

NATURAL RESOURCES COMMISSION
Meeting Minutes, July 18, 2017

MEMBERS PRESENT

Bryan Poynter, Chair
Jane Ann Stautz, Vice Chair
Cameron Clark, Secretary
Bruno Pigott
Jennifer Jansen
Mark Newman
Jeffrey Holland
Phil French
Patrick Early
Doug Grant
R. T. Green
Robert Wright

NATURAL RESOURCES COMMISSION STAFF PRESENT

Sandra Jensen	Jennifer Kane
Dawn Wilson	Scott Allen

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

John Davis	Executive Office
Chris Smith	Executive Office
Danny East	Law Enforcement
Terry Hyndman	Law Enforcement
Linnea Petercheff	Fish and Wildlife
Amanda Wuestefeld	Fish and Wildlife
Dan Bortner	State Parks
Terry Coleman	State Parks
Phil Bloom	Communications
Marty Benson	Communications
John Bacone	Nature Preserve
Mark Basch	Division of Water
Allison Mann	Division of Water

GUESTS PRESENT

Victor Polen	Lynn Burry	Shelly Wakefield
Kay Nelson	Tammy Mebane	Mason Clark
Dean Parr	Emily Wood	Stacy Cachules
Herb Higgins	Andrew Stautz	Erin Huang
Andrew Pappas	Barb Simpson	

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 9:59 a.m., EDT, on July 18, 2017 at Fort Harrison State Park, Garrison, 6002 North Post Road, Ballroom, Indianapolis. With the presence of 12 members, the Chair observed a quorum.

APPROVAL OF MINUTES

The Chair asked for a motion for the approval of the Commission's May 16, 2017 minutes.

Robert Wright moved to approve the minutes of the meeting held on May 16, 2017, as presented. Doug Grant seconded the motion. Upon a voice vote, the motion carried.

REPORTS OF THE DNR DIRECTOR, DEPUTIES DIRECTOR, AND THE CHAIR OF THE ADVISORY COUNCIL

Director Cameron Clark provided his report. The Director stated that the Northeast Indiana Conservation Fundraiser Banquet was held in Fort Wayne on May 25, 2017 and raised over \$270,000.

The Director stated that the Department and other emergency response agencies are busy with water rescues due to high water around the State. The Director stated that the Department is working to communicate the dangers associated with flooded rivers and dams. He commended the Department's conservation officers in their efforts regarding high water rescues. The Director noted that there have been 27 drownings in 45 days.

The Director noted that Bob Vollmer, a surveyor with the Department, recently celebrated his 100th birthday. He stated that Vollmer has worked for the Department for over 50 years and continues to work in the field.

The Director reported that for the third year in a row the International Bowhunting Organization (IBO) held one leg of the National Championship Triple Crown at the Fairfax State Recreation Area on June 16 through June 18, 2017. He noted that the IBO National Championship will return in 2018.

The Director stated that the Division of Communications hosted the Association of Conservation Information annual meeting at Brown County State Park. He noted that there were 26 states represented. The Director stated that the Department recently held the Capital Campout at the Fort Harrison State Park, and noted that Governor Holcomb had lunch with the campers.

John Davis, Deputy Director for the Bureau of Lands and Cultural Resources, provided his report. Davis stated that beaches have been closed due to high water at Mississinewa Lake and at Salamonie Lake.

Davis stated that the Department is debriefing the Ford Hoosier Outdoor Experience Event and planning for next year. Davis noted that the State Fair will begin August 4 and run through August 20, 2017. He stated that the Department properties have set record attendance.

Davis offered notification that Steve Morris, the Director of the Division of Outdoor Recreation, will be retiring. He stated that Mike Molnar, the Program Manager, Lake Michigan Coastal Program for the Division of Nature Preserves, will be resigning as well.

Chris Smith, Deputy Director of the Bureau of Water Resource and Regulation, reported that the Division of Entomology and Plant Pathology has partnered with the Indiana Department of Health on a Lyme Disease public awareness campaign. He noted that the campaign focuses on prevention.

Smith stated that the Division of Historic Preservation and Archaeology has been working with Hamilton County due to the discovery of a Native American artifact, a bannerstone, during the construction of a roundabout. He said that the bannerstone was turned over to the Indiana State Museum and noted that is a debate among archaeologists regarding the purposes of bannerstones. The construction area will be monitored should any additional artifacts be discovered.

Smith stated that Mike Neyer, Director of the Division of Water, retired at the end of June, 2017. Neyer had been with the Department for 43 years. Smith said the position has posted. Smith noted that the vacant Division of Oil and Gas Director position should be filled soon.

Patrick Early, Chair of the Advisory Council, reported that the Advisory Council has not met since January 11, 2017.

The Chair introduced and welcomed Dr. Jeffrey Holland, representative of the Indiana Academy of Science, as the newest Commission member.

Dr. Holland stated that he is a Professor of Entomology at Purdue University and the Chair of the Academy's Natural Areas and Biodiversity Committee. Dr. Holland said he specializes in landscape ecology. "I do research mainly on bugs, maps, and math." He explained that the Academy is an entity that promotes science and scientific reasoning.

The Chair asked Danny East, the Director of the Division of Law Enforcement, to comment on the number of high water rescues.

East stated that the Department's conservation officers have participated in approximately 147 high water rescues.

The Chair recognized and thanked the Division of Law Enforcement for their efforts in keeping citizens and public waters safe.

The Chair recognized Lynn Burry with the Indiana Wildlife Federation (IWF) Board of Directors.

Burry introduced two new IWF board members. Burry stated that Emily Wood was chosen as the new Executive Director and Stacy Cachules as President. He stated that Wood was previously with Keep Indianapolis Beautiful and Cachules is the current Associate Director of operations

with the Central Indiana Land Trust. Burry stated that he is currently acting as the Policy Committee Chairman for the IWF.

CHAIR, AND VICE CHAIR

Updates on Commission and AOPA Committee

Jane Ann Stautz, Chair of the Commission's AOPA Committee, noted that the AOPA Committee has not met since its last meeting on May 16, 2017.

DNR, EXECUTIVE OFFICE

Consideration and identification of any topic appropriate for referral to the Advisory Council

No items were identified for referral to the Advisory Council.

DNR, DIVISION OF NATURE PRESERVES

Consideration of the dedication of the Lucas Hollow Nature Preserve in Brown County

John Bacone, Director of the Division of Nature Preserves, requested this item be tabled for further research.

The Chair approved the deferral of this item. He acknowledged that Tammy Mebane from the Hoosier Mountain Bike Association indicated her intention to address the Commission regarding this item.

Mebane indicated that she would reserve comment until the dedication is presented at a future Commission meeting.

Consideration of the dedication of the Ravinia Seeps Spring Nature Preserve in Morgan County

Bacone presented this item. He stated that the proposed Ravinia Seeps Spring Nature Preserve is a unit of Morgan-Monroe State Forest. Bacone stated that the nature preserve is a unique valley with gravel, sand, and other outwash materials supporting several unique species of plants and wildlife. He stated that there are prairie fens on the property with box turtles and other wildlife present. Bacone stated that the State of Indiana, through the Department's Division of Forestry owns the land.

Holland asked if the proposed nature preserve was one of the areas adjacent to one of the corridors of the Hardwood Ecosystem Experiment.

Bacone replied in the negative. He explained that the proposed nature preserve is a new unit, an outlier, north of the main Morgan-Monroe State Forest complex.

Robert Wright moved to approve the dedication of the Ravinia Seeps Spring Nature Preserve. Vice Chair Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

DNR, DIVISION OF WATER

Consideration of preliminary adoption of amendments to 312 IAC 6.2 governing Great Lakes Basin Water Management; Administrative Cause No. 15-076W

Mark Basch, Division of Water, presented this item. Basch stated that the proposed amendments to 312 IAC 6.2, govern the management of ground and surface water within the Great Lakes Basin. Basch stated that the proposed rule amendments are in response to the *Petition to Change Great Lakes Compact Implementation Permanent Rule (LSA #13-135)* (“Petition”) submitted to the Commission, by Save the Dunes, Natural Resources Defense Council, the National Wildlife Federation, Northwest Indiana Forum, and the Alliance for the Great Lakes.

Basch stated that 312 IAC 6.2 assists with Indiana’s implementation of the Great Lakes-St. Lawrence River Basin Water Resources Compact (“Compact”) under IC 14-25-15. He stated that 312 IAC 6.2 governs registration and permitting of water withdrawal facilities; a voluntary conservation and efficiency program for water withdrawal facilities; as well as mandatory conservation and efficiency programs for new and increased withdrawals, diversions, and consumptive uses.

Basch stated that this particular program requires any water withdraw facility of either ground or surface water with the capacity to pump greater than 100,000 gallons per day to register with the Department and to report its water use annually. He stated that currently there are 4,105 registered water withdraw facilities in Indiana with approximately 25% of the water withdraw facilities located within Indiana’s portion of the Great Lakes Basin. Basch stated that approximately 2.5 trillion gallons of water were reported to have been withdrawn by water withdrawal facilities state-wide in 2015. He added that 29% of that total water withdrawal, or 743 billion gallons, was withdrawn from the Great Lakes Basin.

Basch stated that the Department evaluated the Petitioners’ suggested rule revisions and would recommend the addition of new definitions for “baseline volume abandonment”, “discontinued significant water withdrawal facility”, and “inactive significant water withdrawal facility”.

Basch stated that in addition to new proposed definitions, it is recommended that the “salmonid stream” list be reviewed, evaluated, and revised. Basch stated that Department staff, in consultation with the U.S. Fish and Wildlife Service did a review of the salmonid stream list as required under the Compact.

Basch stated that the Department is proposing amendments to 312 IAC 6.2-2-3(b) to allow for sale or transfer of all or a portion of a facility's baseline volume of water within the Great Lakes Basin. Basch stated that 312 IAC 6.2-2-3(g) currently provides for the relinquishment of a facility's baseline volume when it is subject to "baseline volume abandonment" or is considered to be a "discontinued significant water withdrawal facility." He stated that basin-wide conservation and efficiency objectives were brought forth out of the statute (the Compact's Resolution 5) for the amendments proposed at 312 IAC 6.2-2-7(a).

Basch noted that the petitioners have reviewed the proposed amendments. He noted that the proposed amendments were also reviewed by the Advisory Council in 2016. Basch concluded and recommended the Commission give preliminary adoption to the proposed rule amendment package.

The Chair recognized Kay Nelson, Director of Environmental Affairs at the Northwest Indiana Forum ("Forum") Nelson stated that the Forum is a regional economic development organization with over 130 members. She stated that many of the Forum's members are located in the Northwest Region of Indiana region because of their dependency on water and the maritime shipping industry.

Nelson stated that the Department provided the Forum, during the early days of the Compact, with a wonderful tool for the water registration program. "Of the eight Great Lake States and two [Canadian] Provinces, no other parties to the Compact had that level of detail available to them as we began those negotiations. And I compliment whoever thought of doing that back in the '80s, because it made our lives a lot easier, theoretically." She noted that during the early negotiations of the Compact there was a perception that the Forum's represented industries were wasteful with water withdraw from Lake Michigan. She stated that because of this early mindset Bethlehem Steel, which is now ArcelorMittal Burns Harbor, invited members of the negotiation team from the eight States and two Provinces to tour its facilities. Nelson stated that ArcelorMittal Burns Harbor impressed upon the negotiation team that conservation and efficiency were important economically and that they supported environmental stewardship.

Nelson stated that once the Forum began reviewing the members' grandfathered water registration numbers, based on the members' efficiency and conservation with a reduction in the actual water withdraw from Lake Michigan, "we realized we had a significant economic development tool available to us and that is our excess water capacity." She stated that the large industries that pull large volumes of water from Lake Michigan also have a large amount of underutilized property within their facilities' footprint. Nelson stated that the Forum's members recognize that with the statutory change allowing facilities to transfer their excess withdraw capacity creates opportunities for the State of Indiana and individual corporations to market their extra available property for use by those who may, in fact, need large amounts of water.

Nelson stated that the Forum appreciates the proposed rule amendments. "We worked closely with the environmental stakeholder groups. Indiana was the only state...that had a joint resolution of support for the Compact signed onto by industry as well as environmental stakeholders." She commented that the Department's staff "has been fabulous over the decades

that this process has taken place. You are lucky that Mark [Basch] and Jim [Hebenstreit] haven't left yet so we can get this finished." Nelson thanked the Commission and Department, and stated that the Forum supports the preliminary adoption of the proposed rule amendments.

Bruno Pigott moved to give preliminary adoption of amendments to 312 IAC 6.2, governing Great Lakes Basin water management. Cameron Clark seconded the motion. Upon a voice vote, the motion carried.

DNR, DIVISION OF FISH AND WILDLIFE

Consideration of amendments to nonrule policy document, Free Sport Fishing Days Non-Rule Policy (Information Bulletin #59); Administrative Cause No. 17-073D

Linnea Petercheff, Division of Fish and Wildlife, presented this item. She stated that the Division is requesting an amendment to the nonrule policy document, Free Sport Fishing Days (Information Bulletin #59) for future years. Petercheff explained that the Division is requesting the establishment of free fishing days as the: (1) first full weekend in June, which matches up with the National Free Fishing Weekend; (2) third Saturday in April, the week before the stream trout season opens; and (3) third Saturday in May, which is Kids to Parks Day and Armed Forces Day. Petercheff said the proposed dates also correspond with Go FishIN, Family Learn to Fish workshops. She stated that the free days are early in the year, to encourage people to go fishing, and then to purchase a license to fish later in the year.

R.T. Green moved to approve proposed amendments to nonrule policy document, Free Sport Fishing Days Non-Rule Policy (Information Bulletin #59). Robert Wright seconded the motion. Upon a voice vote, the motion carried.

Consideration of repeal of nonrule policy document, Information Bulletin #63 (First Amendment), which provided the dates for the Free Youth Hunting Days; Administrative Cause No. 17-068D

Petercheff also presented this item. She stated that the nonrule policy document, Information Bulletin #63, was put in place to establish free youth hunting days each year. Petercheff said that unlike the establishment of the free fishing days, which require Commission approval, the Department Director has the authority under IC 14-22-11-18 to designate not more than four days each year as free hunting days for youth hunters. Petercheff explained that since 2013, Director Clark has elected to establish the free youth hunting days with publication in the annual Hunting and Trapping Guide and on the Department's website. She noted that news releases also announce these dates each year. Petercheff recommended repeal of the Information Bulletin #63.

Jennifer Jansen moved for repeal of nonrule policy document, Information Bulletin #63 (First Amendment), which provided the dates for the Free Youth Hunting Days. R.T. Green seconded the motion. Upon a voice vote, the motion carried.

NRC DIVISION OF HEARINGS

Consideration of Report of Hearing Officer, including Proposed Findings and Proposal to the Natural Resources Commission as to its recommendations to the U.S. Army Corps of Engineers in the matter of the Petition for rate increase by Hoosier Hills Marina, Inc.; Administrative Cause No. 16-167P

Jennifer Kane, Hearing Officer, presented this item. She explained that the amended Hearing Officer's Report, dated July 11, 2017, provided review of the Petition for Rate Increase submitted by Hoosier Hills Marina, Inc. ("Hoosier Hills"). Kane explained that the initial report required amendment due to the omission of comments submitted by Janet and Mike Butler. She noted that the Butlers' written comments were considered in the drafting of the report and are included in the administrative file.

Kane said that Jeff Dukes, as the prior owner of Hoosier Hills, filed the Petition on December 26, 2016 with the Department of Natural Resources, Division of State Parks seeking a rate establishment for facilities operated on Patoka Lake. She noted that subsequently, in late June, 2017, the Department informed her that a lease contract between Victor Polen and the Department was signed, making Polen the new operator of Hoosier Hills. For the purposes of this Amended Report, the Petition filed by Dukes, is the Petition subject to review.

Kane stated that Hoosier Hills requested slip rate increases ranging between 8% and 21%, and provided information reflecting comparable rates of the following: Patoka Lake Marina, Fourwinds Resort & Marina, Lake Monroe Sailing Association, and Kent's Harbor & Marina. She noted that a "comparable marina" is a marina located within 400 miles and that provides amenities similar to those of Hoosier Hills. Kane said the Commission's review of the Petition is governed by Information Bulletin #20 ("Bulletin"), which provides an informal process for the administrative review of ratemaking recommendations for resorts and marinas under lease with the Department. She explained that the Bulletin has been amended five times, but noted the third amendment in 2009 was a total rewrite. Kane said the rewrite was a result of a petition to amend the Bulletin submitted by Jeff Dukes and Kent Reineking, owner of Kent's Harbor & Marina. She stated that "Dukes, having participated in the development of the Bulletin's Third Amendment, which established the three tiered review process provided in Subsection 3(F), (G), and (H) of the Bulletin, is familiar with the procedures regarding ratemaking at marinas under lease with the Department."

Kane said the Commission approved rate increases for Hoosier Hills in 2003, 2008, and 2009. The 2009 rate approval made permanent an interim rate of \$4,840 for two newly constructed 22 feet x 80 feet slips. She said no other record was found in Commission or Department records indicating that Hoosier Hills filed a petition for rate increase after 2009. "However, comparing this current Petition with the rates as set in 2008 and 2009, Hoosier Hills appears to have established rates for new or modified slips and increased a daily slip rental charge without Commission review and approval." Kane said sometime after 2009 to present, Hoosier Hills constructed at least one new slip size, 22 feet x 100 feet (single berth), with a current rate of \$5,340; and Dukes also modified, by covering, two existing slip sizes, 14 feet x 30 feet and 10

feet x 30 feet with current rates of \$2,750 and \$2,300, respectively.

Kane noted that most of the complaints submitted centered on the lack of: (1) maintenance; (2) security; and, (3) communication between marina operator and slip renters. She said slip renters commented that the maintenance at the marina seemed to decrease over the last three to five years. She noted that there are electrical problems on Dock A with frequent power outages, brown outs, which may be caused by overcapacity. Kane said Hoosier Hills provided 24-hour security until sometime in the spring or fall of 2016. She indicated that slip renters commented that there marina employees were not present during the week and sometimes absent some weekends. She also noted that comparable marinas provide some type of security for its slip renters. Kane said that slip renters commented that there has been continuous maintenance of Docks B and C, and other facilities are in good condition with no serious maintenance problems existing. Kane noted that the majority of complaints are localized to Dock A as well as complaints regarding ADA noncompliance of Hoosier Hills facilities. Kane said the Department submitted its analysis and found that Hoosier Hills proposed rate increases “are reasonable and justified, given that rates have not been increased more than nine (9) years.”

Kane said Hoosier Hills has not petitioned for rate increase since 2009. The 2008 permanent rate petition requested increases between 0% (no increase in slip rate) and 18%. The 2003 permanent slip rate petition sought increases between 0% and 17%. The 2016 Petition requests rate increases ranging between 8% and 21% for slips, and 50% slip rate increase for personal watercraft. “Hoosier Hills has established a pattern of filing petition for slip rate increase every five to six years. The length of time between petitions attributes to the larger percentage increases.” Kane stated that Hoosier Hills has implemented rates after 2009, without Department review, Commission and U.S. Army Corps of Engineers, approval, for the following:

- Slip size 22' x 100' (single berth): \$5,340
- Slip size 14' x 30' (covered): \$2,750
- Slip Size 10' x 30' (covered) narrow: \$2,300
- Daily slip rental (without electricity): \$25
- Auxiliary Boat mooring behind house boat: \$40
- Daily slip rental for existing dock customers: \$10

Kane said, “The establishment of these rates without the approval of the Commission is contrary to the requirement of the Bulletin. Hoosier Hills was aware that it must submit its request for rate establishment and increase to the Department and the Commission.”

Kane explained that the purpose of the Bulletin, a nonrule policy document, is to implement an informal process for the administrative review of ratemaking recommendations for resorts and marinas under lease with the Department. She said a nonrule policy document is not a rule so the publication does not have the force of law, but does constitute a statement that interprets, supplements or implements a statute or administrative rule. “Direction by the Commission, whether in the form of rule or guidance, such as a nonrule policy document, provides greater predictability for the regulated community, in this instance, marina operators, and to provide citizens, particularly, existing and future slip renters, with notice as to the process for reviewing petitions for rate increase.” Kane said that Hoosier Hills’ unilateral implementation of new rates

and rate increases without Commission approval does not support equity and consistency and undermines the Commission's authority under IC 14-10-2-1(5) to establish those fees.

Kane explained that the Commission, after presentation of the Hearing Officer's Report, may either recommend: (1) approve the rate establishment or increase as requested by Hoosier Hills; (2) disapprove the rate establishment or increase; or (3) approve a rate establishment or increase in an amount less than requested by Hoosier Hills. "Even though a Commission recommendation for favorable consideration of a rate establishment or increase shall not be withheld unless, in the opinion of the Commission, the rates proposed exceed the fair market rates charged by operators of other similar privately-owned resort developments comparable to the project in the area, it is recommended that the Commission approve a rate in the amount less than requested by Hoosier Hills for those rates that Hoosier Hills established or increased previously and implemented without Commission approval.

Kane recommended the Commission consider the rates previously charged by Hoosier Hills without Commission approval as interim rates for 2017 in accordance with the Section 8 of the Bulletin. She further recommended with respect to those rates that the Commission exercise its authority under IC 14-10-2-0.3 and IC 14-10-2-1(5) to establish those rates as permanent rates for 2018 and beyond. "This recommendation is not intended to unnecessarily penalize the new marina operator for the previous marina operator's noncompliance with the Bulletin. However, we believe this action is consistent with the spirit of the Bulletin, reinforces the authority of the Commission, and also highlights the need for equity, consistency, and fairness in consideration of current and future slip holders at Hoosier Hills. She noted that Hoosier Hills may file another petition before January 1, 2018 to increase these rates, to be effective in 2019. Kane provided the Commission Exhibit A of the Report (on blue paper), which provided the current rates at Hoosier Hills along with the requested rate increase. She recommended the Commission: (1) approve the proposed rate increase recommendation as contained in Column 4 (in black font) as the new rates for 2018; and (2) approve the proposed recommended rates in white font as interim rates interim rates for 2017 to become permanent rates in 2018 and going forward.

Stautz stated that in Exhibit A, Column 3, the 20 feet by 75 feet single birth slip rate requested by Hoosier Hills is \$4,550, but noted the Proposed Commission Rate Recommendation, Column 4, lists "\$4,450". Stautz asked whether the Commission recommended rate was due to a typographical error.

Kane noted there was a typographical error and stated that the proposed Commission rate recommendation for the 20 feet by 75 feet single birth slip rate should reflect a rate of \$4,550.

The Chair asked for clarification regarding the petition under review. He asked whether his understanding was correct that the previous owner of the Hoosier Hills Marina, Jeff Dukes, filed a petition for rate increase in 2016 and that is the petition that is subject to the review addressed by the Hearing Officer's Report. Kane answered in the affirmative.

The Chair then noted that effectively in the last 30 to 45 days Victor Polen became the new owner of Hoosier Hills Marina. Kane answered in the affirmative.

The Chair said, “This Hearing Officer’s Report is—as I think I heard you say—following the spirit of the nonrule policy document.” He then asked Kane that because the requested rates are “reasonable and customary...that’s why you suggest recommending approval?”

Kane answered in the affirmative and stated that the rates seem to be reasonable and comparable to other marinas, even those five slip rates established by Hoosier Hills Marina without approval from the Commission or the U.S. Army Corps of Engineers.

The Chair stated, “I find it really difficult to recommend approval even though they might be supported. What struck me when I read [the Hearing Officer’s Report] more than 10% of slip owners made comments. That’s pretty unprecedented. There seem to be articulated deficiencies in matters of safety, security...and communication. I’m not quite sure why this Commission should recommend approval if [Hoosier Hills] can come back in a year, after there has been some evidence of Mr. Polen” addressing the maintenance issues. The Chair asked for clarification regarding Hoosier Hills’ ability to file another petition.

Kane stated that the nonrule policy document allows Hoosier Hills Marina, and other marinas, to file a petition before January 1 of each year for rate increase to be effective the following year. She said Hoosier Hills could file a petition before January 1, 2018, for a rate increase to be effective in 2019.

The Chair asked whether the review process would be the same if Hoosier Hills filed another petition before January 1, 2018 noting that this current review has occurred within six months of the January 2018 filing.

Kane stated that if Victor Polen filed a petition for rate increase before January 1, 2018, the petition would be subject to the same review as was required for the petition filed by the previous owner of Hoosier Hills and as contained in the Hearing Officer’s Report. She noted that the percentage increase determines the review process. She said that if Hoosier Hills requested rate increases of 2% or less, for which no public hearing is required, the hearing officer, in consultation with the Department, would act as the delegate of the Commission in making a determination and with no report to the Commission. For requests for rate increase seeking increases of over 2% with no public hearing, the hearing officer, in consultation with the Department, would prepare a written report for Commission consideration.

The Chair recognized Shelly Wakefield, a Hoosier Hills Marina slip renter.

Wakefield stated that she lives in Columbus, Indiana and has been a slip renter for 10 years. She stated that she was speaking on behalf of not only herself, but also had permission to speak on behalf of the four other slip renters.

Wakefield stated that Jeff Dukes filed for a rate increase in 2009, in which he provided a list of improvements that he had made or was planning to make. Wakefield stated that the rate increase petition Dukes filed in December 2016 was inconsistent with the 2009 petition noting that there was no information on any improvements executed or planned. She stated there has been a lack of maintenance and security. She stated that the electric has not been kept up to date causing

power failure. Wakefield stated it is not uncommon to find that the electricity has failed on her boat causing her to have to throw everything in refrigerator away.

Wakefield stated that Hoosier Hills is not comparable to Patoka Lake Marina (Patoka) because all of Patoka's slips are single birth and Hoosier Hills are double birth slips. Hoosier Hills does not provide internet and Patoka does. She stated that Hoosier Hills slip renters are charged a pump out fee and Patoka does not. She stated that Patoka has a coin laundry and that people have left Hoosier Hills for other marinas for the amenities.

Wakefield stated that Dukes has not done a good job maintaining the property and noted that there were docks with rotting wood that are in disrepair. She stated that Dukes knew about the requirements provided in Information Bulletin #20 but acted contrary to those requirements. Wakefield stated that Victor Polen, the new owner, has begun to open up communication and has started making some improvements. Wakefield stated that she would like to see Hoosier Hills file a new petition for rate increase after Polen has had an opportunity to make some improvements. Wakefield stated that Dukes made the request for rate change knowing that he was selling Hoosier Hills. She stated that Polen should make the request for rate change.

Wright asked what the percent of occupancy is at Hoosier Hills.

Wakefield stated that she heard that docks B and C are full and have a waiting list. She said that dock A has six slips open that are not rented.

The Chair recognized Victor Polen, current owner of the Hoosier Hills Marina.

Polen stated that before he purchased Hoosier Hills Marina, there was a full inspection of the facilities. He noted the purchase did not hinge on the proposed rate increase. Polen stated that based on his own analysis, Hoosier Hills is way below the market. He stated that there is always maintenance to do on the docks and he is focused on the priorities. Polen stated that an electrical breaker was changed on A-Dock. He stated that there was an electrical survey completed on A-Dock and as a result a new transformer was installed. Polen stated that there are plans for the winter to make further improvements to A-Dock, and noted B-Dock and C-Dock are in good shape.

Polen stated that there are only four open (unrented) slips on A-Dock, but stated that he expects to fill one of those slips soon. He said the remaining three slips may remain unrented for a while because of those slips are harder to fill because of the size. Polen stated Hoosier Hills Marina has four 24 foot Open slips currently unrented. "If you add all those slips up that are open, that's nine slips out of roughly 221 slips. We are about 96%-97% full." He said Hoosier Hills allows rental for transient boaters so the open slips are usually full on weekends. "We have a huge demand. [Hoosier Hills has] a waiting list right now, which is still probably 40 to 50 deep for 24 foot and 30 foot covered slips." Polen stated that Hoosier Hills has submitted a master plan a plan to the Department to begin the discussion for eventual expansion with more covered slips.

Polen stated that there has been a clean-up effort and trash has been removed, as well as dock boards replaced and electrical wiring upgraded. Polen stated that he supports the price increase

because of the cost of operating. He noted that the Consumer Price Index exceeds the percentage rate increase requested. He stated, "This isn't about pocketing a bunch of extra money." He stated that there are more people working on staff at Hoosier Hills than there has been in the last five years. Polen said Hoosier Hills now keeps dockhands on staff to help boaters dock. Polen also stated that he appreciates Wakefield's comments, but also noted that positive comments have been received through social media.

Polen stated that there were only four slips out of 221 represented at the public hearing. He stated that the 10% threshold for request of rate hearing was achieved by a petition passed around and signed, not because of individual complaints. "I just want to make it clear that the slip holders we talk to are extremely pleased with the marina." He noted that A-Dock is the oldest dock, has the most issues, has the biggest boats, and has the most electrical and water demand. "In the next ten years it will still have more issues than B and C Docks. And ten years after me, it will still have more issues." Polen stated that "there is no one that wants to provide Wi-Fi more than me." He explained that with the rural setting in which Hoosier Hills is located there is not a fiber optic hub near enough to provide faster internet. He stated that he has a company working with him to hopefully provide "normal household speed" Internet connection.

Polen stated that he is working on plans for a coin operated laundry, which would be housed in existing building. He stated that comparable to other marinas he considers Hoosier Hills to be in the top 15% of nearly 100 marinas that he has visited in the last year in terms of cleanliness and quality. Polen stated that he is proud of Hoosier Hills.

Pigott ask if Polen could elaborate on any security efforts by Hoosier Hills

Polen stated that Hoosier Hills used to have unofficial security, someone living in a camper on site. He stated that Mr. and Mrs. Dukes began traveling to Florida more frequently so were not as visible in the winter months. Polen stated that he will be living on the property year round and there will be someone at the facility in the event of his absence. Polen stated that no employee would be living in the camper, but may be rented occasionally. He stated that Hoosier Hills is reviewing the installation of cameras and will also install electronic security.

The Chair noted that there are differences in other marinas and asked Kane how many marinas were included in her analyses in order formulate the recommended rates.

Kane stated Jeff Dukes provided four marinas with his Petition showing comparables. She stated that in 2008, a former Department employee, Gary Miller, considered Hoosier Hills to be most like Conley Bottom Resort and Marina (Conley Bottom) on Lake Cumberland in Kentucky. Kane stated that she compared Conley Bottom's rates with Hoosier Hills Marina and found them comparable. She noted, however, that Conley Bottom and other comparable marinas have more amenities. Kane also noted that most of the other comparable marinas request increases every two to four years. She noted that Hoosier Hills was noncompliant with the nonrule policy document when it raised or established rates for those five slips and associated fees that are highlighted in Exhibit A of the Hearing Officer's Report. She noted that the remaining slip fees have remained unchanged since the 2008/2009 fee increase.

The Chair noted that Information Bulletin #20 makes it clear that the Commission is charged granting rate increase if the request for an increase is fair and reasonable based on the Hearing Officer's report and the Commission cannot unduly deny the request for rate increase. The Chair stated that he appreciated Wakefield's and Polen's statements. "I just want to make sure the Commission [is] aware that with the Hearing Officer's recommendation, even though there might be some things that are unsettling...there's not much that I can recommend we do other than to accept the Hearing Officer's report with a motion. I don't mean that disrespectfully, but I hope that you would understand that if the requested rates are comparable and the Hearing Officer has recommended them be approved then there should be a motion to support that otherwise we are not following spirit and intent the Information Bulletin."

Robert Wright asked whether the recommended rate increase would become effective January 1, 2018. Kane answered in the affirmative.

Wright then asked what would be the rates charged by Hoosier Hills between now and January 1, 2018. Kane stated that Hoosier Hills would continue to charge its current rates from for the rest of July through December 31, 2017 as listed in Exhibit A, Column 2.

Pigott asked if the Hoosier Hills could come back to the Commission with another proposal in six months for an increase even if Hoosier Hills was granted this current rate increase, and, if so, what would be the effective date for those rates.

Kane replied that if Hoosier Hills petitioned for rate increase before January 1, 2018, the increase, if approved, would not go into effect until 2019. She stated that Hoosier Hills slip renters should feel free to contact the Department if they have issues that remain unaddressed.

Kane recommended approval of the proposed rate increase recommendation in Exhibit A, Column 4, with amendment to the proposed rate for the slip size 20 feet by 75 feet to reflect the correct amount as \$4,550.

Cameron Clark moved to approve the Hearing Officer's recommendation of rate establishment and increase at Hoosier Hills Marina, Inc., as amended, as the Commission's recommendation to the U.S. Army Corps of Engineers. Robert Wright seconded the motion. Upon voice vote, the motion carried.

Consideration of Hearing Officer Analysis with recommendation regarding final adoption of the amendments to 312 IAC 8-2-8 governing the use of airborne human transportation device or unmanned motor-driven device on or over DNR property; LSA Document #17-52(F); Administrative Cause No. 16-078P

Dawn Wilson, Hearing Officer, presented this item. She stated that, currently, 312 IAC 8-2-8(i) prohibits a person from the use of an airborne human transportation or motor-driven airborne device, without a license unless the activity is conducted in an area designated for that purpose, on DNR Property. She stated that the current specific designated prohibited activities are to: land, taxi, take off, park, and moor.

Wilson stated that the proposed rule amendment to 312 IAC 8-2-8(i) adds a prohibition to a person's knowing operation of an unmanned motor driven airborne device over DNR Property, unless under a license or in an area designated for the activity. She noted that that "license" and "DNR property" are defined by rule.

Wilson stated that the proposed rule amendment was originally presented and preliminarily adopted by the Commission in September 20, 2016. During preliminary adoption, the Department responded to inquiries posed by the Commission.

Wilson stated that all required approvals were obtained throughout the process, and the Commission has maintained the appropriate documentation as required by rule and executive order on the Commission's website. She stated that the Economic Impact Statement is included in the Hearing Officer's Report.

Wilson stated that the Legislative Service Agency posted the proposed changes following the Notice of Intent on February 8, 2017. She said that no comments were received on through the Commission's online rulemaking docket or through written correspondence.

Wilson stated that a public hearing was held in the offices of the Natural Resources Commission and no members of the public attended. She stated that the Department also did not attend the public hearing. She stated that Terry Coleman, as the Small Business Regulatory Coordinator, was present and Dan Bortner was available to respond to any questions concerning the rule.

Wilson stated that she recommends final adoption of the proposed rule in Exhibit A as presented.

Jane Ann Stautz moved to approve the recommendation of final adoption of the amendments to 312 IAC 8-2-8 governing the use of an airborne human transportation device and the use of an unmanned motor-driven device on or over DNR property. Jennifer Jansen seconded the motion. Upon voice vote, the motion carried.

Consideration of recommendation for final action on readoption of 312 IAC 11 providing standards for the regulation of construction along and within public freshwater lakes; LSA #17-133(F); Administrative Cause No. 17-010W

The Chair requested that this item and the remaining three items be presented together

Dawn Wilson, Hearing Officer, presented this item along with Agenda Items 11, 12, and 13, as requested by the Chair. Wilson stated that she is recommending four Articles of the Indiana Administrative Code for readoption without amendment. All four are set to expire on Jan 1, 2018.

Wilson stated that 312 IAC 11, on Public Freshwater Lakes, provides standards for the regulation of construction activities along and within lakes. She stated that Jim Hebenstreit, Assistant

Director, Division of Water, Department of Natural Resources was appointed Small Business Regulatory Coordinator.

Wilson stated for the remaining three, Mark Basch, Section Head, Water Rights/Use, of the Department of Natural Resources, Division of Water, was appointed Small Business Regulatory Coordinator. Specifically, those three are:

312 IAC 11.5 providing standards for the protection for owners along lakes ten acres or larger where the lakes are adversely impacted by the operation of a significant water withdrawal facility, which is a facility capable of withdrawing at least 100,000 gallons of water daily.

312 IAC 12 providing standards applicable to water well drillers and water well pump installers.

312 IAC 13 providing standards for the placement of a well that is near a building.

Wilson stated that the Director of the Division of Hearings gave preliminarily readoption of each article on January 30, 2017.

Wilson stated that for each Article, the Department's Small Business Regulatory Coordinator provided a review considering whether there were any alternative methods of achieving the purpose of the rule that would be less costly or less intrusive or that would otherwise minimize the economic impact of the proposed rule on small businesses. She stated that, in addition, a review was provided that reexamined the most recent economic impact statement prepared by the Department, considered the degree factors analyzed have changed and whether regulatory alternatives could replace one or more of the rule's existing requirements. Those analyses are included in the Hearing Officer's Reports.

Wilson stated for each Article the proposed readoption was posted in the Indiana Register on March 8, 2017 and no requests were received to adopt any of the rule sections separately.

Wilson stated that for the readoption of 312 IAC 11.5, 312 IAC 12 and 312 IAC 13, the proposal was submitted to the Legislative Council on March 10, 2017.

Wilson stated that for the readoption of 312 IAC 11, the proposal was submitted to the Legislative Council on June 23, 2017.

Wilson stated that she is presenting 312 IAC 11, for proposed rule readoption, which can be found at the link identified within the Hearing Officer's Report, for final adoption.

Wilson stated that, on behalf of the Hearing Officer, Jennifer Kane, the proposed rule readoption of 312 IAC 11.5, 312 IAC 12 and 312 IAC 13, which can be found at the link identified in the Hearing Officer's Reports, for final adoption.

R.T. Green moved to approve readoption of 312 IAC 11 in its entirety without amendment. Cameron Clark seconded the motion. Upon a voice vote, the motion carried.

Consideration of recommendation for final action on readoption of 312 IAC 11.5 governing surface water emergencies on lakes; LSA #17-131(F); Administrative Cause No. 17-011W

See previous discussion.

R.T. Green moved to approve readoption of 312 IAC 11.5 in its entirety without amendment. Cameron Clark seconded the motion. Upon a voice vote, the motion carried.

Consideration of recommendation for final action on readoption of 312 IAC 12 providing standards for the regulation of water well drilling and ground water; LSA #17-134(F); Administrative Cause No. 17-012W

See previous discussion.

R.T. Green moved to approve readoption of 312 IAC 12 in its entirety without amendment. Cameron Clark seconded the motion. Upon a voice vote, the motion carried.

Consideration of recommendation for final action on readoption of 312 IAC 13 governing water well drillers and water well pump installers; LSA #17-132(F); Administrative Cause No. 17-013W

See previous discussion.

R.T. Green moved to approve readoption of 312 IAC 13 in its entirety without amendment. Cameron Clark seconded the motion. Upon a voice vote, the motion carried.

Adjournment

The meeting was adjourned at approximately 11:13 a.m., EDT.