

**NATURAL RESOURCES COMMISSION**  
NIRPC Building, 6100 Southport Road  
Portage, Indiana

Minutes of July 15, 2008

**MEMBERS PRESENT**

Bryan Poynter, Chair  
Jane Ann Stautz, Vice Chair  
Robert Carter, Jr., Secretary  
Thomas Easterly  
Damian Schmelz  
Larry Klein  
Brian Blackford  
Patrick Early  
Phil French  
Robert Wright  
Doug Grant

**NATURAL RESOURCES COMMISSION STAFF PRESENT**

Stephen Lucas  
Sandra Jensen  
Jennifer Kane

**DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT**

Ron McAhron	Executive Office
John Davis	Executive Office
Glen Salmon	Fish and Wildlife
Steve Roth	Fish and Wildlife
Brian Breidert	Fish and Wildlife
Bill James	Fish and Wildlife
Bill Bean	Fish and Wildlife
Amanda Ricketts	Human Resources
Cheryl Hampton	Human Resources
John Bacone	Nature Preserves
Dan Bortner	State Parks and Reservoirs
Brandt Baughman	State Parks and Reservoirs
Phil Bloom	Communications
Mike Crider	Law Enforcement
Steve Hunter	Law Enforcement
Tom Lyons	Forestry
Brad Schneck	Forestry

**GUESTS PRESENT**

Tim Julien                      Casey Pheiffer                      Anne Sterling                      Jerry Barnett

Phyllis Price	Holly Hadac	Heather Turgill	Charles Andres
Ce Ann Lambert	angel Estep	Frank Lamm	Gerald Bass
Jeremy Bontrager	Tom Carroll	Travis Allen	Travis Loure
Dale LaCognak	Steve Lawson	Judith Cieslak	Daniel Loure
Lief Baierl	Mitch Hess	Todd Eubank	Regina Huffman
Brad Collings	John Steinbrenner	Stuart Grell	Kevin Worley
Jody Melton	Tim Rose	Beverly Torres	Dave Voland
Mike Hanz	Mark Wermont	Jerry Schilling	Linda Knopic
Rachel Jones	Debbie Fray	Karin McKenna	Nartina Rukavina
April Terry	MaryAnn Crayton	Marilyn Chay	Jade Chay
Patti Woronecki	Jen Woronecki	Patricia Riley	Cheryl Powell
Gordon Ingle	Bill Crum		

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 7:03 p.m., EDT, on July 15, 2008 at the NIRPC Building, 6100 Southport Road, Portage Indiana. With the presence of ten members, the Chair observed a quorum.

Larry Klein moved to approve the minutes of May 21, 2008. Doug Grant seconded the motion. Upon a voice vote, the motion carried.

### **Reports of the Director and Deputies Director, and Natural Resources Advisory Council**

Director, Robert Carter, Jr., thanked the Northwest Indiana Regional Planning Commission (NIRPC) for being a “gracious host” and also thanked Jody Melton, Director of the Kankakee River Basin Commission. He reported that the flooding has occurred in the state parks in southwest and west central Indiana. “State parks have sustained heavy damage, namely Turkey Run State Park and Shades State Park.” He noted the campground at Monroe Reservoir remains under water and added that Lieber State Recreation Area and Raccoon Lake were also impacted by the June floods. “We still have a lot of challenges on our hands.” Properties managed by the Division of Forestry and the Division of Nature Preserves were also damaged by flood waters.

The Director said, “I would like to highlight the efforts of the DNR employees. They really stepped up during this recent flood event, especially Law Enforcement. They saved many, many lives—too many to count. We really appreciate the efforts of all of the DNR employees.”

The Director noted the Indiana State Fair begins August 6<sup>th</sup> and runs through August 17<sup>th</sup>.

The Chair announced that a proclamation would be prepared to recognize that the Department was called upon “at the worse moments of the flooding.... The statistics of the number of people that touched the Department of Natural Resources’ boat or personnel was something like 2,200 saves. Several of the officers put themselves in

harm's way in the middle of the night in unknown areas, and the state park staff worked overtime."

John Davis, Deputy Director for the Bureau of Lands, Recreation and Cultural Resources, reported the floods caused damage in some campgrounds, but most of the campgrounds were "able to get up and running." He said there was an extended power outage and cabin damage at Turkey Run State Park due to trees falling. He noted, however, that the Department's state parks had "a pretty good July 4<sup>th</sup> weekend and thankful for that."

Ron McAhron, Deputy Director, Bureau of Resource Regulation, reported the Division of Reclamation Jasonville office was closed due to an area water main break. He said several staff worked with the Army Corps evaluating a "little over" 100 dams across the central part of the state "trying to make an assessment of what sort of immediate danger [the dams] posed." McAhron also explained the Director adopted a temporary rule to allow licensure exemptions under the Flood Control Act in order to repair or re-install culverts, bridges, and other infrastructure without completing a formal permit process. The temporary rule "dovetails" with Indiana Department of Environmental Management's temporary license exemptions. "We're hoping [the temporary rule] will help get things back into the ground and also help them with the FEMA process for reinforcement."

Patrick Early, Chair of the Advisory Council, reported the Advisory Council met in June. He said the Council mainly discussed the rule proposal addressing recreational prospecting in streams and rivers. Several Council members and Department staff observed prospecting activity in the field. "It does appear that even with power equipment, that is at least hand-operated and done with the prospector in the water, it does appear to be a fairly low impact type activity." Early said the DNR and Council will draft a rule proposal that exempts recreational prospectors from the proposed rules that would govern mining of gravel and other materials. "The concerns of [the prospectors] were valid, and hopefully we can come up with some size limits and intake size limits that will be acceptable."

The Chair said, "Again, that's a great example of how the Commission works with the Council."

#### **CHAIR AND VICE CHAIR**

The Chair recognized Commission member Fr. Damian Schmelz for attaining a "landmark anniversary" and celebrating his 50<sup>th</sup> Anniversary as a priest in the Roman Catholic Church." He said, "On behalf of the Commission, we appreciate all that you have done for this Commission and the natural resources."

Schmelz thanked the Commission and said, "If you live long, this is the kind of thing that happens to you."

The Chair directed the Commission's attention to the Division of Hearings' Metrics and a document entitled *Metrics Review (Calendar Years 2006 & 2007)*. The documents are the result of the Division of Hearings performance matrix and were developed by Sandra Jensen. He said, "I go no stretch to thank them for all the work that they do and the issues that they handle."

The Chair asked Jody Melton to provide information about NIRPC. Melton explained that NIRPC is composed of 51 communities in Northwest Indiana from Lake, LaPorte, and Porter counties. "We do a lot of transportation planning and environmental planning."

The Chair also thanked Brandt Baughman, Property Manager for Indiana Dunes State Park, and Mike Molnar, Program Manager for the Department's Lake Michigan Coastal Program, for their assistance in planning and coordinating a "very full day" of field trips. He said the field trips offered a "very interesting perspective on lake issues in this wonderful region and all of its natural resources." He added, "It was very helpful to see the issues that the Northwest Indiana Region deals with here at the Dunes."

Poynter invited the Vice Chair, Jane Ann Stautz, to provide a report on the Commission's AOPA Committee. Stautz said the AOPA Committee met on July 14 to review and hear objections regarding two nonfinal orders. "We would like to ask the NRC to take a look at an issue. We continue to see a lot of cases and matters coming before the AOPA Committee as they deal with piers—particularly group piers and the licensing process for group piers for major issues on our public freshwater lakes." She encouraged the DNR to continue to draft proposed rules to address group pier licensing, and asked that the DNR "expedite the work on clarification around those criteria and rules, and possibly bring it maybe as early as September meeting." Stautz said, "Either the [DNR] staff comes forward with [proposed rules], or we may get some greater assistance through either the courts or legislation in the future, because it's becoming more and more of an issue as the use of piers on lake frontage" increases.

Steve Lucas, Director of the Commission's Division of Hearings added, "The AOPA Committee very ably dealt with two cases yesterday that have rather long histories, and they were both public freshwater lake cases which were concerned with group piers." He added that the cases "underline the need to have very direct standards pertaining to the evaluation of group piers." He said that the administrative law judges that work for the Commission and its AOPA Committee are "desirous of having clear standards as to what we should be evaluating and how we should make our judgments."

The Chair said the AOPA Committee often deals with "quite complex" issues. He said that other AOPA Committee members also relayed the "urgency and the necessity" to promulgate rules to address the licensing criteria for group piers. Davis said the Department is "on track" to present a rule proposal to the Commission at its September meeting. He noted the Lake Management Workgroup has reviewed a rule proposal and feedback from the Workgroup will be available for the August Advisory Council meeting and subsequently placed on the Commission's September meeting.

## **DNR, EXECUTIVE OFFICE**

### **Consideration and Identification of Any Topic Appropriate for Referral to the Advisory Council**

No new topics were presented for referral to the Advisory Council.

## **DIVISION OF FISH AND WILDLIFE**

### **Consideration of request to name the “Lawrence Tract” in LaPorte County in honor of Dick Blythe, Chairman of the Grand Kankakee Marsh Restoration Project Steering Committee**

Bill Bean, North Public Lands Supervisor for the Division of Fish and Wildlife, presented this item. “I have had the pleasure of knowing Dick Blythe for several years and working together on the Grand Kankakee Marsh Restoration Project Committee.” He said the Restoration Project Committee is a result of the North American Waterfowl Management Plan, which Congress enacted in the 1990s, and which provides funding through federal grants. “We are in our fourth phase of grants.”

Bean introduced Dick Blythe, the Chair of the Committee since 1994. Bean explained the Committee established its goal to acquire, restore, and enhance a total of 26,500 acres of wetlands and associated uplands along the Kankakee River Basin. “So far through three grants the partners have generated more than \$12 million in matching funds, which together with \$3.5 million in federal grants, we have acquired, restored, or enhanced 18,400 acres so far.” Bean explained that Blythe has been “one of the binding forces of our Committee. He will be the first one to jump in and tell you that he can’t do this alone... As you all know, every Committee of any kind or group needs a good leader, and Dick has been our leader. He has really been the glue that has held us together.”

Bean announced that Blythe is a figure with national recognition. In 2000, the Governor presented Blythe with the Sagamore of the Wabash, and the U.S. Fish and Wildlife Service has presented him with the National Wetland Conservation Award. In 2006, Blythe received the Distinguished Alumni Award from the Southern Illinois University, and last year he was named one of the most influential people in hunting and fishing by *Outdoor Life*.

Bean recommended that what has been known as the “Lawrence Tract” be renamed the “Dick Blythe Wetland Conservation Area”. This act would honor “Dick Blythe and all of his hard work to help the natural resources in Northwest Indiana.”

Dick Blythe thanked Bean and said, “There should be 75 people up here with me today. Through the years I have had such a great committee and have become friends with all these people.... I really appreciate it. Thank you.”

John Davis added his recommendation. “I have worked with Dick on both sides of the yoke—pulling with him and being driven by him. He is a wonderful asset for Indiana. It’s not often that we make a recommendation like this in regard to our properties, so it’s a high honor to bestow this, and we appreciate the Commission’s consideration.”

Larry Klein, Commission member, added that Blythe is a “prominent businessman in the area and has taken this on as a personal quest. When you find a businessman who has to balance the needs of business against the passions of what he is pursuing—wetland restoration—it sometimes becomes very complicated. Dick has unique ability to keep that all square. He is able to keep people motivated and if there is one thing that he does do is think he doesn’t do enough.”

Klein then moved to rename the area known as the “Lawrence Tract” as the “Dick Blythe Wetland Conservation Area.” Thomas Easterly seconded the motion. Upon a voice vote, the motion carried.

#### **NRC’S DIVISION OF HEARINGS**

#### **Consideration of report of public hearing and comments, and recommendation for final adoption of amendments to 312 IAC 9-3 addressing standards for the possession of coyotes; LSA Document #07-749(F), Administrative Cause No. 07-196D**

Sandra Jensen, Hearing Officer, presented this item, and explained that the proposal involves an amendment to 312 IAC 9-3-12, which currently prohibits the possession of a coyote between April 5<sup>th</sup> and October 14<sup>th</sup> except to provide for the prompt disposal of a coyote. The rule proposal is offered to “clarify the Department’s intent that coyotes taken by a landowner or a landowner’s designee outside the established season for taking these coyotes must be euthanized.” She noted that 312 IAC 9-3-14.5 was also originally proposed for amendment for the purpose of adding the coyote to the list of furbearers that may only be possessed during the season or for 20 days after the close of the hunting and trapping season for coyotes.

Jensen said the Commission granted preliminary adoption at its September 2007 meeting, and the Division of Hearings ensured compliance with the rule adoption statutory requirements. “Written comments were accepted from at least as early as November 2007 and the comment period ended on May 5, 2008.” She noted that two public hearings were held with a total of approximately 1,900 comments received, and an additional 1,000 persons signing separate petitions. “After considering all of those comments and the Department’s response to those comments, and then reviewing all the issues raised, I have concluded that the data is not available to establish that trapping at its present rate is actually affecting a long-term reduction in the coyote population or the number of predation reports of livestock that have been reported in some of those comments.” Jensen explained that a study cited in comments “not conclusively

necessarily but it does propose the hypothesis that the increased harvest of coyotes may actually contribute to overpopulation and predation of larger prey.”

Jensen said the elimination of the live coyote market will “no doubt” affect Indiana trappers and the financial incentive to continue trapping activities will be lost. She explained, however, that the Department offered a revision of the rule as originally proposed that would allow for the sale of hides and parts of coyotes—not live coyotes—throughout the year. “Essentially, what the revision amounts to is removing the amendment” to 312 IAC 9-3-14.5, which will allow trappers to sell hides and parts and addresses the issue of wanton waste raised in many of the comments.

Jensen said the comments highlighted a continuing demand for live coyotes, which raises the concern for the existence of “more of these unlawful types of pens, running pens, than what, in fact, anyone maybe knows about. It also raises the concern that these coyotes are escaping more frequently than anyone is actually reporting.” These issues support the Department’s desire to eliminate the potential for spreading disease across state lines. “It stands to reason that the actual legitimate regulated running pens eventually are going to become sufficiently populated with coyotes that the demand would decrease is the reason for my thinking that there is something going on there.”

Jensen said that Ohio and Kentucky have requested Indiana to stop the live coyote trade to “avoid the issue of the disease spread.” She said national organizations that are “calling” for all states to take action “very similar” to the rule adoption that is being considered presently. Jensen noted that the Division of Fish and Wildlife provided to the Commission a copy of a resolution (Resolution #2008-2) adopted by the Midwest Association of Fish and Wildlife Agencies (MAFWA) to regulate interstate movement of foxes and coyotes for the purpose of stocking hound coursing pens or for release and pursuit by hounds outside pens.

The Chair said, “If anyone doubts the complexity of this issue, the summary alone was ten pages long. From my personal opinion, it was probably the best summary of a very complicated issue that I have seen on my tenure on the Commission.” He applauded Jensen for handling “well a very sensitive and very difficult issue.”

Larry Klein asked whether the Department has regulations with respect to housing pens and running pens. Jensen explained that under a game breeder license there is “very strict” control on the providing of shelter, food, and appropriate medical care, “but in this context the game breeder license does not apply or at least the way has been interpreted. Presently, the prompt disposal as the rule currently exists includes the selling of these animals live. These animals are not being kept under a game breeder’s license necessarily so there are not regulations.”

Casey Pheiffer, representing The Humane Society of the United States, stated that the membership from Indiana and across the country “believe that this issue affects them...and rarely has a day gone by when we haven’t heard from one of our members expressing their shock that this practice is even legal and associated wildlife trade of

coyotes exists.” She said some of the Society’s members live “next door” to the running pens and have seen maimed coyotes. “There is no doubt what happens to these coyotes when they enter these pens.” Pheifer noted that in 2006 one South Carolina pen stocked 404 coyotes; however, in 2007 404 coyotes were again stocked. “This is definitely a humane issue, and I thank the Commission for considering these humane issue as well as the law enforcement issues.”

Karin McKenna indicated that she was representing herself and commented that through research she found that “Indiana is known for having the premier live-market trapping”. She noted that the Indiana Farm Bureau was against the initial rule proposal. In conclusion, she said, “You’re either are for this because you think it’s a fun and ethical thing to do or you are against it because you don’t think Hoosiers think this is fun.”

Ce Ann Lambert from the Indiana Coyote Rescue Center stated that she worked with Dr. Klinghammer at Wolf Park for over 20 years studying the captive behavior of coyotes. “These coyotes are not the demons that the trappers would like for us to think they are...coyotes have a social order and a language of their own...they are animals that have feelings of a higher order in the animal world.” She noted that statutes allow trappers to trap coyotes and “do whatever they want with them. The one statute that really does irritate me is the one that exempts trappers from our animal abuse laws.” Lambert said, “I can’t change statute, but I can back the DNR when they want a new administrative rule that says trappers can’t participate in this abusive activity of dog training.”

Leif Baierl, speaking on behalf of Indiana Coyote Rescue, said he spent last year researching coyotes in Yellow Stone National Park with Robert Crabtree, who has been researching coyotes for over 20 years. Baierl read a quote from Crabtree, “The coyotes that are attacked by humans the more they become entrenched...coyotes kill sheep so we kill coyotes, but the truth is nature is extraordinarily dynamic. If we simply stop killing coyotes we might actually reduce the coyote population.” Baierl said that research “suggests” that coyotes have a “survival mechanism when they are being hunted by wolves or humans, the number of pups that survive to adult is increased significantly”.

Gordon Ingle, representing a cooperative between the Fur Trappers of America and other interested groups, stated that he has in 21 years of practicing law reviewed many reports and commended Jensen for a “great job” summarizing the issues. He said the Department has an “incorrect assumption” in the promulgation of the current rule proposal. He noted that in 1987 the Legislature passed a statute that allowed for coyotes to be taken at any time on a landowner’s property either by the landowner or someone with written permission. “This law had a sunset provision when the law ended in 1991. When this law was reintroduced in 1991, the title of the bill was ‘perpetual open season on coyotes.’” He said the legislative history “makes clear” the perpetual open season on coyotes. That’s not to diminish the arguments these people are making.”

Ingle said, “This battle should not be fought here in front of this Commission. It should be in front of the Legislature, because the Legislature is the one that passed the statute. I respectfully submit to this Commission that if you pass this revision that you are, in fact,



outside the scope of your authority.” He added, “There is nothing in the definition of ‘take’ under Indiana Code 14-8-2-278 that says ‘sell’ or ‘possess’”.

Tim Julien, President of the National Wildlife Control Operator’s Association, noted that the issue is not about nuisance coyotes. “The intent in our interpretation was indefinitely to have a season year round and dispose of those furbearers in accordance with the law”. He said the Association filed recommendations to “enforce the current laws. Require trappers to sell to game breeders and fur buyers. Trappers can’t openly buy coyotes and sell them. That’s a misconception that has been perpetrated here.” He said rules exist to protect the coyotes that are captured live and to sell them live. “This is not a running pen issue, and I’m sick of hearing ‘running pens’. A ‘bait coyote’, I don’t even know what that is.” Julien said that there is “a lot of anger in the community in regards to how this was handled.” He said the issue is not population control. “Coyotes are not managed to reduce the population, but to maintain a healthy population.”

Julien said that that a previous commenter misquoted Crabtree. He said Crabtree found that hunting coyotes causes “a reduction of density and the number of coyotes does occur. And, it doesn’t increase the litter size at birth. These are direct quotes from [Crabtree’s] study.” Julien concluded, “The effect of this rule change is if you take away the incentive for a fur trapper to capture and sell furbearers as allowed in law, what will happen is I will have to step in and take care of those problem animals. It won’t increase or decrease the number of problem animals. What will change is who will pay for them.”

Tim Rose, from Fur Takers of America, stated that the Legislature “made this Indiana Code and you guys right now can put it where it belongs as in the Legislature’s hands. On behalf of all the trappers from as far as Evansville to all the way up here, we hope that you take that under consideration.”

Col. Michael Crider, Director of the Division of Law Enforcement, said his Division is seeking clarity regarding the issues. Crider said surrounding states have contacted him regarding the legality of the movement of coyotes across state lines. “It was a little bit embarrassing not to be able to say exactly what the statutes were.” He noted that “what is proposed in the legislative session and what comes out at the end of the session are a lot of times very different.”

Thomas Easterly, Commission member, asked whether the legal arguments presented by Ingle were incorporated in the Hearing Officer’s Report. Jensen said that comments were presented and are contained in the report. The Chair noted that a “lengthy interpretation” begins on page 194 of the report. Jensen said the Commission has the authority to consider the proposed amendments.

Patrick Early noted that the argument was made that the Commission does not have authority to “rule on this based upon the Legislature made it a perpetual season. We disagree with that...The stated seasons are the seasons and beyond that we are interpreting it as not part of the season, correct?” Jensen answered in the affirmative and explained that the Legislature passed a statute that gives the Department the authority to

establish and open and close seasons for taking animals. The Legislature enacted a separate statute that allows for landowners and those persons that are designated or given authority in writing by the landowners to take coyotes on that land year round. “So, it’s not an open season statewide; it is only landowners. Reading that in conjunction with the Legislature’s additional authority to the Department that [it] may open and close and establish these seasons for the taking of certain animals, the only way to read those in tandem or in conjunction with one another is to determine that this was not intended to establish a year-long season of the taking of coyotes.”

Early asked, “By statute, during those seasons the sale of live coyotes is allowed is that correct?” Jensen said that a separate statute, IC 14-22-19-2 specifies that licensed fur buyers may purchase fur bearing mammals directly from the trappers. “It’s inferred that, in fact, those that are taken during the season established by the DNR may be sold live.”

Thomas Easterly moved to give final adoption of amendments to 312 IAC 9-3-12 addressing standards for the possession of coyotes. Patrick Early seconded the motion. Upon a voice vote, the motion carried.

**Consideration of report and recommendation for reoption of 312 IAC 3, governing adjudicatory proceedings (procedural rules); LSA Document #08-52(F), Administrative Cause No. 08-002A**

Jennifer Kane, Hearing Officer, presented this and the following item. She said 312 IAC 3 governs procedural rules and 312 IAC 10 governs flood plain management. The reoptions of 312 IAC 3 and 312 IAC 10 in their entireties would be a continuation of the process to readopt rules that expire December 31, 2008.

Kane said that the notices of intent to re-adopt the two articles, 312 IAC 3 and 312 IAC 10, were posted to the Indiana *Register* on January 23, 2008 and February 13, 2008. “No written comments were received as a result of these postings.” She concluded that both articles are ready for re-adoption.

Larry Klein asked, “How long do [these articles] stay in effect now if we re-adopt them?” Kane said, “Seven years.”

Jane Ann Stautz moved to re-adopt 312 IAC 3 and 312 IAC 10. Larry Klein seconded the motion. Upon a voice vote, the motion carried.

**Consideration report and recommendation for reoption of 312 IAC 10 governing flood plain management; LSA Document #08-72(F), Administrative Cause No. 08-004W**

[See discussion in previous agenda item.]

**Recommendation for preliminary adoption of amendments to 312 IAC 3-1 to provide for consolidated proceedings between the Administrative Law Judges of the Natural Resources Commission and the Office of Environmental Adjudication; Administrative Cause No. 08-057A**

Stephen Lucas, Director of the Division of Hearings, presented this item. He explained that the rule proposal is a “subject that has been discussed” by the Environmental Law Section of the Indiana State Bar Association “for probably five years.” Lucas provided an illustration of a proceeding that would be governed by the proposed rule; however, he added that proceedings under the new rule, if adopted, would be “uncommon”.

Lucas said the rules were in response to a directive in P.L. 84-2008. The legislation was authored by Senator Robert Meeks and would authorize parties to seek consolidation of multiple proceedings from the Commission’s Division of Hearings and the Office of Environmental Adjudication (“OEA”), if those proceedings involved questions of water quality or water quantity. Lucas said P.L. 84 required NRC Hearings and OEA to draft rules to assist with implementation of the statute, and the two agencies prepared a draft and shared it with a committee of the Environmental Law Section last week. The committee was supportive but suggested proposed 312 IAC 3-1-10.5(e) be amended to read: “The panel may make any orders concerning a consolidated proceeding that are necessary and proper.” Lucas observed this amendment “seems appropriate”, and he then recommended preliminary adoption be given to the proposed rule with the modification.

Larry Klein asked, “How does this affect your relationship with the Commission and the rules that are promulgated by the Commission as a result of your actions?” Lucas said, “This is your rule.” Klein then asked, “This then takes in IDEM?” Lucas said that the OEA has its own rule draft. OEA and Hearings were drafting parallel rules. The OEA version “has a different number, but it says the same thing” as the NRC version.

Thomas Easterly asked, “How will this work in practice? Will there be an OEA Judge and a NRC Judge?” Lucas said that the statute requires at least one ALJ or ELJ from each office, but there could be more than one.

Klein asked, “So each will go back to their respective commissions or regulating bodies, or whomever?” Lucas said that OEA does not have a commission. Easterly added that OEA is “independent. They make their decisions and then I go to court to appeal if I believe OEA is mistaken.”

Lucas continued, “In most situations, we have the Administrative Orders and Procedures Act Committee of this Commission (or what we usually call the “AOPA Committee”) that provides review if a party files objections to one of our decisions. We go to the AOPA Committee. But that is not universally the case.” He then provided examples of current proceedings which are taken directly from a Commission ALJ to a court. “Administrative decisions regarding the subject matter of notices of violation, under the Surface Mining Control and Reclamation Act, go directly to a circuit or superior court if judicial review is sought by a party.” He said decisions by a Division of Hearings ALJ

regarding licensure from the Geologist Licensure Board also goes directly to court. Direct judicial review “would also be the situation for administrative cases governed by P.L. 84, because to have an AOPA Committee for half the case and not for the other half of the case would be unwieldy at best.”

Klein asked, “Are we creating another state agency with this rule proposal?” Easterly answered, “No.”

Jane Ann Stautz moved for preliminary adoption of amendments to 312 IAC 3-1 with the recommendation offered by members of the Indiana State Bar Association. Larry Klein seconded the motion. Upon a voice vote, the motion carried.

## **DIVISION OF WATER**

### **Recommendation for Preliminary Adoption of Great Lakes Compact Incipient Rule; Administrative Cause No. 08-081W**

Steve Lucas introduced this item. He explained that the Great Lakes Compact is “something that the Indiana State Legislature gave its imprimatur to in the last session, including enabling legislation through the hard work of a lot of people, including Ron McAhron.” Indiana became the third of the eight states that need to approve the Compact.” The enabling legislation sets a structure for Indiana to administer the program.

Lucas said by the time the rule was considered by the Advisory Council in June, five Great Lakes states had approved the Compact. The Council recommended preliminary adoption of the proposed rule amendments. Since then “all states have approved” the Great Lakes Compact. The last governor to sign legislation was the governor of Michigan on July 9. Lucas explained “that the Compact now to become the law of the land must be approved by the United States Congress.”

Lucas said the informal rule title of “incipient” was chosen because “it’s really a minor rule amendment at this stage and doesn’t do the substantive things that are needed for implementation.” He said the primary purpose of the amendments was to help secure legal viability of the Commission’s rule adoption authority under the new legislation. The Indiana statute “that imparts rule authority to an agency [requires the agency to] begin the exercise of that rule authority within 60 days of enactment of the legislation. It doesn’t really have an exemption for a situation like this one, where implementation of a Compact requires Congressional approval. The legislation isn’t going to have any impact until Congress approves it. That might be soon or that might be several years off. We didn’t want to put the NRC in the box that Congress approves the Compact in two years or three years, and then you can’t do any rule adoption because we didn’t do initiate rule adoption in the statutory timeframe”. He added that the rule proposal also underlines the “continued commitment of Indiana to the Compact, and it reflects the Division of Water would be the point of contact for what will be a very important program for all of

Indiana, and especially this [Northern] part of Indiana, if the Compact is ultimately approved by Congress.” Lucas recommended the Commission give preliminary adoption to the rule amendments, and he then deferred to Ron McAhron.

McAhron said that NIRPC was “very instrumental” in getting momentum behind the enactment by the Indiana Legislature of the Great Lakes Compact. “I believe Indiana passing the Compact, as readily as we did last session, helped develop an impetus for the other states to pick up and follow through. It has moved a lot faster than we thought it would.” He noted, “There are reports that [the Compact] will be introduced for Congressional action even this week.”

McAhron said that if Congress enacts the Compact, “we may need to come back during this year with more substantive” rule amendments. “We have a lot of implementing language, but there is some detail work we will need to do.” Lucas agreed, saying the current rule proposal was “not substantive. But if Congress moves quickly, definitely we will be back with a proposal for substantive rules that will have significant impact.”

Larry Klein asked, “Is there a reason we didn’t start the substantive rule?” Lucas responded that Indiana is “out on the point as it is,” and most of the eight states do not yet have enabling legislation.

McAhron added, “We wanted to see what some of the other states do and take our time with the part of it we could fine tune. Frankly, we didn’t think it would be this far along so soon. We had other matters we thought were more urgent. Even if things move quickly in Congress, though, we still do have time for the substantive part.”

Klein said, “It appears to me to be inevitable.” McAhron answered that Congress not enacting the Compact was a definite possibility. Lucas said he believed the proposed rule amendments kept Indiana “on target without getting too far ahead of the wave.”

Robert Wright moved to give preliminary adoption of rule amendments to 312 IAC 6.2-1, which addresses Great Lakes Basin water management, to incorporate recent legislation by the Indiana General Assembly supporting participation in the Great Lakes Compact. Doug Grant seconded the motion. Upon a voice vote, the motion carried.

## **LAKE MICHIGAN INFORMATION**

### **Lake Michigan Coastal Program Update**

Mike Molnar, Program Manager for Indiana Lake Michigan Coastal Program (LMCP), presented this item. The LMCP is Indiana’s office for the implementation of the national Coastal Zone Management (CZM) program. Molnar explained that the LMCP is housed within the DNR’s Division of Nature Preserves. The LMCP is charged with managing all of the state’s coastal resources, including natural, cultural, and historic resources. The LMCP has six program areas: Great Lakes Coastal Restoration Grants, Lake Michigan

Coastal Grants, Federal Consistency, Section 309 Program, Coastal and Estuarine Land Conservation Program, and the Coastal Nonpoint Pollution Program. Molnar said the Coastal Advisory Board consists of 27 members appointed by the DNR Director, 19 of which are voting members. He said that LMCP has approximately five dedicated staff; however, the LMCP is networked over 200 different state agency programs.

Molnar provided program updates. He said LMCP is working with IDEM in developing a clean marina certification program, and it is working with the DNR's Division of Outdoor Recreation inventorying all of the public access sites within the coastal area. "The purpose of [the inventory] is to get a handle on what exists. The next phase is conducting a public survey as to what is needed. And a third part of it is working with local governments to develop a management plan to address any gaps in coverage for public access. That's not just fishing, but also passive recreational activities". He said other projects are being developed to target coastal hazards, underwater archaeological sites, and septic issues. In 2007, grants totaling \$719,782 funded 16 projects, and in 2008 \$565,000 funded 15 projects with \$58,000 funding small grants, which are educational based materials and planning processes.

Molnar said the LMCP is funded through the National Oceanic and Atmospheric Administration (NOAA) of the U.S. Department of Commerce with an annual cooperative agreement and requires a one to one fund match. Since 2002 funding has decreased from a little over \$1.5 million, annually, to \$966,000 appropriated for 2008. He noted that 70% of the NOAA funding is "passed through" as grants to local communities, state government agencies, and non-profit organizations. The LMCP provides technical and financial assistance in the management of coastal resources. He said that LMCP education and training events have had 2,333 participants. Approximately 330 acres within the coastal area have been restored with 246 of those acres protected by easement acquisitions.

The Chair thanked Molnar for organizing the logistics and tours. "You did a wonderful job. You accomplished the mission of coming up to this part of this state to conduct our meeting here. Thank you so much for your time and expertise and to all your staff."

### **Marquette Plan Advancements**

Mike Molnar introduced this item and said that some of the projects the Commission toured were possible as a direct result of a project NOAA and the LMCP funded. "We are fortunate to have Gregg Calipino and A. J. Monroe, the consultants that worked on both Phase 1 and Phase 2 of the Marquette Plan."

A.J. Monroe, a Planner with JJR, LLC, welcomed the Commission to Northwest Indiana. "As a resident of the City of Portage, I want to say 'thank you'. You have really helped our community to protect and enhance our natural resources." He stated that Congressman Pete Visclosky had a "bold vision" for Northwest Indiana and presented the Marquette Plan, which identified a series of "ideas or a series of land uses" that would be the future for Northwest Indiana. "It was important that we recapture much of our

industrial lakefront, especially relating to Lake County. Congressman Visclosky envisioned that 75% of the lakeshore would be for public use, with a setback of 200 feet, with a continuous trail that would connect Indiana to Illinois. “These were bold visions, visions that were—you could argue—ahead of their time.”

Monroe then introduced Gregg Calipino, also with JJR, LLC. Calipino would address “how we got from 1985 to the start of Marquette Plan Phase 1.”

Gregg Calipino said the Marquette Plan “all started with an MOU between five communities—Portage, Hammond, Whiting, East Chicago, and Gary.” The Marquette Plan projects were timed to “create action. We actually had a process that was timed to work with the legislative calendar to try to advance projects that [Congressman Visclosky] himself would advance. It was all about moving that vision forward after 1985.”

Calipino explained that the Plan’s Phase 1 recommended restoration of the first 21 miles of lakeshore, encompassing Burns-Portage Waterway, and Phase 2 was restoration of the remaining lakeshore to the Michigan border. “One of the goals here was to try to bring an entire community together to speak in a single voice.” He said the first phase included five communities, but in total there are now 17 communities in three different counties. Calipino said the Plan is built around the key goals—preservation of resources of public access—“all fashioned under a goal of a livable lakefront, live, work, play, and stay.”

Monroe concluded, “Northwest Indiana has a very complex system, whether it’s land use, transportation, infrastructure, or our natural resources. It’s really impossible to show all the things that are going on in Northwest Indiana”.

### **State of the Lake Michigan Fishery**

The Chair announced that President George W. Bush appointed Bill James, Chief of the Division of Fish and Wildlife’s Fishery Division, to the Great Lakes Fishery Commission. “For that and his years of dedication and professionalism, Bill is one of the Commissioners representing the entire United States.”

Bill James responded, “I am privileged to be representing our state and our nation in this new role.” He explained that the Great Lakes Fishery Commission was created between the United States and Canada by treaty in 1955 “out of desperate need to control the sea lamprey.... The bi-national treaty was created to find a way to deal with the sea lamprey and still remains the primary purpose today.” James noted that the Commission has eight members, four from each country, and it has yearly funding of \$22 million contributed by both countries.

James recognized Mike Ryan, a member of the Northwest Indiana Steelheaders Association, for his dedication to fisheries conservation, particularly on the Great Lakes. James said Ryan was one of four Indiana Lake Michigan advisors to the Great Lakes

Fishery Commission for “many years. He has twice served as Chair of all of the advisors from all of the Great Lakes.” Ryan is a “model of constituent input and grassroots conservation.”

James said the Lake Michigan fishery is “one of the most visible, most valuable, most spectacular, dynamic, and challenging” programs the Department administers. “We are blessed with not just good people, but with exceptional people.” He then introduced Lake Michigan’s Fisheries Research Biologist, Brian Breidert.

Breidert provided Commission members with a copy of the Lake Michigan Fishery Report. He said his office is “multifaceted. We don’t just deal with the fish stuff. We deal with everything from helping law enforcement, the LMCP, and the Division of Water.” Breidert said 1.2 million salmon and trout are stocked in Lake Michigan annually. “There are about 13.7 million trout and salmon stocked by all the jurisdictions and the U.S. Fish and Wildlife Service into Lake Michigan alone, including Coho salmon, steelhead trout, Chinook salmon, lake trout and brown trout.” He said the Department “brokered a deal” for Illinois to raise brown trout, incurring those production costs, and for Indiana incurring the costs to pick up the trout and to stock Lake Michigan. “We traded [Illinois] Skamania steelhead eggs.” Breidert said that brown trout were recently stocked for the first time at the Port of Indiana through a cooperative agreement among the DNRs of Illinois and Indiana and the Indiana Port Commission. “Improved lakefront access and stream access are now targeted. We have acquired a number of properties assisted by City of Portage, the Town of Porter, the Lake Michigan Coastal Program, and the Indiana Heritage Trust.”

Breidert said he is the Chair of the Yellow Perch Task Group which “tries to manage” the yellow perch populations within Lake Michigan. In 1997, there were changes in the yellow perch population that resulted in a closure of the commercial fishery. Through the efforts of the Lake Michigan states, “we were able to come to some uniform regulations that allowed agencies to manage the population.” A few years ago a 10-inch yellow perch was a “fluke. Now a 10-inch yellow perch has become a norm. We get a 10-inch, 11-inch, 12-inch, and even a 14-inch yellow perch that weigh 1 ½ pounds to two pounds.” He concluded that Lake Michigan’s fishery is “starting to come back despite the introductions of ballast water, zebra mussels, quagga mussels, round gobies, and of late, Viral Hemorrhagic Septicemia or VHS.” He said VHS has been found in Illinois and Wisconsin and effects over 25 species of fish in the Great Lakes. “It’s something we are very concerned about.”

Breidert reported the U.S. EPA in 2002 characterized exotic invasive species as probably the “number one most devastating thing to the Great Lakes, and I would concur with that. There are 188 different exotic species in the Great Lakes region that have been introduced through various means, and those are all things that have changed the face of the ecosystem.” He invited the Commission members to visit the DNR’s Lake Michigan Field Office in Michigan City.



## PERSONNEL ACTION

### **Permanent Appointment of Bradley D. Schneck as Property Manager at Jackson-Washington State Forest / Starve Hollow State Recreation Area, Brownstown, Indiana**

Tom Lyons, Assistant Director for the Division of Forestry, presented this item. He said Bradley Schneck was appointed as the Assistant Property of Jackson-Washington State Forest / Starve Hollow State Recreation Area one year ago. He “has done a great job this past year.” Lyons said Schneck began his employment with an “additional challenge. At that time, we were consolidating management of the two properties.... He has really made some tremendous progress.” Lyons recommended permanent appointment of Bradley Schneck.

The Chair asked, “How has the consolidation gone?” Brad Schneck answered, “I think it has been great, and I think it was the right thing to do. I will not say it’s not challenging, but it’s fun, and I enjoy going to work every day.... I have a great staff. I mean, everybody takes pride in what they are doing, and that makes my job easier.”

Larry Klein moved to permanently appoint Bradley Schneck as the Assistant Property of Jackson-Washington State Forest / Starve Hollow State Recreation Area. Phil French seconded the motion. Upon a voice vote, the motion carried.

### **Personnel Interview for the Position of Assistant Property Manager position at Starve Hollow State Recreation Area, Vallonia, Indiana**

Tom Lyons also presented this item. He said the Division of Forestry recommended Christopher Todd Eubank as the Assistant Property Manager of Starve Hollow State Recreation Area. Lyons said 34 applications were received for this position. Eubank has a BS Degree in Wildlife Management from Purdue and is presently employed with the state at the Department of Defense where he manages the conservation of forest programs and wildlife programs for the Atterbury Military Base. “So he’s got a great background in natural resources management, plus a good background in administrative procedures.” Lyons indicated he was “pleased” to recommend Eubank for the appointment of assistant property manager of Starve Hollow.

Todd Eubank said the assistant property position will “present some challenges. Dealing with the military, I had to do a lot to mitigate impacts from military training and also trying to do forest and wildlife management. They don’t always go together.” He concluded, “I think moving to an agency that’s focused towards natural resources would be a great challenge, and I look forward to it. This is also a great move for my family”.

Damian Schmelz moved to approve the appointment of Christopher Todd Eubank as Assistant Property Manager of Starve Hollow State Recreation Area. Jane Ann Stutz seconded the motion.

## **Personnel Interview for the Position of Assistant Property Manager for Tri-County Fish and Wildlife Area, Syracuse, Indiana**

Steve Roth, Property Manager at the Tri-County Fish and Wildlife Area, presented this item. He said Mitch Hess has a degree in Wildlife from Purdue University and is currently employed with Pheasants Forever. “He has a good background in all the wildlife activities.” Roth said 18 applications were received with three interviews, and “Mitch, by far, was the best.” Roth concluded, “I wholeheartedly and without hesitation would like to recommend Mitch for assistant property manager for Tri-County Fish and Wildlife Area.”

Thomas Easterly moved to appoint Mitch Hess as assistant property manager for Tri-County Fish and Wildlife Area. Phil French seconded the motion. Upon a voice vote, the motion carried.

### **ADJOURNMENT**

The meeting was adjourned at approximately 9:26 p.m., EDT.

### **COMMISSION TOURS**

The Commission participated in several tours as follows:

- Dunes State Park: Entryway Project; Daylighting Project on Dunes Creek; New Boardwalk; Campground Renovation
- New Buell Memorial Visitor Center: Onsite storm water best management practices (“BMPs”) and viewed the Indiana Dunes video
- New Portage Lakefront Park, a brownfield site remediated to public access
- Deer Creek Trail

### **NEXT MEETING DATE**

The next meeting of the Natural Resources Commission is scheduled for September 16, 2008, at 10:00 a.m., EDT (9:00 a.m., CDT), at The Garrison, Fort Harrison State Park, Indianapolis (Lawrence), Indiana.