

Eastern and Western Upper Peninsula Citizen Advisory Councils (CAC)

Northern Michigan University, University Center

Peter White Lounge (Lower Level of the University Center)

2101 University Center, Marquette, Michigan

Thursday, March 18, 2010

6:00-9:00 p.m. EDST

Meeting Minutes

EUP CAC Members Present:

William Becks
Thomas Buckingham
James Duke
Ginny Giddings
Michael Lawless
Lester Livermore
Glenn Moll
Richard Pershinske, Chairperson
Chad Radka
Douglas Scheuneman
Steve Walker

WUP CAC Members Present:

David Anderson
Donald Britton
Marcy Cella
Floyd Dropps
Fred "Mick" Jarvi
Lorana Jinkerson
David Johnson
Martin Johnson
George Lindquist
G. Dale McNamee
Chauncey Moran
James Schmierer
Robert "Skip" Schulz
Dennis Stachewicz, Jr.
Warren Suchovsky, Facilitator
Philip Wirtanen

EUP CAC Members Absent:

Al Colegrove
Robert Devillez
Dale DuFour
Frederick Gregg
Stephen Rodock
James Rutledge
Thomas Schweitzer

WUP CAC Members Absent:

Robert Black
Shawn Hagan
Anthony Kakuk
Rory Mattson

Department of Natural Resources and Environment (DNRE) Staff Liaisons Present:

Stacy Welling, Upper Peninsula (UP) Regional Director, Marquette
Craig Albright, Wildlife Division, Escanaba
Debbie Begalle, Forest Management Division (FMD), Marquette
Gary Ellenwood, Recreation Division, Newberry
Cary Gustafson, Land and Water Management Division, Crystal Falls
Ann Mattson, Administration, Newberry
Tim Melko, Administration, Marquette
Terry Minzey, Wildlife Division, Newberry
Jessica Mistak, Fisheries Division, Marquette
Acting Lt. Chris Morris, Law Enforcement Division, Newberry
Mike Paluda, Forest Management Division (FMD), Marquette
Steve Scott, Fisheries Division, Newberry
Jon Spieles, Communications, Newberry
Sgt. Pete Wright, Law Enforcement Division, Ishpeming
Penny Bacon, Executive Division, Marquette

Welcome and Introductions:

Regional Director Stacy Welling opened the joint Eastern Upper Peninsula (EUP) and the Western Upper Peninsula (WUP) CAC meeting at 6:00 p.m. She welcomed both councils and the members of the public. Stacy also welcomed Ann Jousma Miler from Governor Granholm's office.

Stacy said Frank Ruswick was appointed as the Stewardship Bureau Chief; he will oversee the Recreation and Forest Management Divisions. The new DNRE logo was released today. At the last NRC meeting, UP Sportsmen's Alliance presented a proposal they've been working on with the Department for supplemental deer feeding. This proposal will be an information only item on the April NRC agenda. House Bill 5662 and 5481 would provide an individual to have up to three days of fish in their possession, provided that the additional two days of fish are in a processed state: frozen, cured, smoked, etc.

DNRE Staff Reports:

DNRE written staff reports were provided to the Council members prior to the meeting. The following staff reports are current updates since the written reports.

Gary Ellenwood, Recreation Division, said the passport bill moved in the house this past week. If passed, the passport would be a \$10 fee added to vehicle registrations and would replace the current motor vehicle permit.

Mike Paluda, Forest Management Division, said so far this fiscal year, which started October 1, 2009, they have offered 113 timber sales on state land in the UP. All of those timber sales have sold. The timber sales are usually two to three years long. The timber sales currently under contract amount to 58,000 acres, almost 1 million cords worth \$31 million. Mike said a year ago they had a workgroup on Drummond Island. The workgroup included residents, sportsmen's groups, ORV user groups and the Tourist Association. They developed a joint agreement to designate 47 miles of ORV route on Drummond Island. This is the only ORV trail/ route in the State that has areas that can be considered challenged riding. They are also working on a proposal with people from Calumet to establish a trail on private land. This would be the first trail in the state on private land.

Tim Melko said the new fishing licenses are on sale and are required on April 1. New hunting licenses are also on sale.

Jon Spieles said the pocket park in Escanaba at the UP fairgrounds will be open all summer. Please contact Jon, if you have children groups that are interested in using the pocket park to learn about fishing and shooting.

Debbie Begalle said due to the warm weather, snowmobile and ski trails in some areas are non-existent. In the southern UP, there have been three fires in Dickinson County and one fire in Delta County. Burn permits are available by calling or on-line. They will be hiring some state workers to help with state forest campground maintenance.

Jessica Mistak said she met with the walleye subcommittee today along with Kelley Smith, Fisheries Division Chief and Steve Scott, Lake Superior Basin Coordinator. They are continuing to make progress toward their mutual goals on the northern Lake Michigan walleye issues. The UP Power Company has filed to transfer the license for the Autrain Lake hydro-electric dam to North America Hydro. The license would transfer as is and the new owner would operate that license according to the existing operational conditions.

Terry Minzey said a few days ago the State of Minnesota filed a petition with the US Fish and Wildlife Service to delist wolves. Michigan and Wisconsin will likely join the petition.

Craig Albright said this weather is great for the deer herd. If the weather continues and there is a quick green up it should result in a good recruitment of fawns.

Special Presentation: Overview of Treaty Rights - Kelley Smith, Chief, Fisheries Division and Dennis Knapp, Tribal Coordinator

Dennis Knapp said there are eight principal treaties in Michigan. The 1842 Treaty of LaPointe and the 1836 Treaty of Washington have stipulations reserving “usufructuary rights” – hunting, fishing and gathering rights. The other Treaties did not have the same type of language reserving those usufructuary rights. Those areas haven’t gone to Court to challenge that type of interpretation. The 1836 Treaty area went to Court in Michigan and the 1842 Treaty area went to Court in Wisconsin. Michigan follows the Crabb decision for the 1842 Treaty area.

There are twelve federally recognized tribes in Michigan, primarily Chippewa, Ottawa and Potawatomi tribes. Treaties are government to government agreements that were made between the U.S. and Indian tribes. The main objective of the U.S. in making these treaties with the Indians was a peaceful way to obtain lands for settlement in exchange for promises. Overtime many of the Potawatomi Indians were removed from Michigan but the Ottawa and Chippewa tribes remained in the State. A key point to remember: Only the Federal Government can make treaties. States can not make treaties; nor can they alter or extinguish treaties.

In the 1842 Treaty, Article 2: “The Indians stipulate for the right of hunting on the ceded territory, with the other usual privileges of occupancy, until required to remove by the President of the United States.” These rights are similar to what’s used today in real estate law where the seller would reserve mineral rights, timber rights, etc. Another term used is “ceded territory” land that was sold where the reserved usufructuary rights continue to apply. The 1842 Treaty has been litigated in Wisconsin in Federal courts and Michigan follows the findings of that case for the most part.

The 1836 Treaty, Article 13: “The Indians stipulate for the right of hunting on the lands ceded, with the other usual privileges of occupancy until the land is required for settlement.” This Treaty was litigated in Michigan in State courts and also in Federal court with jurisdiction over the State of Michigan.

A couple of key legal concepts: Treaties are the supreme law of the land: Tribes are sovereign governments with the right of self-governance and self regulation. Tribes are also considered by the US Supreme Court as domestic dependent nations under the protection of the US. In the 1830’s the US Supreme Court established canons of construction – rules for dealing with Treaties and Treaty law recognizing the tribes were at a disadvantage when negotiating treaties – there were cultural and language differences and they weren’t familiar with the written word. Treaty rights are not individual rights – they are tribal rights. The Tribes determine the membership of the Tribes and are self-regulating governments that establish their own laws including hunting, fishing and gathering.

Kelley Smith used the 1836 Treaty as an example to show how to get from a Treaty to a Consent Agreement: The Treaty cannot be undone or changed. The Consent Agreement addresses how the Treaty is implemented; it can be changed by mutual consent. In the early 70's, Michigan decided to ban gill nets in the Great Lakes and that triggered everything that's happened since. Some tribal members thought they had a reserved right and decided to set nets, they were arrested and that triggered the case in 1976. The case went to the Michigan Supreme Court and the State of Michigan lost the case. The Supreme Court ruled the 1836 Tribes did reserve the right – that right had not been extinguished in Michigan. Secondly the Court set-up conservation standards that tells when the State can step in to regulate tribal fisheries.

The 1979 Judge Fox decision affirmed the Tribes have a Treaty right to fish on the Great Lakes. Judge Fox did not rule on the inland portion of the case. Judge Fox said there was no way the Tribes would have understood that the Great Lakes can be settled, therefore they never gave up their rights on the Great Lakes. The State doesn't have any authority to regulate that right. Kelley said it's important to understand that this is not an equal rights or civil rights case; it's a property rights case. The tribes ceded the territory and reserved part of their rights on the land and water. The Tribes get to manage the property rights for their members. The State appealed, the Court of Appeals affirmed the lower court that the Treaty right was reserved. The Court took the conservation standards further by saying the State may regulate Tribal fishing only when it's a necessary conservation method, is the least restrictive alternative to preserve the fishery from irreparable harm, and does not discriminate or harm Tribal fishers.

The 1985 Consent Decree on the Great Lakes had a 15 year life span. In 1997, two additional Tribes became federally recognized, the Little Traverse Bay Band of Odawa Indians and the Little River Band of Ottawa Indians. The 2000 Great Lakes Consent Decree has a 20 year life span. In 2003, the State initiated the inland case to resolve the inland Article 13 rights. In 2005, the Tribes approached the Governor and asked if the State would be interested in talking instead of going to Court. The State agreed and by 2006 they had an agreement in principle and in 2007 they had the final decree. This decree has no expiration date but it can be modified. The State negotiated for a number of reasons; the 1979 Fox decision, canons of construction and to create a better outcome.

Questions and answers followed. The following was noted:

- In the 1985 Agreement there was a line across Munising Bay, within the line the Tribes could not fish, outside of line they could fish. In the 2000 agreement that line disappeared, this was not intentional nor was it a trade for the Grand Traverse Band. Grand Traverse also had a line that is still there today. There were two versions of the decree, one from the Tribes and one from the State. When they were merged together, no one caught it. The State, the Tribes, and local groups have worked together to resolve this issue.
- Tribes have tribal codes which governs their members when hunting, fishing and gathering. By law that code is as restrictive as the Consent Agreement or more restrictive. Their regulations are not identical to the State's regulations. For example most of their bag limits for fish are double compared to Michigan's. But there are 1.2 million licensed anglers compared to about 5,000 tribal anglers. The Tribes also do things that State doesn't do.
- The Tribes have their own law enforcement to enforce their regulations.

- Gill nets are only allowed in the Great Lakes. There are two purposes for gill nets, one for commercial fishing and one for subsistence fishing. There is no commercial fishing or hunting allowed inland.
- An agreement was drafted into the Consent Decree to have specific regulations rather than the tribal codes for bear, elk, deer and turkey. The Tribes are allowed 10% of the bear quota but they've only taken about 2% of their allocation.
- The State has jurisdiction over the wholesale fish buyer as well as non-Native American individuals.
- The 1842 agreement in Wisconsin, particularly on the inland side, is far more liberal in terms of what the Tribes can do than it is in Michigan. As examples: they can fish inland with gill nets; they can have 20 tip-ups. None of that is true in the 1836 Treaty area. There has been some discussion by those Tribes to use gill nets but mostly walleye spearing is occurring on the inland lakes in the 1842 Treaty area. The DNRE meets annually with the 1842 Tribes on spring walleye quotas, harvest methods and guidelines.
- In the Great Lakes agreement there are specific rivers identified where the Tribal members must be a certain distances off those rivers to use nets. The Tribes agreed not to block any rivers.
- In both Decrees, there are specific harvest reporting requirements for the State and the Tribes. On the inland side especially related to those specific seasons for elk, bear, and walleye spring spearing there are very strict reporting requirements that the Tribes abide by. This is how we know their harvest is pretty small. On an annual basis the Tribes report their harvest, effort levels, and licenses issued. The five Tribes in the 1836 Treaty area have natural resources departments, law enforcement officers, biologists, and technicians. The State and the Tribes work together on surveys and share information.
- Due to the declining deer population; would the Tribes be willing to look at decreasing their deer harvest and possibly helping with the wolf situation. The Tribes are sovereign governments, they regulate themselves and they make their own decisions. The Tribes were part of the wolf plan process. The Tribes are very committed to working with the State on the education about the wolf's place in the eco-system.
- The Tribes do not just arbitrarily issue subsistence licenses to every member, it's a specific license within that Tribe and not all members are issued the license. Subsistence fishermen are limited to 100 pounds aggregate catch per day, they have monthly reporting requirements and subsistence fishing is for personal use only and can not be sold. The only commercial sale that's allowed is by their commercial fishery in the Great Lakes.
- Tribal members are allowed five deer, 2 antlered deer and 3 antlerless deer. It also was noted that in certain parts of Michigan, state licensed hunters are allowed 5 deer.
- The only distance requirement, outside of the mouths of certain streams listed in the Decree, is 1/3 of a mile. In other streams the wording is just to prevent the free passage of fish. For setting the Great Lakes commercial gear there are no restrictions from shoreline. A lot of trap net leads are within a few feet of water right up on shore. Once the net is within 12-15 feet to the surface of the water, there is an additional marking required on the net, for every 300 feet there has to be an orange buoy. **Shannon Van Patten** of the DNRE commercial fish unit said this is the most common complaint they receive and respond to every year.

Phil Wirtanen said there are limited sites where you can put in a sport fishing boat but at these same sites there seems to be a lot of netting activity. He said this has the potential of creating conflict at these sites. Kelley Smith said there is nothing in the Decree to address this. He added there was a problem in the disputed zone off of Alpena. The Tribes agreed

to space their nets to ½ mile so boats can get through. Kelley said they can facilitate discussion with the Tribes and the local groups to consider options.

Dave Anderson said it's almost conflict by design with the recreational anglers that fish in Black River Harbor. The Red Cliff and the Bad River boats come there for spring fishing and set their trap nets right off shore. There are sport fishing areas, commercial fishing areas, reef protection but none of those management tools are being applied to MI-2. He doesn't dispute their Tribal rights but he feels there is something to be gained by opening up discussions. It's about conserving the resources during sensitive times. Dave would like to see a similar discussion like this on the WUP. He feels there are some site specific issues that should be discussed.

Dennis and Kelley agreed to attend a future meeting to continue discussions.

New Business: - Transition of the Citizen Advisory Council's

Regional Director **Stacy Welling** gave an introduction to the group expressing that as the UP-CAC's are the only existing Councils, the others across the State are yet to be formed, we are in a unique situation to ensure that the next step is reflective of the newly formed DNRE. She expressed that the purpose is to gather input from both Councils but a decision will not be made tonight.

Cary Gustafson, acting District Supervisor, Land and Water Management Division gave a presentation describing the divisions and the functions of the environmental issues handled by the DNRE.

Lester Livermore said there are already CAC members highly involved, have expertise and are interested in the environmental aspect. He is the Chair of the Mackinac County Road Commission but he hasn't brought up those issues because it doesn't pertain to the issues the Council has been dealing with. He thinks the Council can handle issues like environmental impacts of erosion and non-point source pollution. There are empty Council seats on the EUP; if someone is interested they can apply to be a member. They need Council members that are willing to spend the time to be here.

Bill Becks said he thinks that everybody here is not only interested in natural resources but they are also interested in the environment.

Glenn Moll agreed but is concerned if this body can't handle the whole spectrum then it's going to be a compromise.

Richard Pershinske said the EUP has a few openings that could be filled by anyone who is interested in resolving environmental issues. They can apply and go through the selection process. They currently have people on the CAC that are competent, capable, and interested in environmental issues. Most of the members have been involved in environmental issues whether it is personally, commercially, industrially, or in other capacities. He said it was pointed out from a former DEQ employee there isn't expertise on the Council to address their issues. As the chairperson for the EUP-CAC, he disagrees, they have the expertise and they'll cover the issues.

Marcy Cella hopes the former DEQ will be as transparent as the DNR has been with the Council members.

By a show of hands, **Stacy Welling** asked the Council members if they were okay with adding environmental issues through this forum in the same way they do with resource issues. **Everyone voted yes (all 27 members present)**. Is there anyone who would not want to add environmental issues – **no members voted**. Would you support adding members to your current Councils to include stakeholders from the environmental side?

Steve Harrington, Remediation Division, said they have a CAC that meets in Lansing. He is not saying this group is not qualified; the Council members certainly have an interest and a lot of interaction with a number of these issues but he wanted to give a sense of the other stakeholders. For example: If the Councils were expanded to include all of their programs, the stakeholders should include representatives from the Michigan Municipal League, someone representing gas station owners, someone representing waste haulers, realtors, and environmental attorneys.

Lester Livermore said this is a citizen's advisory group not a lobbyist group.

Steve Harrington said these are stakeholders who are regulated under these programs. He just wanted to make sure people were aware of the other groups who may want to participate in these Councils.

Richard Pershinske said the EUP has openings, if environmental stakeholder groups are interested in participating, they can apply.

Stacy Welling said those are their stakeholders, those are the groups they interact with. We need to make sure we are including their stakeholders.

Lester Livermore said all of the Council members went through the application process to become members. They didn't come in as lobbyists, they weren't appointed by Director Humphries or the Governor. There are openings on the Council and if those individuals would like to become members of this group, they can apply. If there are more applicants than seats available, then they could decide if they want to expand the group.

Stacy Welling said prior to the merger, they wouldn't have been involved. When the Councils were created, there were media releases and letters sent to stakeholder groups. We are haven't done that yet because we wanted to get feedback to share with the DNRE Management Team and also we are waiting until the other Regional Directors are selected.

Richard Pershinske said there were a large number of organizations that were communicated with when the Councils were first created. Some organizations refused to participate or didn't respond for whatever reason. In fact when the EUP-CAC was created, they only had 16 or 17 of the original 20 allotted members allowed because they couldn't find people interested in being on the Council.

Warren Suchovsky said many the Council members and the organizations they represent already have interaction with the former DEQ. Vacancies occur from time to time and the Council members were split between 2 and 4 year terms, so there may be some reconsideration of members in the future. Another thing to consider when adding members, how large can a Council be and remain effective.

Phil Wirtanen said they are already squeezed for time when dealing with some of the issues. If they add the environmental issues, no matter if there were 20 Council members or

30 Council members there would still be the concern for time. From deer management issues to industrial pollution, it's a broad range that demands expertise. He is uncomfortable with some of the aspects.

Dennis Stachewicz said we can all agree that we have a common interest in the protection of natural resources. We need to understand the environmental people work on a different level and there are lots of things that may not be of interest to these Councils. There all kinds of specific things inside municipalities that 90% of the CAC members are probably not interested in. Also if there were people with environmental interests on the Councils, they would probably not be interested in half of the things we discuss. We look at natural resources from a different perspective. He doesn't think they would share a lot of common interest.

Marcy Cella said there is a schedule problem when addressing subjects now. The Councils only meet every other month. She suggested creating an environmental CAC for both the EUP and WUP to meet the opposite month of the current CAC's. Current Council members should be allowed to sit on both the environment and natural resources Councils.

Jim Duke said it's obvious both Councils are concerned with natural resources and how they utilize them. There are environmental issues especially with the motorized recreational groups that they deal with all of the time like the National Forest Service, National Park Service and with the EPA. He thinks they have a broad group of people that can certainly discuss the issues and if needed take them to a higher level. He doesn't believe they need to bring in lobbyists. With the DNRE staff available to interact with them, he thinks they can handle it as is.

Steve Walker agrees with Lester, we are citizens. He would prefer to have a liaison from the DNRE to provide information on what they are doing and give the Council the opportunity to explore it further. As a citizen, he is concerned with what's happening but doesn't have a desire to know about specific operational functions in a community but if it has a wide ramification to the people of the UP then he wants to know about it. He doesn't know if they need to broaden the Council to add 5 or 10 members because it would lessen the overall involvement between the DNRE and the Council.

By a show of hands, Stacy asked the Council if they want to add more members to the Councils to be reflective of the environmental issues.

Add fewer than 5 Council members – 12 votes out of 27 members present.

Add up to 10 Council members – No votes.

Fill existing vacancies – 14 votes out of 27 members present.

Create an entirely new environmental CAC to handle environmental issues, keeping the current EUP and WUP CAC's as is? - **12 votes out of 27 members present.**

Marcy Cella said the current councils should be kept up-to-date on environmental issues and what they are doing.

Dave Johnson said it's premature to decide if they want to expand the Councils. This is relatively new and we don't know how it's going to evolve. They should wait to see how the whole DNRE fits together. This is a citizen advisory group and we are here to give feedback about what the citizens think.

Dale McNamee said with the DNR they always have the NRC to turn to and to listen to them. There hasn't been any way to get recourse like that with the DEQ. He said he knows what they've accomplished as a Council and where they've come from as a Council. He doesn't see accomplishing that with the environmental side so they should probably create a new Council.

George Lindquist said as slots become vacant, fill the slots with environmental stakeholders but keep the balance to the natural resources.

Floyd Dropps said by adding more members to the Council it will make it harder to get things accomplished. He supports a new council.

Skip Schulz suggested subcommittees based on the Divisions within the DNRE. Each subcommittee would have a liaison from the DNRE to work closely together. The subcommittee would bring issues to the Council.

Warren Suchvosky said the vast majority of topics that have come before the Councils have been recreation oriented. They haven't heard a lot of issues from economic development or use of the natural resources to create wealth.

Mike Paluda said the Council members are being asked to add new members, create a new Council to tackle environmental issues, or attract new members. He said as a suggestion, bring in the environmental aspect of the operation and try it for six months and then see if something different needs to be done. No one really knows how things will go with the transition of the two departments.

Steve Harrington asked how the Councils would feel if half of their time was spent on environmental issues.

Dennis Stachewicz suggested if there were enough people on the Council interested in the environmental aspect, they could form an environmental subcommittee to meet with DEQ on issues and then bring pertinent issues to the Council.

Stacy Welling said if both the EUP and WUP created a group that wanted to tackle environmental issues specifically in addition to your East and West CAC meetings in a central location and add environmental stakeholders for that. How many members would do both. The following discussion ensued.

Lester Livermore said by forming a separate environmental Council, aren't you undoing what you just did. Councils were eliminated that were focused on specific topics and now you are talking about creating a committee just for environmental. We should try this and see how it goes. Add future stakeholders that want to be part of the council. It's a Citizen Advisory Council and any issue that's important to the citizens is welcomed.

Dick Pershinske said we are trying to make decisions based on perceived conditions. He added the DNRE will know first hand if the Council has a problem addressing an issue.

Warren Suchovsky said from his perspective all issues have an environmental impact.

Mike Paluda said the Council decides their agenda and what issues they want to spend their time on. It's not splitting the time equally between the environment and natural

resources; it's what issues the Councils feel they need to get involved in and the DNRE staff bringing issues they feel they need advice on.

Terry Minzey said in some cases you will have a regulation division shutting down a mom and pop operation. You may have people coming to you with specific issues, like the deer management assistance permits. When you are making decisions keep in mind the things you are going to be dealing with.

Glenn Moll said let's try adding the environmental aspect to the existing Councils for six months and see where it goes.

Chauncey Moran said in nine months, we'll be at a turning point when some of the Council member's terms end. Why not extend it for nine months to the end of the term. After nine months, chose applicants that may be more applicable to mission. All the issues we talk about are connected to the environment. The natural resources are the environment.

Stacy asked how many Council members would want to continue as is for six months and add environmental issues to the agenda. **All 27 members present voted yes.** How many members want to continue as is for nine months until the end of the first term.

10 votes out of 27 members present

Public Comment

Richard Sloat asked if any of the Tribes approached the DNRE about their Treaty rights concerning the current mining issues. Mr. Sloat referenced the presentation about negotiations versus litigation. Is the DNRE willing to do that instead off going into a big court battle?

Kelley Smith said they are two separate issues. The reserved Treaty right is very different than what you are talking about. What you are talking about is various parties engaging in a process related to some activity that has nothing to do with treaty rights. It's a property right related to hunting, fishing and gathering.

Cynthia Pryor, Yellow Dog Watershed Preserve, said she thinks eco-system management is really great. She suggested the Council members should spend some time in a region that they are unfamiliar with to get a different perspective.

Closing Comments:

Warren Suchovsky announced on behalf of Rory Mattson, the Delta County Conservation District is hosting a Natural Resources Regulatory meeting. The meeting will cover the permitting processes for Part 91. The meeting is scheduled for Wednesday, March 24, at 7:00 p.m. at Bay College in Escanaba.

The WUP-CAC will meet on Monday, May 17 in Delta County, location to be announced. Also, for the September 20 WUP-CAC meeting, Don Britton would like to take a field trip showcasing a multi-use trail in Marquette County prior to the regular meeting.

Meeting adjourned at 9:03 p.m.