

WHITEWATER COMMISSION
Quarterly Meeting
December 16, 1998

MINUTES

The quarterly meeting of the Whitewater Commission was held on Wednesday, December 16, 1998, in the Division of Natural Resources Conference Room #674, Charleston, West Virginia. The following individuals were in attendance:

WHITEWATER COMMISSION MEMBERS

John B. Rader, Director, Division of Natural Resources (Presiding)
Alisa Bailey, Director, Division of Tourism
Peter Hart, Superintendent, National Park Service
Susan Hanger
Jackie ASkip≡ Heater
D. G. AMoon≡ Mullins
Jeff Proctor
Turner Sharp
Bob Stanley
Luther Toney
Charles Friddell, Guide Representative

DIVISION OF NATURAL RESOURCES

Pamela B. Mullins, Director's Office (Recording Secretary)
Col. Jim Fields, Chief, Law Enforcement Section
Liz Harless, Law Enforcement Section
Lt. Col. Bill Daniel , Law Enforcement
Daynus Jividen, DNR Staff Attorney
Sgt. Larry Case, Law Enforcement - Beckley

PUBLIC

Dr. Andy Whisman, West Virginia University
Rick Bayes, The Rivermen
Bill Blake, National Park Service
Richard Cantrell, Cantrell Ultimate Rafting

John R. Hoblitzell, Attorney with Kay, Casto, Chaney, Love & Wise (representing

Cantrell Ultimate Rafting)

Karen Calvert, Rivers
 Eddie Lilly, Rivers
 Paul Breuer (former Whitewater Commission member) Mountain River Tours
 Rick Johnson, Extreme Expeditions
 Chris Dragan, Wildwater Expeditions
 Richard Smith, New River Scenic
 Randall Ballard , Drift A Bit
 Carol Fulks, WV Professional River Outfitters
 Brian Campbell, Rivermen
 Tom Louisos, Whitewater Information
 Terry Ritterbush, Whitewater Photography

CALL TO ORDER

The meeting was called to order by Director Rader at approximately 1:05 p.m.

APPROVAL OF MINUTES

Mr. Proctor pointed out one correction in the September minutes; Page 5, in the third paragraph, sixth line. This line should read as follows: AHe reminded the commission that at the last quarterly meeting a moratorium was placed on the issuance of new licenses for five years.....≅ Mr. Stanley then made a **MOTION** to approve the minutes of the September 17, 1998 meeting as presented and corrected. The motion was seconded by Jeff Proctor and was passed. Mr. Toney commented that the minutes should be received prior to the meeting in order for the commission to have adequate time for review.

PUBLIC COMMENTS

Paul Breuer of Mountain River Tours and former Whitewater Commission member, thanked the commission and Dr. Whisman for their hard work on the LAC process. He added that this very valuable, nationally recognized model will set in place the framework for the continuation of this work for the next 4 or 5 years. He recommended this process continue and the commission should take heed of its findings.

John Hoblitzell of Kay, Casto, Chaney, Love and Wise, spoke on behalf of his client, Richard Cantrell of Cantrell Ultimate Rafting. He discussed Mr. Cantrell=s request before the commission for his license to operate on the Gauley River. He added that after waiting 20 years for access to operate on the Gauley River and after seeing several study periods come and go that Mr. Cantrell=s license application should finally be addressed. He asked the commission for their favorable consideration of Mr. Cantrell=s license application.

Tom Louisos of Whitewater Information, spoke in favor or Mr. Cantrell=s Gauley

River license request. He stated that he felt it would be helpful to Mr. Cantrell's business to have a license for both the New River and the Gauley River and that he did not feel it would harm the rest of the industry.

Rick Johnson of Extreme Expeditions, stated that he felt there is a problem with the LAC system as it has been put into place. He pointed out that some of the larger outfitters were receiving a larger number of slots and the smaller outfitters were losing slots. Mr. Johnson asked the commission to again review this issue and reconsider parity for all outfitters which would be a fairer and more equal system of allocating numbers.

Richard Smith of New River Whitewater Scenic, stated that in 1980 discussion was occurring on the allocation numbers and that since that time all businesses had grown and the discussions were still occurring on allocation numbers. He added that he felt he was losing the money he had invested and that the present system is not allowing smaller outfitters to compete in the industry. He pointed out that parity would allow all outfitters to be equal as certain outfitters are getting more allocations and paying the same license fee. Mr. Smith suggested that the commission look at this once again prior to implementation.

Ed Lilly of Rivers, Inc. advised the commission that he is a proponent of parity and that he is also supportive of Mr. Cantrell being granted a Gauley River license. He continued by discussing the allocation methodology stating that it appears not to be an equal formula as it is taking slots away from the smaller outfitters and giving them to the larger outfitters. He explained that under the new methodology his company had gained 20 slots on the New River and 5 or 6 on the Gauley River and that he did not want these added numbers at the expense of the smaller outfitters. He reemphasized that he would not except these added slots.

Richard Cantrell of Cantrell Ultimate Rafting, advised the commission that it was not his intent to hurt anyone in the Whitewater industry with his request for a Gauley River license but that he only wanted to be allowed to continue to expand his present business. He discussed his difficulties in building a customer base with only a New River license and that he loses customers to other outfitters each year because he can not run both the New and Gauley Rivers. He also added that he felt the commission is setting up a system whereby the single license outfitter will be blocked off and the industry will be narrowed to only 4 or 5 large outfitters.

Chris Dragan of Wildwater Expeditions, commented that many small outfitters had attended the meeting today because they are upset with the new allocation methodology. He feels this methodology is not fairly based and that the parity system would solve problems for DNR and would not pit outfitters against each other. He asked the commission to reconsider this allocation methodology.

JOINT REGULATIONS AND LAC COMMITTEE REPORT

Lt. Col. Daniel advised that at a previous meeting, the director had asked him to head up the Regulations Subcommittee and to work together with the LAC Subcommittee to develop licensing procedures. Handouts were provided the commission outlining these recommended procedures. (ATTACHMENT A)

Lt. Col. Daniel added that these two subcommittees also addressed the allocation methodology which was accepted by the commission last year. He explained that it had been put into final form as a procedural rule for submission to the Secretary of State and that as a procedural rule, would be exempt from legislative approval; becoming effective thirty days after filing. (ATTACHMENT B)

Lt. Col. Daniel referred to the license application submitted to the commission for review and explained that the language relating to A dead beat parents≡ had been included as West Virginia State law requires any government entity that issues licenses to include this language on their license application. (ATTACHMENT C) Discussion continued.

Mr. Proctor then made a **MOTION** that, based on the LAC study finding that the Gauley River was experiencing crowding in 1995, 1996 and 1997, and due to the lack of criteria in place to determine whether new licenses should be issued with these existing crowding conditions, the 5 applications submitted to the commission for review during the period of January 1 to June 17, 1998 should be filed once again on the new application form and submitted to DNR and the LAC Subcommittee, through the process as outlined by Lt. Col. Daniel. This motion was seconded by Mrs. Hanger. The commission discussed this motion at length. Director Rader requested that the LAC subcommittee come up with a process whereby all applications could be evaluated including the 5 applications submitted prior to the moratorium. He added that the LAC committee could review this and make recommendations at the next meeting or possibly at a special emergency meeting in January. After continued discussion Mr. Proctor withdrew his motion.

Ms. Bailey made a **MOTION** that any procedural rule or application standard, as deemed by legal counsel not to be congruent with state law, be revised or stricken from the rule and that the procedural rule be accepted by the commission as presented. This motion was seconded by Mr. Proctor.

Mrs. Hanger then asked for an **AMENDMENT TO THE MOTION**, asking that the application form should state that an applicant is required to fulfill their business plan as presented on the application within a 5-year period. This motion to amend was seconded by Mr. Proctor and was passed unanimously.

After brief discussion, Ms. Bailey=s motion as amended was voted upon and was passed unanimously.

Mr. Proctor made a **MOTION** to accept the allocation methodology for commercial whitewater outfitters as outlined in the document presented by Lt. Col. Daniel. This motion was seconded by Mrs. Hanger. Discussion occurred.

Mr. Toney pointed out to the commission that this methodology presents a problem for several outfitters who have spoken at this meeting during the public comment period and their comments reflect their disagreement.

Lt. Col. Daniel restated that the commission adopted the allocation methodology last year and the Regulations Subcommittee took the adopted methodology and put it into a format whereby it could be submitted to the Secretary of State's Office as a procedural rule.

Mr. Mullins expressed his concern with taking slots from the small outfitter and increasing the allocation of the larger outfitters. He stated that if this methodology had created such a scenario then he felt it should be reviewed again by the commission before being implemented.

Mr. Proctor explained that this is just a procedural rule which clarifies what has already been adopted by the commission.

Mr. Stanley stated that the commission may need to reconsider this action prior to submitting this methodology as a procedural rule to the Secretary of State.

Mrs. Hanger reemphasized that this was voted upon by the commission a year ago.

Mr. Heater commented that he felt this methodology to be unfair to the single license outfitters and pointed out that many of the outfitters came to this meeting to voice their concern. He added that the single license outfitter was not causing the overcrowding on the river.

Mr. Proctor's motion to accept the allocation methodology was then voted upon by the commission. There were four ayes and four nays with one abstaining vote cast by Director Rader. Mr. Rader stated that he would abstain from voting because he felt this needed to be a decision of the commission and that they should agree as a body.

The motion failed to pass for lack of a majority vote.

Mr. Proctor then made a **MOTION** that the five applications submitted prior to the moratorium be resubmitted on the new application form. This motion was seconded by Mr. Sharp.

An amendment was offered to this motion and was seconded by Mr. Proctor and was passed.

Mr. Proctor's motion as amended was voted upon by the commission and was passed.

TOURISM SUBCOMMITTEE REPORT

Ms. Bailey advised Director Rader that Mr. Heater had voiced his interest in serving on the Tourism Subcommittee and asked that his name be added to the list of potential appointees. She also added that the Tourism Subcommittee had met earlier and discussed proposals for their \$25 thousand budget and advised that a full plan for utilization of these funds would be submitted at the next commission meeting.

Ms. Bailey then made a **MOTION** that any handouts submitted to the whitewater commission should be forwarded in advance of the scheduled meeting in order to provide the commission adequate time to review. This motion was seconded by Mrs. Hanger. Ms. Bailey then mentioned a specific handout and was unsure who had submitted this. Mr. Heater advised that he had provided the handout in question. The motion passed unanimously.

OTHER BUSINESS

Col. Fields advised that final approval had been secured through the Division of Personnel to hire a clerical position and a conservation officer to be assigned specifically to the Whitewater Commission; he introduced Sgt. Larry Case to the commission as that officer. He advised that Sgt. Case had begun an investigation into the nonprofit groups operating on the whitewater rivers. Sgt. Case advised that he would be speaking with each of these organizations and he invited outfitters and commission members who may have information relevant to this investigation to contact him. He continued by advising that as the investigation proceeds, he will report on the progress at future commission meetings. Col. Fields asked legal counsel, Mr. Jividen, to review the law as it relates to the regulation of these nonprofit groups and to provide an opinion to the commission. Mr. Jividen replied that the commission has two reasons for existence: to protect the public safety on the whitewater rivers; to provide for and protect the overall economic impact of the whitewater industry for the economy of West Virginia. He added that the commission, in his opinion, has the discretion to afford jurisdiction over nonprofit entities. Discussion continued.

Mr. Proctor asked if a letter could be sent to all outfitters, reminding them that the electronic reporting of numbers policy would become mandatory on January 1, 1999. Lt. Col. Daniel agreed to this request.

Mr. Proctor also asked that new application forms be forwarded to the five outstanding applicants for completion and return.

Discussion occurred on the proposal submitted by Rick Bayes regarding the

emergency response maps. Mr. Proctor made a **MOTION** to purchase 125 emergency response maps from Rick Bayes at the cost of \$2500. This motion was seconded by Mr. Mullins and was passed unanimously.

Mr. Heater submitted to Director Rader four letters he had received from single license outfitters speaking against the allocation methodology.

NEXT MEETING DATE AND PLACE

The next quarterly meeting will be held on Wednesday, March 17, 1999 at 1:00 p.m. in Charleston, Division of Natural Resources, Building #3, Conference Room 674. Director Rader advised that if a special emergency meeting would need to be held in January, the commission will be advised of the date and time.

A **MOTION** to adjourn was made, seconded and was passed. The meeting adjourned at approximately 3:35 p.m.