

NATURAL RESOURCES COMMISSION

The Garrison
Fort Harrison State Park
6002 North Post Road
Indianapolis (Lawrence), Indiana

Minutes of July 21, 2009

MEMBERS PRESENT

Bryan Poynter, Chair
Jane Ann Stautz, Vice Chair
Robert Carter, Jr., Secretary
Thomas Easterly
Mark Ahearn
Robert Wright
Doug Grant
Pat Early
Lawrence Klein
Brian Blackford
Donald Ruch

STAFF PRESENT

Stephen Lucas
Sandra Jensen
Jennifer Kane

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

John Davis	Executive Office
Ron McAhron	Executive Office
Cheryl Hampton	Executive Office
Bourke Patton	Indiana Heritage Foundation
Chris Smith	Executive Office
Kari Evans	Legal
John Bergman	State Parks and Reservoirs
James Roach	State Parks and Reservoirs
Steve Lemen	State Parks and Reservoirs
Dan Bortner	State Parks and Reservoirs
Felix Hensley	Law Enforcement
Mike Crider	Law Enforcement
Steve Hunter	Law Enforcement
John Bacone	Nature Preserves

James Hebenstriet	Water
Monique Riggs	Water
Linnea Petercheff	Fish and Wildlife
Bill James	Fish and Wildlife
Steve Morris	Outdoor Recreation

GUESTS PRESENT

Annette Engle	Dwayne Burke
Mark Flint	Jeff Harter
Don Gorney	Edward Kopecky

Bryan Poynter, Chair, called the meeting to order at 10:15 a.m., EDT, at the Garrison, Fort Harrison State Park, 6002 North Post Road, Indianapolis, Indiana. With eleven members present, the Chair observed a quorum.

Thomas Easterly moved to approve the meeting minutes of May 19, 2009. Doug Grant seconded the motion. Upon a voice vote, the motion carried.

Reports of the Director, Deputies Director, and Advisory Council

Robert Carter, Jr., Director of the Department of Natural Resources provided his report. He introduced Kari Evans as the new Chief Counsel for the Department, and noted that Evans comes most recently from the private sector but was previously the Governor's policy advisory for the Department. "She knows our business inside and out. We are fortunate to have her."

The Director thanked Patrick Early, Chair of the Advisory Council, and Council members for "all the hard work they have done after hours" holding meetings to gather comment regarding suggestions received in association with the Comprehensive Fish and Wildlife Rules Enhancement Project.

The Director said that he has received multiple calls from the public, Commission members, and others regarding the Department's receipt of federal government stimulus funds noting Jon Vanator has been working "very hard" on the Stimulus Committee. The Director said the Department has applied for "many, many" grants, and has been fortunate to be successful in receiving \$20 million through the Workforce Investment Act, which would carry through for two years, to fund the Young Hoosier Conservation Corps ("YHCC"). He said the YHCC, which is made up of approximately 1,900 employees, has been completing several projects on Department properties such as habitat and trail restoration. The Director said John Bacone and he traveled to northern Indiana to view the YHCC project to remove invasive species in a nature preserve. He

noted that the YHCC has been “highly successful and these kids have really embraced the learning part of the resource. A lot of them have not had the opportunity to get outdoors.” The Director said that he has spoken with some of the YHCC youth and the youth seem to “really appreciate the opportunity to not only experience the outdoors but to learn about the outdoors and get paid.” He thanked John Davis, and the Department’s division directors, especially those directors of landholding divisions for their roles supporting the YHCC.

The Director announced that the Department also received a \$1.4 million grant through the National Oceanic Atmosphere Administration (NOAA) for coastal habitat restoration to expand a watershed restoration project by “daylighting” 750 additional feet of Dunes Creek within Indiana Dunes State Park. The project was started a few years ago, but funds were not available to finish project. He said a portion of the parking area at Dunes State Park was destroyed last year due to storm. He said Mike Molnar, Program Manager for the Lake Michigan Coastal Program within CZM, was instrumental in acquiring the grant funds.

The Director said the Department has partnered with the Indiana Department of Transportation on Transportation Enhancement funds for trail development. Twelve trail projects have been identified and are ready for the “dirt to be turned”. He noted, however, that several projects were not funded including: (1) U.S. Forest Service Wildfire Reduction, which was intended for fire suppression, noting that these grants were awarded to the Western States where most of this year’s wildfires have occurred; and (2) Natural Resources Conservation Service (NRCS) Watershed Rehabilitation grants which would have been used in Indiana to help cover dam restorations.

The Director announced the Department has received more than 80 applications for the vacant Director’s position in the Division of Fish and Wildlife. There has been “a lot of interest in the position within the state and nationwide” with ten applicants from the Division. He concluded by stating that Department Executive Office staff will travel around the state to view YHCC projects, most immediately reviewing the projects at Brookville Lake.

The Chair asked Bourke Patton to update the Commission on the Hoosier Outdoor Experience exposition.

Bourke Patton, Executive Director of the Heritage Trust and Foundation, said the Division of Fish and Wildlife is spearheading the HOE exposition, but the exposition is DNR-wide. The purpose is to introduce outdoor recreation to people who are not “our traditional users. We have a good core of people that are out on our properties, hiking, hunting, fishing, and camping recreation.” Patton said the exposition would be held September 25 through 27, 2009 at Fort Harrison State Park. “We are going to invite 20,000 people who do not know us and introduce ourselves to them.” There will be opportunities for attendees to experience “all things outdoors,” such as camping, trap shooting, fly fishing, kayaking, and canoeing. Patton noted that approximately 120 conservation groups have partnered with the Department for this exposition.

Patton said the exposition will be the venue to launch on September 25 the Conservation Hall of Fame, which is a Department and Foundation program to recognize those persons who have “helped found and laid the foundation for what we are doing.” He said Richard Lieber, the father of Indiana’s state park system, will be honored along with 14 other individuals. Patton announced that September 25 will be student day with 1,000 3rd graders invited. He said teachers were involved in planning the day’s events, which will be based on school curriculum such as habitat and citizenship. Patton said the exposition would then open to the public on September 26 and 27.

Mark Ahearn, Commission member, asked for comment regarding the newspaper article, which was not “particularly complimentary” regarding Indiana citizens participating in outdoor activities and visiting Indiana properties. He asked whether the article contained inaccuracies.

The Director said that the article contained “a lot” of inaccuracies. He said the heading of the news item was “skewed anyway;” however, “when you read the content, it doesn’t show us doing so badly. It talked about how well we are doing.” The Director said that Phil Bloom, Director of the Division of Communications, is working with the divisions impacted by the article to respond to the editor of the *Indianapolis Star* and the article’s author to “set the record straight. A lot of the information was not accurate.”

John Davis, Deputy Director of the Bureau of Lands and Cultural Resources, provided his report. He said the Department is in the middle of recreation season and attendance on July 4th weekend was “huge” and “things went pretty smoothly”. He noted that with larger attendance there is an increase of incidences of drowning and other accidents. The Divisions of Law Enforcement and the Division of Outdoor Recreation are cooperating in a public education program regarding water recreation safety. He said this year’s Indiana State Fair commences August 7th and runs through the 23rd. He urged Commission members to attend the State Fair and to visit the Natural Resources building.

Ron McAhrn, Deputy Director, Bureau of Resource Regulation, said that the Water Shortage Task Force is “finishing up” the legislative mandate to update, expand, and revise the 1994 water shortage plan. He said the 78-page document is in the comment review phase, which will be completed in about one month. McAhrn said the Water Resource Task Force will “roll right into” a Water Resource Task Force, which will look into regional water planning. He said Jim Hebenstreit, Mark Basch, and Monique Riggs with Division of Water staff have done a “great job” working through the Water Resource Plan as well as implementing the Great Lakes Compact.

McAhrn said that the Division of Water has completed another six-month period where the division met its permitting goals, which makes a five consecutive six-month success rate processing about 300 applications last month. Despite the economic situation, the Division of Water has “especially done a real good job of keeping things moving along.” McAhrn also noted the Division Entomology and Plant Pathology completed another season of gypsy moth treatment in northern Indiana using pheromone flakes.

Patrick Early, Chair of the Advisory Council, provided his report. He said the Advisory Council been reviewing suggestions of amendments to the fish and wildlife rules as part of the Comprehensive Fish and Wildlife Rules Enhancement Project. With “a lot of help” from Sandra Jensen from the Commission’s Division of Hearings, the Advisory Council has held two public meetings to allow for the public to comment on the suggestions received. He said the suggestions regarding hunting and taking of wildlife (except deer) were reviewed during the June 10 meeting, and during the July 14 the Advisory Council reviewed and accepted additional comment regarding hunting and taking of deer. “We allowed [the meetings] to be open forum, so we didn’t really restrict people’s comments.” Early explained that the objective of the rule enhancement project is to “take those over 1,000 suggestions and narrow them way, way, way down to things that are fiscally responsible, that social implication are acceptable, and the [amendments] are a benefit to sports people in Indiana creating more and better opportunity to hunt and fish. The Advisory Council will hold three additional meetings in August, September and October to review the remaining suggestions. He said one of the goals in the review process is to submit a list of amendments that “at least merit discussion or consideration at the at the Commission’s November meeting.”

The Chair thanked the Advisory Council, Department staff, and Commission’s Division of Hearing staff for their efforts associated with the rule enhancement process.

The Chair recognized Dan Bortner, the Director of State Parks and Reservoirs, for orchestrating the opportunity to host the Lincoln Bicentennial theatrical performance, “Lincoln” at Lincoln State Park. He noted there are several “equity actors” involved in the “Lincoln” play, a “world class performance.” He said the Commission should be proud of what the Division of State Parks and Recreation is doing.

Dan Bortner said the performance will run through August 15. He said that 600 people attended the July 18 performance. “It is a good opportunity.” He encouraged Commission members to see the performance.

The Chair noted that when former Commission member, Fr. Damian Schmelz, Ph.D, announced his retirement from the Commission, the Commission resolved to honor Fr. Schmelz for his commitment. He said that John Davis, John Bacone, Jennifer Kane and he met with Fr. Schmelz in southern Indiana for a “very nice lunch” and toured his parish.

John Davis said that Governor Mitchell Daniels honored Fr. Damian with a Distinguished Hoosier Award, which was presented to Fr. Damian on behalf of the State, the Governor, and the Department.

John Bacone, Director of the Division of Nature Preserves, explained that there is a portion of Donaldson’s Woods—old growth woods not included in the existing nature preserve—that will be dedicated as an addition to Donaldson’s Woods in Fr. Schmelz’s honor, and the Division of State Parks and Reservoirs will install an interpreter’s sign that

will provide details on Fr. Schmelz's involvement with the nature preserve and his contributions to the Commission and the State as a Forest Ecologist.

The Chair thanked the Department for coordinating the opportunity to honor Fr. Damian Schmelz. "It's much appreciated."

John Davis said that Commission members will be notified of the dedication, which will be held at Spring Mill State Park next spring.

CHAIR AND VICE CHAIR

Updates on Commission and Committee activities

Jane Ann Stautz noted that the Commission's AOPA Committee has not met since April, but a meeting may be scheduled in September.

DNR, EXECUTIVE OFFICE

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

Stautz noted that she received an "interesting email", which enquired whether the Department had "any involvement" in permitting of wind farms as the permits relate to migration routes and flyways, particularly in Northwest Indiana.

John Davis said there have been discussions about wind farms and what role the Department should have. "There's no statute or law that calls [the Department] in right now." He said there have been previous conversations about a voluntary program in lieu of enacting legislation, and that would be tied through the U.S. Fish and Wildlife Service, endangered species and migratory waterfowl and migratory birds that would be more like a "best management practices". He noted "a lot" of energy companies are interested in having something like a "best management practices, so we wouldn't expect that there would be a lot of resistance to that, but we don't know how that is going to work out. We are talking to everybody right now."

Stautz said the email stressed the particular concern of those corridors being considered for wind farms are also migratory routes. She noted that a conference was being held today and tomorrow regarding this subject.

Davis said he "sat with The Nature Conservancy yesterday discussing Duke Energy's proposed placement of a pretty significant" wind farm near Kankakee Sands in Newton County Duke Energy. Duke Energy "seems to have a general agreement on how much of a setback [The Nature Conservancy] would like to have, but there's a lot of questions there.... I'm glad there is cooperation right now. I think that's what we will hope for".

Larry Klein asked whether local ordinances govern construction of wind farms. Davis said that currently local ordinances control the development, but in most states there is not a state government level activity, but many states are in the “same place that we are, talking to the providers...all the different groups concerned about this. As a property owner, [the Department] is concerned, as well as concerned” with the potential impacts to wildlife.

Thomas Easterly said that Indiana Department of Environmental Management would become involved if a wind farm is constructed in a wetland.

Stautz suggested that this subject be referred to the Advisory Council to review opportunities for cooperation and best management practices. “I’m not looking for regulations at this point, but some guidance or some input, particularly given the increasing interest in and discussion around this, and possibly some learnings from other nearby states that area also experiencing this type of growth.”

Thomas Easterly said that Indiana is the fastest growing wind energy state in the County. “Of course, everybody wants us to have some percentage of renewables. We don’t have a law, and this is part of how we are going to get there. We do not have any other renewables in Indiana.”

John Davis agreed and said that the subject of the Department’s role in the development of wind farms would be deferred to the Advisory Council.

ADVISORY COUNCIL

Consideration of Hearing Officer Report in Preparation for Advisory Council Summarizing Public Meetings and Making Recommendations to the Natural Resources Commission Regarding Request by Indianapolis Power & Light Company for a Water Sale Contract Under IC 14-25-2 and 312 IAC 6.3; Administrative Cause No. 09-100V

Monique Riggs, Environmental Scientist from the Division of Water, presented this item. She provided Commission members with a cross-section of Lake Monroe’s water volume components. She noted that the State of Indiana owns water supply storage in reservoirs that were funded fully or in part by the State, and Lake Monroe is one of those constructed by the Army Corps of Engineers for flood control purposes, and the State provided additional funding to expand the size of the water supply storage component. The State is authorized by statute to enter into contracts to provide water on a unit pricing basis, or to provide water for low flow augmentation from storage in those reservoir impoundments. The State is compensated for that water at a legislatively set rate of \$33 per million gallons.

Riggs explained that Monroe Lake's flood storage component is from 538 feet to 556 feet mean sea level (MSL), and the water supply storage capacity is between 515 feet to 538 feet MSL, which equates to 160,000 acre feet or 122 million gallons per day yield. Currently, 17% of the storage capacity is contractually committed. She noted the Army Corps of Engineers reports the lowest level pool of Monroe Lake on record recorded was 534 feet. Riggs explained that Indianapolis Power & Light ("IP&L") is requesting a contract reservation of 1,000 acre feet per year for periodic release if it becomes necessary in order to augment a low flow condition in the White River, which provides cooling water for IP&L's generating plant in Petersburg, Indiana.

Riggs explained the contract would allow for a maximum release rate of 23.27 million gallons per day lasting for 14 days until IP&L "ran into the allotment of 1,000 acre feet, which is 325.9 million gallons with a maximum release of 36 cubic feet per second." She said IP&L is not required to release at that 36 cubic feet per second, but could release water at a decreased rate allowing for a longer period of release. The release would be subject to the 1,000 acre feet annual limit. The IP&L contract term would be for 20 years. She explained that, if approved, this contract would be the second contract OP&L has held with the State. "This is sort of a delayed renewal for them. The first [contract] was from 1980 to 2005, and [IP&L] utilized that contract once during its 25-year term in 1999."

Riggs said that IP&L, as required by statute and rule, has supplied justification as to why Monroe Lake is the "preferred" water supply storage. One reason is that ground water availability is "very limited" in the area. To use other surface water sources, such as the Ohio River, Wabash River, or Patoka Lake, would require construction of pipelines and pumping facilities that could be "very cost prohibitive". She said the required public hearings were held and comments and concerns expressed during the public hearings are incorporated in the Advisory Council's report. She said "the Department believes there are mechanisms in both statute and within the contract itself that address the concerns."

Doug Grant asked whether IP&L pays the annual fee of \$10,000 for the water sale contract even if there is no water withdrawn from Monroe Lake in a given year. Riggs stated that IP&L must pay the annual fee whether IP&L withdraws or does not withdraw the water.

Patrick Early moved to approve the request by Indianapolis Power & Light for a water sale contract under IC 14-25-2 and 312 IAC 6.3. Thomas Easterly seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF NATURE PRESERVES

Consideration of the dedication of Evelyn and Wendell Dygert Nature Preserve, Whitley County

John Bacone, Director of the Division of Nature Preserves, presented this item. He said that Acres Land Trust (“Acres”), the oldest land trust in Indiana, owns both proposed Evelyn and Wendell Dygert Nature Preserve and Wildwood Nature Preserve. The two properties are both “high quality forest in a part of the state where there “isn’t much of that left.” He also noted both properties are “heavily used by school groups for their environmental curriculum.”

Bacone said the proposed Evelyn and Wendell Dygert Nature Preserve is located in Whitely County near Columbia City. “It was a bargain sale to Acres from the Dygert Family”. The Acres Land Trust was involved with some of the funding for the tract, and it is part of a larger area that Acres Land Trust owns. “We are only dedicating the forested part of the Acres managed property.”

Thomas Easterly moved to approve the dedication of the Evelyn and Wendell Dygert Nature Preserve. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of the dedication of Wildwood Nature Preserve, Kosciusko County

John Bacone also presented this item. He said this tract has been owned by the France Family for many years. “Actually, when it came to Indiana Heritage Trust for funding, Tim Berry, the State Treasurer, was at the meeting, and said he was one of the school children that toured the property earlier in his life.” This tract has also been visited by “thousands and thousands of kids.” The proposed Wildwood Nature Preserve is a part of a much larger property, which has been converted to conservation. “Some of the land is in prairie; some of it is in wetland and CRP.” He said that proposed for dedication is the forested portion of the property.

Patrick Early moved to approve the dedication of the Evelyn and Wendell Dygert Nature Preserve. Larry Klein seconded the motion. Upon a voice vote, the motion carried.

Consideration for approval of amendments to Nonrule Policy Document (Information Bulletin #46) regarding geocaching on DNR properties; Administrative Cause No. 09-063N

John Bacone also presented this item. He explained that geocaching is not allowed on nature preserves, primarily because geocaching involves trekking across properties. “We try to encourage visitors to stay on the trails.” He said the amendment would allow “virtual geocaching”. He said the Division of Nature Preserves has been updating its Web pages to support virtual geocaching.

Steve Morris, Director of the Division of Outdoor Recreation, said his division was also supportive of the proposed amendments. The amendments would allow geocaching on the Interlake property now in development.

Jane Ann Stautz moved to approve amendments to the nonrule policy document, Information Bulletin #46, regarding geocaching. Brian Blackford seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF STATE PARKS AND RESERVOIRS

Consideration of Petition by Salt Creek Services, Inc. to amend 312 IAC 8-4-4 governing the maximum number of mooring slips for boats at the group boat dock at Hooks Point, Lake Monroe, and the recommendations by the DNR Committee in response to the Petition; Administrative Cause No. 07-214P

Steve Lemen, Regional Supervisor with the Division of State Parks and Reservoirs, presented this item. He provided Commission members (on yellow paper) the original petition submitted by Edward Kopecky on behalf of Salt Creek Services, Inc, the managing body of Salt Creek Estates. He explained that Salt Creek Services petitioned, among other matters, to amend 312 IAC 8-4-4 to allow 15 additional boat slips on Lake Monroe in an area known as “Hooks Point” or “K-17.” The petition also requested approval to construct a breakwater and to change of boat configuration. Lemen explained, “We have had other requests throughout the years, and [the Department] has always maintained and followed the policy” on the prohibition of the increase in slips on Lake Monroe.”

Lemen noted that Salt Creek Services also inquired whether unused boat slips could be sublet. The Department does not have policy for subletting. He said the Commission at its September 16, 2008 meeting initially considered Salt Creek’s petition, but it tabled action until the basis for restrictions on slip usage and other pertinent matters could be clarified. “We were charged with finding out just what were the legalities concerning subletting.” He said the Department’s legal staff reviewed the petition and U.S. Army Corps of Engineer’s Monroe Lake Shoreline Management Plan. He said the Management Plan prohibits commercial activity and “precludes subletting”. The Department also requested an opinion from the USACE regarding subletting. The USACE said commercial activity was prohibited by Federal regulation at 36 CFR § 327.30. Lemen read several sections of 36 CFR § 327.30.

No charge may be made for use of any permitted facility by others nor shall any commercial activity be engaged in thereon. 36 CFR § 327.30(d)(4)

The use of a permitted boat dock facility shall be limited to the mooring of the permittee's vessel or watercraft and the storage, in enclosed locker facilities, of his/her gear essential to the operation of such vessel or watercraft. 36 CFR § 327.30, Appendix C, § 11

Facilities granted under this permit will not be leased, rented, sub-let or provided to others by any means of engaging in commercial activity(s) by the permittee or his/her agent for monetary gain. This does not preclude the permittee from selling total ownership to the facility. 36 CFR § 327.30, Appendix C, § 13

Lemen noted that Salt Creek requested the approval for the construction of a breakwater in Lake Monroe. Salt Creek Services could file a permit application with the Department and the USACE seeking permits to construct a breakwater for dock protection. Lemen said Salt Creek Services also petitioned for the ability to add a wave continuator to the current dock configuration, to which the Department responded that Salt Creek would have to go through the “correct procedures to get that approved.”

Lemen said the final request by Salt Creek Services in its petition was possibility of developing a deep water boat ramp on Salt Creek side of Monroe Lake. The slip owners at Salt Creek Estates currently must travel to the Paynetown side of the lake, which is approximately 45 minutes away. He said there is a boat ramp in the Salt Creek area, at Crooked Creek boat ramp, but “for the most part” the ramp “is silted shut especially for the use of larger boats.” Lemen said that “due to the monetary constrictions, the Department would not be able to afford development of a new boat ramp.” Lemen said he has discussed with the Division of Fish and Wildlife the possibility of dredging of Crooked Creek boat ramp, which might be more economically feasible than a new ramp.

The Chair asked for clarification why the Commission is again reviewing the petition. Lemen said at the September 16, 2008 meeting the Commission requested DNR legal staff to review the “possibility of subletting boat slips, because there was a portion of the boat slips that currently go unused at Salt Creek.”

Edward Kopecky, currently the Treasurer of Salt Creek Services and formerly its President, spoke on behalf of the petition. He said the petition was filed with the Commission almost two years ago. Where the docks are located “we get hurt quite frequently by the open water in front of us.” There are currently 73 lot owners but only 40 slips allocated to the Salt Creek Estates neighborhood. Kopecky said the closest ramp to the area is Paynetown, which is 45 minutes away. “We are very limited in our access to the lake.”

Kopecky said Salt Creek Services hoped to fund the breakwater by allocating 15 additional boat slips to allow “the rest of the owners that want access to the lake to be able to do that.” In order to allow 15 additional boats, 312 IAC 8-4-4 would need to be amended to increase the maximum number of boats from 40 to 55. He noted, also, that a number of slip owners in the Salt Creek Estates do not currently use the slips currently approved by rule “for various reasons. The slip owners can’t afford to sell their slips, because if they ever want to sell their house, they can’t do it.” He also noted only those homeowners that do not have a slip are “allowed to use a slip. All they need to do is provide a land affidavit.” Kopecky said that he does not equate the activity of boat slip owners allowing the use of their piers by those that do not own a boat slip for a nominal fee. “This really isn’t a commercial venture for anybody. The largest amount of money that would change for a season, given dock fees and everything else, is probably about \$500.” He said the allowance of subletting would eliminate the need to “grow the docks

from 40 to 55. It's not intended to be a commercial money making venture by a corporation or anything else."

Kopecy requested that the Department consider dredging the Crooked Creek boat ramp or the development of a deep water boat ramp closer to Salt Creek Estates. "Boat access for anglers is not available on our side of the lake. I think that would be good for not just us, but for any boaters that are coming down State Road 46 or I-65.... In the long run that would be beneficial for everybody".

The Chair asked whether the provision of a land affidavit to those persons wishing to use a boat slip would satisfy the use of the unused boat docks. Kopecy answered, "In some aspects, I guess, yes. I don't want to be breaking the rules. I guess the whole idea behind this is to make sure we are doing what you guys want us to do."

Stautz asked for clarification regarding the Department's recommendation. "Is there a way that we can put it in a form of some type of statement so that there is some documentation that [Salt Creek Services] would have as to the interpretation for the affidavit to be in effect and to meet any type of requirements for being on the lake?"

Mark Ahearn said, "Procedurally, I think the Commission probably just needs to know what's in front of it. Is it a rule or is it a policy?"

John Davis explained that the Commission is being asked to consider the petition by Salt Creek Services, Inc. The DNR committee formed to review the petition reported that unused slips can be sold from one person to another. Kopecy agreed that the boat slips can be sold but indicated that did not resolve the problem.

Lemen said, "I don't believe that that is true." He said Jim Roach, Monroe Lake Property Manager, was present at today's meeting and noted that Roach has dealt with this issue "many" times.

Davis clarified by stating a boat slip can be sold to another property owner but cannot be sold on the open market. Roach clarified that boat slips cannot be sold independently from a property.

Patrick Early asked whether an owner of a boat slip could lease the boat slip. Roach answered an owner cannot lease its slip to another landowner because the Department has determined the leasing activity would be considered a commercial operation through the administration of an Army Corps policy.

Roach said currently there are 40 boat slips at Salt Creek Services. On file with the Department are affidavits of land ownership and current boat registrations for 38 slips. "So there are only a couple of [slips] that haven't been used." He said to amend the rule by increasing the maximum number of boats allowed from 40 to 55 would "be a bad idea. It goes beyond just Salt Creek Services... There are 1,000 condominiums down at the point, but they only have 30 slips. So, when does it not become a commercial operation?"

And what money changes hands is speculative, because those positions on the lake, the more you boat, become far more valuable if you are able to sublet them.” He said increasing the maximum boats at Salt Creek Services would also go beyond Monroe Lake impacting other reservoir properties.

The Chair noted that Lemen stated that there are two unused boat slips. The petition indicates that there are a larger number of unused slips.

Roach responded he currently has only two boat slips that do not have boat registrations assigned.

Kopeccky responded, “It’s closer to ten.” He suggested at least a half dozen boat slips have outdated boat registrations on file.

The Chair observed the Commission does not have the authority to modify the USACE’s regulations “even if we wanted to, to find common ground.” He asked for clarification as to possible Commission action.

Stautz responded, “Deny the petition before us, right, or approve?”

Kopeccky explained that the issue of the allowance to sublet a boat slip was not part of the petition. “This was developed in terms of the questions that came from the Commission discussion in September of last year.”

Larry Klein asked whether the boat slips were “tied specifically to the number of lots in Salt Creek Estates.”

Roach responded, “Not necessarily.”

Klein observed there are currently 40 slips, and the 15 additional slips could be owned by a landowner in Salt Creek Estates. “It’s implicit that the slip is tied directly to a lot” in Salt Creek Estates.

Roach again responded, “Not necessarily. As long as a person is a landowner in any subdivision on Monroe Lake, where 25% of that subdivision is adjacent to the USACE property, he could theoretically qualify for one of the new boat slip. It’s not just the 70 landowners or lots at Salt Creek—although that is a little more isolated on that end of the lake.” Roach added a boat slip becomes an integral part of the property value.

Ahearn noted that it would be helpful for inclusion of an “actual form of a motion” in agenda items presented to the Commission, but the Commission could amend the motion.

Thomas Easterly pointed out the DNR review committee recommended in its report for the Commission to disallow the expansion of the maximum number of boats.

John Davis said the Department has had incidences over the past 20 years where “there are so many slips, so many people, so many different things that we end up with somebody running a little business. It has happened more than once in other places in other subdivisions and group dock locations.”

The Chair said that the Commission is asked, based on the recommendations of the petition Review Committee, to disallow the expansion of the number of boat slips at Salt Creek dock site K-17. In its recommendations, the DNR review committee indicated it is “not opposed” to the construction of a breakwater authorized through the permitting process. The Chair suggested the Commission need not take action on the review committee’s recommendation that the Department look into the possibility of locating a useable boat launch facility on the Salt Creek side of Monroe Lake.

Stautz said Salt Creek Services could withdraw the petition if the Salt Creek Services does not want “formal action with regard to the expansion. There may be other options to explore.”

Ahearn said that it was unclear what Commission action was required. “If we just remove the agenda Item 7 from today’s agenda, then it’s removed without prejudice and anybody can come back and clarify...the options.”

Patrick Early said Salt Creek Services has had its “options open for a couple of years, and [it’s] is coming back and we are giving him the same answer. It seems to me, from a policy standpoint, we cannot expand the number of docks at Lake Monroe to match the residences that would qualify. If we accept the petition to expand docks, we open a whole can of worms.... For the record, I think we need to deny the petition, unless the petitioner withdraws it.”

Kopecky said, “To be honest with you, I’ve been in this neighborhood for a dozen years.... Every year somebody or multiple people and bring this issue up with me. It’s been very difficult to nail this down. Obviously, it’s not very well understood about what rules apply and how they apply”. He urged some of the data in the review committee’s report was outdated and did not reflect “where Salt Creek Services is now.” Kopecky said the Commission “needs to vote on this today because there needs to be some kind of precedent that really defines this.... I have spent two years of my life dealing with this issue for nothing just to figure out what we can do to make our neighborhood a little bit more useable.... I need to be able to go back to the residents in my neighborhood and say, ‘This is a closed issue. We’ve got to give it up.’ It has been an incredibly frustrating issue to try to deal with”.

Klein asked what regulations or policies would allow or not allow the addition of slips on reservoirs owned by the USACE. “Will this prevent more requests coming before us?”

Steve Lucas, Director of the Commission’s Division of Hearings, explained that when the Commission rules were written 20 years ago to identify group boat dock sites and maximum boat moorings, “it was an extremely painful process.” With the guidance of

what was then the Division of Reservoir Management, a list was drafted for the maximum number of boats allowed at a particular group boat dock on Lake Monroe. The list was adopted as a rule and is now codified at 312 IAC 8-4-4. Some of the numbers for boat moorings were “compromises at that time.” He predicted there would be more requests filed with the Commission to amend the number of boats that can be moored. “There certainly have, in the last 20 years, been other requests to increase the numbers. I don’t remember whether any of them when this far. But it’s almost universally true that every one of these group boat docks would like to have more slips allocated to them.”

John Davis noted that the Department has a shoreline management plan for every reservoir.

Mark Ahearn moved to adopt the DNR review committee’s recommendations to deny an expansion of the number of boats allowed at Salt Creek Dock Site K-17. Larry Klein seconded the motion. Upon a voice vote, the motion carried.

NRC, DIVISION OF HEARINGS

Consideration of final adoption of amendments to 312 IAC 9 governing the taking of fish from public waters, to prohibit the taking or possession of paddlefish except under a commercial fishing license on the Ohio River; LSA Document #08-886(F); Administrative Cause No. 08-163D

Sandra Jensen, Hearing Officer, presented this item. She explained the proposed rule would amend standards governing paddlefish. She said the definition of “rough fish” is deleted. 312 IAC 9-7-16 is amended to prohibit snagging as a lawful method of taking exempted fish on the Ohio River. 312 IAC 9-7-19, 312 IAC 9-6-2, and 312 IAC 9-8-6 are amended to prohibit the taking of paddlefish, except in limited circumstances with a commercial license. Taking a paddlefish with a commercial license would apply specifications for the method of measuring a paddlefish, establish a season for taking paddlefish, and set size limits. Jensen reported no one from the public attended the public hearings.

Jensen said the written comments received from sport anglers were “generally in opposition” to the rule, particularly to the proposed amendment requiring the possession of a commercial license in order to take paddlefish from the Ohio River. The sport anglers commented the proposed amendment was a “limitation on Indiana’s sport fishing”. The Department responded that paddlefish are “filter feeders that are not typically taken by sport fishing methods. They are typically taken by snagging.” Jensen said a temporary rule currently prohibits snagging on the Ohio River, and the temporary rule would be made permanent by these amendments.

Jensen said the proposed amendment to 312 IAC 9-7-16(b)(2) limited the number of floats that would be allowed for float fishing on the Ohio River. The Department has determined this amendment is unnecessary and has requested it be withdrawn. She also

noted the remainder of the proposed amendments “appears to provide for a balancing between commercial fishing opportunities as well as protect the paddlefish populations on the Ohio River.” Jensen recommended the proposed rule amendments contained in the Commission’s packet as “Exhibit A” be given final adoption, including the deletion of the proposed amendment to 312 IAC 9-7-16(b)(2).

Patrick Early moved to give final adoption to proposed amendments to rules in 312 IAC 9 governing standards for the taking of paddlefish as contained in “Exhibit A”. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

ADJOURNMENT

The meeting was adjourned at approximately 11:43 a.m., EDT.