

# NATURAL RESOURCES COMMISSION

Minutes of October 23, 2001

## MEMBERS PRESENT

Michael J. Kiley, Chair  
Larry Macklin, Secretary  
Damian Schmelz  
Jerry Miller  
Jane Anne Stautz  
Jack Arnett  
Terri Moore  
Beth Admire  
Steve Cecil  
Raymond McCormick, II

## NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas  
Sylvia Wilcox  
Debbie Michaels

## DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Carrie Bales	Executive Office
John Davis	Executive Office
David Vice	Executive Office
Paul Ehret	Executive Office
Lee Casebere	Nature Preserves
Sam Purvis	Law Enforcement
Scott McDaniel	Law Enforcement
Bruce Clear	Law Enforcement
Doug Noble	Indiana State Museum

## GUESTS

Charles Wilson	Doug Polk	Stu Boner
Karen Wilson	Lawrence Bartel	Marilyn Boner
Bill Haynes	Lee Runciman	Phil and Sara Vickery
Ann Smith	Dale Christ	David F. Causey
Philip Smith	Steve Gerber	Daniel Yeaton
Marcie Robertson	Larry and Alice Christle	R. Bunt
Morris and Zelda Profetta	Ken McIntosh	Roland Chapdelaine
Chuck and Jarbie Tomich	Ray Bolea	Bill Turner
Dennis and Debbie Copenhagen	Ron McCoy	Jody Weldy
Jeff Downey	Sandy Kazmierzak	Kay and Larry Kyle
Greg Hersberger	Kent Reineking	John W. Conarro

## MONTHLY REPORTS

Michael J. Kiley, Chair, called to order the regular meeting of the Natural Resources Commission at 10:00 a.m., EST, on October 23, 2001, at The Garrison, Fort Benjamin Harrison State Park, Indianapolis, Indiana. With the presence of ten members, the chair observed a quorum.

Damian Schmelz moved to approve the minutes of August 22, 2001. Jack Arnett seconded the motion. Upon a voice vote, the motion carried.

Larry Macklin provided the Director's Report. He said during the week of September 18, 2001, final decisions were made concerning deer control hunts at state parks and one nature preserve. Director Macklin distributed copies of the temporary rule authorizing the hunts and the assessment of the ecological condition of Indiana's state parks supporting the temporary rule. Macklin said the primary determining factor is the ecological condition of the parks. He said DNR would be conducting control hunts in 13 of the parks as well as at Twin Swamps Nature Preserve in Posey County. "Excellent progress has been made, as you will note in the summary, estimated over the past several years. We are in the maintenance mode for most of the properties and anticipate over the next couple of years to probably be in maintenance mode for all the properties, which would be wonderful."

Director Macklin said John Davis, himself, and other staff members traveled to South Bend for the Annual Historic Preservation O'Brian Conference. He said the conference continues to grow each year in attendance and "has made a very strong and powerful impact on the awareness of historic preservation in Indiana."

Macklin said the final 2001 Natural Resources Legislative Study Committee would meet today at McCormick's Creek. He said there would be several bills that would affect the DNR.

Jerry Miller, Chairman of the Advisory Council for Lands and Cultural Resources, said the Council met last week at Fort Benjamin Harrison. He said there were three items on the agenda, each seeking easements on DNR properties and each was approved.

John Davis, Deputy Director for the Bureau of Lands, Recreation, and Cultural Resources, reported recreation on DNR properties was "winding down" with the fall season. He said the seedling lottery was recently closed, and he would soon report the results to the Commission. Davis also said he would also soon have a report on the fire fighting efforts and DNR employee assistance in New York City following the September 11 attack. He reminded the Commission that November 3, 2001, is the opening date for the Angel Mounds Historic Site Visiting Center.

Ray McCormick, Chairman of the Advisory Council for Water and Resource Regulation, reported his Council had not met since the last Commission meeting, but it would meet on November 14, 2001.

David Vice, Deputy Director for the Bureau of Resource Management, reported the Division of Entomology and Plant Pathology has completed its annual nursery inspections. He said that with the beginning of hunting season, the Division of Fish and Wildlife is preparing a lifetime license update for the Council meeting. Vice said that with the fee increases, the division has seen a substantial increase in the number of lifetime licenses purchased.

Paul Ehret, Deputy Director for the Bureau of Resource Regulation, reported the contractual problem has been resolved regarding repair of the Mississinewa Lake Dam. The U.S. Army Corps has informed the agency the contractor is scheduled to immediately start repairs and has already begun working on alternate traffic routes.

Ehret said there was a meeting of the Lake Management Workgroup this month. Several issues were discussed, primary of which involved a lengthy discussion of the agency's tournament fishing rules. One of the issues before you on today's agenda is the result of a rule change recommended by the Workgroup. Steve Lucas will have more to say on the specifics of that recommendation later. There is another Lake Management Workgroup meeting set for November 15, 2001, to discuss potential legislative action issues. Ehret said there are hopes to have the language for preliminary adoption on the ecological exclusion zones for Lake Wawasee and Lake Syracuse in either November or December.

Ehret reported that the Indiana Society of Mining and Reclamation (ISMR) will host its 15th annual meeting in Jasper on December 3 and 4, 2001. The ISMR is "very fortunate to have U. S. Department of Energy, Assistant Secretary for Energy Policy and International Affairs, Vicky Bailey, as this year's keynote luncheon speaker." Bailey is from Indiana and held the position of President of PSI Energy and Cinergy Cooperation before her nomination as Assistant Secretary. She is also a former Commissioner of the Federal Energy Regulation Commission and the Indiana Utility Regulatory Commission. "We think we have an outstanding program again this year, and I would like to personally invite any of the Commissioners to attend that can. Father Damian has been a regular attendee at our annual seminar."

Damian Schmelz spoke glowingly of past seminars. He said that traditionally the second day has been particularly informative to persons not directly engaged in the business of coal mining.

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

### **DIVISION OF NATURE PRESERVES**

#### **Consideration of the Dedication of Saunder's Woods Nature Preserve, Gibson County.**

Lee Casebere from the Division of Nature Preserves presented this item. Casebere explained the proposed nature preserve is a 561-acre tract of land located near East

Mount Carmel in Gibson County. The property, as well as an adjacent 320 acres, is owned and managed as a natural area by the Indiana Chapter of The Nature Conservancy. The Nature Conservancy acquired the site with the assistance of the Indiana Heritage Trust.

Casebere noted the nature preserve is a very extensive forested area and one of the largest remaining tracts of forested land in southwestern Indiana. The site contains a very flat, wet floodplain forest dominated primarily by pin oak.

Casebere said there is an agreement with the seller, who owns the mineral rights, to allow test wells on lands that were formerly farm fields. The opportunity for testing will expire in 50 years. The test wells are not in an area that would be dedicated, and surface disturbances for permanent wells would be limited to adjacent lands. He said the Division of Nature Preserves recommended formal dedication of the site.

Damian Schmelz moved to approve the dedication of Saunder's Woods Nature Preserve. Jane Anne Stautz seconded the motion. Upon a voice vote, the motion carried.

Ray McCormick added, "I have been involved in this project, and I would like to say that naturalists described the bottom lands from Vincennes to the Ohio and Wabash River in the 1800s as the equal of any of the rainforests in South America. This is a great remnant of that past forest." He said the development of the nature preserve was not the result of efforts by just one person. "This is the Smith Family that protected the site and worked with us to get this area protected. This was a big partnership that worked together. Funds came from all different directions. There were many partners, private individuals working together. This is a great piece of real estate, and it is there for enjoyment of all the people of this state and the Midwest."

### **Consideration of the Dedication of John Merle Coulter Nature Preserve, Porter County.**

Lee Casebere from Division of Nature Preserves also presented this item. He explained the proposed nature preserve is comprised of 84.23 acres in two tracts. The natural communities include sand prairie, sand savanna, and wetlands. In addition, he described several rare species present at the site.

Casebere said the preserve was acquired through the Indiana Heritage Trust. The site is owned and managed by the Shirley Heinze Environmental Fund, a Northwest Indiana land trust. Casebere said management would consist primarily of controlling exotic plants including invasive woody species, and prescribed burning may be used to restore dry sand savanna on the higher, drier portions of the property. He said the Division of Nature Preserves recommended dedication as a nature preserve.

Damian Schmelz moved to approve the dedication of John Merle Coulter Nature Preserve. Steve Cecil seconded the motion. Upon a voice vote, the motion carried.

## **DIVISION OF STATE PARKS AND RESERVOIRS**

### **Consideration of the Grant of a 40-Year Easement to Community Natural Gas Company for 6,000 Feet of Natural Gas Line in McCormick's Creek State Park.**

John Bergman, Assistant of Operations, Division of State Parks and Reservoirs, presented this item. He said the Community Natural Gas Company had for some time wanted to put a natural gas line at McCormick's Creek State Park to serve the pool and bathhouse. DNR had been unable to do so because of the associated costs to the State of Indiana. Recently, however, the company was in the area installing natural gas lines and offered to place the natural gas line at no cost. Bergman said the only issue for the DNR was that approximately 400 feet of the line traverses an area of mixed hardwoods; the remainder is on an existing bridle trail or through mowed areas. Both the review process and the grant of the right-of-entry comply with the Natural Resources Commission's Nonrule Policy Document on Easements.

Damian Schmelz moved to grant the easement for 6,000 lineal feet of natural gas line in McCormick's Creek State Park. Jane Anne Stautz seconded the motion. Upon a voice vote, the motion carried.

## **STATE MUSEUMS & HISTORIC SITES**

### **Consideration of admission fee for the new Indiana State Museum**

Doug Noble, Chief Executive Officer of the Indiana State Museum, presented this item. He said the government, private individuals, and foundations are in a partnership to raise and invest approximately \$105 million dollars for the new museum. "It is in that effect a public-private partnership." He said in recent decades more state museum and governmental institutions are adopting and charging a user fees for admittance. "We feel the adoption of the fee is extremely important. To get to the point, the revenue that is generated creates a margin of excellence. If this museum is to be successful, one of the issues we have to approach is an attractive, dynamic exhibition program."

Noble explained there was a critical need to market the new museum. "We can't live in an environment anymore where you simply build it, and they will come. So we know we have to have additional dollars to invest in marketing." He said the museum is also looking at educational initiatives that will require additional funding. A committee of volunteers is leading fund-raising efforts and associated museum initiatives.

Noble said one effort was to have 5,000 to 6,000 sustaining members, but he believed there was a significant possibility of having 8,000 to 10,000 members. Currently there are 1,300 members. "It has been proven time and time again that those institutions that charge a fee, create a reason for people to join. It is why the Children's Museum has 24 or 25 thousand members. It is why the Indianapolis Zoo has the huge membership that it

has. The question emerges logically, what about free admission. We feel very strongly in our committee that the reason for free admission is to serve the under-served.” Noble pointed out that every school child visiting the museum in an organized group with teachers and chaperones, booked in advance, would not be charged admission. He added, “if we want to serve people living in low-income households, we have no way of knowing that, but Indiana has a program through Hoosier Works that does.” He said the Hoosier Works Program pre-identifies those individuals. “All they will need to do is arrive at our ticketing desk, present their Hoosier Works card, and they will be treated as if they were a museum member.” Noble said the museum is also looking at having different levels of memberships as well as family memberships.

Beth Admire asked about establishing a petition process by which a person without financial means might seek to have the entrance fee waived. This process would supplement the efforts of the Hoosier Works Program. Noble responded doing so was not feasible and would present major administrative problems.

Jack Arnett moved to approve the admission fee schedule for the new Indiana State Museum as proposed by Doug Noble. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

## **BUREAU OF RESOURCE MANAGEMENT**

### **DIVISION OF FISH AND WILDLIFE**

#### **Consideration of Request for an Electric Distribution Line Easement in Favor of Southern Indiana Gas and Electric Company, doing business as Vectren Energy Delivery of Indiana, Inc., at Hovey Lake Fish and Wildlife Area, Posey County**

Glenn Lang, Chief of Wildlife presented this item. He said for consideration is a request for an easement for electrical service to the new shop building at Hovey Lake Fish and Wildlife Area. The easement is ten feet wide and 210 feet long and would serve only the shop building. Since the line benefits only the Department of Natural Resources, no charge for the easement is recommended. He said the Division of Fish and Wildlife recommended approval.

Terri Moore moved to approve an easement in favor of Southern Indiana Gas and Electric Company, doing business as Vectren Energy Delivery of Indiana, Inc., as recommended by the Department’s Division of Fish and Wildlife. Jane Anne Stautz seconded the motion. Upon a voice vote, the motion carried.

## LEGAL PROCEEDINGS

### NRC DIVISION OF HEARINGS

#### **Consideration of Findings of Fact and Conclusions of Law with Nonfinal Order of Panel of Administrative Law Judges (and Objections by Steven Gerber) in the Matter of *Steven T. Gerber v. Department of Natural Resources*; Administrative Cause No. 00-107L.**

Stephen Lucas, a member of the panel of administrative law judges, presented the panel's findings and nonfinal order. He said other panel members were Major Jerry Presnell, Captain Tony Wilson, and Lieutenant Steve Hunter. In addition to himself, Captain Wilson was also present. Steven Gerber was represented by legal counsel at hearing, but was representing himself before the Commission. Stephanie Roth would provide oral argument on behalf of the Department of Natural Resources. Lucas said the matter was governed by IC 4-21.5 and was presented to the Natural Resources Commission because Steven Gerber filed objections to the panel's findings of fact, conclusions of law, and nonfinal order.

Lucas said the case involved two counts. The panel found in favor of Gerber on the first count—that Gerber had failed to properly enter three switchblade knives into the evidence system of the Division of Law Enforcement—because the Department's charge was found to be after the one-year limit specified in its Standard Operating Procedures. The Department did not file objections to this nonfinal order, and it was not before the Commission except as it bore upon the sanction to be imposed against Gerber.

Lucas said the second count alleged a violation by Gerber of IC 35-47-5-2 for the disposition of the switchblade knives. On this count, the panel found the preponderance of the evidence supported a finding Gerber had violated the statute. Evidence showed that based on information provided by an informant, Gerber drove himself, the informant, and the informant's girlfriend to a Fort Wayne flea market where unlawful switchblade knives were alleged to be for sale. At the flea market, Gerber observed the unlawful activity, issued a warning ticket to the seller, and took possession of the switchblades. Afterwards, the informant told Gerber he wanted to be paid cash for the arrest or to receive one of the switchblades. Gerber told the informant he could have neither but placed the switchblades in the backseat with the informant and his girlfriend. In written statements by the informant's girlfriend, admitted into evidence without objection, she said Gerber told the informant he could not have the switchblades, but if the informant took one from the backseat, there was nothing Gerber could do about it.

Lucas said the evidence showed a day or two later that Gerber discovered one of the switchblades was missing from the Department's automobile. Because Gerber kept the automobile locked, he determined the informant must have taken it. Gerber testified he then went to the informant's residence to confront him, and after an extended conversation, the informant returned the switchblade to Gerber. Gerber took the

switchblade, along with trash from his automobile, and threw them in a trash bin outside the informant's residence. The informant was present at the time.

Lucas said the evidence showed Gerber was interviewed during the Department's internal investigation. He at first admitted giving the switchblade to the informant then said he wished to change his statement to say "technically" he did not. Gerber contended he threw the switchblade in the trash bin in the informant's presence, but he did not give the informant the switchblade.

Lucas said Gerber also testified his personal practice for dealing with contraband such as switchblades was to "bust up" the items before throwing them away. Although not satisfying the Department's Standard Operating Procedures, Gerber did not even follow his own practice regarding the switchblade since he did not render it inoperable before throwing the switchblade in the trash bin. Knowing the reputation and propensities of the informant, the panel found the preponderance of the evidence probably supported the proposition Gerber intended to give the informant the switchblade when he placed it on the backseat of his automobile. If not then, Gerber effectively gave the informant the switchblade when he placed it in the trash bin in the informant's presence.

Lucas said the objections presented by Gerber contained matters not in evidence, and pursuant to IC 4-21.5-3-27, the proper disposition of the case could only be based upon matters in evidence. As examples— Gerber said in his objections that he has observed the switchblade in possession of the Department and it is not the same one as he placed in the trash bin. Gerber said the DNR did not follow a proper chain of custody with respect to the switchblade. The informant's girlfriend was untruthful, and her incriminating statements should not have been considered. Gerber also said in his objections that the settlement offer made by the DNR was preferable to the nonfinal order recommended by the panel. Lucas reflected that Gerber had his "day in court" and chose to offer or not to offer evidence.

Lucas said the DNR's original sanction against Gerber was a 20-day suspension for both counts. He said the panel believed the sanction should be reduced to 15 days because the first count was overturned, but the second count was the more serious of the two.

Captain Tony Wilson said the panel seriously considered the evidence. The panel decided against the first charge because the time had run, and we believed the suspension should be reduced somewhat because the first charge was dismissed. We had no question whatsoever on the evidence that was presented to us.

Steven Gerber said the hearing process was as close to a jury that he would ever be. In this case, Lucas talked about my state of mind, but these events took place in 1998, and I do not remember everything I did that long ago. Almost two years passed from the events until I was charged with a violation.

Gerber said, "I hate to see the bad guy win." He argued that in this case a "professional snitch," who makes his living by turning people into law enforcement, came to me and said another police officer had threatened to kill us. That's what initiated my contacts with the informant, but eventually he turned on me "because his big thing that brings him pleasure is getting police officers in trouble." Gerber said the informant gave the DNR



about five allegations, some of them “pretty wild,” and it turned out Gerber was innocent, “but there was one thing that was an error in judgment on my part.” The one thing was that I took a knife and threw it in the trash. “What Mr. Lucas didn’t tell you this morning was that, yes, these knives disappeared from my squad car. I did not tell” the informant he could have one of them, and “I went to his house and I threatened to arrest him if he didn’t give them back to me.” After a long discussion, the informant gave a knife to Gerber. “I took the knife, and I threw it in the trash, with some other rubbish in my car, and I told him if I caught him with that knife, I would arrest him.” A few days later, Gerber said he went back to the informant and confronted him, and the informant told me he left the knife in the trash. “That’s nowhere in the findings.” Gerber added this information was provided to the panel. In actuality, the informant had taken the knife and sold it to another person, and then the DNR bought the knife back.

Gerber said the Lieutenant who signed these charges has been my commanding officer for many years. I believe the basis for these charges was retaliation for a sexual harassment charge I brought against him. The Lieutenant had made statements to me having to do with sex. I filed a complaint against him.

Chairman Kiley said he did not see how Gerber’s comments with respect to alleged sexual harassment were relevant to consideration of the evidence. Even if the statements were true, which the Chair said he seriously doubted, they did not bear upon the current proceeding. He directed Gerber to go forward with argument as to why the Natural Resources Commission should not affirm the findings of the panel and its determination there should be a suspension of 15 days.

Gerber said he wanted to add one additional item. “I took a polygraph to this effect, okay.” Gerber said he didn’t want the Chair to be aggravated with him.

Chairman Kiley responded he was not aggravated with Gerber, but he had “45 years of experience with the receipt of testimony of this nature, so I think I can separate the wheat from the chaff.”

Gerber said he was not aware the Chairman was a former judge. “What this comes down to is—does throwing a knife in the trash constitute a criminal act? That’s really what it comes down to, and that’s really what your job is today is to determine whether throwing a knife in the trash is a criminal act. Fort Wayne newspapers have printed information saying that I have committed a criminal act because the Department gave them that information.” Gerber argued he did not commit a criminal act, because by going back and making sure the informant did not remove the knife from the trash, that “I have fulfilled my duty. It was a mistake to throw it in the trash in the first place. I agree with that. It was a bad mistake, but it was not a violation of state law.”

Gerber then argued even if the Commission determined he committed a violation of state law, a “15-day suspension is pretty harsh. It’s a \$2,000 fine for throwing something in the trash.” Gerber indicated the Department’s investigator said Gerber had never done anything of this nature before. It was an error in judgment but not a criminal act. “I would ask that you find it’s not a criminal act and reverse the findings of the panel.”

Stephanie Roth presented argument as counsel for the Department of Natural Resources. She said the panel did make adequate findings to support a determination Gerber should be suspended for 15 days. Gerber, after saying lots of things here today, tries to narrow it down to whether it's a crime to throw away a switchblade knife. Roth said if the case were that simple, he should be found to have violated IC 35-47-5-2. He intentionally possessed the switchblade knife. "He had to possess it in order to throw it away."

Roth added, "The issue is actually a little more complicated than that. Mr. Gerber was very familiar with the law. He used the law to obtain the switchblade knife from somebody else at a flea market. Gerber then took the knives and allowed someone else to have them. She said one definition of "give" is to "cause somebody to have." Gerber caused somebody to have the switchblade knife. "If nothing else, at the point he stopped treating it as evidence, it was contraband, and for that reason" it became illegal possession.

The Chairman asked if there were any questions by the Commission or any items for discussion. If not, it was for the NRC to determine, by motion, whether or not to affirm the findings and conclusion of the panel, as well as its nonfinal order.

Raymond McCormick moved to approve, without modification, the findings of fact, conclusions of law, and nonfinal order of the panel of administrative law judges as the findings of fact, conclusions of law, and final order of the Natural Resources Commission. Steven T. Gerber shall receive a 15-day suspension. Steve Cecil seconded the motion. Upon a voice vote, the motion carried.

**Consideration of Report of Public Hearing and Recommendation for Final Adoption of Amendments to Fish and Wildlife Rules; *Fish and Wildlife Biennial Rule Changes*; Administrative Cause No. 00-050D**

Sylvia Wilcox, Hearing Officer, introduced this item. She reminded the Commission that a summary report of public comments regarding amendments to the fish and wildlife rules was presented to the Commission in September 2001. Included in these amendments are those for one antlered deer per season, wild turkey decoy restrictions and fish sorting and waste prohibitions. She indicated that a public hearing was held on August 22, 2001 at Fort Ben Harrison, with comments centering on requests for more specific restrictions on fish sorting, consistency with decoy restrictions, and one antlered deer rule amendments. Wilcox indicated that comments from attendees included requests for specific timeframes and locations for fish release. Additional comments, she explained, requested that the DNR conduct studies to insure the one buck rule was scientifically sound. Wilcox indicated that DNR Fish and Wildlife staff was present to answer questions. She recommended final adoption of the rule amendments.

Jerry Miller moved to approve the recommendations of the hearing officer that the rule amendments be given final adoption. Damien Schmelz seconded the motion. Upon a voice vote, the motion carried.

**Consideration of Report of Public Hearing and Recommendation of Hearing Officer for Final Adoption of Amendments to Rules; *Rules Governing Public Use of DNR***

***Properties Regarding Gray Water, Release of Animals, and Ejection of Persons;***  
**Administrative Cause No. 00-195A; LSA #01-34(F)**

Steve Lucas, Hearing Officer, introduced this item. He said the proposals were originally presented by a standing committee, representing DNR's property management divisions and the Division of Law Enforcement, that regularly reviews the rules governing citizen usage of agency properties. The three sections proposed to be amended were independent concepts and should be considered individually upon their merits. He said Major Sam Purvis, State Boating Law Administrator, was present to speak to the amendments proposed to 312 IAC 8-2-2. Lucas spoke only to the amendments proposed to 312 IAC 8-2-6 and those proposed to 312 IAC 8-5-3.

With respect to 312 IAC 8-2-6, Lucas said the amendments would require an agency license before a person released an animal on a DNR property. In addition, the generic phrase "assistance animal" would be substituted for "seeing-eye dog" and "hearing guide dog." Chairman Michael Kiley asked if there was any discussion on this proposal. There was none. Jane Anne Stautz moved to give final adoption to the amendments to 312 IAC 8-2-6 as proposed. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

With respect to 312 IAC 8-5-3, Lucas said the amendments would clarify that authorized employees other than property managers could eject a patron from a DNR property. Most notably, the changes would allow conservation officers to do so. In addition, the amendments would clarify an ejection or restriction could apply to a portion of a property, multiple DNR properties, or all DNR properties. The Chair asked if there was any discussion on the proposal, and there was no response. Jerry Miller moved to give final adoption to the amendments to 312 IAC 8-5-3 as proposed. Terri Moore seconded the motion. Upon a voice vote, the motion carried.

Major Sam Purvis then outlined the purposes for the amendments sought to 312 IAC 8-2-2. He said the amendments would clarify that sink or shower water on a watercraft could not be discharged within DNR properties. Currently, discharge from the "galley" is already prohibited. Together these kinds of discharges are commonly referred to as "gray water." Maj. Purvis said conservation officers had experienced enforcement problems relative to discharges from houseboats on Patoka Lake since the section did not clearly prohibit discharges of sink or shower water.

The Chair then called for comments from interested members of the public.

Charles Wilson said he has been a boater for 15 years and had heard discussions that the discharge of "gray water" might be an issue. He said, "if there is a rule against it and after the presentation a moment ago, I'm still confused whether there is indeed, at the present, a prohibition. What we want to do is work with the Department. We've had a very successful experience in the past; we have a high regard for them and we think this is an issue we can work out, but we have had no notice whatsoever until late last week. Phil Smith read the Agenda and under Legal Proceedings saw mention of this item, and this is the first time anyone had heard anything about it."

Chairman Kiley reflected, “it appears to me that all of us are a little bit confused by it and certainly does deserve further definition so that we all understand. And if there is, in fact, an existing rule against it, everybody needs to know that and work within its parameters, and if there is a misunderstanding, we need to know that. We appreciate your group and your work with us in the past, and we certainly want to include you.”

Bill Hanes added, “my concern is the magnitude and the safety concerns that we adhered to in the past. I’ve been a boater on Lake Monroe for 19 years. If we put a large enough holding tank within our boat, and many other boats like that, that comply with those provisions, the cost would be astronomical for the boater.”

Ann Smith thanked the Commission for the opportunity to address them. She indicated she was also a boater at Lake Monroe. Smith said, “I’d like to think that I’m speaking here on behalf of not only Lake Monroe Boaters, but also boaters across Indiana that enjoy our natural resources. Smith asked all the fellow boaters from Lake Monroe in the audience to stand and then reflected, “we’re all well educated and well read people, but yet none of us knew about the proposed rule until a few days ago.” Smith then asked for a show of hands of the fellow boaters who would like to encourage the postponement of the rule amendments.

Phil Smith said, “I’m a boater who is so old, I was there when Lake Monroe was flooded. In fact, I volunteered to help fight a forest fire there before what is now Lake Monroe. It has been an important part of my life, in the formative years of my life. It’s been a wonderful recreation facility, and I certainly want to thank the Commission for its consideration of our request that we be awarded an additional opportunity to learn more about the issues that are involved. And in closing, I would like to thank Mr. Lucas. I learned about this last Thursday when I was attending an environmental conference in Valparaiso. Mr. Lucas took my cell phone call, and when I returned home, I had all the information that I needed. He had emailed it. Thank you very much for your cooperation. We’re asking for your assistance here.”

Douglas Pulk stated, “I’m a boater and been boating at Lake Monroe since the mid-‘70s. I’m also a boat dealer. I sell boats, so I look at it from a couple of different views. I have heard of gray water and black water for years. It was never told to us exactly what to do. About ten years ago, we started putting gray water systems on boats—the last year or two, taking them back off. From a boater’s standpoint, it’s obvious that the inconvenience is incredible. Unless you’re a boater, you wouldn’t know that. We have no way to get rid of all that water. As a dealer standpoint, I can just see it running people out of boating. Small boats that need holding tanks have no place to put them at all. You may not like to hear this, but you’re going to make criminals out of people if you force them to do it because they will just pull the plugs out of the tanks, and let the gray water go into the bilge; the bilge will then pump it over. They can’t help it; they can’t get rid of it.”

Pulk said there are more phosphates draining into the lakes from farming, not to mention herbicides and insecticides, than from boaters. He also noted there are people treating their lawns and washing their cars. Some people drain water from their washing machines into the drains, instead of through their septic systems. “They can get by with it, and that’s a fact that those things are going into the lakes.”

Pulk said he believed holding gray water “was a state issue, rather than a DNR issue, I know it’s not a federal issue. I know that the federal government does not mandate that, and they are very strict on black water. So I don’t understand why we as a state, if it is a law, don’t get rid of it. And why at times—about every ten years—it comes up that it is going to be enforced. It’s going to put a burden on people, and make them do things that they normally wouldn’t do.”

Lee Runciman, who is also a boat dealer, said he felt sales would drop because the boaters would need tanks added to their boats. He indicated if the dealer had to add the tank to the boat prior to sale, it would increase the price of the boats. Runciman indicated he believed not only would sales drop, but also service and revenue.

Dale Christ told the Commission that he was 100% in support of having a public hearing on the gray water issue.

Jerry Miller moved to defer action on the amendments proposed to 312 IAC 8-2-2 and to direct the hearing officer to conduct another public hearing, in Monroe County or another suitable location, and report back to the Commission on the results of the hearing. The hearing officer should include in the report a summary of how other states address gray water and implications for law enforcement if the amendments were approved. In addition, an explanation should be included as to how black water and other wastewater from boats are regulated on Indiana public waters other than DNR properties. Access to pumpout facilities on Lake Monroe and other DNR lakes should be described. Finally, the Department of Environmental Management should be invited to comment on the proposal. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

### **Consideration of Final Adoption of Technical Amendments to Rules of the Natural Resources Commission; Administrative Cause Number 01-074A; LSA #01-124(F)**

Steve Lucas presented this item on behalf of the hearing officer, Jennifer Kane. He said this rule proposal was primarily of a housekeeping nature. Most of the changes conformed cross-references in the rules to amendments to other rules or statutory amendments. There was also clarification the DNR property rules would apply to the Indiana State Museum. The regulatory definition of “public freshwater lake” was corrected to reflect the statutory exception for lakes in East Chicago and Gary. Other technical changes were made. He said the rule changes were not expected to be controversial, and no one commented upon them. Lucas said they were ready for action as to final adoption.

Jane Anne Stautz moved to give final adoption amendments to Commission rules as given preliminary adoption and reflected in the packet. Steve Cecil seconded the motion. Upon a voice vote, the motion carried.

### **Consideration of Preliminary Adoption of Amendments to Standards Governing Petitions to Establish Site-Specific Fishing Tournament Licensing Allowing for Requests for Special Conditions and of Amendments to Delete References in the**

**Fish and Wildlife Rules Exempting Endangered Species from Regulation Where Transferred in Interstate Commerce; Administrative Cause Number 01-106L; LSA #01-359**

Steve Lucas presented this item. He said that two concepts are presented for consideration as to preliminary adoption.

The first concept would delete a clause in 312 IAC 2-4-3 that authorizes persons, who petition for a fishing tournament licensing requirement on a particular water body, to ask for special terms and conditions. He said the Lakes Management Workgroup in a recent resolution sought the change. Lucas said he believed the change would not fundamentally restructure the administration of 312 IAC 2-4, and if the amendment would improve understanding of the regulatory program, the amendment was worthwhile.

The second concept would delete references in the fish and wildlife rules that exempt rare and endangered species passing through Indiana in interstate commerce. Lucas said he believed accommodating the need to protect endangered species with the Commerce Clause would always prove challenging, but the statute already recognizes an exemption for interstate commerce, so its removal from the rules might be helpful to enforcement.

Chairman Kiley said he believed the amendment to 312 IAC 2-4-3 was a good idea. He said the clause to be deleted had “raised a red flag for some people.” The clause was not helpful to DNR and NRC efforts to regulate fishing tournaments fairly, and its deletion should help underline intent.

Jane Anne Stautz moved to give preliminary adoption to the amendments to 312 IAC 2-4-3 and 312 IAC 9 (including the repeal of 312 IAC 9-2-7) as set forth in the Commission packet. Terri Moore seconded the motion. Upon a voice vote, the motion carried.

**ADJOURNMENT**

At 11:35 a.m., EST, the meeting adjourned.

**FUTURE MEETINGS**

November 27, 2001, 10:00 a.m., (The Garrison, Ft. Benjamin Harrison State Park, Indianapolis, Indiana)

December 18, 2001, 10:00 a.m., (The Garrison, Ft. Benjamin Harrison State Park, Indianapolis, Indiana)