

NATURAL RESOURCES COMMISSION
Clifty Falls State Park Inn
1501 Green Road, Madison, Indiana
Minutes of March 16, 2004

MEMBERS PRESENT

Rick Cockrum, Vice Chair
John Goss, Secretary
Damian Schmelz
Jane Anne Stautz
Linda Runkle
Ben Lawrence
Robert Murphy
Raymond McCormick, II

NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas
Jennifer Kane
Debra Michaels

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Krystal Wethington	Executive Office
John Davis	Executive Office
Paul Ehret	Executive Office
Sam Purvis	Law Enforcement
Lee Casebere	Nature Preserves
Mike Nickolaus	Oil and Gas
Lori Dunwoody	State Museums and Historic Sites
Rex Garniewicz	State Museums and Historic Sites
Chris Henderson	State Parks and Reservoirs
Gary Miller	State Parks and Reservoirs
Jerry Pagac	State Parks and Reservoirs
George Bowman	Water

GUESTS PRESENT

Bernie Fallon	Darlene Scheimann
Pam Bell	Don Scheimann
Jeff Bell	Dave McKeeman
Dan Lepley	Ben Lawrence
Joe Sweeney	Jeff Blue

REGULAR REPORTS

Rick Cockrum, Vice Chair, called to order the regular meeting of the Natural Resources Commission at 3:10 p.m., EST, on March 16, 2004, at Clifty Falls State Park Inn, Madison, Indiana. With the presence of eight members, the Vice Chair observed a quorum.

Cockrum introduced new proxy Commission members Ben Lawrence, Indiana Department of Transportation, and Linda Runkle, Indiana Department of Environmental Management.

Damian Schmelz identified two clerical errors. Jane Anne Stautz moved to approve the minutes of January 20, 2004 with the correction of those errors. Schmelz seconded the motion. Upon a voice vote, the motion carried.

Director Goss reported, "The legislative session was kind of a disappointment, not just for DNR, but a lot of things did not pass in the deadlocks they went through in the last few weeks." He said ten different items of interest to the agency, which were recommended for approval by a summer study committee, "got stuck in the House logjam". Three were salvaged but the other seven must await reconsideration by the next session. The three that succeeded were as follows:

- (1) Reforming the surface coal mining bond pool process.
- (2) Amending the dam safety law to allow the DNR to declare a small structure to be a high-hazard dam, where it is part of a sequence of smaller dams, and the failure of one could have a domino effect to cause the failure of others.
- (3) Modifying Indiana law for water transfers from the Great Lakes Basin to conform to the federal Water Resources Development Act ("WRDA").

Goss said the DNR would likely recommend a summer study committee reconsider the other seven items for approval during the next legislative session.

He said the senior fishing license bill did not pass during the legislative session this year, "but we believe the support is growing dramatically." He said that "outdoor writers" across the state have been endorsing the bill. "We actually have a letter endorsement from the AARP for a \$3.00 senior fishing license." He said that DNR also has support from Governor Kernan to bring the bill back for the next session.

Director Goss said the Citizen's Advisory Council on Captive Cervids (CACCC) is considering how best to address hunting within confined reserves. Public meetings will be in Seymour the week of March 15 and in Fort Wayne and Lafayette the week of March 22. By early April, the DNR will assemble the recommendations, and it expects to have a report for consideration at the Commission's May 18 meeting. "Quite amazingly, we have made a lot of progress, and we have reached an agreement on a number of items. There's still a few very touchy issues that they're still debating."

Vice Chair Cockrum recognized Madison County, Indiana State Representative, Markt Lytle. Representative Lytle stated, "I'd like to welcome you back. It's great to have you in our lovely facility in the southern part of the state of Indiana."

Jerry Miller, Chair of the Advisory Council for the Bureau of Lands and Cultural Resources, was not present.

John Davis, Deputy Director, reported that the Division of Forestry's open houses began in February and would continue through May. Open houses would be held at all Division of Forestry properties.

Davis said the DNR was "very close" to signing documents for acquisition of a property deed, which was assigned to DNR by the U.S. Army Corp of Engineers through the National Park Service, for the new State Park in Charlestown. Davis said that DNR recently opened a new trail along Fourteen Mile Creek.

Davis reported the Boat, Sport and Travel Show "went off without a hitch." The DNR had a "very nice display." Davis said attendance was down last year, due to inclement weather, and this year attendance was down because of unusually nice weather.

Davis reminded the Commission of discussions in the January meeting regarding size limits for brown trout. He said the agency was planning a detailed presentation for the May meeting concerning the topic.

Raymond McCormick, Chair of the Advisory Council for Water and Resource Regulation, reported the Advisory Councils met jointly on February 18, 2004 at Fort Harrison State Park. He said the first item of discussion was the election of officers. He said there was only a quorum for the Bureau of Water and Resources Regulation, and he was re-elected as Chair. "So, you have to put up with me a little bit longer, but I feel honored to be here and working with the Commission."

McCormick said the joint Advisory Councils considered preliminary adoption of a watercraft ecozone on Lake Manitou, Fulton County. The Councils went "beyond what would have been recommended by the DNR". They recommended a no-motor zone and a 200-foot ecological zone around a significant wetland site degraded by motorboats. He noted this item was not on the current Commission agenda.

McCormick said that also there was consideration of a recommendation by James R. Paint, Jr. for a permanent easement to support an access road through Morgan-Monroe State Forest. Paint had inherited adjacent property and sought to upgrade the current informal access, at no expense to him and without a survey. The Councils believed doing so would be inappropriate and recommended denial of the request. This item also is not on the current Commission agenda.

McCormick said the Advisory Councils considered a recommendation of a nonrule policy document concerning invasive species. He said that both councils have been "quite active" in working on the invasive species problems within the state. There was also an informational item on an initiative to control invasive species on DNR properties. "We're looking forward to trying to control mainly invasive species throughout the state."

McCormick said the most time-consuming item concerned dog running on DNR properties. "In the past, there had been very little limitation as to how much dog running had been allowed on state properties." There was a feeling among DNR personnel that the dog running may be affecting the reproductive and nurturing cycles of avian species. There was interest in "working out a compromise" for the limitation of dog running, primarily during the spring season. "After hearing a lot of testimony from the DNR, those opposed and in support of the initiative, the Advisory Councils made a recommendation for further research on the possible affects on species during reproductive cycles.... It seemed like a lot of the people that were there felt real good that they had the opportunity to come forward to testify and then have in-cycle questions asked by the Advisory Councils. I think it promoted a lot of good will within those that had a lot of concerns about this issue."

Paul Ehret, Deputy Director, reported the Division of Entomology and Plant Pathology is conducting a series of 19 public meetings relative to the treatment of gypsy moth. "We're starting to see

a surge somewhat in certain parts of the state. I think we've done a good job at trying to keep them at bay, but their numbers and locations of some of the treatment areas are increasing from previous years." Ehret explained that the DNR is using pheromone treatments to disrupt the moth's reproductive cycle. A number of areas would later be treated with Btk (*Bacillus thuringiensis var. kurstaki*). Ehret said the various treatments are harmless to humans. "The pheromone method is a rather intriguing method, so we're hoping for good results from that."

Ehret reported on the Coastal Zone Management Program. In Michigan City, John Goss announced federal CZM Grants totaling \$575,000 for eleven different projects. Ehret said, "It's spreading a lot of good will up there, with funding going primarily to recreational projects."

Ehret said, "I had the honor and privilege of attending a hearing of the United States Senate in Washington relative to the Congressional review and reauthorization of the Abandoned Mine Land Reclamation Program. The program has directed nearly \$100 million dollars to Indiana for the reclamation of abandoned mine lands. "We are looking forward to a potential for a reauthorization for another ten to 15 years, which could result in bringing in as much as another \$90 million dollars into the state of Indiana for reclamation. So, that's very important to us; it's a very worthwhile program. The current AML program expires at the end of September of this year, so it's a very important program, and we hope that it does, in fact, get reauthorization."

STATE MUSEUMS AND HISTORICAL SITES

Consideration of Indiana State Museum Schedule of Fees.

Director Goss presented this item. He provided an itemized chart of the Indiana State Museum fees, effective January 1, 2004. The chart includes "minimum and maximum rates." The rates were based upon availability, time of year, special needs, and market-driven factors.

The Vice Chair commented, "I've been to several events there. It's a great facility, if anybody gets an opportunity to host anything there."

Damian Schmelz moved to affirm the Indiana State Museum schedule of fees. Bob Murphy seconded the motion. Upon a voice vote, the motion carried.

Consideration of Deaccession of Artifacts from the Indiana State Museum and Historic Sites Pursuant to 312 IAC 24-2.

Rex Garniewicz, Curator of Prehistoric Archaeology of the Indiana State Museum, presented this item. He said he is Chair of the Collections Review Committee, an internal organization designed to improve the quality of the existing collection and to help ensure the State Museum accepts only donations that will not require deaccessment in the near future.

Garniewicz provided the Commission with a list of items approved for deaccession by the Collections Review Committee and the Indiana State Museum Board of Trustees. When the museum removes items from the permanent collection, they are removed cautiously and deliberately, weighing the likely future potential for use or research against the practicalities of a finite storage space.

Garniewicz said items are removed from the State Museum's collection for a variety of reasons listed in 312 IAC 24-2-6. Artifacts may be duplicates; have a doubtful potential for utilization; an absence of documentation, or be replaced by donations of similar items of superior quality. Of the 223 items to be deaccessed, several were chairs from the New Harmony State Historic Site. Other items included a

number of rocks (mixed with artifacts in the archaeology collection); damaged dolls and doll parts; large items such as a grand piano; a wood stove; a television; a large number of duplicate Gene Stratton Porter books; and smaller items such as razors, hats, and hair wreaths. Garniewicz explained that the deaccessions are part of a routine procedure to improve the quality, rather than quantity, of the State Museum collection. He added that the Museum had recently acquired some excellent materials.

Garniewicz said that the Indiana State Museum and Historic Sites recommends deaccession of the list of artifacts.

Ray McCormick moved to approve the deaccession of the 223 artifacts from the Indiana State Museum's collection. Linda Runkle seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF STATE PARKS AND RESERVOIRS

Consideration of Recommendation of Room Rates for the State Park Inns.

Gary Miller, Assistant Director for State Parks and Reservoirs, presented this item. He provided information of the current and proposed off peak rates for the State Park Inns. He said the last rate increase was five years ago. Some of the proposed rates were the same while others would increase from \$5 to \$10. During peak times of the year the rates would increase no more than 25% of the normal rates.

Cockrum asked Miller if the Department had looked at what the market rates were during peak times. "I don't want to gouge people, but at the same time we want to be sure that we're funding the operation as little as possible on the taxpayers."

Miller replied, "That's a very good question. There are a number of participating properties nearby which we get our information from who follow research. They're able to partake in what is called the "Star Report." The DNR also keeps "track of what they call ADR, average daily rates. And, I keep very close tabs on what I consider to be our strongest competition, which is state park lodges in our surrounding states. I also don't want to price us to a point where people don't come."

Goss said Kentucky "is looking for a significant increase of \$20 right away. And, I think their top rate is going above \$200 during peak season. So, even though we're increasing, I think we're going to be in very good shape in the southern Indiana market."

Damian Schmelz expressed concern that the rates during peak season need to be affordable for the average family. Miller said that unlike some competitors, the rates for the State Park Inns are rented by the room rather than by the number of occupants. Children have always stayed free.

Raymond McCormick moved to approve the recommended room rates for the State Park Inns. Jane Anne Stautz seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF NATURE PRESERVES

Consideration of the Declaration of Surplus Land and Buildings on a Portion of the Bailey Tract Acquired as Mitigation for the Little Calumet River Flood Control Project.

Lee Casebere, Assistant Director for the Division of Nature Preserves, presented this item. He said the DNR is working in partnership with the Little Calumet River Basin Commission to acquire lands to be restored to wetlands as mitigation for the Little Calumet River Flood Control Project. A 170-acre track being used for wetlands mitigation in Lake County includes the Bailey House, an historic building. The Division of Nature Preserves is working with the Division of Historic Preservation and Archaeology to

preserve the building. To accomplish this purpose, the agency seeks to have the house and immediately surrounding property declared surplus and sold to a buyer who would restore and maintain it.

Ray McCormick moved to approve the declaration of the Bailey House and immediately surrounding land as surplus, upon the condition that it be offered for sale with covenants to help assure its protection as an historic site. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF OIL AND GAS

Consideration for Preliminary Adoption of Amendments to 312 IAC 16-3-2 to Bring Statutory Conformity Regarding Rules Governing Well Permit and Transfer Fees (Administrative Cause Number 04-022G; LSA Document #04-23).

Mike Nickolaus, Director for the Division of Oil and Gas, presented this item. Nickolaus said that in 2002, the Indiana General Assembly amended the petroleum production statutes regarding permit fees and established a transfer fee for permits. The proposed amendments would conform the rules to the statutory changes. Additionally, the rule amendments would require that the coordinate location of a proposed well be provided in the permit application.

Jane Ann Stautz moved to give preliminary adoption to amendments to 312 IAC 16-3 governing well permit fees and transfer fees and to require the coordinate location for a proposed new well. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF LAW ENFORCEMENT

Consideration of Preliminary Adoption of 312 IAC IAC 6.5 that Adds Rules to Govern the Registration of Off-Road Vehicles and Snowmobiles (Administrative Cause Number 04-007A; LSA Document #04-3).

Major Sam Purvis presented this item. He said the DNR's Division of Accounting administers the registration process for off-road vehicles and snowmobiles. Off-road vehicles and snowmobiles require prior registration before operation on public highways, DNR maintained trails, and frozen lakes.

Purvis said the 2003 Indiana General Assembly changed the elements of the registration system. Fees were set for some circumstances, and, in others, the Commission was authorized to set fees by rule. A new computer system has been developed to meet new statutory requirements. A proposed rule would require that a decal has a unique identification number for each registration and a decal would be color-coded to indicate the year of expiration. The difference between an individual and dealer registration is that a dealer or manufacturer may display the decals on an attached but removable sign.

Purvis explained that a temporary rule currently addresses the permanent rule amendments offered for preliminary adoption. He said that the changes were required to be in effect by January 1, 2004.

Jane Ann Stautz moved to give preliminary adoption to proposed rules to govern registration of off-road vehicles and snowmobiles. Linda Runkle seconded the motion. Upon a voice vote, the motion carried.

NRC, DIVISION OF HEARINGS

Reconsideration of Report of Public Hearing, Public Comment, DNR Responses, and Recommendation for Final Adoption of Law Enforcement Lake James Chain Boating Rules Amendments (Administrative Cause Number 00-021W; LSA Document #03-92(F)).

Steve Lucas, Director of the Division of Hearings, introduced this item. He said presented for reconsideration were proposed amendments that would establish new watercraft safety restrictions at three areas on the Lake James Chain of Lakes. These three areas would be the following:

- (1) "Zone 1" between the Upper Basin and the Middle Basin of Lake James and sometimes alternatively referred to as the "Narrows". Lucas said in his February 27 report to the Commission, he incorrectly referred to this area as being between the Lower Basin and Middle Basin and asked that the record reflect the correct description.
- (2) "Zone 2" between Snow Lake and Lake James.
- (3) "Zone 3" between Big Otter Lake and Snow Lake, including Follette Creek.

Lucas said there was ambiguity concerning the Commission's action at the January 2004 meeting. The recommendation was for the approval of final adoption "as recommended by staff". There were, in fact, two disparate staff recommendations. Sylvia Wilcox, Hearing Officer for the Natural Resources Commission, had recommended final adoption be given to Zone 2 and Zone 3 but not to Zone 1. The DNR's Division of Law Enforcement recommended all three Zones be approved as idle speed zones. After the meeting, it became clear that different Commission members had envisioned different proposals when voting to give final adoption to the "staff" recommendation. With this ambiguity, the Division of Hearings refrained from processing the rule proposal for final adoption.

Lucas said that, ordinarily, a rule must complete the process of final adoption within one year of being given preliminary adoption. Because this proposal has had an extended history before the Commission and the Advisory Councils, final adoption within the one-year limit was now impracticable. As a result, the proposal was being resubmitted to the Commission for consideration as to a new preliminary adoption, as well as a parallel non-binding resolution to the Director for his approval of a temporary rule for the 2004 boating season.

Lucas reflected that approval of Zone 3 appeared to be without controversy, although technical corrections from the original language were required. There were varying citizen perspectives as to Zone 2, but since the zone had been constricted from the area given preliminary adoption, it also appeared to enjoy general public support. The focus of controversy was upon Zone 1.

With this understanding, Lucas said he outlined three possible directions for Commission action, although he acknowledged numerous alternatives could be endorsed:

- (1) **OPTION 1:** The Commission could implement the recommendations of the DNR's Division of Law Enforcement through a motion that would provide: Preliminary adoption is given to rule amendments as set forth by the Hearing Officer in Exhibit C. Language previously given preliminary adoption, for the Narrows between the Upper Basin and the Middle Basin of Lake James, is also given preliminary adoption. The recommendation is that the Director of the Department of Natural Resources would adopt a temporary rule to implement these restrictions for 2004.
- (2) **OPTION 2:** The Commission could implement the recommendations of its Hearing Officer as presented during the January meeting through a motion that would provide: Preliminary adoption is given to rule amendments as set forth by the Hearing Officer in Exhibit C. The recommendation is that the Director of the Department of Natural Resources would adopt a temporary rule to implement these restrictions in 2004.

- (3) OPTION 3: The Commission could implement the recommendations of its Hearing Officer for 2004 but include reconsideration of the Narrows during a new public hearing process on a permanent rule, through a motion that would provide: Preliminary adoption is given to rule amendments as set forth by the Hearing Officer in Exhibit C. Language previously given preliminary adoption, for the Narrows between the Upper Basin and the Middle Basin of Lake James, is also given preliminary adoption. The recommendation is that the Director of the Department of Natural Resources would adopt a temporary rule to implement for 2004 the language contained in Exhibit C.

Major Sam Purvis addressed the Commission. He said the Division of Law Enforcement's Recommendations "basically, stay the same with all three zones inclusive." In response to a question by Linda Runkle, he gave an overview of the debate surrounding the "Narrows".

Joe Sweeney, President of the Lake James Association, addressed the Commission. He said there are approximately 600 homeowners on the lake. There has been little resistance to the recommendations for Follette Creek. He said there was some resistance on the recommendations for the area between Snow Lake and Lake James, feeling that "it was a little excessive", but he felt "the move Law Enforcement has made" in reducing that idle speed zone was acceptable.

Sweeney said he asked the Division of Law Enforcement "what was really driving the proposal? "Where is the data" for the narrows? At the time of the public hearing, he was told there was no available data. Of the approximately 80 people who spoke at the two public hearings, approximately 90% were opposed to the recommendations made for the Narrows. The persons opposed were primarily "full-time lakers", and "that many people can't be wrong." There were also discussions at the Lake James General Membership Meeting. "Again, there was an overwhelming concern that it would cause more hazard on either side of [the proposed idle speed zone] where you would have people U-turning into each other and boats re-accelerating out of that area. "So, I think what we're doing is causing two other different types of problem situations while we try to cope with this sometimes congested area." He said there was concern about the safety, and a lot of different recommendations were made. Sweeney urged the Commission to "table the recommendations for the Narrows and not impose a idle zone. I really do think that you will create a two different hazard zones on each side." He suggested that the Lake Owners Association and other lake owners collaborate with the DNR to support education to encourage safe operations at the Narrows and to collect good data pertaining to any potential problems. Sweeney concluded, "And, if there is a problem, then we can come up with a workable safe solution to that problem. But, I ask for your consideration."

Ray McCormick explained that during the Advisory Council meeting there was "much discussion and debate" concerning the Narrows. "We had trouble reaching a solution." McCormick asked Sweeney, "Where do you think we could go with this if we don't have an idle zone? You know, how are we going to find a solution?"

Sweeney replied, "Well, I don't think that in a two-hour session you can. Again, it a congested area on certain weekends. Most of the time, and I'm a full-time resident there, during the week you might be one of the twelve boats...in the Lake James' three basins. You might be one of twelve boats. So, what we're really talking about are holiday weekends, and then it can be quite congested. But even there, recommendations left-right; and we talked about there being buoys, and how difficult that would be because it's so deep. But, if you're familiar with that lake, the drop-offs are so severe. Like I suggested, if you can't anchor a left-right, I doubt if you're going to be able to anchor an idle zone buoy. I don't think you're going to be able to anchor buoys from the shoreline 200 feet out because it is a severe drop. Number one, is there a problem, and number two, if there's a problem, what is the proper solution to that problem?"

McCormick asked, "Would you not agree staff has compromised in that they have reduced the length of the idle zone and reduced the period of time in which there would be an idle zone?"

Sweeney replied, “There has been a reduction in the overall instances, that is true.”

McCormick added, “And, instead of being all year round, it’s now just during this busy summer boating season?”

Sweeney replied, “That true. But again, I will submit to you, even during the busy boating season during the week, and on most weekends that are not holiday weekends, it’s not a problem.”

McCormick added, “But I can see it as a problem that would be just like a reduced speed zone in a work area where we would say on busy holiday weekends we’re going to have a reduced speed limit, but the rest of the time everybody can drive— You know to get that message across and I think in boating it’s even apparently more difficult than it is with people in automobiles, because as it has been others’ testimony, is that there’s a lot of inexperienced among boaters out there. And, so that seems to be the most serious problem. It isn’t the people that have a lot of experience boating that come sort of close to having accidents and draw the complaints. It’s these people that have very little experience boating that are sort of reckless in the Narrows that we need to somehow get that under control.”

Sweeney responded, “That’s true, but unlike driving on the highway in a construction zone, you’re going from point A to point B. When you’re out boating, you’re not necessarily going anywhere. And, if you’re interesting in high-speed boating you don’t want to go through the narrows—to be honest. So, what you’re going to do is avoid that and turn into boats coming the other way at high-speed as other boats come out. And, I really believe that creates more of a problem than what now exists.”

John Davis reflected that education was one of the options discussed during the joint Advisory Councils meeting in February. McCormick asked Sweeney if the homeowners’ association members would “be able to sustain a real effort” to help educate residents and visitors on the importance of boating safety.

Sweeney answered, “Absolutely. As boats get bigger and personal watercraft become faster, I think we need to educate people even more. We, as an association, attend a boating class every year. Yes, we’d like to do more and more, and we’d like to work with the Law Enforcement for safe boating.”

Davis asked, “And you’re willing to make some of your efforts be more than just the homeowners?”

Sweeney replied, “Absolutely. One thing I want to do is make a difference in the Lake James Association. Yes, I think boating is a very important issue. Boating safety is a priority for us. Can we do more together? We can do more.”

Ehret said it was suggested during the Advisory Councils meeting that cautionary buoys might be a feasible option for the Narrows. He said that the buoys would not necessarily change the speed limit but would warn boaters that they were approaching a congested area.

Cockrum addressed Sweeney, “I commend your offer to the education program, because I think everyone recognizes that we’re not rule happy, but these are brought to us because there’s a perceived safety concern. But there’s a burden there; then if there’s a series of accidents or problems, there’s obviously something that has to be looked at.”

Don Scheimann, Lake James property owner, addressed the Commission. He noted boats have become larger, and high-speed personal watercraft have come into existence. He expressed need for speed limit signs. Scheimann referenced the DNR’s statistics involving eight boating accidents, and he said that the eight accidents involved people who were thrown off their personal watercraft. “What I am recommending is that we do not reinvent the wheel, but to look at it as what has caused the problem. Why did we not have a problem 20 years ago, why we have that problem now.” Scheimann said that he

felt that two causes for accidents were relative to the type of boat and the personal watercraft. There are more boats on the waters today than 20 years ago. He added, "I'm recommending a simple solution" that the Narrows be a no-tow zone and a no U-turn zone with a 20-mph speed limit. "I really believe to look at the cause of the problems is not fixing the wheel by stopping everything, but look at the cause of the problem. We need something to slow this traffic down, not stop it."

McCormick asked Scheimann, "And, do you consider an idle zone stopping the traffic, in your analogy? You think that's the wrong thing to do?"

Scheimann said there are five 30-foot boats on the lake, and when the boats decelerate, the end of the boat sinks into the water. The result is a "blind spot" for the boater. "So, for those folks slowing down and stopping, you're going to have that problem. When they accelerate going out of the idling zone, as you're proposing, again you're going with the bow up. There's another blind area and another huge wake."

McCormick asked Major Purvis, "When a boat is speeding through the narrows at 70 mph, can a conservation officer ticket that driver on a reckless charge?"

Purvis answered, "There is a dangerous boat operation clause. The burden of proof of that charge later, without a boat accident, is a hard charge to prove. Without some other evidence, it makes it hard to re-account that situation in a courtroom."

Scheimann added, "The people that have been thrown off personal watercraft, most of them are going too fast to begin with. You hit a wake and get thrown off. That can happen any place, not just on Lake James and through the Narrows. Slowing those things down, they're not going to get flipped off quite as easy."

Bob Murphy asked Scheimann, "So your answer to his question is that an idle zone is not the answer?" Scheimann replied, "Yes." Murphy asked, "What would your vision be." Scheimann replied, "A no U-turn and a no-tow zone. In a no U-turn, a person cannot spin around in front of you in the Narrows, and, also, put a 25-mph cap on it."

Dave McKeeman, a Lake James property owner, addressed the Commission. He said, "I do appreciate you holding the meeting down here in such a beautiful place. I'd like to say that I'm opposed to the [proposed idle speed zone for the] Narrows for a number of reasons. Some of them have already been mentioned." McKeeman said that the public and the DNR "need to set down; we need to lay our cards on the table and share data." He said that the data provided at the joint Advisory Councils meeting revealed that, of the 21 accidents that occurred within a five-year period, eight occurred in the proximity of the Narrows. Data also indicated that seven out of the eight accidents that occurred in the Narrows involved personal watercraft. The data appears to indicate that personal watercraft travel too closely together, noting the Narrows only have 75 feet of safe passageway. Although he was not suggesting the NRC enact law, he said some states have laws regulating the distance between PWCs. He recommended the Commission adopt the recommendations of its Hearing Officer and thanked the Commission for the opportunity to speak.

Rene Scheimann declined to speak but said she wanted to confirm what had been said by others.

Jeff Bell said that he attended the joint Advisory Councils meeting. He commended the Lake James Homeowners' Association for its eagerness to educate the public on boat safety. He also expressed appreciation for the diligent efforts of the Division of Law Enforcement.

Dan Lepley, Lake James property owner, addressed the Commission. He said he lives along the Middle Basin on the lake. "I own a couple of personal watercraft, three 18" slims, so I know the problem you guys are addressing. My take on this, as a father, landowner, and somebody who uses the lake just like anybody else, I have concerns about that area, but I don't think the no-wake zone is the answer." Lepley

said that during the busy holiday weekends, the heaviest traffic is concentrated mostly in the Lower Basin rather than in the Upper Basin and Middle Basin. “I would like to see a proposal, or kick this out as an idea, to maybe take some of the patrols that seem to be concentrated in the first basin and have them patrolling that area a little more on those weekends—slowing those boats down. Everybody, who sees a state policeman on the road, tends to slow down, and I believe that would be the same with this. If they see a DNR boat parked there versus in the first basin, on those certain weekends, it could be a good solution to the problem.”

Jeff Blue, Lake James property owner, said his home was located along Long Creek Point. He said that the majority of the residents, who live along Long Creek Point, “are weekend people—summertime users, not residents.” There are seven or eight permanent residents out of approximately 120 cottages. He said that the residents along Long Creek Point feel that their use of the lake has been denied due to the high-speed traffic—the intense traffic. “By putting the idle speed at the Narrows, you are going to discourage usage of that lake. And, some of my friends and neighbors also suggest that they do it between the Lower Basin and Middle Basin, to discourage high-speed traffic. Also, I think another point that’s been totally missed here is the usage issue. I want to sail. I want to canoe. I want to kayak. I want to paddle boat. I want to swim. I want to rowboat. And I’m going to do that on a Saturday or Sunday? No. Can I ski on a Saturday or Sunday afternoon? No. It’s a question of usage. I just hear about ski boats. I think we need to be broad in our thinking here.” Blue said the Lake James Yacht Club has curtailed its regattas because of the inability to pass through the Narrows on a Saturday or Sunday afternoon. Blue stressed that the ecological concerns for the lake should to be considered for future generations. “Let’s be more restrictive. I just think we need to put this in perspective.”

Cockrum asked, “Mr. Blue, it’s your estimation that a lot of the weekend visitors are not part of the Lake Homeowners Association and not active, or they’re members and can’t participate?”

Blue answered, “I’m going to say that the majority of the people along Long Creek Point that are weekenders, are a member of the Lake James Cottage Association, but that is purely speculation.”

Cockrum referenced the three alternative motions that were offered to the Commission by the Steve Lucas. He said, “I think regardless what the Commission decides, there’s clearly a lot of issues still to be dealt with. To split the difference on the speed zone is an interesting new idea. With the Advisory Councils, the visitors on the weekend traffic, we have some interesting viewpoints. I’m assuming that the Division of Law Enforcement will continue to work with the lake homeowners on safety issues.”

Jane Anne Stautz moved to approve preliminary adoption of the rule amendments as set forth in Exhibit C in regard to watercraft restrictions in Zones 2 and 3. She also recommended the Commission urge the Director to adopt a temporary rule to implement these standards in 2004. Stautz also recommended that the DNR, residents, and visitors on the Lake James area continue to explore methods to promote safe boating operations. She said, “I think there were a lot of interesting ideas of how to possibly address some of the other issues with regard to safety and preservation of the resources.”

Cockrum asked Stautz, “In summation, that would take us into speed limits in Zone 2 and 3. Take Zone 1 off the table, but keep it open for informal discussion, dialogue and negotiations?” Stautz answered, “Correct.” It’s OPTION 2 but with continuing informal dialogue. Ray McCormick seconded the motion. Upon a voice vote, the motion carried.

Major Purvis said he wanted to thank the audience for its participation. He said the Division of Law Enforcement would continue to work with individuals, residents, and fishing organizations. Col. Bruce Clear has directed his officers to hold a public meeting in the community this summer to foster cooperation and better understanding of boating laws and safety. Through the meetings “we’ve had the Division of Law Enforcement realized that there was a lot of miscommunications and misconceptions on what certain laws are on the books regarding boating, and we believe that we clarified some of those

things on both sides of the issues. They are an excellent group to work with. We haven't always set down and agreed with the same thing, but we were always talking."

Cockrum added, "Major Purvis, we very much appreciate it."

Davis added "Major Purvis, we hope that that's the beginning of the framework. We have a lot to talk about, but I hope you can do that at a park or some place that's convenient for everybody and maybe have a series of meetings and include some people that are weekenders. I hope we can make them widely available. I think we should definitely thank these folks here who care enough to drive down and they also care enough to say their Homeowners Association is vigorous enough to do this. I think we should invest in that and get the help that we need as we're going through this process."

Cockrum, added, "We know that while Zone 1 is formally off the table, there's still discussion and needs a lot of work."

McCormick stated, "Mr. Chairman, I also wanted to take the opportunity to ask the Director to direct Law Enforcement, as was suggested, to increase the presence of Law Enforcement Officers in the Narrows on those busy weekends. Because, I don't think the Advisory Councils or the Commission wants the weight of one more accident. We want to avoid anymore accidents in the interim when we find this final solution. So, I would hope that what's been identified as the most serious risk period, is heavily patrolled during those times."

Goss responded, "I think that's definitely doable. With the additional funding from the boat registration fee, which was enacted this year, there can be an increased presence of law enforcement officers on the lakes."

Joe Sweeney concluded, "Through this process, I think we've opened up some good dialogue. We will continue to work with Major Purvis on various issues. I'd like to thank you guys who were willing to travel here even with the snow we had in Fort Wayne this morning."

Consideration of Report of Public Hearings and Presentation of Proposed Rule Amendments (312 IAC 16) for Consideration as to Final Adoption of Plugging, Abandonment, and Mechanical Integrity Amendments to Wells Drilled for Oil and Gas Purposes (Administrative Cause Number 03-152G; LSA Document #03-251(F)).

Stephen Lucas, Hearing Officer, presented this item. He said, "I made several recommendations suggesting some further review of this rule proposal before action on final adoption. Mike Nickolaus and the regulated community have since been hard at work. I have spoken with both of them in the last few days, and they've made a lot of progress. I think they already have an agreement in principle. They hope they're going to have an agreement with specifics to bring back to the Commission at the next meeting in May. I would ask the Commission to defer this item for consideration at the May meeting."

Linda Runkle moved to defer consideration of the proposed rule amendments until the May 2004 Commission meeting. Ray McCormick seconded the motion. Upon a voice vote, the motion carried.

Consideration of Report of Hearing and Presentation for Consideration of Rule Amendments for Final Adoption of Amendments to Lakes Preservation Act Rules (312 IAC 11-3 and 312 IAC 11-4) to Facilitate the Placement of Glacial Stone Seawall Refacing (Administrative Cause Number 03-106W; LSA Document #03-203(F)).

Steve Lucas, Hearing Officer, also presented this item. He said the proposed final rule amendments were very similar to the language given preliminary adoption but with “a little bit of retooling” to streamline the regulatory concept. The changes, as described more particularly in the written report to the Commission, should offer a simplified approach and some clarification to riparian owners who are regulated.

Damian Schmelz moved to give final adoption of rule amendments to the Lakes Preservation Act Rules to facilitate the placement of glacial stone seawall refacing, including the modifications recommended by the Hearing Officer. Ray McCormick seconded the motion. Upon a voice vote, the motion carried.

Consideration of Report of Public Hearing, Analysis, and Recommendation for Final Adoption of Technical Amendments to Rules to Update Cross-references, Add Definitions to Clarify Current Practices, and Incorporate Emergency Rules as Permanent Rules (Administrative Cause Number 03-159A; LSA Document #03-296(F)).

Jennifer Kane, Hearing Officer, presented this item. Kane explained that with the increased use of global positioning systems that depict geographic information, two definitions were added “State Plane Coordinate” and “Universal Transverse Mercator”. She also explained that the word “includes” was also defined at 312 IAC 1-1-19.5.

Kane noted that “construction of abodes in the floodway of a river is prohibited”. She said the rule proposal, would include a listing of what constitutes “reconstruction” within the floodway. She said an unrelated amendment would increase the application fee for ginseng dealer license from \$25 to \$100. Kane recommended the proposed rule package be given final adoption.

Jane Anne Stautz moved to give final adoption to technical amendments to Commission rules as recommended by the Hearing Officer. 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 the Procedural Updates to Delegations and Informal Procedures Within 312 IAC (Administrative Cause Number 03-143A; LSA Document #03-220(F)).

Jennifer Kane, Hearing Officer, presented this item. She said the proposed amendments incorporate several technical updates to the rules governing delegations and informal procedures as set by this Commission. She explained that the updates reflected current practice. Kane also noted that amendments are proposed to correct obsolete cross references to 310 IAC to reflect the recodification of rules to 312 IAC.

Kane said that in order for rules not be “sunsetting” existing rules must be “recodified” every seven years. She explained that the Legislative Services Agency has called this process “recodification by readoption”. Kane noted that on April 24, 2002 the Commission authorized the Director of the Division of Hearings to give preliminary adoption to the recodification of rules (to prevent them from being “sunsetting,” but only if no changes to the rules are being proposed. “If changes are proposed, preliminary adoption could be given by the DNR Director or by the NRC, but not the Director of the Division of Hearings. The Natural Resources Commission would retain authority of final adoption of recodifications.” Kane said the procedure adopted in April 2002 has now been applied to about ten sets of rules without difficulty.

Kane said that the amendments proposed to 312 IAC 2-3-1 would accomplish two things. “First, they would clarify that the procedures for informal hearings conducted in the DNR or one of its boards, before the opportunity for review under IC 4-21.5, the Administrative Orders and Procedures Act, could be used

by any entity. She said that currently, these procedures are technically available only by the DNR Director, a delegate of the DNR Director, the State Historic Preservation Review Board, or a delegate of the State Historic Preservation Review Board. "Recent experience indicates these procedures should be available to other entities within the DNR, such as the Soil Conservation Board. Second, they would clarify that a board (or selected members of a board) could serve as the hearing officer for these pre-AOPA proceedings."

Damian Schmelz moved to give final adoption to amendments to the procedural updates, to delegations, and to informal procedures within 312 IAC. Jane Ann Stautz 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 18-3-12, Which Governs Standards for Control of the Larger Pine Shoot Beetle, By adding Union County to the Quarantine Area (Administrative Cause Number 03-126E; LSA Document #03-214(F)).

Jennifer Kane, Hearing Officer, also presented this item. Kane noted that the existing rule lists those counties under quarantine for larger pine shoot beetle. She said the rule proposal adds Union County to the area quarantined, "in effect, striking it from the list contained in 312 IAC 18-3-12(c)." Kane noted that on July 14, 2003, the federal government, through APHIS declared Union County as quarantined as authorized by 7 CFR 301.50-3(b). "In the absence of county-specific quarantines, APHIS is empowered to establish the entirety of Indiana as a quarantine area." Kane informed the Commission that an emergency rule was in affect presently, and the proposed rule would make the amendment permanent.

Ray McCormick moved to give final adoption to rule amendments that would add Union County to the areas of Indiana that are quarantined for the larger pine shoot beetle. Linda Runkle seconded the motion. Upon a voice vote, the motion carried.

ADJOURNMENT

At approximately 5:07 p.m., the meeting adjourned.

NEXT MEETING

May 18, 2004 at 3:00 p.m. EST at the Indiana Dunes State Park, located in Chesterton, Indiana.