

# **NATURAL RESOURCES COMMISSION**

Minutes of August 22, 2001

## **MEMBERS PRESENT**

Michael J. Kiley, Chair  
Rick Cockrum, Vice Chair  
Larry Macklin, Secretary  
Damian Schmelz  
Jerry Miller  
Jane Anne Stautz  
Steve Cecil  
Raymond McCormick  
John Goss  
Terri Moore  
Lori Kaplan  
Jack Arnett

## **NATURAL RESOURCES COMMISSION STAFF PRESENT**

Stephen Lucas  
Jennifer Kane  
Debbie Michaels

## **DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT**

Carrie Bales	Executive Office
John Davis	Executive Office
Dave Vice	Executive Office
Dan Mathis	Executive Office
Carrie Doehrmann	Executive Office
John Bacone	Nature Preserves
Gregg McCollam	Fish and Wildlife
Glen Salmon	Fish and Wildlife
Bill James	Fish and Wildlife
John Marshall	Fish and Wildlife
John Olson	Fish and Wildlife
John Friedrich	Forestry
Eric Myers	INRF
John Gano	Law Enforcement
Ron Johnson	Law Enforcement
Jeff Wells	Law Enforcement
Jomary Crary	Water
Mark Basch	Water
Gary Miller	Parks and Reservoirs

## **GUESTS**

George McLaren  
Dale Back  
Doug Allman  
David Delaney

Paula Yeager  
Paula Reineking  
Kent Reineking  
Dick Mercier

Bill Scifres  
Hal Harlan  
Alan Hux  
Brent Hanger

## **MONTHLY REPORTS**

Michael J. Kiley, Chair, called to order the regular meeting of the Natural Resources Commission at 10:15 a.m., EST, on August 22, 2001, at The Garrison, Fort Benjamin Harrison State Park, Indianapolis, Indiana. With the presence of twelve members, the chair observed a quorum.

Damian Schmelz moved to approve the minutes of July 19, 2001. Jerry Miller seconded the motion. Upon a voice vote, the motion carried.

Director Larry Macklin provided the Director's Report. Director Macklin introduced Dan Mathis as the New Assistant Director of Legislative Affairs for the Department. Macklin said, "we're real pleased to have Dan on board."

Director Macklin referenced the closing and the success of the Indiana State Fair. He said the State Fair is "probably our greatest opportunity for public outreach and education. The building has always been a great attraction for us." Macklin also referenced the renovations that were made to the DNR building in 2000. He said, "our heartfelt thanks goes to all the staff and their enthusiasm and much support that is necessary to make our presentation as successful as it is." Macklin said the Annual Wild Game Cookout was a success. The event was "well attended with plenty of good food to sample. We really appreciate all the folks who arrived early in the morning and prepared the area and cooked food."

Director Macklin reported that Dr. Robert Waltz, State Entomologist, informed him our dedicated workforce directed to controlling the spread of the gypsy moth in Indiana has been successful. Macklin noted although the spread would continue, at the present, the spread has been minimized. He said, "I certainly do not want anybody to believe that the gypsy moth won't go through Indiana, but we have been able to minimize its advance by using pheromone and other various control methods."

Director Macklin explained much concern remains for potential spread of disease for Indiana wildlife. "We continue to work with Dr. Marsh and the State Board of Animal Science, as well as DNR biologists, to monitor the spread of diseases."

Director Macklin reported he and John Goss traveled to Clarksville to attend a meeting in preparation for the 2003 Bicentennial Celebration of the Lewis and Clark Expedition. He said there were approximately 40 people who attended the meeting. The epic expedition started at Clarksville, and Hoosiers are justly proud of the state's role.

Jerry Miller, Chairman of the Advisory Council for Lands and Cultural Resources, reported his Council met on August 7. He said the items on the agenda were all passed.

John Davis, Deputy Director for the Bureau of Lands, Recreation, and Cultural Resources, added concerning the Indiana State Fair. "I think our folks find it a truly valuable experience being able to discuss issues with people who visit the fair."

Davis said Indiana has approximately 30 fire fighters out West fighting wild fires. He said there would probably be another crew of ten sent in two weeks. Davis reported that attendance has been up this year at the recreational properties. He also reported on the Underground Railroad Conference, which took place on August 4, 2001. Representatives from the national historic preservation groups were in attendance. DNR staff from the Division of Historic Preservation and Archaeology gained national recognition for the program.

Ray McCormick, Chairman of the Advisory Council for Water and Resource Regulation, reported his Council met on July 11, 2001. At the meeting there was a presentation of the proposed rate increases for hunting, fishing and trapping licenses. McCormick said Glen Salmon, Assistant Director of the Division of Fish and Wildlife, and Greg McCollam, Chief of Administrative Services, were present at the meeting. During the meeting there was testimony from individuals representing different organizations as well as representation from the Indiana Sportsman's Round Table, Indiana Wildlife Federation, Indiana Deer Hunter's Association, the Executive Director of the Indiana Wildlife Federation, and Senator David Ford, Indiana State Senate Chair of the Natural Resources Committee.

McCormick said, the majority of people testified in favor of the proposed increases in fees. Several did, however, have concerns and took different positions on different parts of the fee increases. "Most but not all were in favor." After hearing the testimony, the Advisory Council voted to recommend the increase in the hunting fees.

David Vice, Deputy Director for the Bureau of Resource Management, reported the DNR's Conservation Officers have been very busy this season patrolling and protecting the state properties. There has been increased patrol at state properties in order "to provide a safe and enjoyable place for citizens to go and spend quality time with their families."

Vice reported the Division of Fish and Wildlife is preparing for the upcoming hunting season. He said the reserve dove hunt received a total of over 3,000 entries and applications, which are 200 more than last year. Vice said the Division of Fish and Wildlife attended a wildlife seminar for animal disease preparedness at the University of Georgia.

Vice reported the Division of Entomology and Plant Pathology's nursery inspections in several counties are nearing completion. Pine shoot beetle inspections are beginning now for the Christmas tree growers. Vice concluded by confirming Director Macklin's statement the gypsy moth counts appear to be down this year.

Paul Ehret, Deputy Director for the Bureau of Resource Regulation, was not present.

Jack Arnett reported he has recently been awarded the DNR concession for the Kingsbury Fish and Wildlife Shooting Range. In anticipation of seeking the concession, he said he had sought and obtained a favorable ruling from the Indiana State Ethics Commission concerning whether he might appropriately hold the concession and serve the Natural Resources Commission at the same time. Arnett said he wanted the Commission to be aware of his holding the concession and also that he would recuse himself from participation or voting if an issue were to arise concerning the Kingsbury Fish and Wildlife Shooting Range.

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

### **PERMANENT APPOINTMENTS AND PERSONNEL INTERVIEWS**

#### **Permanent Position of Assistant Property Manager at Ferdinand State Forest.**

Robert W. Hogg was recommended for this permanent position. John Friedrich said, “Robert was hired approximately one year ago. He has done extremely well and has gained respect of both his colleagues and those he supervises. We would like to recommend him for permanent appointment.”

Rick Cockrum moved to approve Robert W. Hogg for the permanent position as Assistant Property Manager at Ferdinand State Forest. Lori Kaplan seconded the motion. Upon a voice vote, the motion carried.

### **DIVISION OF FORESTRY**

#### **Consideration of a request by Verizon North Inc., For an Easement for Installation, Operation and Maintenance of an Underground Telephone Line on Ferdinand State Forest.**

John Friedrich from Division of Forestry presented this item. Verizon is requesting an easement along a county road across state forest land to install, operate, and maintain a telephone line to provide residential telephone service on Ferdinand State Forest in Dubois County. Friedrich added, “We’ve had some problems with Verizon and that’s why Division of Forestry recommends approval reluctantly. We’ve had problems getting them to provide information on other lines that currently are not permitted as required by statute.” He said he had spoken with Verizon representatives from Terre Haute who assured him they would provide the needed information to him. Friedrich added, “We don’t like to put these residents on hold waiting for a telephone, because obviously telephones are important for emergencies situations, so we recommended that we proceed with this request.” Friedrich said Verizon did not come up with a fee structure as set forth in the Commission’s nonrule policy document. Verizon responded it usually does not pay a fee for easements. As a result, the Division of Forestry set a fee structure based

upon the U.S. Forest Service schedule for utility easements. He said the Division of Forestry recommended compensation for this easement to be \$360.00.

Damian Schmelz asked Friedrich if there was a representative from Verizon present. Friedrich replied he recommended that a representative be present, but he did not believe a representative was in attendance. Schmelz replied, "I would personally like to meet some of these individuals." Chairman Kiley concurred.

McCormick asked Friedrich whether the residents who will receive the telephone service were presently without service or if the installation for improved service. Chairman Kiley asked how many residents were without telephone service. Friedrich replied there was currently one resident without telephone service, but there would likely be others as the area develops.

Damian Schmelz said he was not in favor of granting anything in the future, nor was he going to say "no" for the sake of the one resident without service. Schmelz said he would rather speak with Verizon before they have another proposal.

After further discussion, Chairman Kiley said provision could be made for a "right of entry" with the condition Verizon make a public appearance before the Commission at a subsequent date. He added, "I hate not to give the this person telephone access for safety and health reasons." The Commission agreed to approve a right of entry with the agreement that Verizon appear before the Commission within 60 days.

Jack Arnett moved to approve the right-of-way for installation, operation and maintenance of an underground telephone line on Ferdinand State Forest. Damian Schmelz seconded the motion. Upon a voice vote, the motion was carried.

### **Consideration of a Request by St. Anne's Golf Course for an Easement for Installation and Operation and Maintenance of a Water Line on Selmier State Forest**

John Friedrich from Division of Forestry presented this item. Friedrich addressed the Commission and reminded them this item was presented at the Commission meeting held at Pokagon State Park on June 21, 2001. Friedrich said Brent Hanger, owner of St. Anne's Golf Course, was present to address questions.

Chairman Kiley said this item was on the agenda at the request of the Commission because a pipeline was placed across DNR property without prior approval. Kiley asked Hanger to explain the actions by St. Anne's Golf Course.

Course owner Brent Hanger explained, "We entered DNR property unintentionally and truly are apologetic for taking up the time for this process. We installed a water line approximately one mile from the golf course down a county road for the duplicate uses of a public fire hydrant system for the volunteer fire department and access to replacement water for an irrigation pond on St. Anne's. We unintentionally encroached on the Selmier State Forest property line down a gravel road. We thought we were not on state property."

Hanger said St. Anne's Golf Course has had a great relationship with Selmier State Forest and with John Friedrich and hoped to continue the relationship. He said, "We don't expect to be treated any differently than any other individual asking for this easement use, and truly regret that we had to go through this process. We are not disrespectful of the process that protects state forest property. We respect that deeply. I can only ask that you accept our apology and grant us use of the easement and am certainly willing to pay those permitting fees for easement uses comparable to what we've done. The magnitude of where we crossed, or how we crossed, or how far we crossed I guess is irrelevant. We didn't think we were encroaching."

Rick Cockrum said, "The perception that I got from the June meeting was you asked for the permit, chose to go a different route and then basically ignored the permitting process and then went the original route. If that is not the case, I'm prepared to move to accept the staff recommendation, permit it retroactively in lieu of the fee in exchange for the dry hydrant, if you're comfortable with that."

Rick Cockrum moved to approve the construction of the easement for the installation, operation and maintenance of the water line on Selmier State Forest. Damian Schmelz seconded the motion. Upon a voice vote, the motion was carried.

Chairman Kiley added, "I don't want you get the impression that the Commission is picking on you, but the Commission does not take lightly the installation of facilities across State property without the benefit of a permit." Hager responded, "truly without taking up anymore of your time, I'm very sincere about what we've done, and we thank you."

## **BUREAU OF RESOURCE MANAGEMENT**

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

#### **Consideration of Hunting, Fishing and Trapping License Fee Increases**

Glen Salmon, Assistant Director of the Division of Fish and Wildlife, presented this item. Salmon explained the recent state legislation authorized the Commission to raise fees above the minimums set by statute. He said, "we are very thankful to the General Assembly for taking that action. We think that over the long run it will help to keep us from having to raise license fees in such a large amount in the future" in any one year.

Salmon explained the Division of Fish and Wildlife and the Division of Law Enforcement are both funded by the Fish and Wildlife Fund. Salmon quoted a state statute, which reads, "funds shall be used for purpose of protecting and propagating game fish and birds in the State and paying for the operating expenses from those two divisions." Revenue comes from a variety of sources but primarily for the sale of hunting and fishing licenses. Salmon said "this arrangement is not by accident. That is the way the North American Conservation Model was established decades ago, and it was done that way all across the country. Sportsmen from all across the country paid for the protection and management of those fish and wildlife resources. The concept was fairly straightforward. People that used the wildlife resources would pay for their protection

and management. Indiana passed its first law to protect wildlife back in 1857. Fines were established if the Fish and Games laws were broken, but it wasn't until the early 1900s when an actual hunting license was created. The fee was one dollar a year and the money raised went into the permanent Fish and Game Protection Fund. Over the years the rules and regulations governing the taking of wild animals have changed, but the guiding principles of the sportsmen funding the management and protection of these resources has remained constant and mirrors the rest of the nation. Federal funds became a major factor in the 1930s. Indiana now receives about \$6 million dollars a year in Federal Aid which are deposited into the Fish and Wildlife Fund.”

Salmon said the DNR takes the proposal for “rate license fees very seriously. It is not something we do unless we consider it to be absolutely necessary. For the record, license fees have been raised numerous times since that first license fee was established back in 1901. In recent history, fees were raised to keep pace with operating expenses for the two divisions back in 1966, six years later in 1972, and then eight years later in 1980. The last fee increases went into effect in 1988. That's 14 years without a license fees being raised, and the cost of doing business has continued to rise each year.”

Salmon continued, “I think everyone here understands the effects of inflation. Our society has increased significantly over the last 14 years, and so have we. In 1988 we only had a handful of computer systems, virtually no ADA accessible boat ramps or fishing areas. Many of our property offices and check stations that our biologist and conservation officers worked out of were nothing more than old barns. Today we have computers in every office and a number of new check stations. We're working hard to make our facilities accessible to all outdoor enthusiasts. These changes were necessary to keep up with public expectations and changes in society, and, yes, these changes have cost money.”

Salmon said, “What I want to point out today is that when an outdoor person bought that hunting, fishing or tracking license back in 1988, the cost was \$8.75. If that individual went out to purchase another license five years later, the cost was still \$8.75, and five years later, it was still \$8.75. While the cost of living all around was dramatically on the rise, the cost of a license to go out to hunt, fish or trap didn't change. How is that possible? How is it possible that since 1988, we have been able to add a long list of new opportunities for the outdoor enthusiasts? We have new properties such as Splinter Ridge, Blue Grass, Chinook Fish and Wildlife areas, new shooting ranges; new ADA accessible headquarters buildings at Atterbury, Kankakee, and Driftwood State Fish Hatchery. We've built over 50 new boat ramps, many of those ADA accessible. We've developed a world class fishery on the St. Joseph River. We developed Go Fish IN, new education programs, acquired thousands of acres of new land for hunting and we now provide hunter education courses for all you that buy a hunting license, just to name a few. How is it possible that we've done that without raising licenses a dime? The answer is fairly simple, but not one that is common knowledge to the general public. Several years ago the decision was made to increase the General Fund money going into the Fish and Wildlife Fund. That was added to the amount of money that came in from selling licenses. Every two years, during the general budget cycle, additional general fund money was added to make sure we had enough in our operating budget to fund Division of Law Enforcement and Division of Fish and Wildlife.”

Salmon added, "Now we're not going to look back today and questions any past decisions. I will say for the sporting public, the people who bought hunting and fishing licenses, that was a pretty good deal to keep that constant for about 14 years. They have received new facilities, more programs, and more recreational opportunities without having to pay more in license fees. In no way am I implying to sportsmen and women have not been paying their fair share. They are the very backbone to conservation in America. I'm just saying that up until now, we haven't had to ask them to pay more money. Any financial shortfalls for the last several bienniums were made up by using additional general fund dollars. However, this year, due to the State's poor economical forecast, the level of general fund money needed to fund the two agencies just are not available. So we're here today asking that license fees be raised for the first time in 14 years, so we can fund our agencies at the level the public expects. We are just trying to keep pace with what we're doing. We're not adding new facilities; we're not adding new programs, not new initiatives. What we're doing here is asking for money to keep us funded at the same level that we need to keep things going."

According to Salmon, "When we made this presentation to Mr. McCormick's Advisory Council one of the council members referred to this as 'a bitter pill,' and it is a bitter to swallow for the sporting public. But just because it's a bitter pill, doesn't mean it isn't the right medicine. We firmly believe it is."

Salmon explained, "Over 70% of the Division of Fish and Wildlife operating budget go to employee salaries. Law Enforcement's situation is similar. That's a direct reflection of the type experienced dedicated employees we have serving the public. We will tighten our belts another notch to squeeze though this fiscal year to keep our programs available for the outdoor resource users and to fulfill our conservation mission."

Salmon continued, "In the past, when license fees were increased, the public found out about it well after the legislation had been passed by the General Assembly. However, with this request, we have taken a very pro-active approach to letting the public know exactly what we were proposing, and why. We kicked off our fee increase proposal back in June, with a presentation by Director Macklin to the Fish and Wildlife Conservation Committee, an 18 member advisory board with a cross section of the mainly organized conservation groups in Indiana. That committee approved our proposal. We followed up with a special Wild Bulletin and then posted our license fee proposal on our web-site, and began taking the first of over 350 e-mails. Numerous articles have been printed by major newspapers, virtually all in favor of this proposal, and we have spoken on two radio talk shows. We appeared before our Advisory Council at their July 11 meeting and received their approval to bring this issue before you. We then took two additional steps. We sent information packets to all fish and wildlife properties and to all Conservation Officers, and invited the public to drop by any of our offices to make comments. We also held open house at three locations across the State. Staff has devoted substantial time to letting the public have every opportunity to comment on this proposal. I won't stand here before you and say that everyone is wild about this proposal. No one likes to pay more for anything. So, I go back to what I said about the bitter pill. This is what we need to do and we need to do it now. I will point out that of the 1.2 million licenses we sell, we did receive less than 400 comments all together, and of those 400 comments, a great number of those were in favor of the increase. Gregg McCollam will make a presentation. He has the specifics about the proposal. After that we'd like for you to take public



comments, and then vote in favor of this proposal. The resolution also includes language to set an effective date for these fees. That's important because the cost of lifetime licenses is tied to the cost of the annual licenses. Lifetime license rates will increase on the day that license fees are raised. We recommend an effective date of January 1, 2002 so that hunters, anglers and trappers have ample opportunity to purchase a lifetime license at the lower rate. I ask that we swallow this bitter pill at this time, because it is the right medicine for us to continue to protect our state's wildlife resources."

Gregg McCollam, Chief of Operations, handed out literature which consisted of three tables entitled "Proposed Resident Fees Using the Average of Eight Surrounding States as a Base Line; Estimated Fish and Wildlife Fund Balance with No Fee Increase; Estimated Fish and Wildlife Fund Balances with Proposed Fees Using Eight State Average as Base Line with Decreased Expenditures Out of Operating Budgets."

McCollam read and explained the estimated fund balance and revenues for the proposed fee increase, with no fee increase, as well as using an eight state average as base line with decreased expenditures out of operating budgets.

Damian Schmelz asked McCollam if the projection were that the general fund would not increase at all. McCollam said that law already statutorily sets in the projection for this fiscal year and the next. We kind of held everything flat; will the General Assembly help us out with more general fund money next biennium? I'm not able to know that at this moment, so I just kept it flat."

Schmelz then asked, "What's built into the reduction of the two division's expenses budgets as time goes on?" McCollam replied that the two divisions are reduced in the first year, this fiscal year by 1.9 million dollars and said that they are intending to reduce their budgets. "We're looking at cutting back our equipment purchases both in the Division of Law Enforcement and Fish and Wildlife. Schmelz questioned if personnel or salaries would be reduced. McCollam said at the moment there would not be any reduction in personnel, but equipment and out-of-state travel would be limited.

Gregg McCollam continued referring to the table entitled "Proposed Resident Fees Using the Average of Eight Surrounding States as a Base Line." McCollam noted in three of the eight states, a deer or turkey license includes an annual hunting license. "In those three states, in order to take your first deer or turkey, you would need to purchase both a hunting license and a deer or turkey permit." McCollam said some of the comments the Division of Fish and Wildlife received from the public stated it was not equitable to compare that three state's deer license structure to Indiana's. McCollam agreed Indiana does not require an annual hunting permit be purchased along with a deer or turkey license. "Indiana's licensing structure is different from some other states, but when you actually look at the proposed \$24 dollar deer license fee, in order to take your first deer in Indiana, and you compare that \$24 dollars to \$35 dollars in Ohio or \$40 dollars in Kentucky and \$39 dollars to hunt in Tennessee for your first deer, you can see that the proposed fee is fairly comparable for the same opportunity. He said the new enabling legislation *does* allow the Natural Resources Commission to set fees, but *does not* allow them to address changes in licensing structure.

Rick Cockrum asked for clarification of legislative authority to address the fee schedule but not changes in the licensing structure. McCollam replied, "the enabling legislation is just one sentence in Section A, Chapter 11. It allows the Commission to set fees, and they can't decrease fees, but they can set fees in Section A. In Section A, Chapter 11, it basically addresses the fees for resident and non-resident hunting fishing and trapping licenses." Cockrum asked to be given me example of a structural change as opposed to a fee changes. McCollam answered, "a structural change is if we would stipulate that you would have to have a hunting license along with a deer permit in order to hunt deer in Indiana."

Ray McCormick asked if the fee increases were to be passed, would it make sense that a lot of people would rush to purchase a lifetime license before the new fees went into effect. He also had concerns that it would impact future revenues and projections. McCollam answered, "It's possible, in fact, when you raise fees at a considerable rate what would actually happen is we would sell lifetime licenses like we never have before in the last month or so. We get money from the sale of lifetime licenses." McCormick asked if McCollam could elaborate how the fees for the lifetime licenses are used over a period of time. He answered the lifetime license revenue is deposited into the lifetime license dedicated account, and money is transferred annually into the Fish and Wildlife Fund. "At the moment, that amount is approximately one-half million dollars." McCormick asked, "What determines that?" McCollam said it was a formula of 2.5% of the principal, and some percentage of the interest. He said at the moment it was \$478,000. "There are some states that have discontinued the sale of lifetime licenses."

Damian Schmelz asked McCollam if he projected the number of licenses sold would drop due to public resistance. McCollam said the assumptions are the number of licenses sold will drop 7% the first year, and then over a year and a half climb to approximately a 3.5% loss in the 2000 number levels.

Chairman Kiley commented, "The lifetime basic fishing license for \$175 has not increased significantly since they originally offered that particular permit. The original cost of a lifetime fishing license was \$125 dollars, which was over 20 years ago."

Rick Cockrum questioned what the effective date would be for the new license fees. Chairman Kiley replied, "January 1, 2002." McCollam said the 2002 calendar licenses would be available in December 2001.

Chairman Kiley opened the floor for public comments in regard to the proposed license fee increases.

David Delaney, Deer Hunter's Association stated, "Clearly, the Department needs a fee increase. I don't think that really is a question that we should be dealing with. However, on behalf of the Deer Hunter's Association, I have to say a number of things, that the deer hunting increase really is, first of all, not equitable. If you look at a number of issues in regard to the time spent in the field, if you were to look at the amount of resources expended by the department on the management of white-tailed deer; all of those things combined does not provide the equity in regard to the cost of a deer license to the cost of a fishing license, or any of the other licenses that are being proposed."

He added, “Secondly, the representation that an Indiana deer license is equal to the surrounding states, is also a vague, almost a misrepresentation. In Kentucky, for instance, when you buy as a resident, your deer license, it is good for all season. You get to hunt from September 15 through almost all of January, and you get to hunt with whatever weapon you wish to hunt with. In Indiana, you have to buy a deer-hunting license; you have to buy a gun license that is only two weeks long. You then have to buy a muzzleloader’s license, which again is only two weeks long. It is not equitable and it is not comparable in the format that it is. The reality is, the deer license is driving the revenue for the department, and it can’t continue to do that.”

“Thirdly, we’ve talked about General Fund dollars and how sportsmen have gotten such a deal. The reality is, the sportsmen pay for all this access and all this management for all the citizens of Indiana.

Delaney concluded, “On behalf of the Indiana Deer Hunters Association, we are in favor of a license fee increase. However, we don’t believe the deer license fee increase is equitable or is fair.

Paula Yeager, Director of the Indiana Wildlife Federation commented, “Our membership does support the fact that the resources cannot be sustained if we do not have license fee increases. We do recognize that there are problems with the deer hunting licenses, the way that structure has been formulated, and we do understand that revisions need to be made, and concerns are reflected by our membership also in this matter. We also feel that the commercial fishing licenses and other commercial licenses in Indiana do need to be looked at for review, too. We hope that these fee increases come to fruition for the Department. Since we are ranked 38<sup>th</sup> in the United States as far as what we spend on natural resources, we really need to address this issue and look at this carefully.”

Chairman Kiley asked Yeager to refresh the Commission as to the constituency of the Indiana Wildlife Federation. Yeager responded the Indiana Wildlife Federation is comprised mainly of members of conservation clubs throughout the State of Indiana. She said the IWF has a volunteer board of directors. She reflected most of the members are sportsmen, hunters, and fishermen, as well as constituents and businesses that care about resources and conservation management in Indiana.

Dick Mercier of the Indiana Sportsmen Roundtable commented, “We realize that the State needs the need and support of this license fee immediately.” His organization has been asking for such an increase in sporting license fees for more than seven years. He said that he believes “the DNR still needs to continue to educate the people of the State of Indiana on what the fees are used for and how they are used.” He agreed there are some inequities in the way the fee structure has been set up. “We realize, of course, that this is not a matter for you as the Commission, but is a legislative matter and we will bring it up before the Summer Study Committee. We ask that you approve these increases promptly so the Division of Fish and Wildlife may begin the process of having licenses printed for the year 2002.”

Chairman Kiley said the Commission was provided a “very well put together” booklet from the Division of Fish and Wildlife with all of the comments that were received. There were more than 300 citizen comments, and the Commission members “were very

much aware of the public's sentiments." He concluded, "this is not a matter we take lightly, and we appreciate the information we've been given by the Fish and Wildlife people. It helps us get a pretty good picture of the public's sentiments are in regard to this issue."

Chairman Kiley concluded by thanking the public and the press for their attendance and participation.

Jerry Miller moved to approve the proposed hunting, fishing and trapping licenses fee increase. Jack Arnett seconded the motion. Upon a voice vote, the motion was carried.

## **LEGAL PROCEEDINGS**

### **NRC DIVISION OF HEARINGS**

**Consideration of the Findings of Fact, Conclusions of Law with Nonfinal Order of Panel of Administrative Law Judges in the matter of *Steven T. Gerber v. Department of Natural Resources*. Administrative Cause Number 00-107L. (Claimant's objections attached.)**

The Chairman reported this item withdrawn on the motion of Steven Gerber.

**Consideration of Report of Hearing Officer, Including Findings and Proposal to the Natural Resources Commission as to Its Recommendations to the U. S. Army Corps of Engineering in the matter of *Petition for Rate Increase by the Lake Monroe Sailing Association*. Administrative Cause Number 01-095P.**

Jennifer Kane, Hearing Officer, presented this item. She said the petition by the Lake Monroe Sailing Association was governed by a nonrule policy document approved by this Commission in 1998. The purpose of the document was to implement an informal process for the administrative review ratemaking recommendations for resort and marina facilities operated on properties where the DNR holds a long-term lease from the U.S. Army Corps of Engineers. Kane said, unlike an AOPA case, the Commission would make a recommendation rather than a final agency decision. Authority for the final decision on rates rests with the Army Corps of Engineers.

Kane said the Lake Monroe Sailing Association requested a facility rate increase of 3% increase for the 2002 boating season. The Department analyzed comparable facilities to compare rates with those sought by Lake Monroe Sailing Association. She said Gary Miller of DNR's Division of State Parks and Reservoirs assembled schedules of rates at other marinas included in the report. The Department found that "facilities similar to Lake Monroe Sailing Association show that generally, the rates charged are within the range of other marinas that offer open, seasonal slips. Kane said the Department supports the 3% rate increase, and the hearing officer concurred.

Kane stated the Lake Monroe Sailing Association requested that the 3% rate increase also apply to the proposed new slips. Miller made a separate recommendation with respect to the rate increase for the proposed slips. "The rate increase was approved in the 2001

boating season to establish a benchmark for these slips, if installed. However, these slips have not yet been undertaken. The Department will not address these slips until they have been installed, or installation is certain to be completed.” The Hearing Officer concurred.

Kane said regarding this item, the Commission would 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 lessee. She said that the fees submitted should not be excessive when compared to fair market rates charged by operators of other similar privately owned resort developments comparable to the project in the area. Kane said the rates sought by the Lake Monroe Sailing Association, Inc. for the existing facilities should be recommended to the U. S. Army Corps of Engineers for approval.

Rick Cockrum asked if the Association was a nonprofit organization. Gary Miller from Division of State Parks and Reservoirs replied in the affirmative.

John Goss questioned whether Lake Monroe Sailing Association requested increases every year. “Three percent obviously isn’t going to hurt anybody, but we have to go through the process every year?” Goss suggested that a future increase request encompass the next three years. Miller responded, “the process allows for a yearly request to the Department. Not all the marinas take the option of doing yearly requests.” John Davis asked Miller if he had spoken with the Corps of Engineers about multi-year increases. Miller said, “they are probably in favor of a multi-year program as long as the Corps is comfortable where the marina stands right now. The Commission has granted multi-year on other issues, not marina issues.”

Rick Cockrum asked if there were any financial statements on the Lake Monroe Sailing Association. Miller explained that Lake Monroe Sailing Association sends in yearly reports on sales and are not required under the long-term lease to present DNR with liability statements or financial statements.

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

**Consideration of Report of Hearing Officer, Including Findings and Proposal to the Natural Resources Commission as to Its Recommendations to the U. S. Army Corps of Engineering in the matter of *Petition for Rate Increase by Kent’s Harbor*. Administrative Cause Number 01-097P.**

Jennifer Kane, Hearing Officer, presented this item. She stated the petition by Kent’s Harbor was also governed by the nonrule policy document approved by this Commission. She explained that the requested rate increase would be for the 2002 boating season. Kane said Kent’s Harbor requested: To charge slip owners that have boats 35 feet or larger or boats that require more than a single 30 amp shore power electric receptacle, for actual electrical usage billings in any month that exceeds \$20. The Petitioner also requested an approximate 9% increase to “rack rates” for lodging.

Kane said Kent Reineking, President of Kent's Harbor Marina, offered evidence at the public hearing that "since 1997 electrical usage has increased for larger size boats at Kent's Harbor, and there is a tremendous variance in electrical usage from boat to boat." She said Reineking explained the newer boats have more electrical appliances than older boats, and "it used to be that the boats would use other types of fueling, such as LP gas, solar or battery power. Boats smaller than 35 feet just do not generally use enough electricity to support charging an electrical usage fee. Just increasing the slip rate to include higher electrical usage would not encourage energy conservation."

Kane noted the main concerns regarding the requested increase were the integrity of the meter readings and the process for billing. She said Reineking employed a trained and competent staff that would read the meters, and he would also offer slip holders a venue to discuss their electric billing if they perceived an error. Reineking said he had not decided on the billing process, but he was willing to work with the slip holders.

Kane said the Department analyzed facilities to compare rates with those sought by the Kent's Harbor for the 2002 boating season. She said Gary Miller analyzed rates at other marinas. Kane said Miller noted there is a trend across the country to charge for electric or some form of electric surcharge. In Miller's analysis he also noted this change at Kent's Harbor would promote energy conservation. The hearing officer concurred. Kane explained, "in essence, the slips at Kent's Harbor currently have a \$20 electrical usage per month allotment built into the slip fee. If a slip owner uses more than \$20 per month, the user will be charged for the actual electrical usage."

Kane said Kent's Harbor also requested an approximate 9% increase in "rack rates" for lodging. Kane said the proposed rack rates for lodging fall well within the region and national average daily room rates (ADR) for similar lodging types as stated by the American Hotel and Lodging Association publications. Kane said the rates sought by the Kent's Harbor for the existing facilities should be recommended to the U. S Army Corps of Engineers for approval.

Rick Cockrum asked whether the \$20 was a flat fee for all slip holders. Gary Miller responded, "Most marinas do not give any amount of electricity free or the use of electricity may be included in the slip fee." Slip holders at Kent's Harbor would have a \$20 per month electrical usage built into the slip fee. If a slip holder uses more than \$20 per month, the slip holder will be charged for the actual electrical usage over \$20.

Jerry Miller moved to approve the report and recommendation for rate increase request by Kent's Harbor to the 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 and Proposal to the Natural Resources Commission as to Its Recommendations to the U. S. Army Corps of Engineering in the matter of *Petition for Rate Increase by Patoka Lake Marina, Inc.* Administrative Cause Number 01-096P.**

Jennifer Kane, Hearing Officer, presented this item. The petition by Patoka Lake Marina was also governed by the nonrule policy document approved by this Commission. She

said the Department of Natural Resources operated the site of the Patoka Lake Marina until the 1998 boating season. From 1998 forward, management has rested with the private sector, where there is an expectation of reasonable profit. Patoka Marina's last rate increase was for the 1999 season. It has been three years since a rate increase has been granted. In this instance, Patoka Marina requests a 15% across the board rate increase.

Kane said that there were several comments on the petition received prior to the public hearing; however, no member of the public attended the hearing. The comments reflected varying levels of dissatisfaction with rate increase. Those comments are included in the report to support a complete administrative record, but the focus of the analysis was properly upon rates charged for comparable facilities. The nonrule policy states the fees submitted should not exceed fair market rates charged by operators of other similar privately owned resort developments that are comparable to Patoka Lake Marina.

Kane said Miller provided an analysis of comparable facilities to compare rates with those sought by the Patoka Marina for the 2002 boating season. Miller's analysis can be found in Exhibit A. Kane provided a copy of the exhibit to the Commission. She said Miller's fiscal analysis was essentially unrefuted. For the most part, rates proposed by the Department for the Patoka Marina are appropriate and comparable to similar facilities. She said that the Department recommends no increase in surcharge for: (A) wet winter storage (current rate \$250.00); (B) slipcovers for slips up through 28 feet (current rate \$700.00); and (C) slips 40 feet and above (current rate \$1, 500.00), and the hearing officer concurred.

Kane said the Department also recommended rate increases that range from 7.2% to 16.6%. She pointed out the notice by Patoka Marina (Exhibit B) informed the public rates could increase by 15%. Kane said any approved increase exceeding 15% might not reasonably be anticipated and could establish an inappropriate precedent. Accordingly, none of the rate increases should exceed 15%.

Kane urged the Commission to recommend to the U. S. Army Corps of Engineers that the petition for rate increases be granted as recommended by the Department in Exhibit A, with the exception of those slips listed on page six of the report, as well as the recommendation for no surcharge increase for wet winter, (A) wet winter storage (current rate \$250.00); (B) slip covers for slips up through 28 feet (current rate \$700.00); and (C) slips 40 feet and above (current rate \$1, 500.00). Slip covers for slips up through 28 feet, and (C) slips 40 feet and above (current rate \$1, 500.00).

Jane Anne Stautz moved to approve the report and recommendations to the Army Corps of Engineers for Patoka Lake Marina rate increases by. Jerry Miller seconded the motion. Upon a voice vote, the motion was carried.

**Consideration of Report of Hearing Officer, Including Findings and Proposal to the Natural Resources Commission as to Its Recommendations to the U. S. Army Corps of Engineering in the matter of *Petition for Rate Increase by Pleasure Craft Marina*. Administrative Cause Number 01-098P.**

The Chairman reported this item withdrawn at the request of Pleasure Craft Marina.

**Consideration of Recommended Report of the Natural Resources Commission in the matter of the *Petition for the Creation of the Wea Creek Conservancy District*. Administrative Cause Number 01-102C (Tippecanoe Circuit Court Cause Number 79C01-0102-MI-7).**

Jennifer Kane, Hearing Officer, presented this item. Kane said the Wea Creek Conservancy District is proposed to be established for the purposes of:

- (1) providing for the collection, treatment, and disposal of sewage and other liquid wastes;
- (2) providing water supply, including treatment and distribution for domestic, industrial, and public use;
- (3) improving drainage; and
- (4) developing forests, wildlife areas, parks and recreation facilities if feasible in connection with beneficial water management.

Kane explained the Tippecanoe Circuit Court referred the petition for the creation of the Wea Creek Conservancy District to the Commission to make a determination, recommendation, and report to the Tippecanoe Circuit Court as to whether the proposed district for each purpose:

- (1) appears to be necessary.
- (2) holds promise of economic and engineering feasibility.
- (3) Seems to offer benefits in excess of costs and damages for purposes other than the following: A. Water supply. B. Storage of water for augmentation of stream flow. C. Sewage disposal.
- (4) Whether the public health will be served immediately or prospectively by the establishment of the district for any of the following purposes: A. Water supply. B. Sewage disposal. C. Storage of water for augmentation of stream flow. D. Any combination of these purposes.
- (5) Proposes to cover and serve a proper area.
- (6) Could be established and operated in a manner compatible with established: (A) conservancy districts; (B) flood control projects; (C) reservoirs; (D) lakes; (E) drains; (F) levees; and (G) other water management or water supply projects.

Kane said the proposed conservancy district would encompass a “conservation development” called “Bren Bella,” including approximately 400 to 500 homes within the boundaries. Also included within the development are a golf course, a bed and breakfast, and a restaurant. Bren Bella would incorporate small parks, green space, and open areas in connection with storm water management. The proposed district would not own the golf course. The conservancy district and its board would perform a role similar to a homeowners association; however, the board would have the ability to acquire the expertise to maintain the open areas and the infrastructure.



Kane said IDEM approved the public water system that will serve the proposed district, and the State Department of Health approved the cluster wetlands sanitary sewer system. The treated wastewater will be used in the drip irrigation system within the golf course.

Kane said the public hearing was held on July 3, 2001. She said Alan Hux, attorney for Petitioner, presented sufficient evidence in regards to the proposed purposes to make findings. She explained, however, that for the purposes of (3) improving drainage; and (4) developing forests, wildlife areas, parks and recreation facilities if feasible in connection with beneficial water management, a finding regarding whether the purposes seem to offer benefits in excess of costs and damages could not be made. Kane suggested that the proposed district provide a cost-benefit ratio to the Tippecanoe Court as the Bren Bella development proceeded.

Kane explained the Commission is currently authorized to provide analyses described in IC 14-33-2-17 and IC 14-33-3-33 but nothing more. The statutory structure does not anticipate the Commission will approve or decline the petition to establish the conservancy district or even approve or decline a purpose for which the conservancy district is to be established. This authority rests exclusively within the Tippecanoe County Circuit Court. Kane recommended approval of the report as the Commission's report to the Tippecanoe Circuit Court.

Damian Schmelz moved to approve the Hearing Officer's report and findings regarding the Petition for the Creation of the Wea Creek Conservancy District. Terri Moore 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 13 Governing Water Well Drillers to Authorize Use of Corrugated Fiberglass Casing in Bucket Wells. Administrative Cause Number 01-033W.**

Jennifer Kane, Hearing Officer, presented this item. She said a public hearing was held on July 24, and public notice was given in the INDIANAPOLIS STAR and published on the DNR Web Calendar. No members of the public appeared for the hearing nor were there any written comments received.

Kane said the proposed language amends the existing rule to incorporate the use of new and proven technology in the construction of bucket wells. She recommended the proposed language be given final adoption as proposed. Mark Basch was present from the Division of Water to answer any questions.

Rick Cockrum moved to approve amendments to 312 IAC 13 that authorize the use of corrugated fiberglass casing in bucket wells. Jerry Miller seconded the motion. Upon a voice vote, the motion was carried.

**Consideration as to Preliminary Adoption of Amendments to the Idle Speed Zone on Geist Reservoir in an Area Known as Devil's Elbow in Marion County. Administrative Cause Number 00-240L.**

Steve Lucas presented this item. He said that for consideration was a proposal to amend an existing idle speed zone on Geist Reservoir in an area known as Devil's Elbow. The proposal followed a citizen petition. He said State Boating Law Administrator, Sam Purvis, personally inspected the site, and the description was prepared in consultation with the Division of Outdoor Recreation and Mike Martin using GPS technology. Lucas demonstrated a topographic map depicting the change and said he expected the public debate on the proposal to be "lively."

Hal Harlan, who spearheaded the citizen petition for the rule change, was present to answer questions. He expressed appreciation for the Commission's attention to the issue and expressed hope the change would be approved for preliminary adoption.

Jane Anne Stautz moved to give preliminary adoption to the amendments to 312 IAC 5-9-2 that will govern watercraft operations on Geist Reservoir beginning January 1, 2002. Jerry Miller seconded the motion. Upon a voice vote, the motion carried.

**Consideration of Report of Hearing Officer Concerning the Disposal of an Interest and the Dedication of Additional Tracts in the matter of Amendments to the Portland Arch Nature Preserve in Fountain County. Administrative Cause Number 01-104N.**

Steve Lucas, Hearing Officer, presented this item. He said for consideration was a proposal for an equal acreage exchange of small parcels located on the edge of Portland Arch Nature Preserve in Fountain County. He said the Division of Nature Preserves took very seriously its statutory responsibilities with respect to dedicated preserves and was generally unfavorable to property exchanges. In this instance, however, the areas to be removed from the preserve were understood in good faith by the DNR (and before acquisition from The Nature Conservancy by The Nature Conservancy) and the adjoining property owner to be outside the nature preserve. A recent professional survey disclosed this understanding was in error. The proposal before the Commission would correct the error and even enhance modestly the stature of the nature preserve. Areas to be added to the preserve included roadway frontage, which would now be protected and unavailable for development.

Lucas said a public hearing on the proposal was held on July 20, 2001 in the preserve near Fountain. About ten persons other than agency staff appeared for the hearing, and all voiced support for the proposal.

Damian Schmelz moved to give final approval to the disposal and like exchange of acreage and boundary adjustment to the Portland Arch Nature Preserve, including the approval of Amended Articles of Dedication, as proposed by the Division of Nature Preserves. Steve Cecil seconded the motion. Upon a voice vote, the motion carried.

**ADJOURNMENT**

At 12:35 p.m., the meeting adjourned.

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## **FUTURE MEETINGS**

September 18, 2001, 7:00 p.m. (Oakwood Inn & Conference Center, Syracuse, Indiana)

October 23, 2001, 10:00 a.m., (The Garrison, Ft. Benjamin Harrison State Park,  
Indianapolis, Indiana)

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