NATURAL RESOURCES COMMISSION

November 15, 2011 Meeting Minutes

MEMBERS PRESENT

Bryan Poynter, Chair
Jane Ann Stautz, Vice Chair
Robert Carter, Jr., Secretary
Michael Cline
Brian Blackford
Thomas Easterly
Phil French
Doug Grant
R. T. Green
Donald Ruch
Robert Wright

NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas
Sandra Jensen
Jennifer Kane

DEPARMENT OF NATURAL RESOURCES STAFF PRESENT

John Davis	Executive Office
Chris Smith	Executive Office
Cameron Clark	Executive Office
Cheryl Hampton	Executive Office
John Bergman	State Parks and Reservoirs
Lisa Johnloz	State Parks and Reservoirs
Vicki Basman	State Parks and Reservoirs
Jason Hickman	State Parks and Reservoirs
Ginger Murphy	State Parks and Reservoirs
Mark Basch	Water
Terri Price	Water
Phil Bloom	Communications
Scotty Wilson	Law Enforcement
Bill Browne	Law Enforcement
Mark Reiter	Fish and Wildlife
Mitch Marcus	Fish and Wildlife
John Bacone	Nature Preserves

GUESTS PRESENT

Michael Knight	Pat Doughty
Mike Doughty	John Btinius, Jr.
Jason Stoots	Roger Radue
Peter Foley	Dean Roberson

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 10:03 a.m., EST, on November 15, 2011, at The Garrison, Fort Harrison State Park, 6002 North Post Road, Ballroom, Indianapolis, Indiana. With the presence of eleven members, he observed a quorum.

Thomas Easterly moved to approve the minutes for the meeting held on September 20, 2011. R. T. Green seconded the motion. Upon a voice vote, the motion carried. Steve Lucas also indicated corrections would be made to misspelled surnames.

Reports of the Director, Deputies Director, and Advisory Council

Director Robert E. Carter, Jr. provided his report. He said the Department initiated a major effort to reduce the deer population, with a goal to reduce the deer population by at least 25% in the next five years. The Director said the Division of Fish and Wildlife staff has done a great job of creating programs and spearheading rule amendments regarding the taking of deer. "We are trying our best to manage a population that grows and grows." He said the new program GiveIN matches hunters with individuals who want low fat high protein venison. The Director said the program has worked out very well, and over 400 people have signed up. "This has been a successful program. It has actually taken off like wildfire. We didn't expect it to be this successful this quickly." He said the program will continue to expand, and the Department will continue its outreach.

The Chair said, "I want to echo those comments as well, that the Division of Fish and Wildlife has heard the Commission. We're moving forward in terms of looking at access issues and finding the money and resources for the programs for the farmers and hunters, and those that are working towards getting that protein into hands. This is another great program."

John Davis, Deputy Director of the Bureau of Lands, Recreation, and Cultural Resources, provided his report. He noted that the State Park deer reduction program is scheduled for November 14 and 15 at Fort Harrison State Park and 20 other state parks and nature preserves. The deer reduction program will also occur on November 28 and 29. Davis said that he along with staff from the Divisions of State Parks and Reservoirs and Historic Preservation and Archaeology attended the 200th Anniversary of the Battle of Tippecanoe in Prophetstown. There was a symposium that was also well attended.

Davis said the Department is conducting additional Healthy Rivers initiative meetings. Yesterday's meeting was held at Muscatatuck, Austin, Indiana, and another meeting is scheduled

November 16 in Clinton, Indiana. He noted the Wabash Enhancement Project of the Healthy Rivers Initiative was chosen as one of the Department of Interior's America Outdoors National Program. He explained that two projects for each State were chosen, with the Northwest Indiana trails expansion project being the other.

Davis said the Department is also working on the other leg of the deer reduction program, contacting counties and cities about local ordinances and the ability to get people with safety permits to reduce the deer population. We need to "get hunters access and the ability to sometimes discharge a weapon in a city limit."

The Chair noted Ron McAhron, Deputy Director of the Bureau of Resource Regulation, and Patrick Early, Chair of the Natural Resources Advisory Council, were not present at today's meeting.

CHAIR AND VICE CHAIR

Proposed meeting dates for 2012

The Chair proposed that the Commission meet in Indianapolis for four of its meetings (January, March, July and November), and hold two of its meetings outside Indianapolis. "I'm extremely excited about the two opportunities for the Commission to get to Potato Creek in September. It's always fun when we deal with reclamation issues here to have firsthand knowledge." A May 15 meeting is proposed for Jasonville. The Chair said the two meetings would give the Commission the opportunity to interact with two state parks, as well as some of the regulatory issues.

The Chair asked Commission members to note the proposed meeting dates on their calendars. The January 10, 2012 meeting time and location are confirmed, and the May 15 and September 18 meetings would begin in the evening. "We will be soliciting your input real soon, especially for the May meeting. There will be some planning and logistics for getting you actually into some of the reclamation areas and mines. We want to make sure who can attend the activities surrounding the meeting." More specifically, the proposed dates and locations are as follows:

> March 20, 2012, July 17, 2012, and November 20, 2012, 10:00 a.m., ET, Fort Harrison State Park, Indianapolis
>
> May 15, 2012, 7:00 p.m., EDT, Division of Reclamation Field Office, Jasonville
>
> September 18, 2012, 7:00 p.m., EDT, at or near Potato Creek State Park, St. Joseph County

Updates on Commission and Committee activities

Vice Chair Jane Ann Stautz reported the AOPA Committee, which she chairs, has not met since its September meeting, but she plans to schedule a meeting in the near future.

DNR, EXECUTIVE OFFICE

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

Stephen Lucas said that the Department has a growing number of areas in which the agency is responsible for testing and overseeing continuing education for professions. For examples, the Division of Fish and Wildlife requires professional testing for wild animal rehabilitators. The Division of Water would require professional testing for water well drillers and water well pump installers, which is to be considered in today's Agenda Item 13. The DNR also oversees continuing education programs for these professions.

Lucas reported there have not yet been adjudications resulting from the DNR's professional testing processes. But as Martha Mettler Clark of IDEM pointed out during the preliminary adoption of the proposed rule at Agenda Item 13, issues may arise regarding continuing education and testing. What I'm talking about is "essentially testing the test. An individual may take a required test, and miss passing the test by one question. The individual may make a claim that the question was a bad question. Issues have not yet arisen, but we see that coming down the pike, and we would really like to have guidance from the Commission and from the Advisory Council." There are members of both the Commission and Council who have university experience that may provide assistance and guidance. He requested this item be referred to the Advisory Council. "Discussions there may result in a draft nonrule policy document that could be carried forward."

The Chair said he believed seeking guidance on professional testing was a good initiative. He noted Advisory Council Chair, Pat Early, has already been briefed and has agreed to accept the project. Chairman Poynter thanked Lucas for "being proactive."

Information Item: Legislative Update

Chris Smith, the Department's Legislative Liaison, presented this item. He noted the Indiana General Assembly had several topics for review that were of higher priority than natural resources related items. Even so, several notable amendments were made to subjects administered through the DNR and the NRC. Changes were made to the prohibition against boating while intoxicated to more equally mirror the driving while intoxicated statute. "That's always a high profile thing for us." Several statutory amendments were enacted regarding fish and wildlife. There was a change to the fur takers statutes to make more beneficial the sale of furs. A roe taker and roe harvester license was enacted for paddlefish, shovelnose sturgeon, and bowfin which is part of an effort to protect the fish and to comply with an international treaty on the trade of endangered species.

Smith said House Bill 1133, an agritourism bill, made it easier for property owners to allow hunters access to their property by taking away any liability of allowing someone to hunt on private property. "Any time we can help hunters gain access to private property, that's a benefit to us." The Lake and River Enhancement Program ("LARE") statute was amended to allow

funding for projects to remove sediments, control exotic species, and remove logjams and obstructions on rivers. A Senate Joint Resolution for a constitutional right to hunt and fish passed, but it needs to be presented for vote again next year.

Smith reported the Natural Resources Summer Study Committee just concluded. "It wasn't a real action-packed Committee this year." Sedimentation concerns at Versailles Lake were discussed. The Invasive Species Council and the Historic Courthouse Preservation Commission provided updates. Steve Morris, Director of the Department's Division of Outdoor Recreation, gave a report on the State trails program. Jack Seifert, State Forester, provided an update on the Department's nursery program. The Committee recommended the use of revenue from CAGIT (County Adjusted Gross Income Tax) and C-EDIT (County Economic Development Income Tax) for historic courthouse preservation projects.

Smith said the Department also participates in other legislative summer study committees, such as the Environmental Quality Service Council ("EQSC"). Ron McAhron made a presentation regarding the Great Lakes Commission Compact. Mike Molnar and his staff provided updates from the Lake Michigan Coastal Program. The Water Resources Study Committee discussed water shortage and water distribution. Smith said he expects bills will address regional water planning during the next legislative session. The legislature's organization day is November 22.

Information Item: Consideration of recommendations with respect to use of the shoreline along Lake Michigan, generally, and Long Beach, particularly

Cameron Clark, the Department's Chief Legal Counsel, presented this information item. He provided an explanation of an issue centering on ownership and use of the shoreline of Lake Michigan, particularly at the Town of Long Beach. Clark provided an historical timeline. In 1787, the Northwest Ordinance was adopted. When regions in the Northwest Territory gained statehood, the new States obtained an interest ownership, sovereignty, and otherwise the state's particular territory, but more particularly the beds of the navigable waters within the state's territory. He said that navigability of waters has been litigated, but in this instance there is no argument that Lake Michigan is navigable.

Clark said there has not been a legal determination of what is the upper limit of the bed of Lake Michigan. In 1995, the Lakes Preservation Act established an elevation of 581.5 feet as the ordinary high water mark for Lake Michigan. "Where that falls on the beaches up there changes from season to season as the sand erodes and is put back." The State of Indiana has historically claimed ownership of what is below the ordinary high water mark; however, research has not produced evidence to support that claim. "All that is out there states that the beds of the navigable waters belong to the states, so what is the bed? Is it just what's under water or is it a distance beyond the water's edge? There is no legal guidance with regard to what we would actually own or hold in trust for the public, which is sort of issue number two here, is what are we, the State, holding in trust for the public use?"

Clark explained that at the Town of Long Beach there is an extensive beach area that did not exist 20 years ago. In 1911, the Town of Long Beach was platted, and the plat's legal

description identifies the lots as four rods by 20 rods. "The first question I had was, 'well, which prevails, the specific dimensions of these lots or what would be an arbitrary definition is of the low water mark?'" Clark said that a rule of surveying is "somehow the more arbitrary language prevails." The plats showed "the Town of Long Beach proper" goes to the water's edge. "Then the question became, 'Where did the person who platted [Long Beach] in 1911 get title to the water's edge?'—still holding onto the idea that the State owns the beaches?" He said that the research has not produced "sort of that golden point of origin, but what we have not found is something that I can say to you all here is a document that shows the State owns to a particular point on the beach. Points that we have to rely on are that unless we can produce a document that proves we have interests superior to somebody else we really can't come in and claim that we own these beaches…. Do we focus on ownership or do we focus on what the State holds in trust for the public use?"

Clark said this is an important issue that has to be settled in the event that we settle the ownership issue in favor of the private property owners. The ownership issue has been litigated extensively in the surrounding states. The Ohio Supreme Court issued an opinion favoring the private property owners, as did the States of Michigan, Illinois, and Wisconsin. "No court has yet to come out and say the state owns to a particular point or has really settled the issue in favor of the public…. What is the resolution here? I don't know." Clark summarized: "I would hope that we can work out something, in the event we come to the conclusion we don't own outside the water, which is acceptable to all parties involved. As you can imagine there are a lot of people used to using those beaches that don't live there. It will impact their use of the beach." He then introduced Michael Knight, attorney with Barnes and Thornburg—South Bend, who he said represents several Long Beach property owners.

Michael Knight provided to Commission members an information binder. He explained that under Tab 1 in the binder is a reprint of a Department webpage posted at http://www.in.gov/dnr/water/3658.htm, which contains the claim of ownership by the State of Indiana below the ordinary high water mark that is set in the Administrative Code. "This is really what my clients said they want changed; they want removed; they want extinguished because their deeds, their plats, their backyards if they will, all say…that it runs to the low water mark or the water's edge." Knight said a copy of the Long Beach plats are found at Tabs 11 (current plat) and 12 (former plat). He said the current plat, plat completed in 1921, contains a wavy line at the top edge of the Long Beach properties that border Lake Michigan. Knight said he canvassed surveyors from Purdue University and Purdue North Central regarding the meaning of the wavy line. "The best they could come up it means it runs to the water's edge. I showed them the former plat, and they said it runs down to the low water mark." Knight said the DNR website claims when the waters of Lake Michigan are below the ordinary high water mark, the State owns that property.

Knight noted that most of the Long Beach lots that border Lake Michigan are platted "40 wide and runs north to the lake. There's not a lot of room on everybody's own 40 foot plat." The Long Beach plat starts from Michigan City, Washington Park, where the DNR Law Enforcement Office is located, all the way to Michiana Shores, Michigan. He explained that Lake Shore Drive is numbered with Stops, and "that's how people up there relate to where they live.… The Stops, which are 40 feet wide, are publicly held." Those that live in the Town of Long Beach

have deeded beach rights at Stop 33. "If you own on the lake, you own to the lake, and you don't need the deeded beach right. And, it's not majority ownership, or it shouldn't be majority ownership; it should be property ownership. It should be what's in their deed records; what does your deed say; how long has it been there; do you have a valid deed; and if you have a valid deed and it says you run to the water, part of your private property rights is the ability to exclude others". Knight noted that some of Indiana's 41 miles of Lake Michigan lakefront is mostly privately owned. He said the residents in Long Beach "did pay a premium to live there…. The deeds for my clients go down to the low water mark."

Knight said his clients have submitted a petition ("Petition"), which is contained under Tab 5. He also noted that a full reprint of the Northwest Ordinance is under Tab 6. He said the top of page four of the Ordinance provides: "The navigable Waters leading into the Mississippi and St. Lawrence, and the carrying places between the same shall be common highways, and forever free." Knight said this language is the language that the neighboring States of the Great Lakes have construed in order to determine where the public right is and what is the public right. He said that there have been different constructions from Michigan, Ohio, Illinois, and Wisconsin, "but none have—no Great Lakes State, no Northwest Ordinance State—has prevailed on a claim that it owns in fee, privately owns, to the water's edge." He said Michigan has an "expansive understanding of its public rights. It still says the riparian owner, or littoral owner for lakes, own in fee to the lakeshore. What Michigan had done is it set a definitional ordinary high water mark. Michigan's public right says for its citizens that its citizens may traverse its lake shore beneath the ordinary high water mark." Knight explained Ohio found that private property rights run down to the water's edge. "Wherever that edge it is today, that's where the private property rights are. If you are going to work on your public rights, my understanding is your toes needed to be wet, and then you are in the common highway." Michigan limited its public rights to just traversing only, and stopping on the beach to fish, sunbathe, or for any other activity was not allowed.

Knight said that the cases that have been decided by neighboring State Supreme Courts have not held that the public rights doctrine has trumped anybody's private deed. "We have checked the plats; we've checked the documents; we've checked the deeds, and they all say 'down to the low water mark or to the water's edge'. It is a private property issue, and it's a very important issue to my clients. They live there and they grew up there…. It's a beautiful beach, but it's a privately owned beach for the most part. And, that's why we would ask this Commission to take a look at the publication found on the [DNR] website, and we would like that changed."

Knight said that under Tab 15 is the resolution passed by Town of Long Beach, which states that it is no longer defending someone's private property right below the ordinary high water mark based on the website publication. "So everything from A to Z is now not defended by the Long Beach PD in Long Beach, Indiana. In addition, the Long Beach PD traverses the beachfront on ATVs." He noted portions of the beachfront, at the Stops, are public property, but "90% of the beachfront, if you buy my argument that this is private property, has the police trespassing on the private property". Knight referenced an incident where a person was ticketed for not having his dog leashed while on public property. "That's the kind of monkey wrench in this situation. Unfortunately, there are more people who do not own to the lake in Long Beach than there are people who own to the lake."

Knight said that all Long Beach lakefront property owners, except one, signed the Petition. "All these have this heartfelt interest in their property, some vacation homes and some permanent residences, and their property on southern shore of Lake Michigan…. There are public beaches in the area, but these people worked hard and own this private property beach." He noted that under Tab 16 (A through E) is Indiana case law. He said Indiana is not a tidal law State. "On the East Coast and on the West Coast, when the public right is talked about, they talk about the movement of the tides—the ability to clam digging, to remove the bounty from the sea beneath the tidal movement. Indiana has said it is not a tidal State." Knight said there is case law regarding public rights on the Ohio River. "If you want to come ashore on the Ohio River, you need to have the property owner's, riparian owner's permission or pay the wharfage or it's a trespass. There is private property to the water on the Ohio River."

Knight summarized, "Given these pieces of law that we have, we would like it consistently interpreted to the shore of Lake Michigan for the part about ownership." He said those that signed the Petition are "okay with somebody traversing the lake; somebody using the lake; somebody going back and forth. They are not okay with somebody stopping to settle; somebody taking their square footage on the lakefront and staying there. They are not in favor of that at all. They want to keep their private property rights for their enjoyment and for that property value. That's what's been deeded to them, and that's why we ask that this board take a look at the [website] publication, consider it, and withdraw it."

Director Carter asked, "What has been done in the past? Is this something that has been deteriorating for years?"

Knight said, "That's only anecdotal. The lakefront owners versus the non-lakefront owners, I think you can all imagine…as the population is growing there is getting to be more and more confrontation. There's no public parking to speak of in Long Beach, Indiana, anywhere just about. So, we don't have our 308 million people trying to use Long Beach beaches, but we do have just about everybody in Long Beach trying to get down to the beach. When the population was smaller, the Stops accommodated and any spillover was not a problem. Then the spillover started happening more on Saturday and Sunday, and often that's not a problem. Then the spillover now is also happening Monday through Friday. Especially for the folks that have 40 feet next to [a Stop], those areas get to be a problem".

John Davis asked about the current measurements of the lakefront lots in Long Beach. Knight said the 1921 plat does not contain a northerly depth measurement.

Davis indicated that he was referencing the 1894 plat, which notes the lots are 28 rods or 462 feet. He then asked what the measurement was to the water as of today. Knight said he did not know the measurement to the water's edge, but the beach is expansive. "I'm guessing from my client's house to the water, maybe 200 yards, 600 feet."

Davis said 28 rods is calculated to be 462 feet. "I wonder then kind of in theory what would happen if the low water mark was a mile out."

Knight said, "The law of accretion, that's the case behind Tab 16(D)…. If you own that 428 feet, sir, and it would go to 430 feet or 440 feet, your property expands with that. On the contrary, if, in fact, that goes up higher, then your property declines with that. You don't lose it permanently, but the riparian owner will hold title under those documents."

Davis then asked, "And you think that happens even when there's a platted lot with a specific measurement of 40 rods by 20 rods, that you grow beyond that 20 yards, as opposed to the title being somewhat invested in the original platter? I don't need an answer. We talked about what comes in to play here. Does public policy come into play also? I realize that public policy doesn't get to decide what someone owns, but in deciding how to interpret what someone owns does public policy come into it? If it does, then it just seems like there is probably a myriad of different pieces of evidence".

Knight said that public policy will come into the interpretation of the public rights doctrine. "What's interesting is the State's public rights doctrine behind Tab 14, the General Assembly saw fit to create a public rights doctrine for every place, for all freshwater lakes, but Lake Michigan. So the General Assembly has not spoken. Lawyers, who some of us are here today, will argue that's what they meant to do. They meant to create a public right on A but not on B, because they know how create a public right on A, but they decided not to create the public right on B. I have no idea what the General Assembly intended."

Director Carter asked whether the incident of the unleashed dog is still being litigated.

Knight said, "Calmer heads prevailed. The $25 fine was donated to the animal shelter."

Director Carter asked, "So, he paid the fine?"

Knight explained, "Well, it was now a charitable deduction, and people sort of walked away from it."

Director Carter then asked whether there were other fines or tickets issued.

Knight noted there is some adversity going on about sand movement. "Some people like to groom the sand in the spring to have a nice shallow slope from the back door to water's edge. Some people do it with bobcats coming through their own property, or some people have larger things coming through. There are local ordinances and permits that have to be gained before you can do any sand movement. That's a bit of an issue going on with folks that say, 'Don't move any sand'; and folks that say, 'Go ahead and move as much sand as you want.'"

Thomas Easterly asked, "Your position is, I think, the legislature could have decided this—you think they did in a certain way—and our policy is inconsistent with the law?"

Knight answered, "What I don't know is what Tab 1 is. Tab 1 is not the Indiana Code. Tab 1 is not the Indiana Administrative Code. Tab 1, that claim of ownership is not even a nonrule policy decision. It's a web posting for the best that a web posting can be to the worst that a web posting can be. It's just a web posting."

Easterly then asked, "If we went through regulations to do Tab 1, do you think we have that right as long as it is not inconsistent with whatever the underlying law is?"

Knight said the regulation is there and the support for navigation is there. "You can't let everybody—and we understand this—wharf out 300 feet to the navigability on Lake Michigan. You won't do that and you can't do that. That precludes everybody's enjoyment of the lake." He stated the Commission and the Department have the ability to regulate, control, and monitor activity on Lake Michigan. "Where they should draw the line in the sand is exactly what we are talking about. For regulation purposes, of course, for the navigational servitude, of course, for the Northwest Ordinance keeping that open for commerce and navigability, of course."

Easterly suggested the Commission could pursue rulemaking.

Director Carter asked, "Does that end all? Does that satisfy the town board, or the mayor, or the police chief, or whoever?"

Knight said, "I think the wind filling the Town's sails is the publication found on the DNR's website. I think if that publication was changed or withdrawn, things would become easier in the Town…. We hope and we are here to avoid litigation."

Director Carter noted the Department advocates for public recreation. "We are not here to keep people off the beaches. Is there some balance or agreement that we can come up with?"

Knight said his clients request that "there is no claim of ownership, and then the decision is where the location and scope of Indiana's public right for Lake Michigan. If it's something reasonable, I know my clients will not sue."

Easterly asked whether the situation at Long Beach is unique as compared to other lakefront communities such as Ogden Dunes, Dune Acres "where the perception is…that the beach is public even though there are property owners there."

Davis said, "I think that is a very good point… This is a microcosm…, but we are going to end up defining the bed of the lake. There is a part that we haven't talked about just to put it out there, is the carrying places in between seems important to me also. The idea that use comes with the carrying places in between. I know what the common thought would be 'portage' means between one place and another, but 'portage' also means getting out and walking around…. I just think this may be a lot more complex than just walking and recreating on the beach. I worry about U.S. Steel and everybody else up there."

The Chair asked Cameron Clark to summarize his perspectives and clarify any action he seeks from the Commission.

Clark explained that the ordinary high water mark, the 581.5 feet, sets the regulatory jurisdiction. "I don't look at it so much as a point below which it distinguishes ownership publicly versus ownership privately." He said the Department is not in the position to ask for recommendations

from the Commission today. "I am leaning on the ownership issue towards ownership in the private sector rather than the public sector. I'm not sure it's that important to the State to actually own it anyway. From my perspective, what's important is how much of that beach can the public use under the public trust doctrine and what can they do on it?" Clark said he welcomed additional comments from the Commission, but "setting some sort of agreeable set distance that the public can use. What I haven't quite figured out is, is this some sort of agreement we have to reach just with [Knight's] clients, or is this something that the Commission has to determine or set, or some nonrule policy to be established as it applies to all of the shores of Lake Michigan. I am not sure that this issue, if we just resolve it with Long Beach, is going to go away. My preference would be that we establish something that is reasonable to both sides, and something that is probably is a little bit more global than just Long Beach."

Easterly asked whether Clark had researched how a resolution would affect the steel mills and the Port of Burns Harbor, or any land created through lake fill. He said the State deeded ownership to those that filled the lake permitted under a government program.

Clark said the State can dispose of the beds of navigable waters, but only by legislative action.

Easterly asked, "But we have to own it first, right?"

Clark said, "If you fill in Lake Michigan, you are taking some of what is the bed. The State has to permit that and has to, by way of certain official act, transfer title to whoever that particular party is. That is part of the challenge here, if we reach some sort of agreement, how does that impact lands outside the Town of Long Beach?"

The Vice Chair stated, "This is a very complex. Having chaired the AOPA Committee and dealt with riparian rights and waterfront properties, and the challenges here, I don't think we are going to resolve it today, but I do think in the best interest of the citizens of the State and the land owners and adjacent property owners that I would recommend that we look at rulemaking to address this. This is not just—as I see this—just this area. I do think you need to really look at all along the shores of Lake Michigan given this unique situation and the history behind this. That way then all parties of interest could participate in the rulemaking process."

Clark said, "In the mean time, the web posting on DNR's website relative to what the State owns and the high water mark, will continue to be an issue. We have been contacted by the Long Beach Police Department…. I don't know who has the right to post on the DNR's website, whether it's determined by each division or the Commission. We might consider at least today what to do about that posting."

Easterly stated that postings on the Department's website should be the decision of the Department Director.

The Chair and Vice Chair agreed.

Davis said the posting is located on the Division of Water's portion of the Department's website. "I think it's just not saying that we are going to change it."

The Vice Chair said, "I think it's a recommendation for the Department, not the Commission because it's not our website, to explore the origin of this document, the basis for that, and how to proceed with regard to either revising it, leaving it as is, or whatever".

Director Carter said, "We'll talk more about that internally. I agree with what [Vice Chair Stautz] said about let's start a rulemaking process, or at least think about that." He noted the Department has also received letters regarding this issue from the Town of Long Beach residents, from the Town Manager, the Town Board, and the Long Beach Police Department. "They want to see this thing resolved."

The Chair said, "I think what I've heard, and what I think is a consensus…. We will consider taking this for rulemaking…. The website is a DNR internal matter and not something I want to talk about here today, because we really do not have any input as to what goes on the DNR website. I understand and I've heard what the thoughts are."

Davis said the Department would review the language on the website, and "at the same time, hopefully, in conjunction with the rulemaking process, so that when we consider making a change we make in anticipation of the next step. I just don't want to be too fast. I understand the issue."

The Chair thanked Cameron Clark and Michael Knight for their efforts and time invested in researching and presenting the issues.

PERSONNEL ITEMS

Permanent appointment of Lisa Johnloz, Assistant Manager at Pokagon State Park, Angola, Steuben County

John Bergman, Assistant Director of the Division of State Parks, presented this item. He said Lisa Johnloz was present at today's meeting, and noted that Johnloz is concluding her first year as Assistant Manager at Pokagon State Park. "She has been an exemplary employee, and has worked for us prior to even being the Assistant. She has been highly involved in all aspects of our operation up there, including developing the Trine Area." Bergman recommended permanent appointment of Lisa Johnloz.

The Chair thanked Johnloz for coming again before the Commission. He then asked whether there were any updates regarding Pokagon State Park.

Johnloz said, "We are busy that's for sure. We are getting ready to open the toboggan, which opens next weekend." She added the Trine State Recreation Area will open soon.

Robert Wright moved to approve permanent appointment of Lisa Johnloz as Assistant Property Manager of Pokagon State Park. Doug Grant seconded the motion. Upon a voice vote, the motion carried.

Personnel interview for position of assistant manager at Tippecanoe River State Park, Winamac, Pulaski County

John Bergman also presented this item. He said the Department recommended Jason Hickman as the candidate for Assistant Manager at Tippecanoe River State Park. Bergman said Hickman has worked for the Department at Summit Lake for five years in various capacities, including security officer. He said Hickman is a graduate of Indiana University at Richmond.

Jason Hickman said he was a security officer and has experience in numerous jobs on other properties, such as prescribed burns and maintenance and operation of property buildings. He thanked the Commission for this employment opportunity.

Thomas Easterly moved to appoint Jason Hickman as Assistant Property Manager at Tippecanoe State Park. R. T. Green seconded the motion. Upon a voice vote, the motion carried.

DNR DIVISION OF STATE PARKS AND RESERVOIRS

Consideration for adoption of a resolution supporting the Indiana Children's Outdoor Bill of Rights

Ginger Murphy, Division of State Parks and Reservoirs' Assistant Director for Stewardship, presented this item. She asked for Commission endorsement of the new Indiana Children's Outdoor Bill of Rights ("Bill of Rights"). The Bill of Rights is "designed to encourage parents, grandparents, guardians, teachers, and anyone who is actively present in children's lives to find positive ways to get them outdoors, experience the outdoors, and just have a great time outside." Murphy said the initiative originated with the National Association of State Park Directors, of which Dan Bortner is a very active participant. She said at least ten other States have adopted their own Children's Outdoor Bill of Rights, as well as other city and county agencies across the Country.

Murphy said the proposal contains eleven things that the Department believes all children are entitled to experience in the outdoors regardless of their ability. The list was developed by the Department's Division of State Parks and Reservoirs staff with input from other DNR divisions and a number of outside organizations associated with natural and cultural resources. The Bill of Rights is already supported by 35 outdoor and environmental organizations across Indiana, and support continues to grow. Support is from a "diverse list—everyone from Amos Butler Audubon Society to the Boy Scouts of America to the National Muzzleloading Rifle Association". She said the supporting agencies and organizations will be listed on the Bill of Rights' webpage, and links will be provided to the organizations' web sites "so that families can find local opportunities for outdoor activities with their kids, to get them outside."

Murphy said it is hoped that the Children's Outdoor Bill of Rights for Indiana would accomplish seven things: (1) Result in more Indiana youth and families benefiting from outdoor recreation experiences. (2) Create a uniting message regarding youth and families in the outdoors for federal, state, county, municipal, non-profit, and for profit agencies. (3) Result in more informal collaborations and formal partnerships between all involved agencies and organizations. (4) Promote an increase in family health and wellness. (5) Increase future stewardship of outdoor resources on public and private lands. (6) Increase the overall quality of life for Indiana's youth and families. (7) Highlight the abundant natural resources and recreation opportunities available in Indiana. Murphy thanked the Commission for its consideration in endorsing this Bill of Rights.

Steve Lucas noted that when the Commission adopts a formal resolution, the resolution is sometimes then included on its web site. He asked whether Murphy whether the Department is requesting that the Indiana Children's Outdoor Bill of Rights be posted to the Commission website.

Murphy answered, "That would be wonderful. We'd be happy to have that happen".

The Vice Chair asked how the Department is communicating and publicizing the Children's Outdoor Bill of Rights.

Murphy responded the Department would issue a press release. "We are hoping to have some connections with the Governor and First Lady Daniels. We are having those discussions." She said the Bill of Rights would be promoted on the Internet and at Department properties, and she expected other agencies would be promoting the Bill of Rights

Robert Wright moved to approve for adoption of a resolution supporting the Indiana Children's Outdoor Bill of Rights. Brian Blackford seconded the motion. Upon a voice vote, the motion carried.

DNR DIVISION OF FISH AND WILDLIFE

Consideration of recommendation of petition regarding adding albino red-eared sliders to the reptile captive breeding license; Administrative Cause No. 10-035D

Mitch Marcus, Wildlife Section Chief for the Division of Fish and Wildlife, presented this item. He explained that in early 2010, the Commission received a petition to amend a rule to allow an individual to possess, breed in captivity and sell albino red-eared sliders under a captive breeding license. 312 IAC 9-5-6 currently allows an individual to possess four red-eared sliders, most typically wild-caught red-eared sliders. "With regard to pet trade purchased animals, there is ability for an individual to get a turtle possession permit, and possess more than four; however, in rule we still do not allow for the sale of red-eared sliders."

Marcus noted in 1998 the Commission and the Department reviewed and amended the rules governing reptiles and amphibians. "At that time, we did allow for the sale of certain reptiles

and amphibians that were not on the State or Federal endangered or threatened list that had certain color morphologies, including albinistic, leucistic, and zanthic." He explained the purpose for allowing those color morphologies to be sold was to continue to allow those that were rarely found in the wild, but commonly found in the pet trade.

Marcus said throughout the United States, reptile and amphibian resources are of concern. Threats include: loss of habitat; sensitivities species have to environmental contaminates; concerns over increased taking and the turtle trade, which leads to issues slated to disease and genetic problems in the wild and captive populations; and limited dispersal ability by those animals. In 2010, the Association of Fish and Wildlife Agencies conducted a workshop regarding the conservation and trade management of freshwater and terrestrial turtles. Staff from the Division of Fish and Wildlife and the Division of Law Enforcement joined with other State and federal agency partners and other interested nongovernmental organizations. "One of the findings that came out of that meeting was the turtle farming likely leads to continued harvest of wild breeding stock, illegal laundering of poached wild animals, genetic pollution, and spread of disease in wild populations."

Marcus said the Division of Fish and Wildlife does not recommend proposing a rule that would allow the breeding of albino red-eared sliders or the subsequent sale of those turtles under the reptile captive breeding license. With regard to the Petitioner's request to possess more than four red-eared sliders, an individual currently can apply for a turtle possession permit under 312 IAC 9-5-11 and possess more than four that are lawfully obtained. The current rule would still prohibit an individual from breeding, selling, trading, bartering, or releasing those animals into the wild. The Department "must provide for the protection, reproduction, care, management, survival, and regulation of wild animal populations" under IC 14-22-2-3. IC 14-22-2-6 provides that wildlife rules "must be based on relative data for the following: the welfare of the animal; the relationship of the wild animal to other animals; and the welfare of the people."

Marcus said that albinism, in the red-eared slider, is a harmful or deleterious recessive trait that occurs in the wild and is associated with reduced fitness and vigor in animals. "That pigmentation is protective, and many albino specimens have vision and other health problems that reduce their fitness even if they're held in captivity." He explained the selective breeding that would need to occur to guarantee these albino animals are hatched further reduces genetic vigor within those captive populations. Turtles are relatively long-lived species, and captive produced albino and atypical colored specimens often out-live the interest of the human owners. "Many of these unwanted animals are then released or have the opportunity to escape into the wild, where, if they live long enough to breed, they will reduce the fitness of the overall turtle populations." He said captive-bred animals can carry disease that would be harmful to free-ranging populations. "We feel that increasing the frequency of albino animals is not consistent with the protection and care and survival and management of red-eared sliders of the State. Therefore, we are of the opinion that it is not in the best interest of the captive and wild turtle populations or the people of Indiana to produce more turtles with these harmful traits."

Thomas Easterly stated, "It looks like if you lived out of Indiana you could sell these turtles into Indiana, but we are saying that people in Indiana can't breed them and sell them. If it's a bad

idea, shouldn't we say nobody can sell them in Indiana? It's sort of odd that we are saying this business, whatever it is, has to be somewhere else."

Marcus said, "Although I wasn't involved those discussions back in 1998 that was a big issue."

Davis asked, "A big issue because there are a lot of commercial outlets? A business issue, is that what you mean?"

Marcus answered in the affirmative. "In general, in addition to the pet trade industry there is an interest in the movement and farming of turtles for medicinal uses and as a food source."

John Tinius, Petitioner, explained that he understood the distinction as to the Department protecting the turtle population. "I totally agree and support that. My whole goal is not to become specifically an albino turtle breeder; however, I do wish to establish a pond. I would like to have male and female turtles together, and they'll produce baby turtles." Tinius said the rule would need to be changed to allow the breeding of albino turtles only, but "I do understand what floodgate that opens up as far as turtle breeding…. It's not a question of how many I want to keep as far as being able to get permits and permission. It's just the fact that I'm also a horticulturist. I breed and raise coy fish…. As a collector and a fan of turtles, I would like to be able to produce some. So, that's kind of the goal I'm after."

Easterly asked, "Were you planning to sell them, or were these for you?"

Tinius answered, "These personally will be for me, but I understand the law will only allow if I do breed them…and at some point in time I get too many turtles, I will be allowed sell them." He said currently turtles can be sold if they are four inches or larger, 1½ inches if sold for institutional or education purpose. "In all honestly…, this is done day in and day out on the Internet…, without the size consideration, which should be enforced more severely. If we enforce the four-inch rule, I think it's going to decrease the ability for a lot of people who want to go into the turtle farming business, because in turtle farming, generally, they want to sell small turtles, first year hatch, instead of having to grow them for a year or two to make them marketable."

The Vice Chair asked, "With regard to the request that you have before us, would you be comfortable with a provision that would allow for the breeding for your own personal use and not allow for breeding and sale to others?"

Tinius answered, "Yes, I would. Actually, my whole goal—I have a large oriental garden—is just to keep a collection. I'm a propagator of plants, fish, and things. It's just one of those fascinating things of nature for me to see the little turtles being born. So, any restrictions that you need to put on being able to do that. I'm just looking for some provision in the law that will allow me to keep male and female turtles together and let them reproduce."

Vice Chair observed, "The challenge is enforcement."

Bryan Poynter said, "I don't want to make rules more complicated, and I don't want to promulgate more rules. My inclination is to take the Department's recommendations and move it forward, because I don't see this to be an issue that can be enforced. That's my personal opinion as the Chair." He then sought additional comment from Marcus.

Marcus said, "I think that the issue was very thoroughly vetted in 1998 when we addressed the possession and sale of turtles. I think we would rather not open that door."

Robert Wright moved to accept the Department's recommendation to decline the petition to promulgate a rule amendment that would add albino red-eared sliders to the reptile captive breeding license. R. T. Green seconded the motion. Upon a voice vote, the motion carried. Thomas Easterly abstained.

Consideration of recommendation of petition regarding the possession, breeding, and sale of garter snakes; Administrative Cause No. 10-175D

Mitch Marcus also presented this item. He said Jason Stoots filed a petition with the Commission in the fall 2010 to amend a rule to allow additional color morphologies of the eastern garter snake and the plains garter snake to be bred in captivity and sold in Indiana. "Much of the logic that followed the previous petition is applicable here."

Marcus said the Department is to provide for the protection, reproduction, care, management and survival and regulation of wild animal populations. "We are supposed to look at the welfare of the wild animal and the relationship of the wild animal to other animals and the welfare of the people when we are developing associated rules." To be consistent with the Department's authority and the process for data review for rules, the Division of Fish and Wildlife recommended not proposing a rule that would allow the breeding and selling of the various color morphologies as Stoots petitioned. "There are concerns over the deleterious genes once again, albinism, and most other atypical pigmentation patterns are considered to be harmful traits. It is well accepted that these deleterious color patterns reduce survival probability of the affected specimens in the wild. There are also other associated problems with vision, thermal regulation, still births and malformations associated with these aberrant color patterns." He said the captive breeding of these aberrant species artificially increases the occurrence of these defects in the overall population and does not benefit the welfare of those animals. "We feel that captive breeding of these various color morphs of garter snakes is not beneficial to the animals themselves or the people of the State."

Jason Stoots, Petitioner, stated that he reviewed the Division of Fish and Wildlife's recommendations. "There are quite a few things that I have a problem with in there." Current rules allow three color morphologies to be bred. "Why stop at three? I do not see any reason why a yellow snake can be bred, but not a red snake when it is the same exact species." Stoots noted the recommendations indicated loss of habitat has caused a decrease in garter snake population. "I find garter snakes in the City [of Indianapolis]. I work at 30th and Post [Road]. We find garter snakes behind our shop constantly. Garter snakes are kind of the cockroach of reptiles. They are a hardy snake."

Stoots said he disagreed with the Department's statement that captive breeding of the aberrant species artificially increases the occurrence of these defects in overall population and does not benefit the welfare of the animals. "I've bred albino animals for years. I have not found this to be the case. Albino animals can be extremely healthy when they are bred from separate lines." Captive inbreeding "is not a problem because we have albinos from separate lines so I do not see inbreeding as something that is going to occur at all". As far as typical color specimens that result from captive breeding, "it's already illegal for anyone to release any garter snake into the wild. If typical specimens are produced, I would say that maybe we can give them away with a purchase of an albino. Make it to where they do go to a home, but to where they don't necessarily have a value. That would keep anybody from just wanting to go out and catch 100 baby garter snakes and label them as 'pet albino' that would keep that from happening if they are worth nothing." If albinism is "truly a harmful trait and a trait that would not live in the wild, then an albino snake or any of the other color morphs that I would like to see recognized escapes, we are already being told that they do not live in the wild so I don't see that as becoming a problem either. As far as trying to recognize the different color morphs, a garter snake is a garter snake…. All it is, is a different pigment of color. "Again, I think that the biggest thing is if we allow three color morphs why can't we allow more?"

Mark Reiter, Director of the Division of Fish and Wildlife said, "I think if we had the information back when we wrote this rule to allow those other color morphs, we probably wouldn't have done it. We left the door open way back then. We can't get it closed. I don't think we should open it any farther."

R. T. Green moved to accept the Department's recommendations to deny the petition to promulgate a rule amendment to allow the possession, breeding, and sale of garter snakes. Phil French seconded the motion. Upon a voice vote, the motion carried

DNR, DIVISION OF NATURE PRESERVES

Consideration of the dedication of the Boot Lake Addition Nature Preserve in Elkhart County

John Bacone, Director of the Division of Nature Preserves, presented this item. He said Boot Lake is a "very rare and unique type of wetland. It's a very shallow wetland that is found only in a few places, mostly in Elkhart County". The lake is extremely shallow with a floating mat cover. "Oddly enough, on this floating mat there are found a number of very rare plants." Bacone said the City of Elkhart acquired the area for use as a nature park, which has been developed with trails, boardwalks, and overlooks. With the assistance of Indiana Heritage Trust funds, the City of Elkhart purchased the additional acreage to be added to the existing nature preserve. Bacone recommended dedication of the Boot Lake Addition Nature Preserve.

Vice Chair Stautz moved to approve dedication of the addition to the Boot Lake Nature Preserve in Elkhart County. Donald Ruch seconded the motion. Upon a voice vote, the motion carried.

NRC DIVISION OF HEARINGS

Consideration of the recommended report of the Natural Resources Commission with respect to the Petition for the Establishment of the Lake DeTurk Conservancy District (Morgan Circuit Court 55C01-1106-MI-1254); Administrative Cause No. 11-138C

Jennifer Kane, Hearing Officer with the Commission's Division of Hearings, presented this item. She said on August 12, 2011, the Morgan Circuit Court referred the petition for the establishment of the Lake DeTurk Conservancy District. The Lake DeTurk Conservancy District was proposed to be established for the purposes of: (1) developing forests, wildlife areas, parks, and recreational facilities if feasible in connection with beneficial water management; and (2) operation, maintenance, and improvement of a work of improvement for water based recreational purposes including, but not limited to Lake DeTurk and the Lake DeTurk dam and spillway. She said the Petitioner's attorney, Peter Foley, was present at today's meeting.

Kane said the public hearing was held on September 26 in Martinsville and was well-attended. A summary of evidence received at the public hearing began on page two of the recommended report. She explained the conservancy district petition was filed with the Morgan Circuit Court as a result of a class action lawsuit, which was resolved through a settlement agreement between several residents of Shireman Estates and Ozark Fisheries. Ozark operates a commercial fishery adjacent to Shireman Estates. Shireman Estates has been marketed as a lake community offering additional recreational amenities, but without the maintenance obligation and without management through a homeowners association. "This marketing approach was directed to enhance desirability of Shireman Estates over several competing residential developments with similar amenities." Shireman Estates features a 35-acre lake, Lake DeTurk, two beaches, and contains two parks with basketball courts, tennis court and playground equipment, and common areas, which were improved and maintained by the developers of Shireman Estates and are now owned and maintained by Ozark. Kane said Shireman Estates is within Martinsville's corporate city limits. Lake DeTurk, the dam, and areas adjacent to the lake—the toe of the dam, principal spillway, and emergency spillway—are outside the corporate limits.

Kane said the developer of Shireman Estates, Missind, said it would maintain Lake DeTurk, the associated dam and spillways, and other recreational amenities in perpetuity. Ozark has been maintaining these amenities for 41 years, but the company indicates "it can no longer justify the ongoing expense." Ozark suggested "Lake DeTurk, the dam, and the other recreational amenities will continue to deteriorate, and frustration between residents of Shireman Estates and Ozark would be ongoing." Kane said the territory to be included in the conservancy district would include Lake DeTurk, the dam, spillway, and appurtenances, all real property adjoining Lake DeTurk and all platted lots in Shireman Estates and appears to be necessary. "Ozark fisheries would convey the lots within the development that it owns to the conservancy district".

Kane explained the Commission is currently authorized to provide analyses described in the Indiana Conservancy Act at IC 14-33-2-17. The creation of a conservancy district does not

remove any obligation by the conservancy district to acquire any license or permit required by law. The Commission is required to make a determination and report to the Morgan Circuit Court whether the proposed district for the two purposes meets five statutory conditions. She said there were no negative findings for the five conditions. Kane said there is no mechanism, such as an organized association, in place at Shireman Estates to ensure maintenance of the dam and the other recreational facilities. She said the proposed district appears to be necessary. "The settlement agreement is predicated on the establishment of the Lake DeTurk Conservancy District."

Kane said the proposed conservancy district as a quasi-governmental entity affords a mechanism for operation, maintenance, and improvements of the Lake DeTurk dam, including funds management. Ozark would hold a perpetual right to withdraw a reasonable amount of water from Lake DeTurk for use in its commercial fish operation, the terms of which are provided in an agreed upon Water Lease Contract. "The proposed conservancy district holds promise of economic and engineering feasibility for maintaining the works of improvement, as long as the district has a geographic scope that facilitates its purposes, needed inspections, repairs, and maintenance of the earthen dam, control structures, and facilities downstream that can potentially compromise the integrity of the dam or control structures". The territorial scope must authorize entry upon properties of Ozark Fisheries adjacent to or downstream of the earthen dam and control structures, for the purposes of performing inspections and implementing repairs or design modifications, including the drainage of fishery ponds as reasonably directed by a professional engineer.

Kane noted the conservancy district and Ozark Fisheries seek, by contract, to define its mutual rights to use and withdraw water from Lake DeTurk. But "the contract does not negate economic or engineering feasibility of the proposed district. If the district is formed, it should be with the understanding that other riparian owners, and the Department of Natural Resources in its regulatory capacity, have independent standing pertaining to water rights which would not be foreclosed."

Kane said the proposed district seems to offer benefits in excess of costs and damages. "The loss of Lake DeTurk would far exceed the cost of maintaining the dam and other recreational facilities". She said evidence was presented that estimated the impact of the loss of Lake DeTurk to be $4,000,000; however, costs associated with the conservancy formation to be $1,450,000 to $1,500,000. The benefits of dam improvement and continued maintenance of the dam and other recreational amenities far exceeds all consequential costs of dam failure. The Lake DeTurk Conservancy District, as proposed and as depicted in the Hearings Exhibit A, would serve a proper area for both purposes. The proposed district proposes to cover and serve a proper area and would be compatible with established conservancy districts, flood control projects, reservoirs, lakes, drains, levees, and other management or water supply projects.

Kane noted that for the second purpose of the conservancy district the last two paragraphs of the recommended findings under the statutory condition "*Whether the proposed district seems to offer benefits in excess of costs and damages*" found on page 32 and 33 should be relocated and are more appropriate under the statutory condition "*Whether the proposed district holds promise of economic and engineering feasibility*" replacing the last sentence in the last paragraph under

this condition found at page 32. Kane recommended the Commission adopt the recommended report, as amended, as its report to the Morgan Circuit Court.

Peter Foley said he represented the Petitioners and was an attorney in Martinsville, Indiana with the law firm of Foley, Foley, and Peden. He "grew up and lived in Shireman Estates." The issues that spurred the class action suit were "kind of unique in nature, but the conservancy district offers a solution to those problems". He said the residents and landowners were promised by the development corporation, a subsidiary of Ozark Fisheries, that the developers would maintain the amenities, which included Lake DeTurk, the dam, and other park areas. The owners of Ozark "followed that promise, and did so in a very good manner until too many years past. All of the lots have sold. There was no incentive, economic incentive to do so, which left the result of Ozark's balance sheet. They are in the fish business. They're not in the business of maintaining amenities for a residential subdivision. They were continuing to spend monies on maintenance and other issues, which did not serve their business purpose. That's the fork in the road and spurred the class action lawsuit." Foley said a resolution was reached between the parties and approved by the class action court, and the solution is the conservancy district.

Foley noted there were no covenants or restrictions with the platted Shireman Estates that would allow any of the residents any of the self-governance or ability to assess for the benefit of all residents the maintenance of the amenities. "We think we can have the [conservancy district] economically feasible. The good note is that there is not catastrophic event with the dam…. We kind of have the normal repairs and maintenance that would be customary for a 40-year-old dam. It's not a high hazard dam; it's a low hazard dam. We've worked in the settlement agreement that Ozark or its successor would not file any petitions or do any development that would change that classification of that dam. In other words, there would be no residential development or any other development below the dam…. That is an important piece for the residents". Foley requested that the Commission approve the report as amended.

Thomas Easterly moved to approve the report of the Natural Resources Commission with respect to the Petition for the Establishment of the Lake DeTurk Conservancy District, as amended by the hearing officer, for filing with the Morgan Circuit Court. Vice Chair Jane Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of report of hearing officer, including findings and proposal to the Natural Resources Commission for petition for rate establishment by Pleasure Craft Marina; Administrative Cause No. 11-011P

Sandra Jensen, Hearing Officer with the Commission's Division of Hearings, presented this item. She noted the Pleasure Craft Marina rate petition was tabled in July. "Typically, these marina rate petitions have already been addressed by this time of year." Jensen said Pleasure Craft Marina, also known as "Lake Monroe Marina", originally filed a petition for a rate establishment in January 2011. The petition related to the establishment of rates of four boat slips that were constructed and put into use in 2010, and were originally rented based on interim rates that were established by the Department in accordance with a nonrule policy document, Information Bulletin #20. Pleasure Craft, as required, brought forth a petition in 2011 to have the Commission establish permanent rates. Jensen stated Pleasure Craft's former manager

"failed to follow through with notice to the slip renters". After changes at the marina prior to the Commission's July meeting, new management requested additional time to comply.

Jensen said in September, Pleasure Craft fulfilled the requirements of the nonrule policy document. Pleasure Craft also filed an amended petition that decreased rates contained in the original petition. She said the decreased rates were lower than the 2010 interim rates. Jensen said the petition is to establish permanent rates for covered slips sized at 12 feet by 32 feet, 17 feet by 40 feet, and 17 feet by 48 feet. The annual rates requested are $2,495, $3,600, and $3,800, respectively. Jensen said Gary Miller with the Division of State Parks and Reservoirs evaluated the rates and determined they were comparable with other marinas. She then recommended that the rates be approved as permanent slip rates for Pleasure Craft Marina.

Doug Grant moved to approve the rates sought by Pleasure Craft Marina its revised petition be formally established as requested. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of report of rule processing, public hearing, written comments, and hearing officer analyses, and recommendation regarding final adoption of amendments to 312 IAC 13 governing water well pump installers; LSA Document #11-332(F); Administrative Cause No. 10-065W

Steve Lucas, Hearings Officer with the Commission's Division of Hearings, introduced this item. He said the proposed rule adoption would apply to the new licensing requirement of water well pump installers and would also creates continuing education requirements for pump installers and water well drillers. The proposed rule would assist in the implementation of legislation that was passed in 2010.

Lucas said at the Commission's September meeting, there was a lot of discussion about amendments to proposed rules and whether those amendments were a logical outgrowth of a rule proposal. "In this instance—although we didn't have a huge audience—we did have several comments that seemed well directed. There are several changes that I believe and hope will qualify as logical outgrowths and will be acceptable to the Attorney General." He noted if there is a problem, however, there would be sufficient time for the rule proposal to be modified and brought before the Commission within statutory timeframe. Lucas then deferred to Mark Basch with the Division of Water to outline the rule proposal and the recommended changes.

Mark Basch, Section Head, Water Rights and Use within the Division of Water, explained the rule proposal amends 312 IAC 13 which provides well construction standards. The article deals primarily with the licensing of water well drillers and the construction of water wells and abandonment procedures. The proposed amendments are in response to SEA 356, which amended the water well drillers law to include the licensing of water well pump installers, and also required continuing education for drillers and water well pump installers. "Many of these amendments to the rule are applicable mainly to the timing and approval of continuing education." The proposed amendments would add definitions, such as "supervision", "personal use", and "pump installation". He said the list of specified pitless units and pitless adapters established by the Water Systems Council would be incorporated by reference. The amendments

also propose a minimum draw down requirements, which would be the distance between a pump setting and the static water level in the well at the time the well was installed. "These particular standards are consistent with what already exists in the water rights statute ."

Basch said the agency received written comments regarding the proposed amendments. Comments submitted were associated with the definition of "bedrock formation"; deletion of monitoring wells from the minimum drawdown requirements; and the carry-over of hours for continuing education and how those would be handled in a two-year cycle. In response to those comments, the Division of Water recommended modifications to the proposed rule. "Bedrock formation" and "unconsolidated formation" would be amended to "bedrock aquifer" and "unconsolidated aquifer" to be consistent with 312 IAC 12. The exclusion of monitoring wells and dewatering wells in the minimum drawdown requirements is recommended to be consistent throughout the rule. Basch said 312 IAC 13-2-3.3 would be amended to allow a demonstration of good cause and would not allow the carry-over of hours from a two-year cycle.

Basch said the Indiana Association of Plumbing and Heating Contractors and the Indiana Groundwater Association attended the public hearing, and both supported the proposed rule and the recommended amendments. "The Department has worked real closely with both of these groups in the development of this rule and the recommended additional amendments." He then requested the Commission give final adoption of the rule proposal with the modifications included in the report of the hearing officer.

Thomas Easterly moved to give final adoption of amendments to 312 IAC 13 governing water well pump installers and water well drilling contractors, as the modified. Donald Ruch seconded the motion. Upon a voice vote, the motion carried.

Adjournment

The meeting was adjourned at approximately 12:02 p.m.