

Deep Creek Lake Policy and Review Board
Regular Quarterly Meeting
Garrett College
Monday, July 27, 2015

In Attendance: Chairman Dr. David Myerberg, Bob Browning, Robert Hoffman, Susan Fowler, John Stakem, Barbara Beelar, Daryl Anthony, (Asst. Sect. for Land Resources) Lake Manager Eric Null, Senator George Edwards, Delegate Wendell Beitzel, County Commissioner Paul Edwards, Bruce Michael, Gary Burnett, (Western Regional Manager for Parks), Joe Riley (Maryland Natural Resources Police) Mark Talty, Esq. (by phone) and ~100 Members of the Public.

Meeting called to order at 6:00 pm by Chairman Myerberg.

Action Agenda: Chairman Myerberg asked if there were any changes or corrections to the April, 2015 minutes. Chairman Myerberg asked for a motion to accept the minutes. **Motion to accept** was made by Mr. Browning, **seconded** by Mr. Hoffmann, **all approved**. Minutes were accepted. Chairman Myerberg thanked DNR for providing a transcriptionist for the last meeting and for this one.

Ms. Beelar corrected the use of the term ANTF in the Agenda. Mr. Michael said the group is called the State Aquatic Invasive Species working group which was put together after passage of House Bill 860 in the last session.

Old Business

New or re-appointments will occur sometime. Asst. Secretary Anthony responded that if anyone seeks appointment to the PRB, they should contact Eric Null at the lake management office, at 301-387-4112, and he will forward the information on to DNR.

Watershed Management Plan Update – Dr. Myerberg proposed to the Board that it should adopt goals #12 and 13 of the Watershed Management Plan and recommend to the Commissioners, the DNR, and the MDE Secretaries that the water budget study be conducted. Ms. Beelar expressed reservations with proceeding since other issues such as erosion and sedimentation directly relate to the water level issue and are not, necessarily, addressed by the water budget study. She also felt the issue that Deep Creek does not come under FERC control should be addressed, simultaneously. She fears that the water budget study may be the only action on all of these problems that the PRB will take. Delegate Beitzel felt it was unwise to involve FERC in these deliberations and further complicate the issues. After much discussion, **Mr. Hoffmann moved** that “the PRB adopt the goals of the Watershed Management Plan and recommend to the Commissioners, the DNR, and the MDE Secretaries that this water budget study be conducted.” **Motion was seconded by Susan Fowler.**

In further discussion on the motion Senator Edwards and Delegate Beitzel wanted to clarify that this motion just referred to the water budget study, that total funding for the study would come from private donors up to about \$100,000, that the study would be done in the next year of two, that the object of the study was to determine whether or not water allocation to the lake, the fish, the river and power can be done in an equitable but better way, that the consultant will be engaged by MDE, DNR the County and the PRB, and that the RFP will go through normal State processes. All these were confirmed. Since this motion relates to funding, Senator Edwards and Delegate Beitzel abstained from voting as recommended by counsel. **The motion passed 5-0.**

Committees:

Canada Geese: Mr. Paul Peditto did not attend the meeting. Chairman Myerberg reported that DNR and Lake Management addled over 100 eggs this year, which will, of course, lessen the total goose population. But, even with this level of addling, the population will likely continue to increase by 15% per year. Therefore, there will be a Goose hunt this winter. DNR will have more details on this. Ms. Beelar suggested that DNR produce information soon for the public and present it to the PRB. Chairman will communicate with Mr. Peditto to get this information soon.

Sedimentation Study Committee (meeting minutes and correspondence of the Committee were attached to the agenda for the Board)

Mr. Hoffmann presented: The Sediment Committee is composed of Dick Matlick, Paul Weiler, Ed King, Morgan France, Bob, Browning, (co-chair) and Bob Hoffmann (co-chair). This Committee was appointed to review the DNR Sediment Report published in 2013, which stated that DNR did not agree with dredging in Deep Creek Lake. The Committee had several meetings during which the report was discussed, but the Committee's attention became focused on the issue of dredging after Senator Edwards was able to obtain \$250,000 of Waterway Improvement Funds (WIFs) for dredging from BRFA funding for Deep Creek Lake from the Governor's Budget. This funding will be lost if it is not obligated/committed by April 1, 2016.¹ The Committee has focused on development of a small-scale pilot dredging project that will be acceptable to DNR, MDE and the Army Corp of Engineers, (ACoE) will be able to be done within the budget and will provide some answers for those interested in any kind of dredging in Deep Creek Lake in the future.²

¹ MR. G. EDWARDS: (regarding the funding) "But if not (obligated by that time), then they're to make it a priority in the 2017 budget, they being DNR, and they could put in whatever number they want, but I would say no less than 250." See Transcript at page 55.

² For presentation at this meeting, the Committee has embraced the concept of the King Wall, which is a wall based below the 2462 foot elevation, behind which dredged material from the lake will be placed to remove sediment/debris/erosion that has collected in the area immediately in front of the wall.

Ms. Beelar expressed concerns that, based on the State's Sediment Report, DNR will, still, not want to dredge in Deep Creek Lake. She also expressed concerns that the Committee has not reviewed and assessed the State-sponsored sediment study, or assessed the Decision Matrix in that study, which is limited and narrow in scope and has flaws and oversights. Ms. Beelar submitted a 3-page document, dated 7-27-15 to the PRB with a response and questions to the Sediment Committee. (See attached to the minutes)

The Committee has involved Mr. Rich Ortt from DNR in its discussions. Mr. Ortt was encouraging to the Committee regarding the pilot project. Mr. Bruce Michael from DNR stated that he was aware of the "new caveats" regarding dredging at DCL based on the new WIFs allocated. He wants to get Mr. Mark O'Malley, Director of Boating at DNR, MDE and the ACoE together with the Committee to discuss present limitations on WIFs and permitting for the pilot dredging project. He also would like to use ~\$60,000 of these new WIFs to (1) study what sediment is coming in from the tributaries to supplement data that they have from 2013 and 2014 and (2) Maryland Geological Survey (MGS), working with the park authority and the community, would like to set up in ten locations to look at where shoreline erosion is coming from. DNR and MGS would like to start these studies in the next several months. The pilot project needs to be geared up in that same time frame.

Mr. Beelar is hopeful that MDE Secretary Grumbles will be amenable to doing Total Maximum Daily Load (TMDL) studies on some sediment in DCL this year. Mr. Beelar is concerned that the Sediment Committee does not have adequate professional expertise in dredging to embark on the pilot project of the King Wall.

Ed King, a member of the Committee commented that the concept is already on DCL. The only difference is they backfilled the wall at the State Park by hauling dirt in. This concept makes it possible for a place to put the sediment to backfill the wall.

Ms. Beelar asked, "is this a best management practice for removal of sediment? How much sediment? How do you handle the waterfication? How do you handle costs? What are the costs to the property owner? Are you asking them to pay for this? What about the stench?"

Chairman Myerberg proposed that "the committee consult with Bruce, consult with Barbara, consult with whoever they have to over the next month and have an emergency (special) meeting of the PRB, a month from now and not wait until we go all the way into October. **This was accepted by the Board** and scheduled.

Mr. Browning moved for approval of ~\$60,000 for the studies that Mr. Michael outlined, above. The motion was **seconded by Ms. Fowler**. After brief discussion the **motion passed unanimously** with the Senator and Delegate abstaining as recommended by counsel.

Lake Budget – No Update until new appointments to the PRB are completed.

Laws and Regulations Impacting the Deep Creek Lake Watershed (update): Dr. Myerberg: The AG's office will update it from the State law and regulation standpoint on a yearly basis. Mr. Talty stated that the AG intern should be finishing up the changes from the State side for this yearly update within the next week or two. Debbie Carpenter from the County told the Chairman that she and her office will update the County part of the Compendium on a yearly basis, so we will have an updated compendium of laws and regulations every year.

Mr. Browning would like to have a handbook of DNR policies for Lake Management. The Chairman will approach Mr. Eric Null to determine the best way to have this done.

SAV's: Update on Hydrilla and Inspection of Boats

Bruce Michael: Results and Plans for 2015: “The hydrilla control strategy has been in place this year. We've had three treatments. We actually had a treatment today, and so far, it's been pretty successful. We haven't identified any other hydrilla throughout the lake, but we'll be doing some more intensive studies throughout the rest of the summer with some lake live surveys.”

“We did find one other, an invasive species called Curly Pondweed. We're evaluating that. It's not near like Hydrilla, but it's certainly something that we have an interest in. We found a couple plants coming up, but we'll be continuing to evaluate that over the summer.”

“Our launch steward program has been very successful. We've had 1,451 boats that we've inspected so far through May 26th through July 22nd of last week, which is more than we did for the entire summer last year.”

“Out of those 1,400 folks, only 23 people refused inspections, and we have found 23 instances out of those 1,400 boats, where they actually had some debris, an SAV or whatever on the boat, and we asked them to clean it off. And what we found was a whole suite of different grasses. There was one instance of hydrilla that we found on a boat, and we, obviously, got it off before it went into the (lake), and that boat was -- I guess there was one boat that had hydrilla from the Susquehanna, and there was one

boat from the Great Lakes, I believe, that also had hydrilla. All the other species have basically been, you know, normal species that we see in this type of climate.”

“One of the things that we mentioned at the very beginning is that there is House Bill 860 that created the Aquatic Invasive Species (AIS) work group, AIS. We had our first meeting in June. We actually have another meeting scheduled for tomorrow. The goal of this is to make recommendations on how we can slow the spread of Aquatic Invasive Species throughout the state of Maryland, and this is specifically to state-owned properties.

There's a couple people from Deep Creek Lake that actually are participating in this, in that work group, the Aquatic Invasive Species work group. Barbara Beelar's on it, and so is Carol Jacobs who is here tonight. They are participating in this.”

“We are also trying to bring in some outside experts. I've contacted U.S. Geological Survey, the Smithsonian Research Center, as well as Maryland C3N to talk to their experts, and they're going to be bringing some information to this work group. Our goal is to have a report done and those recommendations by December 31st of this year, and we're working towards that.”

The web site of the AIS is <http://mddnr.chesapeakebay.net/AIS/index.cfm> (The next meeting of the AIS is scheduled for Tuesday, July 28th from 1:00 - 4:00 PM at the DNR Tawes State Office Bldg. in Annapolis. They will post meeting agendas, minutes and relevant information on the website in the future.)

On questions related to Snakehead fish, Elodea and celery grass, Mr. Michael stated that “(these are) why we have a long-term comprehensive monitoring program, so we can look at that change over time, and we want to make sure that, again, those seasonal variations and yearly variations are certainly something that we understand and are accustomed to, but we want to make sure that we don't get something like Hydrilla that takes over the entire lake.”

Mr. Michael responded to a question on Eurasian Water milfoil, stating, “We haven't seen Eurasian Water-milfoil increasing over time. It's not to say that it's not there. It doesn't go up and down depending on what year it is. But right now, we haven't seen an overall increase in Eurasian Water-milfoil.”

North Glade Run Study – (Report from Debbie Carpenter attached to email) Ms. Carpenter does monthly updates which she will email to any concerned citizen.

Jet-Pack Boats – July 2015 – Some have seen these on the lake off Turkey Neck and off Pawn Run this summer. No accidents or incidents have been reported. The conduct of these vessels seems to have been orderly and within the emergency regulations. No one is renting these on DCL as of this time.

Update from County Commission: re: other lake-related issues – Mr. Paul Edwards stated that “we’ll be meeting in two weeks, I believe, with the Secretary of DNR and Secretary of MDE. I’m sure Deep Creek Lake will be a large part of that conversation. Outside of that, there’s not a lot of new stuff going on, just a lot of continued deliberation of old stuff. We’re getting a lot of recommendations from the public, a lot of help on the management plan and things of that nature, but we’re about the same place we were the last time.” The dates for the meeting with the Secretaries will be August 10th and 11th. The itinerary has not been solidified.

Related to this **Ms. Beeler moved** that the Secretaries meet with the PRB when they are here in August. **There was no second** to the motion. Senator Edwards suggested that at some point in the future we should schedule a meeting with the Secretaries and the PRB.

New Business: (3 items)

We received a note from Steve Green that one of his customers received a warning regarding a device on which he was riding. NRP Officer Joe Riley showed the Board a photo of the device that he says was the subject of the warning. This device is a board with fins underneath that function as a hydrofoil. The board rises above the water at some speed, but the fins still touch the water. Joe has seen You Tube videos that show this device to be dangerous. However, Mr. Browning pointed out that this device is waterborne, so it is not illegal. There appeared to be some confusion as to whether the device that was ticketed was a tube with wings that actually becomes airborne. If so, flying such a device behind a boat on DCL is illegal. The Chairman will clarify this with Lieutenant Cage.

The Board was asked to review an easement permit where there was a violation in terms of going over the line and actually constructing a patio over the line, all done prior to a permit being issued. The patio is more than 120 square feet, also. DNR is the organization that will determine if that violation occurred, whether there's any fine or anything along those lines. Mark Talty gave an opinion on this that is in the record.

DNR has been approved by the Board of Public Works (BWP) to purchase a property at the end of Yacht Club Road (YCR) that is composed of six lots that have not, prior to this time, been developed, and these front on a

peninsula that sticks out into the lake. (~3 additional acres) The intention of DNR's purchase is to have an area where the public can come with boats on top of their cars, including kayaks and canoes, non-motorized vehicles, and carry these down to the water and use the lake on that southern exposure. It amounts to approximately 0.96 acres of land, and the price was about one million and 50 thousand dollars. The closing on this real estate has not occurred as yet, and it will likely be in two to three months.

Ms. Beelar stated that she thought the PRB should have known about this prior to the Board of Public Works meeting at which this was approved. She also has questions about how this extension of the State Park will be managed.

Asst. Secretary Daryl Anthony stated that “The three acres that are within the buffer can't be developed. There's nothing that can be done on that because it's in the buffer, and we fall under the same regulations that everyone else does here in the room. So, what the concept is -- and I want to make sure that you understand this. The concept is if this purchase happens, the reason why DNR began looking for opportunities for additional access to the lake is because we hear the public. It's part of the Watershed Management Plan, I believe, as well.” “In our heads, we're thinking a gravel pull-off area and a trail to the edge of the water. That's the extent of it.” “There's no desire on the part of DNR to have any type of infrastructure on that property, no bathrooms, no lighting, no -- nothing other than passive, maybe some gravel and a trail.” The State generally purchases first and plans later. They have an idea that they can justify to the BPW. The intention here is for additional public access to the lake.

Delegate Beitzel stated, “When the Board of Public Works approves it, it's pretty much a done deal.”

There were no additional questions by the PRB.

Correspondence Received by DNR: None

Public Comments: Numerous public comments were received by the Board by the following:

Brian Blough: YCR resident since 1939. Don't want ramp at the end of YCR. Traffic on narrow road. Someone will get hurt.

Brooke Blough: YCR resident for 73 years. Don't need additional boat and car traffic.

Michael Brooks: If I wish to pursue or a group of us wish to pursue a legal process that perhaps would provide you the catalyst to walk away, respectful of the comments that Mark made about maybe your lack of due diligence and the process associated with that lack of due diligence, to whom do I direct my people?

Bob Campbell; Fulltime resident in Cedarbrook. Republican. This was a covert operation. Claims that Eric Null said, "I am the lake manager and I can do what I want on this lake."

Chris Colvill: Property owner. Opposition to the Yacht Club Road purchase. Middle of the residential area. No guarantee the State's purpose may change in the future. What is the evidence it is needed?

Brian Greenberg; DNR sediment policy and buffer zone policy: Push the pause button, its rush to adopt this kind of sediment removal approach. Your option with the King Wall is to build that wall and then pump the "goo" that you don't like under your dock into your front yard. It will be more akin to the Normandy defenses when you look at it across the lake than to the Deep Creek Lake we now enjoy. Bring in ecologists and realtors to evaluate this. Because the King Wall approach is cheaper, doesn't mean it's better. Reallocate monies which are being misdirected towards land acquisitions to protecting the deteriorating quality of the lake experience.

Donna Hansen: Dredging: Huge change in usability of their cove over 16 years from sediment and SAV's. Many years need to pull boats out early. Can't swim. Property taxes will suffer as value drops. Will only be good for kayaks and canoes after a short while. The \$1M for the YCR purchase could better go to dredging. Major point of reference for the lake is really the health of the ecology and the amenity value of the recreation we all enjoy on the lake.

Chuck Hoffeditz; Lake resident. Worked for National Weather Service. Did water budgets. Rainfall information is much more important than the rainfall information that's been available in the past. Proceed with that water budget study. It's only a study. It's not going to change things. It'll be available for anybody to use in the future, so it's a good suggestion.

Carol Jacobs: No comments transcribed.

Ed King: See minutes on Sediment Committee.

Ed Lang: From the Crescent Shores Homeowners' Association. Crescent Shores Drive is private. Wanted public notice. Logistics of the access. Extra parking? Fees? What is the evidence it is needed? Ice fisherman have plenty access. Can't connect the road through a wetlands. Crescent Shores Road will be destroyed by seekers of the State's property with GPS's.

Richard Matlick: Green Glade Cove resident for 35 years. 1 to 2.7 feet of sediment. Lake needs dredged. Pilot project a good way in the door with DNR, MDE, etc. Coves dying. Orange and filthy this year. The coves will all be kayak coves and the property values will plummet. Shallow and warmer coves increases SAV's. Ten impacted coves. Need to sample in the shallows. Fish can't even live there.

Joan Mortenson: Lake resident whole life. 100 signatures in the last 24 hours against connection of YCR and Ezra Savage Road. People will be hit by cars. The price paid was too high. Boats will not be screened for SAV's. Road too narrow. Ice fisherman leave trash. Smells like an inside deal. Will fight this. She read a number of comments from her petitions: (1) Lots bought by the State are those the owners were unable to sell. (2) Private owners invested for privacy. Unnecessary. State Park provides all the needed access. "I offered to buy the parcel from the State and was not replied to. I was going to deed it to the Maryland Conservation Trust at the time. If you wish to pass this to the appropriate representatives, I would be happy to discuss in open negotiations to buy the parcel." (3) Poor use of tax payers dollars. Little means of limiting volume. (4) Do not invite strangers to come through our neighborhood where trash and/or other invasive species will exacerbate our issues. We choose to live here because Turkey Neck Road had no thruway and, only residents use this road. This is a bait and switch to invite the public. The tax map shows the roads connected. Why is that?

Elizabeth Savage; One of the kids who lived on Ezra Savage Road. These are vacation homes, they are not occupied by people year round. And so, by opening this up, it's allowing -- it's inviting people to come to an area who, hopefully, they have no ulterior motives. If it's not done, then why can't it be stopped?

Brad Shepard: Guest at DCL. Ask the DNR to bring proof of all the people that have claimed to want this particular location.

T. Robert Verkouteren: In a nursing home with Alzheimer's. Still pays enormous taxes on waterfront property. Park already on the lake. Pay for the access and the public gets to take it. Spend the money on SAV's.

Larry Werner: Listed, but no comments.

Ellen Williams; Lake resident for 60 years. Need for effective lake management. Watershed Plan didn't really address it. It sort of kicked the can down the road.

These comments appear on **pages 105 to 159 of the transcript** of the meeting.

Following the comments, on questioning, Mr. Talty stated, “If changes (in the contract for sale) take place at this point, there are legal implications, based on contract negotiations that have taken place. That's not to say that those couldn't be reversed, but there are, obviously, certain legal implications that could happen to the State should the arrangement change at this point, if that helps to clarify the issue.”

Announcements: The next meeting date for the PRB is October 26, 2015.

Submitted by:

David Z. Myerberg, MD, JD
Chairman