

NATURAL RESOURCES COMMISSION
Minutes - July 18, 1996

MEMBERS PRESENT

Michael Kiley, Chair
Patrick Ralston, Secretary
John Goss
Steve Cecil
Jan Henley
Terri Moore
Mary Titsworth
Sherman Anderson

NATURAL RESOURCES COMMISSION STAFF PRESENT

Steve Lucas	Hearings
Bill Teegarden	Hearings
Cheryl Hampton	Hearings

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Jack Costello	Executive Office
Paul Ehret	Executive Office
Dave Vice	Executive Office
Louise Krick	Executive Office
Lori Kaplan	Executive Office
Mike Neyer	Water
Kenneth Smith	Water
John Simpson	Water
John Olson	Fish and Wildlife
Patrick Mayer	Fish and Wildlife
George Seketa	Fish and Wildlife
Jerry Pagac	State Parks and Reservoirs
Emily Kress	Outdoor Recreation
Otto Jose	Outdoor Recreation
Tom Kidd	Outdoor Recreation
Gwen White	Soil Conservation
Stephen Sellers	Public Information and Education
Mike Masson	Soil Conservation
Mary Davidsen	Legal Counsel
Virginia Simone	Legal Counsel
Chris Geeslin	Legal Counsel
Ihor Boyko	Legal Counsel
Sylvia Wilcox	Legal Counsel

GUESTS PRESENT

Bob White	Ted Harris	Jim Gurhn
Roger Beach	Connie Hamilton	Bob Ginger
Roy Kaser	Jack Clements	Paul Dickson
Alan Plunkett	Kyle Niederpruem	Margaret Burlingane
Dick Mercier	Ray Schwomeyer	Raoul Moore
Tim Halcomb	Les Zimmer	Kevin Condon
Dean Ford	Don Schmitt	Mike Ruppert
Jon Voelz	Allan Clauser Jr.	Janice Clauser
Bill Hayden	Hugh Schoen	Linda Schoen
Gayle Lough	Greg Woods	Jeff Wells
Cindy Galloway	Mike Goss	Cecil Rich
Clarke Kahlo	Tim Maloney	Rod Everhart
Bob Kraft	Kim Vail	

MONTHLY REPORTS

Michael Kiley, Chair, called to order the regular meeting of the natural resources commission at 10:08 a.m., EST on July 18, 1996 in the Auditorium, Indiana Government Center Complex South, Indianapolis, Indiana. With the presence of eight members, the chair observed a quorum.

Mary Titsworth moved to approve the minutes of the June 20, 1996 meeting. The motion was seconded by John Goss and approved by voice vote of the commission.

Patrick Ralston gave the Director's Report. He noted both the Natural Resources Study Committee and the Water Resources Study Committee of the Indiana General Assembly have met this month. The Department is in the very early stages of developing its next two-year budget.

The Director said earlier this week he attended the Prairie Duneland Trail dedication and the Portage Marina dedication in Portage, Indiana. Important coming events included the meeting of the Great Lakes Commission Executive Committee later in July and the Midwest DNR Directors Meeting, a function he initiated, in Indianapolis in October.

Jerry Miller, Chairman of the Advisory Council for Lands and Cultural Resources, was not present.

Jack Costello, Deputy Director for the Bureau of Land and Cultural Resources, indicated some of the federal reservoirs managed by the Department still contain high water. Most extreme among these is Lieber Lake. He reported that, in accordance with an inter-state agreement, the Indiana Division of Forestry has assisted with fire fighting in Minnesota.

Joe Siener, Chairman of the Advisory Council for Water and Resource Regulation, was not present.

David Herbst, Deputy Director for the Bureau of Water and Resource Regulation, said "our worst fears have come true" with respect to the spread of dogwood anthracnose in Indiana. Diseased trees have been confirmed in Brown County State Park.

Herbst distributed the Indiana Wetlands Conservation Plan. He said the effort involved the volunteer efforts of citizens from a variety of professions and perspectives. For the first time, a comprehensive effort at addressing issues of wetlands management was pursued in which divergent viewpoints were assimilated.

Paul Ehret, Deputy Director for the Bureau of Mine Reclamation, said his bureau had "spent a lot of time" providing information to the legislative Committee for Growth and Regulatory Relief. A main purpose was to streamline permitting, and there was a focus upon efforts by the division of reclamation. He said another recent initiative has the federal Office of Surface Mining and Reclamation focusing its efforts more on oversight of on-the-ground reclamation and less on traditional "bean counting." Ehret also reported on continuing efforts at a state and local partnership designed to cleanup the South Fork of the Patoka River, an area impacted by past mining activities. The division of reclamation provided assistance for the Patoka River citizen's group in acquiring a grant from "River Watchers" to purchase water monitoring equipment.

BUREAU OF LANDS AND CULTURAL RESOURCES PERMANENT APPOINTMENTS AND PERSONNEL INTERVIEWS

Personal Interviews

There were no personal interviews considered during the July 18 meeting.

Permanent Appointments

John Olson of the division of fish and wildlife introduced Patrick Mayer. Olson recommended his permanent appointment as assistant property manager at Sugar Ridge Fish and Wildlife Area.

Steve Cecil moved to approve Patrick Mayer for permanent appointment pursuant to the law governing department property managers. The motion was seconded by Sherman Anderson. Upon a voice vote, the motion was approved.

DIVISION OF STATE PARKS AND RESERVOIR MANAGEMENT

Consideration of a Request to Provide No-Cost One-Day Passes to Department of Natural Resources in Association with the Fatherhood Conference in September 1996

Patrick Ralston explained this item. He indicated that Governor Evan Bayh is hosting the Fatherhood Conference in September, and in association with that conference, the Department wished to waive the regular entrance fee to state parks, reservoirs, and forest properties. He said the fiscal impact would be negligible. Ralston explained the waiver would not apply to other user fees, such as camping, cave tours, or building fees.

Steve Cecil moved to provide no-cost one-day passes to DNR properties as outline by the director in association with the Fatherhood Conference. The motion was seconded by Terri Moore. Upon a voice vote, the motion carried.

BUREAU OF WATER AND RESOURCE REGULATIONS DIVISION OF OUTDOOR RECREATION

Consideration of Preliminary Adoption of a New Rule to Designate a Portion of Sugar Creek as a State Natural, Scenic, and Recreational River

Chairman Kiley introduced this item. He explained that a decision would not be made during this meeting concerning the addition of Sugar Creek as a natural or scenic river. Instead, the NRC would receive brief public comment on the proposal. A hearing officer would then be appointed to later receive public comment and report back with recommendations concerning designation. The hearing would not be held sooner than this fall and would be conducted in Montgomery County.

Otto Jose, Sugar Creek study coordinator for the division of outdoor recreation, said the division was asking the NRC to appoint a hearing officer as required for rule adoption. He said the division recommended that a 15.2 mile segment be included on the upper portion of Sugar Creek as a scenic river and another 16.5 miles be included downstream as a natural river. Two miles between these sites would be excluded from designation so as not to interfere unduly with the urban needs of Crawfordsville. Jose also spoke of the Voluntary River Guidelines which had been developed by a group of citizens working in cooperation with the DNR, and he asked that they be approved. "At this time, we are recommending the NRC appoint a hearing officer."

Ted Harris, a participant in the Voluntary Committee spoke in favor of designation. He said a few persons have used "innuendoes" to raise illegitimate fears regarding "property rights." He said the real crisis, in Indiana and globally, was with the loss of biodiversity. The designation of Sugar Creek would help protect biodiversity.

Dick Mercier of the Indiana Sportsmens Round Table spoke in favor of the designation. He said Sugar Creek is one of the few streams left in Indiana which might yet qualify.

Jim Suren, a property owner and local canoe enthusiast, said he supported the proposed designation. He "honored" Otto Jose, Tom Kidd, and the Friend of Sugar Creek for their efforts to protect the creek's environmental integrity. The "designation of Sugar Creek

will help us become better stewards" by linking local efforts with state-level professional expertise.

Connie Hamilton, a landowner along the creek, said in the 1970s she opposed the adoption of a rule to designate Sugar Creek as a scenic stream. She joined with those urging local control. She said a "county development plan" was devised, and this plan resulted in the adoption of a Montgomery County ordinance to protect Sugar Creek. Unfortunately, she said, the "ordinance was all but forgotten" soon after its adoption. Local efforts at protecting the creek have been "ineffective."

Roger Beach also expressed support for designation. He said the "future of Sugar Creek" depends upon its designation as a scenic or natural stream.

Ray Schwomeyer also spoke briefly. He said he supported the proposed designation.

Raoul Moore said he observed the process to consider designation in the 1970s. At that time, he favored local enforcement rather than a formal state rule. He said the local effort has proven unsuccessful, however, and he now favors designation. Moore suggested there were too many competing business efforts to allow meaningful local implementation of creek protections.

Linda Schoen read a statement made by a citizen following the designation of Wildcat Creek in the 1980s as a scenic stream. That statement complained that the opponents of designation did not have their concerns properly addressed. She said the same applied to the proposal to designate Sugar Creek, and she opposed its designation.

Gayle Lough said the proper focus should be upon property owners and their rights. He said the fault with stream degradation rested with state agencies. "The current state laws need to be enforced by DNR and IDEM. . . . To own property is part of the American dream." He said designation of Sugar Creek as a scenic stream violated that dream.

Cindy Galloway, Executive Director of the Montgomery County Visitors Bureau, said the Bureau supported the appointment of a hearing officer. "We believe the designation of Sugar Creek as a scenic stream will bring positive economic benefits to Montgomery County."

Jeffrey Wells also spoke in favor of the proposed designation. He said the real threat to property rights was not designation but rather irresponsible usage of the stream and riparian areas. He urged the appointment of a hearing officer.

Allan Clauser, Jr., a landowner on the southern end of the proposed designation area, said he opposed its designation. He stated ten reasons for the opposition, saying it was ill-considered and irreversible. Clauser said good management practices among farmers were improving water quality, and that farmers would continue to move forward with their efforts to protect the land, making the rule unnecessary.

Clarke Kahlo, Protect Our Rivers Now, presented a letter from his organization in support of the designation. Montgomery County has the opportunity to "get out front" for the protection of Sugar Creek. He urged the appointment of a hearing officer.

Mike Goss said he supported designation. He argued that the stewardship of Sugar Creek needed statewide support.

Roy E. Kaser, Manager of Crawfordsville Electric Power & Light, spoke in opposition to designation. He said the area from the I-74 bridge at creek mile 42.6 to the State Road 32 bridge at creek mile 34.0 were served by Crawfordsville Power and Light and should be excluded. He said this 8.6 mile section had 16 crossings, making it ineligible for inclusion. "We believe that to continue pursuing the designation process for this section of Sugar Creek beyond today's meeting is a blatant disregard for the rules of the Department of Natural Resources and an inexcusable waste of taxpayers' money." He said a designation would have "grave economic impacts for our community, stifling growth and progress."

Jack Clements, representing the Chamber of Commerce, also expressed opposition to the proposed designation. He said it would have a serious detrimental effect upon business development.

Tim Maloney of the Hoosier Environmental Council spoke in favor of the proposal. He said doing so would provide "additional recognition" to the community and its special scenic and environmental values. Having a stream designated as scenic would add to the region's quality of life.

Bill Hayden of the Sierra Club and Isaac Walton League said designation would provide recognition to the special values of Sugar Creek. Some landowners have practiced "good stewardship," but others have not. The designation would encourage better private management and would likely provide opportunities to access financial resources to "preserve and enhance" the stream. He reminded the NRC, "this is not just a county resource, but it is a resource of all the citizens."

The Chair then called for consideration by the members of the commission.

Patrick Ralston said the review process has "gone on for two or three years" and was initiated locally. He commended the division of outdoor recreation for its efforts. Ralston asked that, if the process continued on to public hearing, the participants direct their attention to the issues and not to misrepresentations designed to frighten the public.

The Chair then announced that he was appointing a hearing officer to conduct a hearing, possibly in the fall, and report back to the commission concerning the propriety of final adoption. Kiley reflected, also, that the commission is the "final arbiter of all matters pertaining to the state's natural resources."

DIVISION OF FISH AND WILDLIFE

Consideration of a Request by Pike-Gibson Water, Inc. for a Right-of-Way Easement to Place a New Waterline Along County Road 775E and County Road 300 South in Pike County

George Seketa of the division of fish and wildlife presented this item. He explained that Pike-Gibson Water, Inc. was seeking authority to place a new waterline, which would extend 4,000 feet through Sugar Ridge Fish and Wildlife Area. The line would have "little negative impact on the management" of the fish and wildlife area. In addition to residents in the immediate community, facilities at the fish and wildlife area are served by Pike-Gibson Water, Inc. Seketa said the division's recommendation was largely motivated by a "good neighbor policy."

Sherman Anderson moved to approve the waterline in favor of Pike-Gibson Water, Inc. as outlined by Seketa and more specifically set forth in the commission packet. The motion was seconded by Steve Cecil. Upon a voice vote, the motion carried.

BUREAU OF MINE RECLAMATION DIVISION OF RECLAMATION

Consideration of Two Rule Packages from the Division of Reclamation Governing Changes Proposed to 310 IAC 12-3-121 and to 310 IAC 12-4-8

Part 1. Administrative Cause Number 94-80R (LSA #95-153): Paul Ehret recommended that the commission give final adoption to amendments to 310 IAC 12-3-121 concerning significant and nonsignificant permit revisions. Steve Lucas added that this proposal had previously been given final adoption by the commission, but it was being resubmitted to address mostly-technical legal concerns raised by the Attorney General.

Sherman Anderson moved to give final adoption to 310 IAC 12-3-121 regarding significant and nonsignificant permit revisions as set forth in the commission packet. The motion was seconded by Steve Cecil. Upon a voice vote the motion carried.

Part 2. 310 IAC 12-4-8: Paul Ehret asked that this part be deferred for additional communications between the agency and the regulated community. The chair showed part 2 withdrawn from the agenda.

LEGAL PROCEEDINGS

Consideration of Report, Findings of Fact, and Nonfinal Order of the Administrative Law Judge in McDowell v. Department of Natural Resources; Administrative Cause No. 95-279W

William Teegarden, Administrative Law Judge, reported that the parties had achieved a settlement. Accordingly, the Chair reported the item withdrawn from the agenda.

Consideration of Report, Findings of Fact, and Nonfinal Order of the Administrative Law Judge in Stanton v. DNR and DNR v. Stanton; Administrative Cause Nos. 90-221W and 90-233W

William Teegarden, Administrative Law Judge, introduced this item. He explained that the case had come before the commission several months ago. At that time, he had presented findings and a nonfinal order which found in favor of Stanton, in the enforcement part of these consolidated cases, based upon a statute of limitation. The commission had ordered the case remanded with findings reversing the statute-of-limitation issue. Those findings were prepared by counsel for the Department of Natural Resources and were presented in the commission packet. The ALJ explained that Stanton had filed objections.

Mary Davidsen, attorney for the Department of Natural Resources, said she was available to answer questions. She said that her effort was to reverse the statute of limitations legal findings as directed by the commission.

Michael Ruppert, attorney for Stanton, indicated he stood by the written objections filed against the amended findings tendered by the Department's attorney. He said those findings were, he thought, consistent with commission instructions but inconsistent with the law. He argued that the findings meant, in effect, there would be no statute of limitation for violations of the Flood Control Act. The only other legal area where no statute of limitation existed was for the crime of murder. Ruppert argued the commission interpretation was mistaken.

Patrick Ralston moved to approve the amended findings and order as tendered by the Department's attorney and contained in the commission packet. The motion was seconded by Mary Titsworth. Upon a voice vote, the motion carried.

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