

Deep Creek Lake Policy and Review Board

Quarterly Meeting Minutes

Monday July 29, 2019

In Attendance: Chairman Bob Browning, Paul Weiler, Robert Kelly, Steve Green (for Senator Edwards), Patty Manown-Mash, Jim George, James Bailey, Larry Iden, DNR: Eric Null, Julie Bortz, Bruce Michael, Paul Peditto, Emily Vainieri, Sgt. Mike Friend, Sgt. Walter May

Action Agenda

Chairman Browning started the meeting by addressing an Open Meeting Act complaint that was filed against the Policy and Review Board. Chairman Browning introduced Emily Vainieri, the Assistant Attorney General for the Department of Natural Resources. Ms. Vainieri stated that the someone in the board must read aloud the summary of the Open Meeting Act Compliance Board's findings on the complaint that was filed on the PRB. Chairman Browning read the summary, it stated that a letter of complaint was submitted to the Open Meeting Act Compliance Board against the PRB stating that the PRB had violated two rules of the Open Meeting Act.

Allegation one: The allegation that the PRB had not given notice of its quarterly meetings during the past year, the Open Meeting Act Compliance Board's opinion was that the PRB did not violate the Open Meeting Act, since the meetings were advertised at least two weeks prior to the meeting date in the Republican Newspaper. The Compliance Board suggested that the PRB continually evaluate the way it advertises its meetings to ensure that it was reaching its target audience.

Allegation two: The Allegation that the PRB did not adopt its meeting minutes in a timely manner so that the minutes were posted in sufficient time for the public to read. The Compliance Board's opinion was that the PRB was in violation of the Open Meeting Act buy approving their minutes at the following quarterly meeting. It was determined that the PRB was in violation due to a previous complaint submitted for another Board that was found in violation of the same complaint. The Compliance Board suggested that the PRB approve meeting minutes via e-mail, cautioning that e-mail approval of Board business does not comply with the Open Meeting Act and is restricted to the approval of minutes only for the sake of public transparency.

Chairman Browning stated that basically when the Board communicates on the minutes by e-mail that the members do not reply to all with comments and suggestions, the members must only reply to Mr. Null.

Ms. Vainieri stated that when the Board members sign that they have received the summary and statement she will collect signatures and send them to the Compliance Board. She stated that grammar and wording corrections may be done by email, but if the Board finds something in the minutes that needs to be discussed by the Board the minutes will be tabled for the discussion at the next quarterly meeting, since this would entail conducting Board business that is open to the public.

Chairman Browning asked Ms. Vainieri that if the Board thinks that the minutes do not read how they should, that the Board hold off approving the minutes until the following meeting, so that the Board may discuss the major changes with the entire Board. Ms. Vainieri stated that it would be up to the Chairman but if there was something that created substantial discussion it would have to be discussed at the following meeting.

Chairman Browning asked for a motion to approve the current minutes. Mr. Kelly stated that he had some questions about the minutes. Mr. Kelly stated that the paragraph that referred to Hydrilla control being an emergency response by the Lake Management Office have the word emergency stricken from the minutes. The second suggestion Mr. Kelly made was that the paragraph stating that there had been a draw down of Forest and Park money from the Lake Management Fund be clarified. Mr. Null stated that he would reword the Forest and Park draw down paragraph before posting, the Board agreed to the change. The majority of the Board voted to leave the word emergency in the minutes.

Mr. Weiler made the motion to approve the minutes with the change, Ms. Manown-Mash second the motion, all were in favor, the minutes were approved unanimously.

Old Business

Canada Goose

Chairman Browning asked Mr. Paul Peditto to discuss Canada Goose control options. Mr. Peditto stated that the Wildlife and Heritage Service has been oiling goose eggs at Deep Creek Lake and averaging 50-60 eggs a year, which equals 50-60 birds removed from the population every year. He also states that in 2015 the first ever goose hunt was allowed at three locations at DCL. He stated that the hunt averaged about 15 geese year. Mr. Peditto cautioned against a depredation round up on the lake, since these events take years of litigation to hold and it requires the US Fish and Wildlife Service and USDA to be contracted to perform the round up at a high cost. Mr. Peditto stated that the goose population has remained relatively the same at 600 individuals since the oiling and hunt. He informed the Board that the most recent depredation round up in the state took six years to enact. Mr. Peditto's suggestion to the Board was to use a multiple method approach to control geese. The multiple method approach would include the egg oiling, the existing hunt and expand the control methods to deterrents installed, through Lake Management approval on the Buffer Strip, and the expansion of hunting to areas on land around the lake, where safety laws permitted.

Mr. Peditto stated that he would work with Mr. Null to assess the expansion of the hunting areas and the permitted installation of goose deterrents. Mr. Peditto was confident that this multiple method approach, once enacted would work well to reduce the goose population and allow for a publicly accepted method to reduce the population. He stated that there were already farmers around the lake that have entered into US Fish and Wildlife agricultural depredation permits that allow the farmer to take geese that are damaging their crops.

Mr. Weiler asked at what point are the geese not considered a nuisance? Mr. Peditto stated that there were two different tests to determine this, one is the ecological or biological impacts of a goose population and the other is the social and cultural aspect of a goose population. Mr. Weiler stated that in the case of DCL he would say that geese present a cultural and social problem. Chairman Browning

stated that people would not want to see an ecological problem arise from an increasing goose population. Mr. Peditto stated that he doesn't see the population becoming an ecological problem, since there are areas with much higher goose populations that have not resulted in an ecological problem. Mr. Kelly stated that there are clearly too many geese at DCL. Mr. Peditto stated that he had no argument but would cut to the chase. Some folks read about USDA control efforts and automatically think that it is DNR control efforts. The control efforts that have happened are largely USFWS and USDA. He stated that if you want to get rid of three hundred geese in July during the molting season, this would have negative impacts on tourism, since many tourists would witness this event. He stated that he was not trying to deter the action, just that a community of stakeholders would have to diligently do their homework on the impacts to the tourism before committing to an effort like this. He also stated that the cost would be significant, and someone would have to pay for the event. Mr. Iden asked if the USDA was the only group that would do the round up, Mr. Peditto stated yes. Mr. Iden asked if DNR would do the round up, Mr. Peditto stated no, since DNR is not authorized to euthanize a federally managed species.

Chairman Browning asked Mr. Null what were the majority of public complaints/ comments on the geese? Mr. Null stated that that he receives many complaints calls about the geese, but he also receives an equal number of comments that are against the mass depredation of geese. Mr. Null stated that Mr. Peditto was correct in stating that you don't know how many people like the geese until you propose something like a round up. Mr. Green suggested to the Board that they move forward with the suite of options that Mr. Peditto suggested. Mr. Peditto stated that he would work on including ducks in the DCL hunt for this year to make the hunt more attractive to waterfowl hunters, therefore increasing the participation in the hunt. Chairman Browning asked the Board if any one objected pursuing the options that Mr. Peditto suggested. There were no objections.

Lake Management Budget

Chairman Browning asked Mr. Null for a budget update. Mr. Null stated that he received word from the Park Service Chief of Finance that there would be no Forest and Park Fund contributions to the Lake Management Budget this year. He stated that he replied that there would have to be cuts in the budget on crucial projects to offset the lack of Forest and Park contributions unless he could access the Lake Management Reserve Fund. Mr. Null stated that Parks replied with wait a few months to see how the budget shapes out.

Mr. Null stated that Lake Management is receiving \$200k for hydrilla control from the State Lakes Restoration and Protection Fund. He stated that this would offset Lake Management budget expenditures, but the money has not been directed to the control project yet, so the cost is still coming from the Lake Management Budget for Hydrilla Control. Chairman Browning asked if the State Lakes money would be deposited into the Lake Management Budget, Mr. Null stated no, the money would be allocated to the individual project for which it was requested. He stated that instead of Hydrilla control bills being paid from the Lake Management Fund they will be paid with the special project money from the State Lakes Fund.

Mr. Null also stated that parks and legal were addressing the Shoreline Erosion Control Cost Share Program that was funded by the State Lakes Fund. Mr. Null stated that once approved it would provide

\$10k to 20 eligible applicants to offset some of the cost of installing shoreline erosion control. Mr. Null stated that once all the details are worked out the Lake Management office will disseminate all information about how to apply for the cost share to the public.

Mr. Null stated that the third project that was funded through the State Lakes Fund was the installation of fish habitat to enhance the fishery of DCL. He stated that \$20k was awarded to partner with fishermen and the Fisheries Service to install habitat structures around the lake.

Mr. Kelly asked if the Hydrilla Control was going to be funded by the State Lakes Fund then what happens to the Lake Management Fund money that was used for Hydrilla Control? Mr. Null stated that the money would be used to purchase the new water quality equipment that the Board approved for purchase when DCL applied for State Lake Fund money. It would also be used for equipment replacement that has not occurred since Lake Management has had to pay for the emergency response of Hydrilla treatment. He stated that the Lake Management budget will be able to increase operations and return to normal, something that he has not been able to do, since he has been manager due to the large amount of money spent on Hydrilla control. Mr. Kelly stated that it would be helpful to provide a list of the major expenditures and the equipment needed for the projects to aide in transparency.

Mr. Green asked if the legislation that provides the State Lakes Fund expires in three years. Mr. Michael stated that the legislation did not expire, but the funding does unless the legislature votes to extend the funding.

Wake Boats

Chairman Browning asked for a wake boat update. Mr. Null stated that he has only received two complaints so far this season but has received many complaints about boats pulling skiers and tubers too close to docks and generally boats operating too close to docks. Chairman Browning asked if there were any statewide complaints that have been heard by the BAAC. Mr. Bob Nichol of the BAAC stated that there were no wake boat complaints from any other part of the State.

Water Quality Monitoring Update

Chairman Browning asked if Mr. Bruce Michael for an update on the water quality monitoring efforts. Mr. Michael distributed a copy of the water quality monitoring to the Board. Mr. Michael stated that the update would be available on the Eyes on the Lake website. He stated that the continuous water quality monitoring, near-shore monitoring, and mainstem monitoring would continue. He stated that SAV and hydrilla monitoring would also continue. He stated that the zebra mussel monitoring project that has been funded for two years will continue if private funding for the project persists. Mr. Michael thanked Brookfield and the Watershed Foundation for their funding of the zebra mussel project.

Mr. Michael stated that a draft RFP of the sedimentation mitigation plan, that was paid for by Waterway Improvement Funds was submitted to a contractor for review. He stated that there were five different sites that were chosen for the sediment mitigation plan. He stated that analysis showed that they could

fund five project designs with the \$250k that was allotted by the Waterway Improvement Fund. He stated that the Department is also helping identify funds that could be used for the implementation of these project designs. Mr. Kelly asked when the designs would be finished for the five sites. Mr. Michael stated once the RFP is issued it will be about 14 months to receive the designs.

Mr. Jim George stated that going back to the shoreline erosion control cost share that MDE had a similar program that reimbursed private property owners for upgrading septic systems. He stated that after the owners received their reimbursements it was considered taxable money. Mr. George suggested that DNR look at this project closely so that the reimbursement is not considered taxable income to the private individual. Mr. Michael stated that he would be working with legal to alleviate that issue.

Mr. Michael thanked Mr. Green for providing his boat for the boat tour that held in this morning. Mr. Michael states that DNR, county, and MDE personal went on a boat tour of DCL to familiarize their selves with the lake, as well as, the projects that were being performed by Lake Management.

Minimum Wake Zones

Mr. Null stated that the Board had received the evaluation of the Sky Valley Minimum Wake proposal to review. He stated that Lake Management and NRP had reviewed the proposal and determined that it fit the BAAC criteria and was consistent with the historic minimum wake zones of DCL. Mr. Null stated that it was now the Board's decision whether to move to a committee public hearing. Mr. Kelly made a motion for the Board to move forward with a public hearing, Mr. Weiler second the motion, all were in favor, the motion to move to public hearing passed unanimously. Chairman Browning asked for volunteers from the Board for the Committee. Mr. Weiler, Mr. Iden, and Ms. Manowen-Mash volunteered to be on the committee. Chairman Browning asked for a commercial representative on the committee, Mr. Green volunteered. The Chairman asked for a member of the public from the area being proposed, Mr. Bob Sutton volunteered.

Mr. Null was asked how other areas could apply for minimum wake zones? Mr. Null stated that a formal petition with signatures and addresses and a detailed narrative along with a map of the proposed area must be submitted to Lake Management. Mr. Null cautioned that the first part of the evaluation would be to determine if petition was submitted due to existing regulations that were being violated. If this was the cause of the submission then the petition would be rejected, since it would be an enforcement issue, instead of a regulatory issue.

Mr. Null reminded the committee that since there was not a quorum of the PRB that the group may have discussions amongst themselves without violating the Open Meeting Act.

Brookfield Water Allocation Permit

The Chairman asked for an update on the Brookfield Water Allocation Permit Application. Mr. Null stated that he has not received any new information on the application, but he would be attending a meeting on the temperature enhancement release protocols for the DCL dam at Greenbrier State Park later in the week. Mr. George stated that the 21-day allotted period above the upper rule band is being closely reviewed by MDE due to the shoreline erosion occurring at higher levels and as a safety concern of the dam operation. Mr. Weiler stated that speaking for the POA that he has received many

complaints about the high-water level. Mr. Green stated as a commercial permit holder he does not think that the high level in July is sustainable due to the shoreline and personal property damage that occurs around the lake. He stated that a 21-day allotted period above the upper rule band is too long and causes too much damage. Mr. Kelly agreed with Mr. Green that the shoreline damage caused by the high-water level has been significant.

Mr. George stated that MDE was considering reducing the 21-exceedance rule in the permit. Mr. Browning stated that there would be a public hearing on the permit and MDE could address the questions about the 21 day period above the upper rule band at the meeting.

County Commissioner Update

There was not update by the County Commissioner

Mr. Null reminded the Chairman that the scheduled meeting time had elapsed and a motion to extend the meeting was needed. Mr. Kelly made the motion, Mr. Weiler second, all were in favor.

Public Comment

Mr. Tim Klein stated that he would like to see the BAAC criteria and that docks should be better regulated so that they do not extend past the 100 feet from shore regulation. He stated that people had been skiing Sky Valley for thirty years and doesn't understand why anyone would want to change that. He suggested that more boater education be available to the public.

Mr. Logan Marks stated that he was a wake surfer and wanted to share with the board that he was working to informing wake boaters of the rules, regulations and public courtesy associated with operating a wake boat on DCL. He offered to be of assistance in any way he could be to help the Department and Board relay information to the wake boat community. Mr. Marks was concerned about the possibility of more minimum wake zones being added to places that would restrict wake boat operation. The Chairman and Mr. Null informed him that there were only about three other places in DCL that would fit the BAAC criteria for a minimum wake zone.

A heated discussion occurred in the audience about livery operators and their responsibility, the Chairman had to call order to the meeting, since the argument was heated and off topic of public comment.

A motion to adjourn was made by Mr. Weiler and second by Ms. Manown-Mash, all were in favor the next meeting date was set for October 28, 2019. The meeting adjourned at 8:20pm

Respectfully Submitted,

Eric Null

Lake Manager

DCL NRMA