

**NATURAL RESOURCES COMMISSION**  
**Minutes - August 15, 1996**

**MEMBERS PRESENT**

Michael Kiley, Chair  
Patrick Ralston, Secretary  
Jerry Miller  
Damian Schmelz  
Joe Siener  
John Goss  
Steve Cecil  
Kevin Betz  
Jack Arnett  
Mary Titsworth  
Sherman Anderson

**NATURAL RESOURCES COMMISSION STAFF PRESENT**

Steve Lucas           Hearings  
Bill Teeguarden       Hearings  
Cheryl Hampton       Hearings

**DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT**

Jack Costello       Executive Office  
Paul Ehret           Executive Office  
David Herbst       Executive Office  
Dave Vice           Executive Office  
Louise Krick       Executive Office  
John Friedrich      Forestry  
John Bacone       Nature Preserves  
Chuck Cooper       Water  
Chuck Cooper       Law Enforcement  
John Stivers       Law Enforcement  
Steve Gerber       Law Enforcement  
Kevin Geier       Reclamation  
Mike Sponsler      Reclamation  
Angila Prather      Legal Counsel  
Sylvia Wilcox      Legal Counsel  
Randy Lang       Fish and Wildlife  
Gwen White       Soil Conservation

**GUESTS PRESENT**

John Karstens       Joe Pitcher           Bill Valentine  
Jeff Fulton       Sue Shadley       Stephen Snyder

## MONTHLY REPORTS

Michael Kiley, Chair, called to order the regular meeting of the natural resources commission at 10:05 a.m., EST on August 15, 1996 in the Indiana State Museum, 202 North Alabama, Indianapolis, Indiana. With the presence of eleven members, the chair observed a quorum.

Jerry Miller moved to approve the minutes of the July 18, 1996 meeting. The motion was seconded by Sherman Anderson and approved by voice vote of the commission.

Patrick Ralston gave the Director's Report. He reported on the press conference held at Ft. Benjamin Harrison State Park in which Governor Bayh announced the 5,000 acre purchase under the license plate program. Ralston indicated by the end of the year, the department could possibly go over 10,000 acres.

The Director was invited by Attorney General of Michigan, Frank Kelley, to attend the executive committee meeting of the Great Lakes Commission as chairman.

Ralston also reported that he reviewed the DNR building at the State Fair. He noted that the department has invested heavily in the last few years "to bring it back up, and there are really a lot of nice displays."

Ralston reported upon that an employee suggestion from the division of reclamation for an environmental credit card. The card would look like an environmental license plate. Ralston explained that he took it to the Natural Resources Foundation, which adopted the concept. The NRF appointed a committee with Mike Sponsler as chairman. He indicated the committee will develop a proposal to submit to the NRF. Ralston said the concept has a lot of potential, and "it is really kind of a neat idea."

Jerry Miller, Chairman of the Advisory Council for Lands and Cultural Resources, indicated his council was scheduled to meet August 21.

Jack Costello, Deputy Director for the Bureau of Land and Cultural Resources, noted that his staff has been busy with the state fair. The bureau is currently developing operating and capital budgets, a process which is "very, very demanding."

Costello reported on fires in Oregon. He indicated crews, made up from several DNR divisions, were sent to Oregon to fight the fires.

Joe Siener, Chairman of the Advisory Council for Water and Resource Regulation, reported his council met in July at Huntingburg to continue its study of the conservancy district law. In addition, the next day the division of reclamation took the council to different reclamation sites, some in process and some completed. The council found it to be "very interesting."

David Herbst, Deputy Director for the Bureau of Water and Resource Regulation, reported briefly on the division of entomology and its continued monitoring of the invading gypsy moth in northern Indiana.

Herbst also reported his staff met with the water resource study committee and the legislative study committee. He said floodplain management will be a hot issue this year. Most notably, the permitting process and public notice requirements are causing problems.

Herbst announced today officially starts the 1996 hunting season for squirrels.

Paul Ehret, Deputy Director for the Bureau of Mine Reclamation, reported his bureau and divisions have been working hard on the state fair and biennial budget presentation. Ehret also reported the natural resources study committee will be having its next meeting on August 29 and 30 in the Jasonville Reclamation office.

Ehret announced the division of reclamation recovered \$2.3 million from a previously bankrupt surety in a settlement. He indicated there was roughly \$10 million which the division had written off after ten years.

## **BUREAU OF LANDS AND CULTURAL RESOURCES PERMANENT APPOINTMENTS AND PERSONNEL INTERVIEWS**

### **Permanent Appointments**

John Karstens of the division of forestry introduced Geoffrey Fulton. Karsten recommended Geoffrey Fulton for permanent appointment as assistant property manager at Jasper-Pulaski State Tree Nursery.

Sherman Anderson moved to approve Geoffrey Fulton for permanent appointment pursuant to the law governing department property managers. The motion was seconded by Damian Schmelz. Upon a voice vote, the motion was approved.

## **DIVISION OF NATURE PRESERVES**

### **Consideration of the Dedication of Charles Spring Nature Preserve, Washington County**

John Bacone of the division of nature preserves presented this item. He explained that the proposed Charles Spring Nature Preserve is a 109 acre tract of land located in Washington County. It is owned and managed by the Division of Nature Preserves and was purchased using Indiana Heritage Trust funds with assistance from the Nature Conservancy.

Bacone explained that this property contains several significant geologic features. The most prominent feature is the picturesque entrance to Charles Cave, and the cave's stream issues forth a series of springs. The property also provides habitat for rare cave-inhabiting animal species. Bacone stated that the division of nature preserves recommends approval of dedication as a nature preserve.

Damian Schmelz moved to approve the dedication of Charles Spring Nature Preserve in Washington County. The motion was seconded by Steve Cecil. Upon a voice vote, the motion carried.

## **DIVISION OF FORESTRY**

### **Consideration of a Request by Ski World, Inc. for a Revision of a Four-Year Permit for the Operation, Maintenance and Repair of a Skilift and Ski Runs Including Towers, Appurtenances and Utilities on Yellowwood State Forest**

John Friedrich of the division of forestry presented this item. He explained the original permit document described a permit area of about one acre, and a recent property line survey of this area indicated the area of actual use was considerably larger. It is unknown if the original permit area was incorrectly described or if the area of use was expanded at some point.

Ski World requested that the permit area description be enlarged to bring the existing operational area under the permit. This enlargement will include all existing ski runs and ski equipment. The revised permit would not allow expansion of the area of use beyond the existing area without the permission of the department. The division of forestry recommended approval of granting a four-year permit for the operation, maintenance and repair of a skilift and ski runs including towers, appurtenances and utilities.

Jerry Miller moved to approve a revision of a four-year permit for the operation, maintenance and repair of a skilift and ski runs including towers, appurtenances and utilities on Yellowwood State Forest. The motion was seconded by Damian Schmelz. Upon voice vote, the motion carried.

## **BUREAU OF MINE RECLAMATION DIVISION OF RECLAMATION**

### **Consideration of Collie Coal Company vs. Department of Natural Resources, Division of Reclamation; Administrative Cause Number 95-281R**

Before the consideration of this issue commenced, Steve Cecil removed himself participation. Cecil explained that he had some involvement with the permit and with the coal company prior to his appointment to the natural resources commission.

Sylvia Wilcox, attorney for the Department of Natural Resources, introduced the item. She explained that at issue was administrative review by Collie Coal Company of the denial of a coal mining and reclamation permit (P-40). At the request of both parties, and by agreement of the administrative law judge, the item was being placed on the agenda of the commission to consider a possible resolution without adjudication.

Wilcox stated that on November 4, 1994, the Department conditionally approved the permit. Included in the conditions were two items:

Collie Coal was to submit a valid public liability insurance policy with respect to mining activities.

Collie Coal was to submit a performance bond with respect to mining activities.

Wilcox stated that these documents were not provided within the time-frame expected by the Division of Reclamation. In August 1995, however, representatives of the Division met with Bill Valentine to determine to authorize a final extension by which documentation was to be provided. That final extension date was set at September 25, 1995.

According to Wilcox, when Collie Coal failed to comply with the September 25 extended deadline, the conditional approval was withdrawn and the permit denied. The denial was issued on October 4, 1995.

Wilcox explained that Collie Coal has subsequently provided the necessary documentation. The permit is now in an approvable form, but recycling the permit approval process would delay its implementation to the business detriment of the company. She said the Division of Reclamation was uncertain as to whether or not it has the authority to re-open a permit denial, but the commission could enter an order authorizing the permit. Wilcox emphasized the Division's position that the denial was justified, but she directed the commission's attention to alternative findings and orders distributed to the membership; one of these sets of findings would authorize the permit.

Sue Shadley then spoke as attorney for Collie Coal Company. She noted that she was accompanied by Bill Valentine, owner of the company.

Shadley said there was a fact dispute as to compliance with the September 25 deadline. She indicated that documents on record in the adjudicatory case would reflect the existence of insurance binders on that date which, she urged, constituted the requisite documentation. "We truly believe that we have met it by the September 25th date."

Shadley argued that, whatever the merits of the legal contentions of the parties, both business and environmental interests would be served by activating the permit. The permit would authorize the re-mining of a site originally mined in the 1940s and 1950s, left derelict, and posing a present environmental problem. Bond would be posted to assure the site's reclamation following mining, a responsibility which Collie Coal intends

to meet. Even if Collie Coal defaults on its responsibilities, however, the agency could turn to the surety company to perform reclamation. If Collie Coal cannot begin operations at once, a critical contract would be lost. The site would remain in its current derelict condition.

Patrick Ralston said he was familiar with the site because it is located in his home county of Vigo. "I drive by it a lot, and it's a tremendous eyesore." Ralston stated his opinion that Collie Coal had failed to meet agency deadlines, and those deadlines must be taken seriously. On the other hand, an opportunity was presented to put coal miners to work and, at the same time, to resolve an environmental problem. He said he believed Bill Valentine now understood the responsibilities associated with mining in this state, and some latitude could properly be given.

Chairman Kiley asked how long Collie Coal had been involved at the site and who originally mined the coal. The response was that Valentine had been involved since about 1993. He was not involved in the original mining activities.

Paul Ehret said review of the permit was "getting a little bit frustrating." While he expressed no opposition to the commission authorizing mining under the permit, he said the problems were occasioned by lack of diligence on the part of Collie Coal. "It is simply a matter of a huge waste of time, and I am sorry in a way this agenda item was in front of this group."

Sherman Anderson said he was also personally familiar with the site. He said he concurred with the opinions expressed by Ralston. "I was working in that area in the 1950s, and it has been an eyesore for quite some time."

Sherman Anderson moved to order approval of the permit, with the conditions set forth in the draft circulated among the commission membership. The motion was seconded by Damian Schmelz. The motion carried with Joe Siener opposed. Steve Cecil abstained.

The Chair remarked in closing that Collie Coal should feel itself "extremely fortunate" to have received the permit. He advised the company to take its mining and reclamation responsibilities very seriously in the future. He said timeliness was among those responsibilities.

## **LEGAL PROCEEDINGS**

### **Consideration of Report, Findings of Fact, and Nonfinal Order of the Administrative Law Judge in the Matter of Alan Fix vs. Department of Natural Resources; Administrative Cause No. 96-008L**

Pursuant to 312 IAC 3-1-12, the Department requested that the objections hearing be recorded by the commission's court reporter. That recordation was performed and would be reduced to a transcript upon a written request by a party made in conformance with IC

4-21.5 and 312 IAC 3-1. The transcript would then form the official record in lieu of minutes.

At the close of oral argument, Patrick Ralston moved to approve the findings and order of the panel of administrative law judges, except that Fix should be reimbursed for the \$200 expended for the computers (and the computers should be retained by the agency). The motion was seconded by Jerry Miller. The motion carried by a vote of five to two. Jack Arnett abstained.

**Consideration of the Report, Findings of Fact, and Nonfinal Order of the Administrative Law Judge in the Matter of Anglin v. Department of Natural Resources; Administrative Cause No. 95-301W**

William Teegarden, Administrative Law Judge, introduced the item. He explained that in issue was an unusual mixture of adjudication and rule making. Citizens adjoining Silver Lake in Kosciusko County petitioned for a rule change which would allow high-speed boating. By statute, a ten-mile-per-hour speed limit ordinarily applies to lakes contained fewer than 300 acres, but if a lake contains at least 70 acres and a majority of adjoining landowners petitions to allow high-speed boating, the commission has discretion to adopt a rule to implement the request.

Teegarden noted that the commission had delegated its authority to preliminary adopt a rule to the Director. Several divisions reviewed the petition, and based upon environmental concerns and possible safety concerns, recommended preliminary adoption not be given. When the petitioners were notified of the denial, Anglin initiated administrative review.

Teegarden explained that the Department of Natural Resources moved to dismiss the review because rule-making procedures are not subject to review pursuant to IC 4-21.5. Rule making is governed by another statute (IC 4-22-2), and an action pertaining to rule making is not an "order" which triggers the right to review. On the other hand, the commission is also the rule-making authority for the Department and could, in its discretion, subsequently give preliminary adoption to a rule. With these two principles in mind, the administrative law judge provided alternative findings for the commission's consideration, either of which he felt were legally justified. The first would simply dismiss Anglin's complaint. The second would dismiss his complaint but authorize the item to be placed on the agenda of the commission for possible preliminary adoption at a later date.

Stephen Snyder spoke as the attorney for Max Anglin. He said that Judge Teegarden tendered a "very technical decision from the standpoint of whether or not the decision for rule making" was subject to administrative review pursuant to the administrative orders and procedures act (IC 4-21.5). He said his client was not vitally concerned with whether a review of the DNR's substantive findings concerning environmental harm was based upon IC 4-21.5 or upon IC 4-22-2. He noted that other elements needed for approval of

high-speed boating had been met. The DNR found no safety hazard, and he urged that an opportunity should be provided to present experts to address the agency's environmental concerns.

Sylvia Wilcox spoke as attorney for the Department of Natural Resources. She urged that Anglin's complaint be dismissed. She said the law was clear that the agency's decision concerning rule adoption was not reviewable. Wilcox took issue with Snyder's contention that the Division of Law Enforcement had found no safety concerns. She said that overturning the dismissal would open the commission to administrative reviews every time someone was dissatisfied with a decision to adopt or not to adopt a rule.

Jerry Miller asked what would be the consequences of granting the petition. Would there be limitations on the size or speed of boats operating on Silver Lake? The Chair responded there would not typically be limitations during open hours, but the commission also had discretion to establish zones where boating activities were prohibited or restricted.

Miller asked whether Silver Lake had a public access site. The response from the Department was that a roadway abutted on the lake allowing for some access. Neither the Department nor Kosciusko County maintained an official access site. Sherman Anderson asked for clarification concerning the issues. The Chair asked Steve Lucas to summarize.

Lucas said the case was atypical because both adjudicatory and rule-making questions were presented. The commission often dealt with both, but ordinarily these arose in different agenda items. He said the commission had a court-type function with adjudications and a legislative-type function with rule making. He said Judge Teegarden had emphasized the commission could move forward with rule adoption as sought by citizens adjacent to Silver Lake, if the commission wished, but the ALJ had distinguished this authority from the law which governs adjudications.

Mary Titsworth moved to affirm the dismissal of the complaint filed by Max Anglin. She also urged, however, that the rule proposal be returned to the commission agenda as soon as practicable, accompanied by recommendations from the citizens and from the agency concerning preliminary rule adoption. The motion was seconded by Patrick Ralston. The motion carried with Jack Arnett opposed.

At approximately 11:45 a.m., EST, the meeting was adjourned.