

SHAFER & FREEMAN LAKES ENVIRONMENTAL CONSERVATION CORPORATION (SFLECC)

FOR IMMEDIATE RELEASE

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The SFLECC and Local Governments Coalition Files FERC Protest Comment on Lake Levels Issues

The Shafer and Freeman Lakes Environmental Conservation Corporation (SFLECC) announced that it has filed an official SFLECC Coalition Protest Comment with the Federal Energy Regulatory Commission (FERC). The Protest Comment was filed on May 15th by SFLECC's Washington, D.C. law firm Smith, Currie & Hancock LLP. The complete, 750 page filing, is available for public viewing and download on two SFLECC websites: www.SFLECC.com or www.SFLECC.org.

The reason for SFLECC's protest filing was to state opposition to NIPSCO's request for permanent license changes for Oakdale and Norway dam's operational procedures during low river flow periods; changes that SFLECC feels will cause enormous ecological damage to the two lakes and negatively affect businesses, lake structures, property values, and the quality of life of thousands of people. The Protest Comment contains all the arguments and research that SFLECC's Lakes Task Force, volunteers, consultants and legal experts have developed over the last 10 months. The filing is divided into four parts: (1) The Protest, Sample Comments, and Request for Hearing of SFLECC, Carroll County, White County and the City of Monticello; (2) an Appendix; and (3-4) detailed, research and comments from two SFLECC expert consultants Bernard Engel, Ph.D., P.E. and Robert E. Criss, Ph.D.

The four part document, was filed on behalf of the official “Protest Coalition” led by SFLECC. The Coalition members, include the SFLECC and the governments of the City of Monticello, White County, and Carroll County. Other parties named in the document as providing significant supporting protest commentary were Jefferson Civil Township of Carroll County; noted local academic researchers in hydrology and agricultural engineering; members of the Indiana State Legislature, Don Lehe and Brandt Hershman; the Greater Monticello Chamber of Commerce and Visitors Bureau; and the Carroll County Chamber of Commerce. Also named as filing individual protest comments were several businesses located on and around the Twin Lakes including Indiana Beach, Fillingier Marine Services; Tall Timbers Marine Corp.; White County Association of Realtors.

According to John Koppelman, SFLECC President, “The Coalition Protest Comment that we filed Friday is the culmination of many months of work by many people. The SFLECC Lake Levels task force has been working since August of last year first to find scientific experts in hydrology, statistical analysis, and marine case law; then researching, examining and discussing the U.S Fish and Wildlife Service (FWS) Technical Assistance Letter (TAL) and their claim that they had used the “best science” they could find in developing the TAL methodology for determining natural river flows in abnormal low flow situations. Up until now we have not revealed the details of our findings. The Protest Comment we filed last Friday lays all our cards on the table. The SFLECC Task Force and its consultants spent hundreds of man hours combing FWS and IDNR Freedom of Information Act (FOIA) request responses for historical dam and river flow data and FWS letters. We then examined the e-mails that were exchanged between IDNR, FWS and other parties during their formulation of the hydrology methodology and data they finally chose to use. Many of SFLECC’s FOIA written requests for data and correspondence sent to FWS went ignored, were only partially answered or redacted.”

SFLECC officials state that much of their energy also went into researching the hydrology literature and other Endangered Species Act cases regarding river and lake environments and other science for determining natural river flow and modeling. According to Joe Roach, SFLECC

Executive Director, “We sought to understand what the term “natural run of the river” (as if the dams were not there) really means in terms of flow levels, not what FWS and NIPSCO have stated what it means for their own convenience. We spent a lot of time just trying to understand what role rainfall, evaporation, shoreline runoff, NIPSCO power generation activities and ground water seepage play in determining the Lake levels. We determined that our two Lakes actually generate water beyond what comes into them from upstream.” SFLECC views this conclusion as important because FWS and NIPSCO view the lakes as taking water from the natural run of the river especially in times of low flows from up river. FWS demand that the same amounts of water coming into the twin lake chain from the upper Tippecanoe River go out at the Oakdale Dam below Lake Freeman is really all that the concept of “natural run of the river” should encompass leaving the extra water generated by the lakes in the lakes.

SFLECC also developed statistical models and “what if” scenarios for lake levels to illustrate what lake levels would have been if the TAL had been put into use starting many years ago, instead of just last August. This allowed them to predict when and what future lake levels would be during abnormal low flow periods under the TAL procedures. This information proved startling in that it indicated lake levels would have been much lower during abnormal low flow periods and would have occurred much more often, mostly in the summertime.

SFLECC officials state that the drop of 23 inches in Lake Freeman in August of 2014 was significant and startling in that it clearly and dramatically demonstrated that a drop of only 23 inches, in the middle of summer effectively closes the Lake to access. It also showed that a 23 inch (or greater) lake levels drop also makes it dangerous to any kind of boating activity and causes great destruction to the quality of life of lake users, negatively effects businesses, tourism, plant and animal life in the lakes, shoreline structures and property values.

The Protest Comment document points out that the Commission’s original (2007) license for the Oakdale dam project allowed NIPSCO to lower the level of Lake Freeman, by no more than three (3) inches but, ***“The pending license modification, if granted, would authorize NIPSCO to reduce the level of Lake Freeman by more than 12 feet.At bottom, the U.S. Fish & Wildlife***

Service (“FWS”) and NIPSCO seek to use water from Lake Freeman to provide a benefit to the mussels that is unnatural because it is over and above what the Tippecanoe River would provide in its natural state.

The SFLECC Protest Comment further states, ***“The issue for the Commission is whether NIPSCO has supported its proposed license modification with the best available science evidence (as required by FERC) to establish that the existence of the Oakdale Dam/Lake Freeman are harming protected mussels. Because the proposed modification is not supported by the best available science and the Oakdale Dam and Lake Freeman are not harming the mussels, the Protest Coalition respectfully urges the Commission to deny the requested modification or at a minimum, conduct a hearing so that this important hydrological issue may be fully ventilated..”***

Over 200 pages of the SFLECC Protest Comment are devoted to presentation of the scientific findings of two noted scientists: Professor Robert E. Criss, Ph.D. of Washington University of St. Louis and Professor Bernard Engel, PH.D., P.E. of Purdue University.

The Conclusions of Dr. Engel’s Expert Report

Dr. Engel’s report establishes, by using sound hydrological science, that contrary to the underlying assumptions and conclusions of the TAL:

- ***Linear scaling does not represent the best science available to determine whether the existence of the Oakdale Dam/Lake Freeman alters the natural flow of the Tippecanoe River during periods of low flow.***
- ***FWS/NIPSCO’s attempt to apply linear scaling here is not supported by the research of Professor Galster. (Who promulgated the linear scaling concept.)***
- ***No studies show that linear scaling is an accurate means of assessing, let alone predicting, low flow rates on a daily basis at a particular point on a river.***
- ***No studies have used linear scaling to assess or predict what “natural” run-of-river rates would be during periods of low flow in the absence of a dam.***

- *FWS/NIPSCO's underlying and unwarranted assumptions in arriving at the conclusion that the scaling value between the Winamac and Oakdale gauges is 1.9 is wholly unwarranted and renders the TAL little more than the product of "junk" science.*
- *The best available science for assessing whether the existence of the Oakdale Dam/Lake Freeman may be impacting the natural run-of-river during periods of low flow demonstrates that evaporation (plus any precipitation that falls) accurately accounts for the negligible effect of Lake Freeman on the flow of the Tippecanoe River, even during periods of protracted drought.*
- *Because the Oakdale Dam/Lake Freeman are not appreciably altering the natural run-of-river and therefore do not impact the mussels, Professor Engel's view is that the elevations of Lake Freeman required by the current License should not be changed.*
- *To the extent that changes in the run-of-river are shown to result from NIPSCO's generation of electricity, those operations should be curtailed or halted before they result in harm to listed mussels.*

The Conclusions of Dr. Criss' Expert Report

Dr. Criss' review concludes that, contrary to the underlying assumptions and conclusions of the TAL, hydrological science establishes that:

- *Relatively low flow rates of less than 600 cubic feet per second cfs are common on the Tippecanoe River below the Oakdale Dam;*
- *Such low flows occur naturally and are also common on undammed Midwestern rivers of comparable size;*
- *Exposure of river mussels is a natural occurrence during periods of drought;*
- *Losses of water from Lake Shafer and Lake Freeman due to evaporation, seepage and withdrawals are small and, on the whole, the lakes contribute more water to the Tippecanoe River than is lost through evaporation;*
- *In general, the theory of "linear scaling" is a poor predictor of low flows along rivers, and no available literature suggests it is valid for this purpose;*

- *The application of linear scaling by NIPSCO and FWS has no predictive value for low flow rates on the Tippecanoe River; and*
- *The levels of Lakes Shafer and Freeman would drop by no more than a few inches per month if outflows matched actual inflows during extended periods of drought, even with no rainfall.*

SFLECC feels that it has developed a very strong case for refuting the validity of the TAL that should lead FERC to deny the NIPSCO request for changes in dam operations. The Protest Comment requests that FERC do the following:

1. *Deny NIPSCO's October 2, 2014, proposed license modification and direct that operations of the dams resume as required under FERC's 2007 Original License, unless and until NIPSCO develops a valid definition of "Abnormal River Conditions" to address periods of low flow, or alternatively;*
2. *Direct FERC Staff, in reviewing NIPSCO's proposed modification, to develop and recommend alternative operations for the dams. In this way, a modified License can address any fluctuations in flow rates during periods of low flow caused by NIPSCO's operations that may result in take of protected mussels. Such Staff recommendations should include that the levels of the lakes not be lowered below the 0.25 foot maximum in FERC's 2007 Original License, or alternatively;*
3. *Set this matter for hearing, during which:*
 - a. *The Protest Coalition (SFLECC) will be permitted to conduct all relevant discovery, including but not limited to discovery into FWS/NIPSCO's development of the proposed license modification and the TAL upon which it is premised; and*
 - b. *The Protest Coalition will be permitted to present the testimony of its experts in hydrology to respond to issues that may arise for FERC and/or its Staff; and*
4. *During the pendency of Requests 1 thru 3 above, rescind the temporary license variance approved by FERC,and direct that operations of the dams resume as required under FERC's 2007 Original License, unless and until NIPSCO develops a valid definition of "Abnormal River Conditions" to address periods of low flow, or alternatively;*
5. *During the pendency of Requests 1 thru 3, and because the temporary license variance granted by FERC,was approved one week after being requested (without public notice, or review and without FERC having had the opportunity to analyze its effects which were very detrimental to the Protest Coalition, local*

businesses, and citizens), allow the Protest Coalition to participate in any and all implementations of the August 22, 2014, temporary variance until such time as this Protest is resolved; and

- 6. Provide the Protest Coalition with such other and further relief as the Commission deems necessary and appropriate.*

END

CONTACT INFORMATION FOR SFLECC

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ABOUT SFLECC – The Shafer & Freeman Lakes Environmental Conservation Corporation was formed in 1994 to take title to Lake Freeman and Shafer shorelines and other nearby properties owned by NIPSCO. It is a non-profit corporation whose Articles of Incorporation state its mission is “to promote environmentally sound use of Lake Shafer and Lake Freeman. The corporation will conduct itself in a way to protect and enhance the environment and the water quality of these lakes in order to facilitate public recreational use. The Corporation will accomplish this purpose through various activities, including but not limited to, the issuance and administration of permits for the use of shoreline property, the testing of the water quality, monitoring shoreline quality and ensuring continued public access.” The SFLECC Board of Directors meets at 7:00PM on the third Thursday of each month at the White County Memorial Hospital. Meetings are open to the public.