woodpeckers. He said his parents moved to North Vernon in 1949. “Dad was one of only two doctors there for years.” He said his father raised horses on the area and was “very active” in the community. His mother was a “tireless” volunteer who started the youth center, the public swimming pool, and was awarded the Governor’s Award for Volunteerism. “I just want this to, number one, benefit all the people that I love and the land that I love, and to be set up as a memorial to Mom and Dad so that their names will continue to live on even though they no longer live there.”

Kiley stated, “I am actually moved by these pictures. This is an extraordinary looking site. It is absolutely gorgeous.” He asked that the photographs be presented to the audience for their review. “On behalf of the Commission, I don’t know how to thank you, because this is a magnificent, magnificent gift and benefaction that we have received and the people of the state of Indiana has received.

Kiley recognized Mike Mobley, the Executive Director of the Jennings County Community Foundation. Mobley urged the Commission to accept the dedication. “I want to thank Dr. Calli publicly and his family for the donation.” He explained that going through the Foundation and the generosity of the Lilly Endowment made possible that “\$94,000 to be held in trust forever. We will be able to generate \$4,700 annually for whatever is necessary to preserve this land.”

Kiley inquired about public access to the preserve. Cliff Chapman, Southeast Region Ecologist for the Division of Nature Preserves, said that construction of a hiking trail is in progress. He noted that plans call for future tree plantings. “Currently, there is a small parking area, but we are not advertising since there is no real hiking trail.” Chapman said he and Calli would together hike the area that has been flagged “to make sure everything is up to snuff.” Mobley said the opening ceremony for the nature preserve would be timed with the spring blooming of the bluebells.

Rick Cockrum moved to approve the dedication of the Violet and Louis J. Calli, Sr. Nature Preserve in Jennings County. Jane Anne Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of the Dedication of Fourteenmile Creek Nature Preserve, Clark County

John Bacone also presented this item. He said the proposed 859-acre nature preserve was located in Charlestown State Park in Clark County. The site contains high-quality limestone cliffs, a range of dry upland to floodplain forests, and several rare plant species. Among these are Eastern bloodleaf, black-stem spleenwort, Deam’s two-seeded mercury, three-flowered melic grass, large leafed phlox, and *sullivantia*. He said the area known as Devil’s Backbone, at the south end of the proposed preserve, also had an interesting historic and prehistoric tradition.

Gerald Pagac, Director of the Division of State Parks and Reservoirs, said, “We’re very supportive of this nature preserve. It’s a great thing to do; it’s the right thing to do.”

Jerry Miller moved to approve articles of dedication for Fourteenmile Creek Nature Preserve in Charlestown State Park, Clark County. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

Consideration of Transfer of Land to Floyd County for a Bridge Replacement

John Bacone also presented this item. He said the proposal was for a transfer of land to Floyd County to replace bridge 61 over Knob Creek on land managed jointly by the Division of Nature Preserves and the Division of Fish and Wildlife. “The lands affected by the bridge are old fields and lack unique resources. The bridge is dangerous and needs to be improved.” He said portions of the site might later be recommended to the Commission as a dedicated nature preserve, but no dedication had yet taken place.

Ray McCormick said there was extensive discussion by the Advisory Councils when the item was considered. The Advisory Councils hoped that species would not be introduced in the construction process that could prove troublesome, such as fescue, to DNR management of the property. Ultimately, the members determined not to require special conditions as a term of the land transfer, but they hoped this concern would be considered in any licensing by the agency. McCormick said there was strong interest by the Advisory Councils in developing standards for revegetation following construction along easements in DNR properties.

Damien Schmelz moved to approve the transfer of land to Floyd County for a bridge replacement as recommended by the Division of Nature Preserves. Rick Cockrum seconded the motion. Upon voice vote, the motion carried.

LAND ACQUISITION

Consideration of an Easement in Favor of NIPSCO for an Electric Line to Service a Communications Tower at Jasper-Pulaski State Fish and Wildlife Area

John Davis presented this item. He said for consideration was approval of an easement in favor of NIPSCO to serve an existing tower on Jasper-Pulaski State Fish and Wildlife Area. He indicated the proposal supported the Hoosier Safety Initiative and was “pretty routine”.

David Vice of SEMA was present in support of the proposal. He indicated the tower was used by law enforcement agencies for communications and was an important link in emergency services. Vice reflected that the current proposal was part of a larger effort to formalize prior determinations to share lands for these services.

Ray McCormick inquired whether guy wires supported the tower. He noted that these wires can be lethal to flying birds, and he expressed concerns with their usage at a site as important to birds as is Jasper-Pulaski State Fish and Wildlife Area. Davis responded there were no guy wires at this tower. Glen Salmon, Director of the Division of Fish and Wildlife, added that his division is sensitive to this concern and discourages the use of guy wires on properties that it manages.

Jerry Miller moved to approve an easement in favor of NIPSCO for an electric line to serve the existing communications tower at Jasper-Pulaski State Fish and Wildlife Area. Rick Cockrum seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF OIL AND GAS

Consideration of Preliminary Adoption of Amendments to the Rules Governing Oil and Gas Wells to Modify Standards for Plugging, Abandonment, and Mechanical Integrity Tests; Administrative Cause No. 03-152G

Paul Ehret requested that this item be deferred until the November meeting so the agency might continue

consultations with the regulated community. The Chair reported the item withdrawn.

DIVISION OF FISH AND WILDLIFE

Consideration of a Request by the Kankakee Valley REMC for an Easement for the Installation of an Electric Service line at Winamac Fish and Wildlife Area

Mark Reiter of the Division of Fish and Wildlife presented this item. He asked for approval of an easement in favor of the Kankakee Valley REMC for the installation of an electric service line at the Winamac Fish and Wildlife Area. The purpose of the easement is “so we can put some heat in the range officer’s shack and operate some power tools.”

Jerry Miller moved to approve an easement in favor of the Kankakee Valley REMC for the installation of an electric line to serve the range officer’s building. Rick Cockrum seconded the motion. Upon a voice vote, the motion carried.

Consideration of Adoption of a Nonrule Policy Document addressing the Indiana Aquatic Nuisance Species (ANS) Management Plan (Information Bulletin #39), Administrative Cause Number 03-129D

Gwen White of Case & Associates in Mishawaka presented this item. She said an “invasive species” was one that is not native to the ecosystem and whose introduction is likely to harm the economy, environment or human health. An invasive species can be a plant, animal, or other organism (such as a microbe). White distinguished between those species that were beneficial and those that posed ecological and economic problems. She said the proposed plan would address invasive species that can live in aquatic habitats in Indiana, including rivers, lakes, and wetlands.

White said the development of a state management plan is called for in Section 1204 of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1999 and offers federal cost-share support for implementation. The Indiana Aquatic Nuisance Species Management Plan identifies feasible, cost-effective management practices and measures for state and local programs to prevent and control invasive species in aquatic habitats in a manner that is environmentally sound. She said the plan was developed through a number of agency meetings, three public meetings, and interviews with 40 stakeholders. Drafts of the plan have been available for public review and comment over the summer. The meetings were announced in *Wild Bulletin* and were on the DNR website.

White expressed appreciation for the leadership and support of the Great Lakes Commission in developing state and regional strategies to deal with aquatic nuisance species. She said the current effort moved outside the Great Lakes basin and would, when in place, form a cornerstone for the entirety of our state and surrounding states. She also singled out Robert Waltz and Bill James of DNR for special assistance in the effort.

White said the completed plan would be used as a “road map for guiding nuisance control efforts” for the next five years. Approval of the plan by the national Aquatic Nuisance Species Task Force would also be required for a state’s eligibility for federal cost-share support. In recent years, other Midwestern states have received up to \$100,000 annually in federal funding. She said a joint meeting of the Advisory Councils recommended the plan for approval on August 27. The plan is being tendered to the Natural Resources Commission for approval as a nonrule policy document. If approved, the document would be forwarded to the Governor for possible signature, as required by the federal agencies, then submitted to the Legislative Services Agency for publication in the *Indiana Register*.

Ray McCormick praised the effort to establish a comprehensive plan to address aquatic nuisance species.

At the same time, he asked whether efforts within the agency weren't sometimes contrary to the effort. He referenced multi-flora rose and autumn olive as being examples of species introduced for wildlife habitat but that are now nuisance species. The Division of Fish and Wildlife releases ring-necked pheasant and brown trout purely for recreational purposes. He urged, "Our biologists' time would be better spent on improving habitat rather than using non-native species for recreation or for whatever reason."

Bill James, Chief Fisheries Biologist, responded. He said the Division of Fish and Wildlife carefully reviewed the consequences before releasing any species into the wild. "We do have a fish-stocking policy that we adhere to in Indiana."

Jerry Miller noted he recently observed species at a bait shop that he had never seen before. He wondered about their potential impact to the environment and asked how effective regulatory controls were for dealing with aquatic nuisance species. White noted that during the July meeting, the Commission gave preliminary adoption to rules that would give the Division of Entomology and Plant Pathology a stronger hand in dealing with these species, but very significantly, there would always be dependence on an educated public to protect out native species. "We can't have a conservation officer behind every tree."

Beth Admire, Commission member representing IDEM, said she expressed concerns were "very supportive of the proposed nonrule policy document." The proposed document would help coordinate efforts and would help improve public understanding of the challenges.

Jerry Miller moved to approve the Indiana Aquatic Nuisance Management Plan as a nonrule policy document. Beth Admire seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF WATER

Consideration of Approval of Amendments to "Procedural Guidelines for the Interpretation of Conservancy District Article" (Information Bulletin #36) to Address Territorial Additions in Hendricks County; Administrative Cause No. 03-071C

Terri Swoveland of the Division of Water presented this item. She said the proposal would delegate authority to the Division of Water and to the NRC's Division of Hearings to help consider proposals to add territory to conservancy districts in Hendricks County. She thanked Steve Lucas for assisting in drafting the proposal. Swoveland said the proposed amendments were parallel to those that applied in the other 91 counties and would help lend clarity to the process.

Ray McCormick asked whether the Commission would be making a mistake by adopting standards that would apply to only one county. Steve Lucas responded by saying that which counties should be governed by special standards was a choice for the Indiana General Assembly. For example, the Conservancy District Article (IC 14-33) also had special provisions that only applied to Lake County and Starke County. The role of the DNR and NRC was to implement the legislative policy choices as efficiently as possible.

Former Indiana State Senator Richard Thompson spoke in favor of the proposal. He said he had authored the legislation that provided for language with specific application to Hendricks County. With changing conditions, the greatest need for the legislation may have passed, but he agreed the nonrule policy document was consistent with its purposes.

Damian Schmelz moved to approve amendments to the "Procedural Guidelines for the Interpretation of Conservancy District Article" to address proposed territorial additions in Hendricks County. Jane Anne Stautz seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF STATE PARKS AND RESERVOIRS

Consideration of Increases to Entrance Fees for Out of State Residents at Indiana Dunes State Park and for Docks and Boating Fees at Sites Managed by State Parks

Gerald Pagac, Director of the Division of State Parks and Reservoirs, presented this item. He presented two distinct proposals for the Commission to consider regarding fee increases. The first would increase out-of-state entrance fees at Indiana Dunes State Park. The second would increase dock and other boating fees at DNR-operated facilities. Pagac said he would make separate presentations on the two issues.

At Indiana Dunes State Park, the current daily fee for residents is \$4, and the current nonresident fee is \$5. The Division of State Parks and Reservoirs recommended increasing the out-of-state fee to \$7. "Indiana Dunes is unique in our system in that it has a tremendous summer influx of visitors from the Chicago area." About 80% of summer use is derived from outside Indiana. He said there was serious pressure on the fragile ecology of the park due to heavy public usage. "There are a lot of problems with over-use."

Pagac reported that the Advisory Councils recommended the out-of-state use be increased to \$10 rather than the \$7 recommended by the DNR. He noted, however, that federal funding has been accepted for use in the park, and a condition of federal funding was that entrance fees for out-of-state residents not exceed twice those for Indiana residents. Since the state rate is \$4, the out-of-state rate cannot exceed \$8 daily.

John Goss explained that setting appropriate rates for entrance fees to DNR facilities was a difficult balance. Indiana wants to encourage tourism, and charging higher rates for out-of-state visitors would typically be inconsistent with that goal. "There is a concern about getting too much disparity between in-state and out-of-state rates." At the same time, Indiana Dunes State Park presented special challenges. The facility is such a popular summer destination that some disincentive might be needed to protect the integrity of its fragile ecology. He said he hoped the NRC would look at the proposal, if approved, as an "experiment" that should be watched closely.

Ray McCormick said he wished to preserve the intent of the Advisory Councils as nearly as practicable but did not wish to jeopardize Indiana's access to federal funding. For these reasons, he recommended amending the proposal to charge out-of-state residents \$8 daily to enter Indiana Dunes State Park. Rick Cockrum seconded the motion. Upon a voice vote, the amendment was approved.

Pagac then explained the proposed increases to dock and boating fees at properties administered by the Division of State Parks and Reservoirs. "It's a 10% raise, so it's a fairly substantial increase. However, our prices are much lower than those operated by private facilities on our reservoirs, and we believe the rates are warranted." He directed the Commission's attention to the rates proposed in the back-up materials. Costs are per year unless otherwise indicated:

<u>Description</u>	<u>Present Rates</u>	<u>2004 Proposed Rates</u>
<i>Monroe Lake</i> 12 feet by 16 feet	\$450	\$500
14 feet by 16 feet	\$480	\$530
<i>Brookville Lake (Fairfield Marina)</i>		
10 feet by 18 feet	\$435	\$480
10 feet by 18 feet (w. electric)	\$535	\$590
10 feet by 20 feet	\$460	\$510
10 feet by 20 feet (w. electric)	\$560	\$620

12 feet by 40 feet (w. electric)	\$905	\$1,000
14 feet by 20 feet (w. electric)	\$640	\$700
<i>Brookville Lake (Hanna Creek Sailing Marina)</i>		
10 feet by 20 feet (w. electric)	\$560	\$620
14 feet by 20 feet (w. electric)	\$640	\$700
14 feet by 30 feet (w. electric)	\$785	\$860
<i>Hardy Lake</i>		
10 feet by 16 feet	\$415	\$460
10 feet by 20 feet	\$435	\$510
15 feet by 14 feet	\$425	NA
15 feet by 18 feet	\$475	NA
<i>Lieber State Recreation Area</i>		
14 feet by 22 feet	\$570	\$630
16 feet by 20 feet	\$415	\$460
<i>Raccoon Lake State Recreation Area</i>		
10 feet by 20 feet (w. electric)	\$560	\$620
10 feet by 20 feet	\$460	\$510
14 feet by 20 feet	\$540	\$600

(Surcharge per additional boat length over five feet longer than slip: \$20 for each five feet or less)

<i>Buoys</i>	\$350	\$400
<i>Mooring Permits/Bank Tie</i>	\$50	\$60
<i>Improved Mooring Area Permit*</i>	\$75	\$90
<i>Replacement Mooring Permit</i>	\$5	\$10
<i>Single Landowner Dock</i>	\$75	\$90
<i>Group Docks</i>	\$150 + \$25/slip	\$175 + \$35/slip
<i>Hanna Creek Dry Storage</i>	\$250	\$275
<i>Hanna Creek Rack Storage</i>	\$40	\$40
<i>Jib Hoist Fee</i>	\$35/hour	\$35/half hour
Landowner Bank Tie at Raccoon Lake SRA	\$60/3 year	\$75/3year

*Improved mooring areas have seawalls or other improvements.

John Davis said he believed rate increases at dock and boating facilities were probably overdue. DNR facilities should secure a reasonable rate of return and should not compete unfairly with the private sector. “We may come back and ask to raise these rates again, sooner rather than later.”

Jerry Miller moved to increase to \$8 the daily entrance fee for out-of-state residents at Indiana Dunes State Park. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

Jerry Miller moved to increase dock and boating fees, as proposed by the DNR, on properties administered by the Division of State Parks and Reservoirs. Jane Anne Stautz seconded the motion. Upon a voice vote, the motion carried.

NRC, DIVISION OF HEARINGS

Consideration of Report of Hearing Officer, Including Findings of Fact and Proposal to the Natural Resources Commission as to Its Recommendations to the U.S. Army Corps of Engineers in the matter of *Petition for Rate Increase by Hoosier Hills Marina, Inc.* (Administrative Cause Number 03-072P)

Jennifer Kane, Hearing Officer, presented this item. Kane provided a brief overview and stated that Items 10, 11, 12, and 13 were governed by the Nonrule Policy Document (Information Bulletin #20) that was amended by the Commission in July 2003. Kane explained that the Information Bulletin #20 established the informal process for the administrative review of ratemaking recommendations for resorts and marinas under lease with the Department. She said that for Items 10, 11, 12, and 13, the marina operators submitted requests for facility fee increases to the DNR Division of State Parks and Reservoirs, which initiated the review process.

Kane said the public hearings were held on July 2. She noted that each marina operator appeared at the hearings to give comment; however, no members of the public were in attendance. Kane said the Division of State Parks and Reservoirs analyzed comparable facilities by comparing rates from similar facilities with those sought by the marina operator. She explained that according to Information Bulletin #20 the Commission shall either recommend approval of the rate increase, disapproval of the rate increase, or approval of a rate increase in an amount less than requested by the marina operator. “Recommendation for favorable consideration of a rate increase shall not be withheld unless, in the opinion of the Commission, fees submitted exceed the fair market rates charged by operators of other similar privately-owned resort developments.” Kane said the Commission’s recommendations would then be forwarded to the District Engineer of the U.S. Army Corps of Engineers for final action.

Kane said that Jeff Dukes, operator of the Hoosier Hills Marina, requested a general 10% across-the-board slip rate increase. “Hoosier Hills Marina has not requested an increase for six years, and has made multiple improvements to the existing docks and completed a total replacement of Dock C. She noted that DNR’s comparable analysis of the requested slip rate increase for the 2004 boating season fell within fair market rates charged by operators of other similar privately-owned resort developments. Kane said the request by Hoosier Hills Marina for the facilities and houseboat rental is supportable and may be recommended to the U.S. Army Corps of Engineers for approval.

Gary Miller, Division of State Parks and Reservoirs, commented generally that “this year has been a good year for improvements at these marinas. We are here this time to say that all four marinas have invested capital money in improvements in the marinas and the operations. Miller stated the requested increases by the four marinas are supported and also recommended approval.

Jerry Miller moved to approve the report and recommendation for rate increase request by Hoosier Hills Marina to the U.S. Army Corps of Engineers. Damian Schmelz seconded the motion. Upon a voice vote, the motion was carried.

Consideration of Report of Hearing Officer, Including Findings of Fact and Proposal to the Natural Resources Commission as to Its Recommendations to the U.S. Army Corps of Engineers in the matter of *Petition for Rate Increase by Quakertown Marina* (Administrative Cause Number 03-075P)

Kane also presented this item. She said that James Girot, operator of Quakertown Marina requested a 2.3% to 2.5% facility rate increase for the 2004 boating season. She stated that Quakertown Marina has not requested an increase since 1995. Kane noted that Dock B was replaced and the electrical and plumbing systems have been upgraded. She said DNR's comparable analysis revealed that the requested slip rate increases for the 2004 boating season fell within fair market rates charged by operators of other similar privately-owned resort developments.

Kane noted that the Hearing Officer's Report contained a few clerical errors. She said the errors would be corrected. Kane said the request by Quakertown Marina is supportable and may be recommended to the U.S. Corps of Engineers for approval.

Jane Anne Stautz moved to approve the report and recommendation for rate increase request by Quakertown Marina to the U.S. Army Corps of Engineers. Rick Cockrum seconded the motion. Upon a voice vote, the motion was carried.

Consideration of Report of Hearing Officer, Including Findings of Fact and Proposal to the Natural Resources Commission as to Its Recommendations to the U.S. Army Corps of Engineers in the matter of *Petition for Rate Increase by Lake Monroe Sailing Association (Administrative Cause Number 03-073P)*

Kane also presented this item. She said that Jeff Roberts, Commodore and representative of the Lake Monroe Sailing Association (LMSA) requested a minimal increase in slip rates for the 2004. She also noted that LMSA shifted from a rate setting policy based on boat length to rates based on slip size. Kane said rates based on slip size are more consistent with industry norm. She said LMSA has also made improvement to the facilities by replacing Dock A. Kane also noted that LMSA performs facility maintenance and continues to develop plans for facility upgrading and replacement.

Kane said the request for increase in slip rates for 2004 by Lake Monroe Sailing Association is supportable and may be recommended to the U.S. 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 U.S. 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 of Fact and Proposal to the Natural Resources Commission as to Its Recommendations to the U.S. Army Corps of Engineers in the matter of *Petition for Rate Increase by Kent's Harbor Marina (Administrative Cause Number 03-074P)*

Kane also presented this item. She said Kent Reineking, President and operator of Kent's Harbor Marina attended the public hearing. Kane said Kent's Harbor Marina has requested a 2% to 2.6% slip rate increase along with a 4% increase in lodging and house boat rentals for 2004. She said Kent's Harbor has paved and expanded parking areas, expanded the restaurant, remodeled the clubhouse and restroom facilities, added a pump out station, and opened a new golf course. Kane noted that Kent's Harbor is unique in its facilities making it difficult to find comparables that include slips, lodging, food service, and a golf course. She said, however, the Division of State Parks and Reservoirs was able to compare 13 other marinas to rates sought by Kent's Harbor, which fall within fair market rates.

Kane said the request for increase in slip rates for 2004 by Kent's Harbor Marina is supportable and may be recommended to the U.S. 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 U.S. Army Corps of Engineers. Ray McCormick seconded the motion. Upon a voice vote, the motion was carried.

Consideration of Report of Public Hearing, Analysis, and Recommendation for Final Adoption of Amendments to 312 IAC 9-10-3 Governing Aquatic Vegetation Control on Waters of the State (Administrative Cause Number 03-037D; LSA #03-35(F))

Jennifer Kane, Hearing Officer, presented this item. She said that 312 IAC 9-10-3 governs aquatic vegetation control on state waters. Kane said the public hearing was held on June 23, which was attended by both industry and the general public. She explained that the current rule only pertains to chemical controls, but the proposed amendments would include mechanical, physical, and biological control methods. Kane pointed out that one particular amendment would reduce the chemical application public notice from five days to 36 hours and only applying to treatment of municipally owned reservoirs that are used as a drinking water supply. She said favorable comments were received from both industry and the public regarding the reduced posting requirement.

Kane also pointed out that Glenn Pratt orally proposed several amendments during the public hearing. One amendment proposal would add a requirement that notification be given to relevant county and municipal governments of all permitted activities under the rule. The other proposed amendment would add a requirement that permitted chemicals to be used for aquatic vegetation control under the rule be approved by the state chemist. The third proposed amendment would allow for more time for public comment before a license is issued. Kane explained that the comments were oral and not written, and substantially differ from what was preliminarily published in the INDIANA REGISTER. She also noted that incorporating amendments that are proposed orally at public hearing does not meet the statutory requirement.

Kane stated that the Commission could, however, give preliminary adoption to the amendments. She asked the Commission to urge the Division of Fish and Wildlife to continue discussions with the public and industry regarding future amendments to the rule. Kane recommended that the proposed amendments to 312 IAC 9-10-3, as contained in the Hearing Officer's Report as Exhibit A, be given final adoption.

Kiley noted that two letters were submitted in favor of the amendments, one from US Filter, Indianapolis Water, which is a contract operator for the City of Indianapolis Department of Water Works; and the other from Indianapolis Water. Kiley recognized Dale Pershing.

Dale Pershing, representative of US Filter Indianapolis Water, LLC, elaborated on the letters submitted to the Chair. He explained that US Filter is the contract operator to the City of Indianapolis Department of Water Works. He said both letters support the proposed changes that are recommended for final adoption. "We are specifically seeing that this is an opportunity for improvement in both protection of aquatic life and operationally to help manage the reservoirs in cases of aquatic vegetation control." Pershing stated that the current posting requirement of five days can "sometimes give you a longer lead time than is necessary to react proactively to manage aquatic vegetation." Pershing noted that the City of Indianapolis currently has permits for aquatic vegetation control on three reservoirs one of, which is Eagle Creek Reservoir that has a history of taste and odor problems associated with green algae. He also noted that algae blooms can "accelerate very rapidly." Pershing stated that if the proposed changes become final would allow permits to provide municipal reservoir management the opportunity to run shorter notice and post notice and "react quickly to and address the needs of taking care of some of these alga blooms. Right now it is a little restrictive and we have to anticipate a little longer in advance, and we don't think it serves the public as well when we post these signs but don't always follow through with our scheduled treatment."

Pershing noted that early treatment can result in using less copper and with less bio mass there is less stress to aquatic life. He stated that US Filter is in favor of the change the public notice requirement from five days to 36 hours for municipally owned reservoirs used for drinking water supply.

Kiley recognized Glenn Pratt. Glen Pratt stated that he was the Assistant Commissioner at the Indiana Department of Environmental Management, and spent “most of his life” at U.S. Environmental Protection Agency. He said, “I support very much this proposal. Our concern in a lot of this is the continued use of chemical treatment of reservoirs without, unfortunately significantly addressing the problem of trying to eliminate the need for them.” He said that treating an alga bloom early on would take much less chemical. “Anything we can do to reduce the amount of chemical is significantly beneficial.”

Pratt stated that it was “important” to notify the local, municipal, and county governments of scheduled treatments to give the local governments an opportunity to monitor if warranted. He said that it was “critical as far as environmental and human health” that the Commission modify the rule to include notification to the relevant local governments. Pratt also suggested that the current rule is “presently in violation of state law, because if the state chemist has not approved the chemical one might say it is illegal to use the chemical even though it has been approved by EPA.” He explained that the proposed rule should include language that requires state chemist approval, which would put the rule in “full conformance with what the procedure should be.” Pratt suggested that the proposed amendment should be considered a procedural correction rather than a significant change. He urged the Commission to promulgate the proposed language as an emergency rule to eliminate a “challenge on approval process.”

Pratt commented that a joint effort is needed between DNR and IDEM to not only reduce chemicals in our water supply, but “how more adequately can we address the whole of issue of trying to control the alga growths.” He said that one of the “major contributors” to alga growth is fertilizer runoff from lawns. “We need a program that can better educate the public.” Cockrum recommended that the Commission encourage DNR staff to work on those issues so that “we can have a better understanding and more remediation.”

Jerry Miller moved to give final adoption to the amendments to 312 IAC 9-10-3 as recommended. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

Consideration of Report of Public Hearing, Analysis, and Recommendation for Final Adoption of Amendments to 312 IAC 18-5-4 Governing Phytosanitary Document Fees and Related Fees (Administrative Cause Number 03-028D; LSA #03-91(F))

Jennifer Kane, Hearing Officer, presented this item. She explained that the Division of Entomology and Plant Pathology issues federal phytosanitary certificates to cover plant commodity from Indiana to international ports or state phytosanitary certificates into other parts of the United States. She said the proposed amendment would increase the fee for federal phytosanitary certificates from \$30 to \$50, which is the current federal fee.

Kane said the rule proposal also establishes a new fee of \$50 for a state phytosanitary certificate. She noted that two exemptions from the state phytosanitary fee are proposed. Kane explained that an Indiana resident who is lawfully moving domesticated plants for personal, noncommercial purposes into a state requiring a certification would be exempted, along with persons that have been inspected and certified as a nursery under IC 14-24 or provided a voluntary certification under the proposed rule.

Kane also noted that the Division of Entomology and Plant Pathology issues approximately 2,000 certificates annually representing a total fee income of \$100,000. She recommended that amendments to 312 IAC 18-5-4 as included in the Commission packet be given final adoption.

Damian Schmelz moved to give final adoption to the amendments to 312 IAC 18-5-4 as recommended. Jane Anne Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of Recommendation for Preliminary Adoption of Amendments to 312 IAC 2 Governing Procedural Updates to Delegation and Informal Procedures (Administrative Cause Number 03-143A; LSA #03-220)

Steve Lucas, Director of the NRC's Division of Hearings, presented this item. He said for consideration as to preliminary adoption were several amendments to agency procedural rules. The amendments to 312 IAC 2-2-1 would delete an obsolete reference to 310 IAC. The amendments to 312 IAC 2-2-4 would codify the process by which the Director of the Division of Hearings was delegated authority to give preliminary adoption to the recodification of rules, where no changes to the rules were proposed. The amendments to 312 IAC 2-3-1 would clarify that the procedures for pre-adjudicatory hearings (those typically conducted by Divisions of the DNR rather than the NRC's Division of Hearings) applied to all of those types of hearings. In addition, they would clarify that such hearings could be conducted by more than one person (including the entirety of a DNR board).

Damian Schmelz moved to give preliminary adoption to the amendments to 312 IAC 2 as recommended. Raymond McCormick seconded the motion. Upon a voice vote, the motion carried.

ADJOURNMENT

At approximately 12:20 p.m., the meeting adjourned.

NEXT MEETING

November 18, 2003 at 10:00 a.m., EST at Ft. Harrison State Park, Indianapolis (Lawrence)