

Mountain Island Lake Marine Commission Minutes

November 6, 2013 · 6:30 pm
East Lincoln Fire Department
Stanley, North Carolina



Commissioners Present: Chairman Kari Lanning (Lincoln County)
Secretary Treasurer Brian Weyeneth (Gaston County)
Commissioner Murray Nixon (Gaston County)
Commissioner Daniel DuVall (Mecklenburg County)
Vice Chairman Skip Hudspeth (Mecklenburg County)
Commissioner Cathy Roche (Mecklenburg County)
Vacant (Gaston County)

MILMC Staff Present: Emily Parker, Executive Administrator; Chris Clark, Legal Counsel

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Welcome & Introductions	Chairman Lanning called the meeting to order at 6:30 pm and welcomed everyone present.
Consent Agenda	Chairman Lanning asked if any items on the Consent Agenda should be removed. No comments were made. <u>A motion was made by Secretary Treasurer Weyeneth to approve the Consent Agenda. Vice Chairman Hudspeth seconded the motion and it was approved unanimously.</u>
Discussion of Items Removed from Consent Agenda (if any)	n/a
Public Comments	Tim Gause, District Manager with Duke Energy spoke to the MILMC about the de-commissioning of Riverbend. On April 1, 2013, Duke Energy closed Riverbend and started the de-commissioning process, which is a careful and methodical disassembling of the plant. The building itself will be de-commissioned. There is a team onsite that makes sure everything is safe. They are going through the plant and removing liquids, fuels, asbestos, and taking apart the steel structure. The transmission lines will remain. Over next several years, Duke Energy will level the plant and begin a restoration process to make it look like a natural area. The Riverbend site is a strategic location for Duke Energy. They are looking at different options for closing the coal ash basin. Duke Energy sent mailers out to the community. The commitment is that Duke Energy will keep people onsite and will

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	<p>work with the State to remove materials, including recyclable materials. At each milestone, Mr. Gause said that he would update the MILMC. Ms. Parker will email Mr. Gause regarding future communications. Vice Chairman Hudspeth asked a question about the coal ash ponds on water quality. One option is to put a cap (liner, dirt, and grass) over the basin, and another option is to remove it completely. Duke Energy is going to look at the science behind both options. There is a cost associated with either option. Cost may flow down to the rate payers. They do not know yet what option they will go with. Chairman Lanning asked about other uses for the site. Mr. Gause reiterated that Riverbend is a strategically important site. The MILMC thanked Mr. Gause for attending the meeting.</p>
Public Safety Reports	<p>Officer Turner of the Charlotte Mecklenburg Police Department reported that in October, the CMPD had 23 calls for service, 2 boats were inspected, and they issued 1 warning and 1 citation. Officers were notified about an abandoned boat floating with no motor or outdrive at the Neck Road Access. The owner of the boat is presently in jail. Officers are trying to locate a trailer to get the boat removed from the lake and back to the owner. Due to the situation, Officer Turner was not quite sure what to do with it. Secretary Treasurer Weyeneth asked how much it would cost to take the boat out of the water. He may be able to arrange a trailer. Commissioner DuVall asked if the boat could just be placed on the owner's property. He did a close inspection of the boat and concluded that it is going to be difficult to get it out of the water. Vice Chairman Hudspeth also has a big tube that law enforcement could use. CMPD officers have also received a couple of calls about gun shots near Latta Plantation in the Gar Creek area. They think that the shots are from duck hunters in the back of Gar Creek. CMPD road officers have been advised.</p> <p>Officer Hord of the Gaston County Police Department reported that the GCPD is waiting for the new boat. Officer Hamrick will likely attend the training session for the new boat.</p> <p>Kermitt Taylor of Duke Energy reported that:</p> <ul style="list-style-type: none"> • Lake level was at 96.3 • Low Inflow drought stage – Normal • No new permits have been issued.
Environmental Reports	<p>Heather Davis with Mecklenburg County LUESA reported that the last lake monitoring occurred on September 16. LUESA updated the Lake Use Support Index (LUSI) map by adding 4 boxes for each monitoring site. The top box shows the LUSI score, the second box addresses the level of fecal</p>

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	<p>coliform bacteria, the third box addresses turbidity and the fourth box is about algae growth. They also changed the Fishable Indicator Key. Overall, the scores look good. Ms. Davis spotted an error on the LUSI map. She will send Ms. Parker a revised LUSI map. All fecal coliform scores are in the “Supporting” range.</p> <p>Alice Battle was not present. Chairman Lanning relayed highlights of Ms. Battle’s Lakekeepers Report.</p> <ul style="list-style-type: none"> • The event at Riverbend was well supported by the Covekeepers. Lake Wylie had a lot of trash to clean up because of the floods on Mountain Island Lake. Items included two swing sets and a variety of boats. They usually have 1,000 volunteers; this year they had between 700 and 800. • The Lake Norman and Mountain Island Lake Covekeepers are holding a joint kayak trip down Mountain Island Lake on November 9th at 10:00 am. The Lake Norman Covekeepers made the request because they wanted to learn more about Mountain Island Lake. The trip will start at Killian Road Access, go into Duck Cove, and down the River to Neck Road Access. The Catawba Riverkeeper Foundation will provide kayaks for those who do not have one. • Ms. Battle’s hydro bike was stolen the night of October 5th. The bike is unique item on the lake and is difficult to hide. It has a unique hull number and weighs 150 pounds. After searching the lake and areas where it could have left the lake, the only place it could it have been removed is the Riverbend Access. • The motion activated cameras at the Riverbend Access are not functioning properly. The pictures captured by the camera can be downloaded by wi-fi or by removing the card onsite and replacing it; a key is needed for the latter operation. The camera stops operating when the card is full. The City of Mount Holly took charge of the camera because they annexed Riverbend Access. Calls to Mount Holly Police resulted in several responses: that the camera does not work, to it has never worked. It was concluded that this is the Mount Holly Police Department’s issue. Secretary Treasurer Weyeneth will call Mount Holly personnel about this situation. • Sam Perkins added information about the November 9th kayak trip.
<p>Factual Presentation about E-verify Compliance</p>	<p>Vicki Bott, Centralina COG Grants Development Director, was present to inform the MILMC about a new NC state law that will impact the MILMC, referred to as the E-verify laws. Ms. Parker provided the marine commissioners an one-page overview document in their agenda packages. Ms. Bott referred to that overview document as she spoke to the group. The reason this came about is that</p>

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	<p>before Gaston County will release payment to the MILMC, the marine commission has to prove that it is in compliance with the E-verify laws. Ms. Bott provided background about the E-verify laws. Basically, local governments cannot enter into contracts unless they are sure that their contractor(s) and any subcontractor(s) are in compliance with the E-verify laws. So, Gaston County and Lincoln County are asking the MILMC to certify that the marine commission and its subcontractors are in compliance with the law. Ms. Bott, Ms. Parker, and Legal Counsel Clark have worked together on an affidavit that the MILMC can authorize and send to Gaston and Lincoln counties. The affidavit says the MILMC is in compliance because it is not a private entity and is therefore exempt. The affidavit has been prepared for the MILMC to sign, notarize, and submit to Gaston and Lincoln counties. Centralina has already prepared their affidavit as one of the MILMC's subcontractors. Ms. Bott responded that Centralina, Legal Counsel Clark's law firm, the MILMC's auditor, and Nick Makres would be considered subcontractors. Exemption can come with 25 or less employees. The MILMC is exempt because it has less than 25 employees, but because of its subcontractors, the MILMC must respond to the request from Gaston and Lincoln counties, and potentially Mecklenburg County. Legal Counsel Clark recommended that the affidavits be signed. Chairman Lanning should sign the affidavit in front of a notary. Legal Counsel Clark mentioned that this mainly impacts the MILMC in a forward looking way – in that, if the MILMC is going to hire a subcontractor to do work, that sub may need to sign an affidavit. Legal Counsel Clark commended Centralina staff for work done to prepare E-verify materials for the commission. The MILMC thanked Centralina staff present.</p>
<p>MILMC Bylaws Amendment (July 3, 2013), revisited</p>	<p>Commissioner DuVall would like to table this item until the January meeting.</p>
<p>Finance Report</p>	<p>Secretary Treasurer Weyeneth reviewed the finance report. Ms. Parker reported that the \$7,500.00 has been moved from the SunTrust checking account to the NCCMT savings account. County contributions from Mecklenburg and Lincoln counties have come in. Gaston County's contribution is forthcoming.</p>
<p>Chairman's Report</p>	<p>Chairman Lanning reported on the following items:</p> <ol style="list-style-type: none"> a. December 2013 Meeting – Traditionally, the December meeting has been a quasi-business meeting held at a Mecklenburg County marine commissioner's house. Chairman Lanning asked for thoughts from the other commissioners on whether or not to have the December meeting. Commissioner Roche suggested that perhaps there should not be a December meeting this year. However, not having a December meeting may put Mecklenburg County

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	<p>marine commissioners in jeopardy, with regard to attendance. Ms. Parker will look into the MILMC's attendance for calendar year 2013. <u>Secretary Treasurer Weyeneth made a motion that the MILMC not meet during December 2013. Vice Chairman Hudspeth seconded the motion and it passed unanimously.</u></p> <p>b. Strategic Planning Session – Commissioner Roche thought that last year's session was very valuable. Perhaps the MILMC could try a different format. Saturday vs. a weekday? <u>Secretary Treasurer Weyeneth made a motion to accept the proposed 2014 meeting schedule, as presented by Ms. Parker. Commissioner DuVall seconded the motion and it approved unanimously.</u> Chairman Lanning wanted to aim for having the Strategic Planning Session on Saturday, January 11, 2014. The Strategic Planning Session may be considered a Special Meeting under Open Meetings law. If so, 48 hours' notice is needed if a meeting date is going to change. Notice must be posted to the door of the meeting room, in addition to on the MILMC website and sent via email to MILMC stakeholders. January 11, 2014 is the tentative date, from 9:00 am – 12:00 pm. Chairman Lanning would like the session to be held at the Mount Holly Municipal Complex in the training rooms (where the MILMC typically meets in Gaston County).</p> <p>c. Kay Killian Commendation, December 10, 2013 – Ms. Killian received a lot of press for being honored with the 2013 Blue Fin Award.</p> <p>d. Big Sweep at Riverbend Update – Great turn out! Chairman Lanning wants to send the Mount Holly Fire Department a thank you note for their support during the event. 44 bags – roughly 1,000 pounds – of trash were removed that day. <u>Secretary Treasurer Weyeneth made a motion to send \$150.00 to the Mount Holly Fire Department and take it out of the Litter Prevention line item. Commissioner Nixon seconded the motion and it was approved unanimously.</u></p> <p>e. Chairman Lanning concluded by saying that there will be no QNRC meeting this month.</p>
Committee Reports	<p>Buoys – Chairman Lanning started by saying that Vice Chairman Hudspeth had offered his resignation as leader of the Buoy Committee. Vice Chairman Hudspeth provided clarification about why he offered his resignation. The main focus of the Buoy Committee since 2011 has been to get Mountain Island Lake's no wake zones in the North Carolina Administrative Code (NCAC). Meetings have been held with the MILMC Buoy Committee, NCWRC and Duke Energy staff. After the recent lake tour, it was established that NCWRC supported just two of the MIL no wake zones. The NCWRC wants the MILMC to remove the other no wake zones and buoys. There was a process for getting those to-be-removed no wake zones in place and it would take a lot of work to undo what has been</p>

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	<p>done. Vice Chairman Hudspeth commented that he feels that the no wake zones have worked well, in that there have not been any serious accidents and there has been no public dissent or controversy.</p> <p>Currently, Vice Chairman Hudspeth finds himself having a difference of opinion with other Buoy Committee members on how this issue should be resolved. The Buoy Committee received a recommendation from NCWRC: The two existing no wake zones are approved. There are four existing no wake zones that are not approved and some buoys are in place that are not part of the no wake zones that mark certain dangerous areas. There are also danger and hazard buoys in place. Vice Chairman Hudspeth spoke about the benefits of having the existing no wake buoys in place. His recommendation is to move forward with the two no wake zones that NCWRC has approved, but also get more information on no wake zones and buoys that the Buoy Committee has questions about. A Mecklenburg County Commissioner recommended to Vice Chairman Hudspeth that the Buoy Committee get buy in from potentially impacted homeowners before making any decisions or changes about no wake zones. Because Vice Chairman Hudspeth has a different perspective on how to proceed than the Chairman and Buoy Committee members, and to not disrupt progress with NCWRC, he has offered to step down as leader of the Buoy Committee. It was stated that to work in partnership with NCWRC, the MILMC must be in 100% compliance with their recommendations.</p> <p>Vice Chairman Hudspeth turned the Buoy Report over to Commissioner Nixon. Commissioner Roche asked Commissioner Nixon what the remaining members of the Buoy Committee (Commissioners Nixon and DuVall and Chairman Lanning) would want to do differently. Commissioner Nixon reviewed events of the recent past, with regard to meetings with NCWRC and Duke Energy. Commissioner Nixon heard a strong public safety message from NCWRC. NCWRC would like to get things back to how they are stated in the NCAC regarding no wake zones, then possibly move forward with adding no wake zones, as determined by NCWRC. From NCWRC's perspective, the MILMC has violated the enabling legislation because the MILMC cannot take any action that would conflict or supersede NCWRC's authority. The review of the lake by NCWRC, two MIL commissioners, Duke Energy and local law enforcement indicated that buoys have been moved on MIL without NCWRC's permission and NCWRC considers that action in conflict with what is in the NCAC. A local entity cannot trump a state entity and a state entity cannot trump a federal entity. The NCWRC has offered its recommendation as a starting place and is in support of the MILMC. But, 100% of marine commissioners must support their recommendation. If the MILMC is not in alignment, NCWRC may feel that it is not in their best interest to continue partnering with the</p>

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	<p>MILMC because there could be potential undermining of the process set by NCWRC. The Buoy Committee agreed with 13 of 16 points made by NCWRC, and Commissioner DuVall communicated to the NCWRC about the three items in question, requesting more information. After the Buoy Committee meeting, Vice Chairman Hudspeth stated in email that he did not agree after all with what came out of the Buoy Committee meeting. Right now, the Buoy Committee is not in a position to support the NCWRC's recommendations 100% since Vice Chairman Hudspeth is not in full support of the NCWRC's recommendations.</p> <p>NCWRC said that if the MILMC was in 100% support of their recommendations, the first thing that would happen would be public information sessions with HOAs, individuals, and other impacted parties. Public information sessions (with NCWRC) would precede any public hearings for recommendations. Commissioner Roche asked why there would need to be additional public information sessions and/or hearings on this issue. Commissioner Nixon said that on all other lakes – including Lake Wylie and Lake Norman – and rivers in North Carolina, the NCWRC establishes no wake zones, <i>except</i> on MIL. MILMC uses a different process to establish no wake zones, invoking the enabling legislation and local authority, not in full partnership with NCWRC. Chairman Lanning added that another piece of the package is that the NCWRC would assign an officer to MIL. That officer could also attend all MILMC meetings and coordinate with the marine commissioners. Chairman Lanning views this possible arrangement, which includes 100% support from the MILMC, as a bolstering of the partnership between MILMC and NCWRC. Commissioner Roche stated that having the existing no wake zones in place adds to the safety of the lake. She said that it would be good to have had the Buoy Committee's recommendations in hand before this meeting. It was clarified that the recommendations were not sent out before the meeting because the Buoy Committee could not come to an agreement. There was discussion about specific no wake zones and buoys. Chairman Lanning said that the NCWRC recommendations are part of a total package – it's about enhancing enforcement on the lake, it's a beginning that is not set in stone, and it's a partnership between entities. She then added that if the MILMC does not support it 100% – the door could be shut. Commissioner Roche is not pleased with this decision point. The fact is that part of the MILMC went to NCWRC for input, and that is what the MILMC received; even though some of the recommendations from NCWRC may not be what marine commissioners had in mind. Commissioner Nixon reiterated that the NCWRC does want to have public information sessions. They want to know that the MILMC is also open to working with NCWRC and others. Commissioner Roche added that the homeowners are the very people that requested an expanded no wake zone in a certain cove in the first place.</p>

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	<p>Vice Chairman Hudspeth said that he had a proposal that may provide a solution. <u>Vice Chairman Hudspeth made a motion that the MILMC agree to consider all of the recommendations made by NCWRC regarding MIL no wake zones and buoys and, develop a process to determine final actions on proposed changes. The process should include the following:</u></p> <ol style="list-style-type: none"> 1) <u>Educate the public on the proposed changes.</u> 2) <u>With support from NCWRC and law enforcement, meet with the homeowners impacted by proposed changes to explain advantages of recommended changes and listen to homeowner concerns.</u> 3) <u>Review homeowner feedback and determine if the MILMC wants to propose any changes to the NCWRC and law enforcement in order to address homeowner and/or lake safety concerns.</u> 4) <u>Work with NCWRC and law enforcement toward agreement on any final changes and.</u> 5) <u>Schedule public hearings and vote on final changes.</u> <p>Commissioner Roche asked a question about buffers on surrounding lakes and MIL. Buffers are not part of this deal. There was some discussion about buffers. Chairman Lanning referred to Vice Chairman Hudspeth's proposal and clarified that the recommendations the NCWRC came back with <i>are</i> the final recommendations. Commissioner Roche addressed Chairman Lanning and said that she has not been adequately informed or included in this discussion, and is not ready to vote tonight. Chairman Lanning reiterated that there is not consensus amongst the Buoy Committee. Commissioner DuVall clarified that there is consensus, just not detailed consensus. He reviewed what transpired with the Buoy Committee meeting when the 16 items were discussed. There was consensus among the Buoy Committee that more information was needed on three of the items. When the Buoy Committee meeting was over, there was a need for more information before a report could be given to the full marine commission. Commissioner DuVall continued to review the proposed process, including public hearings. His concern about where the MILMC is in this situation is that, if NCWRC is where they are and there is not 100% support from the MILMC, that the marine commission has exposed itself to the NCWRC and the public. From a public relations standpoint, this situation, in conjunction with what has happened in the past with the Lake Management Plan, could end up being noticed. If the MILMC tells citizens that it is trying to get in compliance with NCWRC, but then does not, it may not look good. Commissioner DuVall asked the MILMC to think about the longer term image implications of decisions possibly being made this evening. If we know that at</p>

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	<p>least two marine commissioners are not in favor NCWRC's recommendations, and thus, there is not 100% support, why proceed with risking the image of the marine commission? Secretary Treasurer Weyeneth summarized that taking no action this evening is an action unto itself. If the marine commission takes action, the situation may get worse. Chairman Lanning made the point that she still needs to communicate with NCWRC personnel and let him know the status; he may not be pleased due to resources expended. The MILMC is not going to take action on this issue this evening. It came out that the Buoy Committee did not have to report to the MILMC at the November 6th meeting; they could have reported at a later time. How will NCWRC react to this situation? Legal Counsel Clark stated that the MILMC can pass ordinances as long as they do not supersede state or federal law. The question is, because NCWRC is a state-level rule making body, do the guidelines that NCWRC has adopted with regard to setting no wake zones and placement of no wake markers, fall into the category of laws that the MILMC cannot conflict with or supersede? Commissioner DuVall added that if Legal Counsel Clark finds out that the MILMC can place buoys and no wake zones, the MILMC would have to count only on voluntary compliance from boaters. Vice Chairman Hudspeth asked law enforcement personnel present how often they write tickets for no wake zone violations. The answer is not very often and law professionals do not necessarily know how to prosecute such tickets. Therefore, the enforceability issue may be moot. Chairman Lanning was clear that she is not interested in putting herself out there again in this effort with NCWRC. Commissioner Nixon brings up the different perspectives involved in this situation: public safety and public use of the lake, and property rights, shoreline and cove protection. She thinks that NCWRC wants the MILMC to think about the <i>whole</i> lake. To be clear, NCWRC wants MILMC to comply with all 16 recommendations, as a starting point.</p> <p>Chairman Lanning asked Vice Chairman Hudspeth if he is going to resign as leader of the Buoy Committee. If he resigns as leader of the Buoy Committee, Chairman Lanning will call NCWRC personnel to provide an update on the situation. If not, he can call NCWRC as Buoy Committee leader. Vice Chairman Hudspeth recommended addressing this whole issue in the January 11, 2014 Strategic Planning Session. Chairman Lanning asked again if Vice Chairman Hudspeth is going to remain as Buoy Committee leader or not. Commissioners Nixon and DuVall said that they do not have time to take this leadership position. Vice Chairman Hudspeth has limited time for continued controversy. Commissioner Nixon brings up an education piece about no wake zone vs. buoys. She recommended that when the MILMC defines the scope and charter of committees, that there is a differentiation between how no wake zones and buoys are administered or addressed. Commissioner Roche called into question the authority and purpose of the MILMC. She asked if we</p>

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	<p>have tools or the ability to accomplish the marine commission's mission. Commissioner DuVall said that at the January 11 Strategic Planning Session, the group needs to focus on MILMC responsibilities and mission – and that should be the only item on the agenda. This whole discussion was tabled until the January 8, 2014 meeting. A new Buoy Committee Chairman will be selected at that time.</p> <p>Shoreline Protection – No report was given. Watershed/Water Quality – No report was given. Public Safety – No report was given. Technical Advisory Committee (TAC) – No report was given.</p>
Executive Administrator's Report	<p>Audit Update – Ms. Parker reported that the audit was submitted on time.</p> <p>Catawba Wateree Bi-State Commission Representation – Former Lake Wylie Marine Commissioner Smitty Hanks is interested in continuing to serve on the Catawba Wateree Bi-State Commission. Ms. Parker asked if marine commissioners are alright with him doing so and representing marine commissions. They responded with a resounding “yes.” Mr. Hanks will be able to report to the MILMC as needed.</p>
Legal Counsel Comments	n/a.
Commissioner Comments	<ul style="list-style-type: none"> • Commissioner DuVall – none. • Commissioner Roche – none. • Commissioner Nixon – none. • Vice Chairman Hudspeth – none. • Chairman Lanning – none. • Secretary Treasurer Weyeneth – none.
Adjournment	The meeting was adjourned at 9:11 pm.
Next Business Meeting Date and Location	The next MILMC business meeting will be held on January 8, 2014 at the Gaston County location (400 East Central Avenue, Mount Holly, NC).

Emily Parker, Executive Administrator