

# NATURAL RESOURCES COMMISSION

Minutes - December 22, 1998

## MEMBERS PRESENT

Michael J. Kiley, Chair  
Larry Macklin, Secretary  
David Hensel  
Rick Cockrum  
Jane Ann Stautz  
John Goss  
Steve Cecil

## NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas  
Sylvia Wilcox  
Jennifer Kane

## DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Paul Ehret	Executive Office
Jack Costello	Executive Office
Angie James	Executive Office
Lori Kaplan	Executive Office
Brent Shike	Executive Office
Greg Ellis	Staff Counsel
Dennis Talley	Law Enforcement
Paul Bykowski	Law Enforcement
Bryan Knox	Law Enforcement
Bill Maudlin	Fish and Wildlife
Mike Neyer	Water
George Bowman	Water
John Bergman	Parks and Reservoirs
Marian England	Parks and Reservoirs
Jim Slutz	Oil and Gas
Mike Nickolaus	Oil and Gas
John Bacone	Nature Preserves
Gwen White	Soil Conservation

## GUESTS

Bob Fanning

## MONTHLY REPORTS

Michael J. Kiley, Chair, called to order the regular monthly meeting of the natural resources commission at 10:07 a.m., on December 22, 1998 in the Auditorium of the Indiana State Library, Indianapolis. With the presence of seven members, the chair observed a quorum.

Jane Ann Stautz moved to approve the minutes of November 19, 1998. The motion was seconded by Steve Cecil. Upon a voice vote, the motion carried.

Larry Macklin provided the Director's report. He said he participated in a "well-attended" Underground Railroad Conference held in Indianapolis. The impetus for the conference was a Congressional pronouncement to honor and preserve the legacy of the Underground Railroad in the Civil War Era.

Macklin said staff is continuing to meet with the architects of the new museum. He announced the unveiling ceremony for January 19, 1999 at 11:30 a.m. to be held at the IMAX Theater. He said the "footprint" fundraiser is complete; however, the compilation of exhibit dialogue is ongoing.

Macklin attended the Soil Conservation Annual Meeting held at Spring Mill. He said he "enjoys going to the annual division meetings" because they give him a "good opportunity to meet with the employees." Macklin also met with the Bill Stinson, Executive Director of State Fair Board, to discuss the renovation of the DNR State Fair Building using gaming and lottery funds.

Kiley presented a written proclamation congratulating the Division of Reclamation staff for this year receiving the State of Indiana Quality Improvement Award. He said the division was the first state agency to receive the prestigious award, and he also expressed appreciation to division staff generally for "their tremendous work." Kiley said he was "quite proud of this achievement."

Jack Costello, Deputy Director of the Bureau of Lands and Cultural Resources, said the council met at Ft. Benjamin Harrison. The council had a "good" meeting. He said the Ayers' Tea Room event "went very well." He said tickets sold out quickly, with attendance doubled from previous year.

Costello supplied summary sheets of the 1998 deer reduction program in state parks. He said DNR hoped to give an "in-depth" presentation to the Commission during the January or February meeting to outline the successes of the program. Staff would also outline future plans for the deer management program.

Costello said he recently toured the Newport Army Base. He said there is natural resource management ongoing (specifically prairie species) at the base, making it a "super" fish and wildlife area.

Lori Kaplan, Deputy Director for the Bureau of Water and Resource Regulation, said the council did not meet in December. The council is next set to meet in February. She announced that citizens can now call the Division of Water, toll free, for information (1-889-928-3755). She said the number is also available on the DNR web page. Kaplan also announced nominations are being accepted for four openings on the Trails Advisory Board. The due date for the receipt of nominations is February 1, 1999. Kiley nominated former senator Tony Maidenburg.

Kaplan announced Indiana will "very shortly be the proud host of a small group of trumpeter swans" that will winter at Muscatutuck. She said the birds were expected to arrive sooner, but inclement weather left the flock stranded in Ohio. Kaplan explained that "these birds are the largest indigenous waterfowl in Indiana, and the largest swans in the world."

## **BUREAU OF LANDS AND CULTURAL RESOURCES DIVISION OF NATURE PRESERVES**

### **Consideration of the Dedication of an Addition to Bean Blossom Bottoms Nature Preserve, Monroe County.**

John Bacone, Division of Nature Preserves, presented this item. He said the proposed addition is a 120-acre tract of land adjacent to the existing 80-acre Bean Blossom Bottoms Nature Preserve located in northwestern Monroe County. Bacone said both the nature preserve and the proposed addition were owned and managed by Sycamore Land Trust, and both properties were Indiana Heritage Trust acquisitions. He said a public hearing was held; however, only one person attended and spoke in favor of the dedication. Bacone "strongly" recommended dedication of the 120-acre tract.

John Goss moved to approve the dedication of the addition to Bean Blossom Bottoms Nature Preserve, Monroe County. The motion was seconded by David Hensel. Upon a voice vote, the motion carried.

### **Consideration of the Dedication of Seidner Dune and Swale Nature Preserve, Lake County.**

John Bacone presented this item. He said the Seidner Dune and Swale Nature Preserve is a tiny remnant of "extremely rare dune and swale topography." He said the 42-acre tract was purchased by the Shirley Heinze Environmental Fund in partnership with the Indiana Heritage Trust.

Jane Ann Stautz moved to approve the dedication of the Seidner Dune and Swale Nature Preserve in Lake County. The motion was seconded by Steve Cecil. Upon a voice vote, the motion carried.

**Consideration of Acquisition by the Indiana Department of Transportation of Right-of-Way in Big Walnut Nature Preserve, Putnam County**

John Bacone presented this item on behalf of John Davis, Director of the Division of Land Acquisition. He said the proposal was for the transfer of land to the Indiana Department of Transportation for use in bridge replacement and road realignment along US 36 in Putnam County. The acquisition was needed for construction and maintenance, would help support a safe and modern highway system, and would not significantly impact the nature preserve. He recommended the resolution for approval.

Rick Cockrum moved for approval of the resolution. The motion was seconded by Jane Ann Stautz. Upon a voice vote, the motion carried.

**BUREAU OF MINE RECLAMATION  
DIVISION OF OIL AND GAS**

**Consideration of Recommendation for Preliminary Adoption of Amendments to Oil and Gas Rules; Administrative Cause No. 98-203G**

Mike Nickolaus, Assistant Director of the Division of Oil and Gas, presented this item. He said for consideration as to preliminary adoption were a variety of issues governing the drilling, production, and proper temporary abandonment of wells. He said the proposed new standards for well construction would allow operators greater flexibility as long as potential underground sources of drinking water were protected.

Nickolaus said new standards for proper temporary abandonment of wells would allow a longer period for wells to be maintained in a temporary abandonment status, so long as environmental protections were demonstrated. The need for this change was particularly acute with the current depression of petroleum prices. Nickolaus indicated he checked on the price of crude oil just before the NRC meeting, and it was at a very low \$7.75 a barrel. He asked the commission to approve the proposed amendments for preliminary adoption and to have them committed to public hearing.

Jane Ann Stautz moved to give preliminary adoption to the amendments proposed to the oil and gas rules as set forth in the commission packet. The motion was seconded by Steve Cecil. Upon a voice vote, the motion carried.

**LEGAL PROCEEDINGS  
NRC DIVISION OF HEARINGS**

**Consideration of Report of Public Hearings (Including Public Comments, DNR Response to Public Comments, and Analysis by the Hearings Officers) and Recommendation of Hearing Officers for Final Adoption of the Amendment and**

**Recodification of Public Freshwater Lake Rules; Administrative Cause No. 97-032W; LSA #98-52(F)**

Steve Lucas introduced this item in his capacity as one of the hearing officers. He said the hearing officers recommended final adoption of recodification of rules for public freshwater lakes at 312 IAC 11, and the repeal of 310 IAC 6-2, as set forth in the Commission packet. In the majority of instances, he said the hearing officers recommended the same modifications to language given preliminary adoption as had been suggested by the DNR in its response to public comments. In addition, the hearing officers recommended the NRC endorse a process, within Information Bulletin #10 governing these items, to seek review of site designations as "wetlands" or "areas of special concern;" that a proposal by Stephen Snyder concerning the definition of "riparian owner" be treated as if it were a petition for rule change; that a proposal by Donald Henderson to allow glacial stone to be placed with a dry hydrant under a general license in wetland areas be treated as if it were a petition for rule change; and that a proposal by several citizens to allow a general license to replace existing seawalls be treated as if it were a petition for rule change.

Lori Kaplan said DNR had "no formal comments" concerning the recommendations of the hearing officers. "We do agree with all of the recommendations of the hearing officers. We would be very happy to follow their recommendations." She clarified that one finding by the hearing officers was the phrase "critical or unique fish and wildlife habitats" to help define "area of special concern" was unacceptably vague. While staff for the DNR might pursue language to provide standards for this phrase in the future, for the current rules, the DNR agreed the phrase should be deleted.

Rick Cockrum asked why the hearing officers did not recommend final adoption be given to the citizen proposal for a general license for glacial stone to replace a concrete seawall. Lucas responded the concept "appeared to have merit," but there were two reasons why it was not recommended for final adoption. First, the concept was not part of the rule package committed to public hearing, and it digressed so fundamentally from the package that the hearing officers felt it would be an impermissible modification under the law governing rule adoption. He said the "public would not have been put fairly on notice this new general license was being considered for rule adoption." Second, the DNR staff reflected in its response to this proposal that standards were needed to determine under what site conditions a general license might be warranted. "DNR staff has a legitimate concern and needs time to develop an appropriate general license."

Bob Fanning asked from the audience that the proposal concerning the replacement of seawalls with glacial stone be reworded. He suggested rather than "seawall replacement," most citizens were interested primarily in "seawall refacing." Kaplan responded that she felt this substitution was in order. Lucas added the wording might be modified to suggest both scenarios, allowing DNR staff to fully review the issue and develop whatever general license seemed warranted. The Chair asked Sylvia Wilcox, who was also a hearing officer for the rule proposal, if she objected to the modification. She said she did not.

The Chair said there was a growing interest in the placement of dry hydrants in lakes in support of local fire fighters. He noted that, in some instances, the maximum 150-foot distance from shore would prove impracticable because waters were yet too shallow to support the safe placement of a dry hydrant.

Kaplan explained the language recommended for final adoption had already extended the maximum distance from shore to 150 feet from the original proposal of 50 feet. This modification was made in response to concerns similar to those expressed by Chairman Kiley. She noted the new rule language would establish a "general license." Where there were special needs, an applicant could complete the full licensing process and receive an authorization which varied from the terms of the general license.

Mike Neyer, Director of the Division of Water, concurred with the response by Kaplan. He also expressed the view there was an increasing interest in the placement of dry hydrants in public freshwater lakes. Neyer said his division was actively working with local fire departments and similar interests to see how their needs could best be served without causing an adverse impact to the environment or boater safety.

The Chair asked if there was additional discussion or comment. There was none. He then called the matter to a question.

Steve Cecil moved as follows:

1. The language recommended by the hearing officers for the adoption of 312 IAC 11 and the repeal of 310 IAC 6-2 is given final adoption.
2. Information Bulletin #10 governing Wetlands Within Public Freshwater Lakes is amended to provide: "A person who believes modification to the delineation of a wetland' or an 'area of concern' is needed may seek informal review of the delineation from the Division of Fish and Wildlife. In the alternative, a person may seek more formal review by filing a request for quasi-declaratory judgment with the Director pursuant to 312 IAC 3-1-15."
3. Correspondence from Stephen Snyder concerning the definition of "riparian owner" should be processed as if received on December 22, 1998 as a petition for rule change.
4. Correspondence from Donald Henderson concerning authorization by general license of the placement of glacial stone in non-wetland areas to support the placement of a dry hydrant should be processed as if received on December 22, 1998 as a petition for rule change.
5. The Department of Natural Resources is directed to actively pursue the development of rule standards for the preliminary adoption of a general license to authorize, under appropriate circumstances, glacial stone to replace or reface existing concrete seawalls.

The motion was seconded by Jane Ann Stautz. Upon a voice vote, the motion carried.

**Consideration of Report of Public Hearing and Recommendation of Hearing Officer for Final Adoption of Rule Amendments to 310 IAC 12-3 Governing Surface Coal Mining Permit Applications; Administrative Cause No. 98-139R; LSA #175(F)**

Jennifer Kane, Hearing Officer, presented this item. She said the proposal made technical changes and changes required by the federal Office of Surface Mining and Reclamation regarding applications for SMCRA permits. Kane said the proposal was noncontroversial and recommended it be given final adoption.

Steve Cecil recommended the amendments proposed to 312 IAC 12-3 within LSA Document #98-175(F) be given final adoption. The motion was seconded by David Hensel. Upon voice vote, the motion carried.

**Consideration of Report of Public Hearing and Recommendation of Hearing Officer for Final Adoption of Rule Recodification for Groundwater Emergency Minimum Well Standards from 310 IAC 16.5 to 312 IAC 12; Administrative Cause No. 98-125W; LSA #98-173(F)**

Steve Lucas, Hearing Officer, presented this item. He said the proposal was part of the recodification process for all permanent DNR rules within 310 IAC to be relocated as NRC rules within 312 IAC. Unlike some other recodification proposals, this one contained no substantive changes. No public comments were expected, and none were received. He recommended the recodification be given final adoption.

John Goss moved to give final adoption to 312 IAC 12, to govern minimum water well standards to qualify for relief under the groundwater emergency law, and for the simultaneous repeal of 310 IAC 16.5 currently governing this subject. The motion was seconded by David Hensel. Upon a voice vote, the motion carried.

Consideration of a Proposal for a Nonrule Policy Document, to Be Published as Information Bulletin #23, Entitled "Personal Property Found on DNR Properties"  
Marian England of the division of state parks presented this item. She said the NRC recently gave final adoption to recodification of the rules governing use by the public of DNR properties. The recodification becomes effective on January 1, 1999. One issue not covered by rule recodification, however, was abandoned property.

England said an agency committee decided the best approach to abandoned and seized property was the development of a nonrule policy document. The reasons for this determination are as follows:

1. Many abandonment and seizure situations are already governed by a variety of state statutes.

2. Experience with a process could provide valuable insights before rule adoption.
3. Some abandonment and seizure issues arise from public waters, and public waters are not generally covered by the new rules.

She asked that the nonrule policy document be approved by the commission.

Rick Cockrum moved to approve for publication Information Bulletin #23 entitled "Personal Property Found on DNR Properties." The motion was seconded by David Hensel. Upon a voice vote, the motion carried.

### **Adjournment**

At approximately 11:48 a.m., EST, the meeting adjourned.