

NATURAL RESOURCES COMMISSION

Minutes - April 18, 2000

MEMBERS PRESENT

Michael J. Kiley, Chair
Larry Macklin, Secretary
Damian Schmelz
Elizabeth Admire
Jane Ann Stautz
Jerry Miller
Terri Moore
Joseph Siener
Rick Cockrum
John Goss

NATURAL RESOURCES COMMISSION STAFF PRESENT

Steve Lucas
Jennifer Kane
Debbie Michaels

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Jack Costello	Executive Office
Paul Ehret	Executive Office
David Vice	Executive Office
Carrie Bales	Executive Office
Carrie Doehrmann	Executive Office
George Bowman	Water
Jerald Jackson	Law Enforcement
John Bacone	Nature Preserves
Greg Ellis	Legal Section
Terry Slywka	Legal Section
Linda Badger	State Museums and Historic Sites
Gwen White	Soil Conservation
John Davis	Land Acquisition
John Friedrich	Forestry
Randy Lang	Fish & Wildlife
Bill Maudlin	Fish & Wildlife
Wayne Faatz	Fish & Wildlife
Randy Espinoza	Fish & Wildlife
Robert Ackerson	Fish & Wildlife
Susanna Arvin	Outdoor Recreation
Emily M. Kress	Outdoor Recreation
Patrick Malone	Outdoor Recreation
John Bergman	State Parks and Reservoirs
Eric Ditmars	State Parks and Reservoirs

Nate Osburn State Parks and Reservoirs

GUESTS

Ted Heemstra Mark Cline
Joe Shacter Carey Johannesson

MONTHLY REPORTS

Michael J. Kiley, Chair, called to order the regular monthly meeting of the Natural Resources Commission at 10:13 a.m., on April 18, 2000 in the Mathew Welch Room of the Indiana State Museum, Indianapolis. With the presence of ten members, the chair observed a quorum.

Jerry Miller moved to approve the minutes of March 14, 2000. Terri Moore seconded the motion. Upon a voice vote, the motion carried.

Director Macklin introduced Joe Shacter, the Project Director for the new Indiana State Museum. "We are very proud to have Mr. Shacter." Macklin said the Museum Foundation Capital Campaign began in Bloomington with "good reception and was very well received."

On April 8, Director Macklin attended the Grand Opening of the Fort Harrison State Park Nature Center. He said he was "well pleased" with the facility and said the center was "very impressive." He said 50 to 60 people were present for the ribbon cutting ceremony with more attending as the day progressed. Director Macklin announced the Governor's Conference on the Environment for April 28, 2000. He explained the conference is a cooperative effort between DNR and IDEM, with the "morning kickoff" to be held at Broad Ripple Park.

Director Macklin informed Commission members that Indiana is again experiencing drought with very severe conditions in central and northern sections of the state. Jerry Miller, Chairman of the Advisory Council for Lands and Cultural Resources, said the council met last week and approved all three items present on NRC agenda. He said the Division of Entomology and Plant Pathology gave a "tremendous presentation" on the gypsy moth infestation. Miller said the Council toured the new nature center at Fort Harrison State Park.

Jack Costello, Deputy Director of Bureau of Lands, Recreational and Cultural Resources, recommended the Division of Entomology and Plant Pathology present its gypsy moth update to the Commission in May. He said the structure housing the Fort Harrison Nature Center was a good adaptive use of an historic building once used to hold prisoners of war. Costello said the number of tree seedlings available this year has increased from 4.5 million to between 5.5 and 6 million. He said Martin Lake has been approved for summer activity.

Joseph Siener, Chairman of the Advisory Council for Water and Resource Regulation, said the council did not meet this month. Even so, this month's Commission agenda included rule proposals considered favorably by the Advisory Council last month.

Dave Vice, Deputy Director of Bureau of Resource Management, said the Division of Fish and Wildlife has begun collecting several species of adult fish to be used in the spring White River restocking effort. He reported district biologists held open houses with extended hours to meet individually with constituents. They discussed several issues including deer regulations, antlerless deer quotas, waterfowl seasons and regulations, and general hunting, fishing, and trapping regulations. Conservation Officers were also available during these open house forums.

Vice said the "put and take" pheasant release program once again used birds from private vendors. Chairman Kiley asked whether the program was well received. Vice responded the participants "seemed very pleased."

Paul Ehret, Deputy Director of Bureau of Resource Regulation, reported favorably upon work at Sylvan Lake. Efforts to correct seepage in the dam appear to be working with the construction of a grout wall within the dam structure. He said there was a construction decision to extend both the length and depth of the grout wall in order to correct additional problems. An assessment is ongoing and initial readings are looking "very promising. The seep appears to be drying up."

Ehret said the public freshwater lakes workgroup will meet at Pokagon State Park on June 7, 2000 at 6:00 p.m. for a public outreach session. Senator Meeks will chair the committee, and the workgroup has been extended for two more years. Ehret also said the Division of Soil Conservation awarded \$92,000 from the Lake and River Enhancement (LARE) Fund. Seventeen lakes will be treated for aquatic plant control-mainly for eurasian mylfoil and other exotic plant species. LARE provides up to 25% match funds covering 2,600 acres of weed control.

Ehret said he and other agency personnel attended a Coal Combustion Waste Forum in Morgantown, West Virginia. "It was an interesting meeting."

Ehret said there was a strong concern regarding the drought and suggested a presentation to the Commission from the Division of Water might be appropriate. He said Director Macklin has formed an internal workgroup within DNR to help prepare for drought contingencies. The internal group will be lead by Mike Neyer and Jim Hebenstreit at the Division of Water. At the state level, the State Emergency Management Agency (SEMA) is serving as the point agency. He said the northern part of the state is experiencing a severe drought, and the groundwater indicators statewide show spring conditions that are worse than for the spring entering the 1988 drought. "There has not been a good rebound for the water table. The whole state is in jeopardy, although southern Indiana may be in somewhat better shape."

Chairman Kiley asked whether the Division of Water has received citizen complaints this year regarding significant water table draw down. Ehret said he was not aware of any complaints; however, lake levels may become an issue.

Damian Schmelz asked Ehret if he had received reports regarding dam leakage at Patoka Lake. Ehret replied he had not, but as a consequence of the question, he would "look into it."

BUREAU OF LANDS, RECREATIONAL, AND CULTURAL RESOURCES PERMANENT APPOINTMENTS AND PERSONNEL INTERVIEWS

Personnel interview and appointment of Randall Espinoza as Assistant Property Manager at Mixsawbah Fish Hatchery

Terri Moore presented this item. She said "as always, we have very qualified applicants making the choice very difficult." She reported that after deliberations the Personnel Committee recommended Randall Espinoza be approved as the Assistant Property Manager of the Mixsawbah Fish Hatchery.

Jerry Miller moved to approve Randall Espinoza for permanent appointment as the Assistant Property Manager at the Mixsawbah Fish Hatchery. Joseph Siener seconded the motion. Upon a voice vote, the motion carried.

Permanent appointments of Eric Dittmars, Wayne Ley, and Nate Orsburn as Assistant Property Manager of Shakamak State Park, Assistant Property Manager of Salamonie Reservoir, and Assistant Property Manager of Versailles State Park respectively.

Terri Moore introduced this item. She said Eric Dittmars, Wayne Ley, and Nate Orsburn were recommended by DNR for permanent appointment as Assistant Property Manager of Shakamak State Park, Assistant Property Manager of Salamonie Reservoir, and Assistant Property Manager of Versailles State Park, respectively. John Bergman, Division of State Parks and Reservoirs said the three employees have been doing a "wonderful job, and we are looking forward long careers for each of these gentlemen."

Jerry Miller moved to approve the permanent appointments of Eric Dittmars, Wayne Ley, and Nate Orsburn as Assistant Property Manager of Shakamak State Park, Assistant Property Manager of Salamonie Reservoir, and Assistant Property Manager of Versailles State Park, respectively. Joseph Siener seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF NATURE PRESERVES

Consideration of Boundary Adjustment and Dedication of Addition to Ropchan Memorial Nature Preserve, Steuben County.

John Bacone, Division of Nature Preserves, presented this item. He said this 77-acre nature preserve, owned by ACRES Land Trust, was acquired in three separate parcels from Sam Ropchan. The property was subsequently dedicated as a nature preserve using the existing property description. A change of ownership and survey of property adjacent to the nature preserve disclosed an inadvertent property line encroachment. Bacone explained all parties seek a resolution by revising the boundary through an exchange of equivalent acreage. He said the Ropchan descendants would donate parcels to Acres, Inc. in equal trade. Bacone said the trade is "strategically a better deal" for site preservation "because the exchanged land borders the highway, eliminating the threat of future development."

Bacone explained that, under the provisions of the Nature Preserve Act, a public hearing is necessary before the Articles of Dedication and Master Plan for nature preserves can be amended. He recommended the boundary adjustment and dedication of addition to Ropchan Memorial Nature Preserve be given preliminary approval and a hearing officer be appointed to receive public comment.

Ted Heemstra, Vice President of Acres Land Trust, informed the Commission that ACRES has dedicated 40 plus properties throughout eleven northeastern Indiana counties totaling 3,000 acres. Kiley thanked Heemstra, and said the continued efforts by ACRES "bodes well for the state."

Rick Cockrum moved for preliminary approval of the boundary adjustment and dedication of addition to Ropchan Memorial Nature Preserve, Steuben County. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried. Chairman Kiley appointed Stephen Lucas as the hearing officer.

DIVISION OF OUTDOOR RECREATION

Consideration of the 2000 - 2004 Statewide Comprehensive Outdoor Recreation Plan (SCORP)

Susanna Arvin of the Division of Outdoor Recreation presented this item. She said the Statewide Comprehensive Outdoor Recreation Plan (SCORP), the qualifying document for Land and Water Conservation Funds (LWCF) has been completed. Arvin said the Division of Outdoor Recreation is in the process of distributing \$700,000 LWCF funds, with \$70 million distributed since 1969. She said potential LWCF funds of \$4 million to \$9 million could be available through the Conservation and Reinvestment Act (CARA). Arvin said that LWCF has not been funded since 1995 for lack of Congress appropriations.

Rick Cockrum stated that "it's in the Department's interest to support a complete census." He asked whether census figures were pertinent to funding the SCORP. Arvin responded that census figures are a factor. Jane Ann Stautz complimented the inclusion of the Environmental Yellow Pages.

Jerry Miller moved to approve the Statewide Comprehensive Outdoor Recreation Plan. Jane Stautz seconded the motion. Upon a voice vote, the motion carried.

INDIANA STATE MUSEUM AND HISTORICAL SITES

Consideration of Deaccession of Items from the Division of Museum and Historic Sites' collection.

Linda Badger from the Division of State Museum and Historical Sites presented this item. She said that every year the Division evaluates the collection and deaccesses "items no longer appropriate and that do not fit the collecting strategy. She said items in very poor condition or of no value are destroyed or sent to state sale. Badger said some items are kept for hands-on educational use. Chairman Kiley asked where the museum inventory was stored. Linda replied the majority of inventory is stored in the unused spaces at the Indiana State Museum itself.

Badger recommended items numbered through 281 be approved for deaccession; however, she asked that the last three items (numbers 282, 283 and 284) be transferred, pursuant to the North American Indian Act, to the Oklahoma Miami Indians. Kiley asked if the Indiana Miami were aware of the transfer. Badger said the Indiana Miami were aware of the procedure, and she also explained that the items for transfer were to be published in the Federal Register.

Jane Ann Stautz moved to approve the deaccession of items 1 through 281 from the collection of the Division of Museums and Historic Sites. Damian Schmeltz seconded the motion. Upon a voice vote, the motion carried.

BUREAU OF RESOURCE MANAGEMENT DIVISION OF FISH AND WILDLIFE

Approval to Dispose of Seven Acres of Land, a Residence and a Garage at the Former Bass Lake Hatchery (Starke County).

Randy Lang of the Division of Fish and Wildlife presented this item. He said the twelve-acre Bass Lake Fish Hatchery was constructed in 1928. The land was formerly used to raise bass, bluegill, and other warm water species. Lang said through normal use the facility "was wearing out," and more cost-effective hatcheries had been constructed. In the mid-1990s, the Division of Fish and Wildlife learned that two parcels containing 4 ½ acres had reversionary clauses. These parcels were recently returned to the former owner's descendants. Lang requested approval for disposal of the remaining 7½ acres.

This land contains a residence and other out buildings. He said the Culver School system is interested in using the land for environmental educational purposes, and state law appears favorable to transfer to Culver schools.

Damian Schmeltz moved to approve disposal of seven acres of land, a residence, and a garage on the former Bass Lake Fish Hatchery in Starke County. Joseph Siener seconded the motion. Upon a voice vote, the motion carried.

Consideration of a Request from Vector Pipeline for Perpetual and Temporary Easements for Installation of a Natural Gas Pipeline through Chustak State Fishing Area, Porter County

Randy Lang also presented this item. Lang said the Chustak State Fishing Area was acquired in partial settlement of a natural resource damage claim. He said Chustak was the only public land on this portion of the Little Calumet River, a tributary of Salt Creek, and that it was "an excellent addition to the fishing opportunities." Lang said the 48-inch pipeline would impact 1.8 acres. Under the proposed agreement, the DNR would receive eight acres in mitigation. He said the mitigation acreage is timber habitat that would "provide some buffer to residential development that we expect." Kiley asked whether a regulator would be installed on the site. A representative from Vector said a regulator would not be installed there.

Jerry Miller asked if perpetual easements were usual practice for DNR. Damian Schmeltz reflected that perpetual is a long time. John Davis explained the perpetual easement was limited to repair maintenance on the pipeline, and that, if major work is needed, Vector would have to apply for a new easement.

Carrie Doerhmann asked the Commission to either approve the easements conceptually or table action until favorable comments are received from the federal government and the Indiana Attorney General. She noted there is "a consent decree controlling the use of this property." John Davis said the Department of the Interior has been involved in consideration of the easement from the beginning and is aware of the proposal.

Wayne Fatz of the Division of Fish and Wildlife said he felt competent to speak for the U.S. Fish and Wildlife Service. He said officials in that agency were well aware of the proposal and supportive of it.

Beth Admire said she understood the federal government had been consulted but that she continued to have concerns whether additional procedural steps at federal level may be required. Approval from the Natural Resource Damages Trustees should also be pursued.

Davis said there has been technical coordination with the federal government. With DNR, IDEM, and the U.S. Fish and Wildlife Service all serving as Natural Resource Damage Trustees, the strategy was to complete review within the DNR and before the NRC. When these agencies were satisfied, the proposal would be placed before the Trustees for

final action. Carey Johannesson, a representative of Vector, said his company has all the required federal permits and has been working with the U.S. Fish and Wildlife Service "for quite a long time." He said the Department of Interior is "quite aware" of the proposed easement and land exchange, and "I haven't heard anything to say that they are opposed."

Rick Cockrum moved to approve the request from Vector Pipeline for perpetual and temporary easements to install a natural gas pipeline through Chustak State Fishing Area. The approval would be conditioned upon Vector Pipeline receiving the approval of all other appropriate agencies, however, including the Natural Resource Damage Trustees. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

BUREAU OF WATER RESOURCE REGULATION

Approval to Preliminary Adopt Modifications to the Lake Preservation Act Rule (312 IAC 11) to Clarify Existing Criteria and to Establish New Criteria for a General License to Install Qualified Dry Hydrants and to Reface Qualified Existing Seawalls with Glacial Stone

George Bowman from the Division of Water presented the item. He explained that in 1998 the Commission gave final adoption to rules considering these same general subject matters. During the hearing process, citizens had asked for greater flexibility in the use of "general permits" for dry hydrants and for seawall refacings. The hearing officer concluded the citizen proposals were not appropriate for final rule adoption in 1998 but asked that the concepts be remanded to DNR staff for further review and their subsequent recommendations to the NRC. Bowman said the language currently for consideration was the product of that agency review process.

Kiley asked whether there was a test area along Lake Wawasee's shoreline for the use of glacial stone protection. Gwen White, Division of Soil Conservation, said that 27 landowners along Lake Wawasee volunteered to place glacial stone along their shoreline at a length of approximately 2,000 total. White said the Lake and River Enhancement Program funded 90% of the cost of placing the stone while the landowners paid the remaining 10%. Kiley asked how the glacial stone was placed. White answered the stone was "placed by hand" to minimize environmental damage.

Jerry Miller moved to preliminarily adopt modifications to 312 IAC 11 as recommended by DNR staff. Joseph Siener seconded the motion. Upon a voice vote, the motion carried.

LEGAL PROCEEDINGS NRC DIVISION OF HEARINGS

Approval of the Nonrule Policy Document for Easements on DNR Properties, including Navigable Waterways; Administrative Cause No. 99-115A

Steve Lucas, Director of the NRC Division of Hearings, introduced this item. He said for consideration was a proposed nonrule policy document to assist in the consistent review of requests for easements across DNR properties, including navigable waterways. Lucas said John Davis, Director of the Division of Land Acquisition, was also present to answer questions.

Lucas said the document was motivated by expressions of concern that the DNR was not always evaluating easement requests in a manner that was predictable. The draft was the product of a standing workgroup, chaired by Marian England, made up of representatives of DNR's property managing divisions. For this project, the group was also augmented by the Division of Land Acquisition, Division of Law Enforcement, and Division of Water.

He said the first section of the proposed document outlined its application and purpose. The second outlined the history of NRC involvement with easement policy, with the first policy statement issued in November 1966. He said the current proposal would merge and carry forward prior policy statements.

Lucas reflected that the third section provided an important umbrella policy statement as to easements on DNR properties:

Lands managed by the department are held for the benefit of all the people of Indiana. The lands were ordinarily purchased with public funds or obtained through donations from citizens whose explicit or implicit desire was to enhance public enjoyment and education. The placement of easements makes land management more complex and more expensive. Facilities developed in association with easements reduce the natural, cultural, aesthetic, economic, and recreational values of these public lands. New or expanded easements are discouraged. Existing easements should be managed to minimize their adverse impacts. If the purpose for which an easement was approved no longer exists, the department should actively seek its formal termination.

At the same time, the workgroup understood easements were sometimes warranted. Section 4 outlines the process for reviewing easement requests. Lucas said a two-pronged approach would be envisioned by the draft nonrule policy document. First, several factors would be reviewed to determine whether DNR employees should recommend to the NRC that an easement should be granted or denied. Other factors would then be factored for easements that could be granted.

The DNR Director would be given authority to approve rights of entry to conduct surveys or collect data in anticipation of a possible easement request. Approval of a right of entry would not, however, carry any presumption the easement ultimately would be granted.

Lucas explained the proposed nonrule policy document also addressed a limited exemption for qualified utility line crossings beneath navigable waters. This exemption would encourage the development of utility line crossings that would have the least impact on the environment and upon recreational usage, particularly vessel navigation.

He noted the exemption did not apply to Lake Michigan or other navigable lakes. Finally, provisions were included for the DNR Director and NRC Chair to provide emergency construction approvals where they deemed appropriate. These emergency approvals would not carry with them any presumption that a permanent easement would ultimately be approved.

Chairman Kiley said the proposal appeared to be well reasoned. He reflected upon the need for a consistent approach to easements and one that considered the public trust associated with lands managed by the DNR.

Jerry Miller moved to approve the nonrule policy document for easements on DNR properties, including navigable waterways, as recommended by the DNR workgroup. Damian Schmelz seconded the motion. Upon voice vote, the motion carried.

ADJOURNMENT

At 11:15 am, EST, the meeting was adjourned.