

NATURAL RESOURCES COMMISSION

Minutes - March 14, 2000

MEMBERS PRESENT

Michael J. Kiley, Chair
Larry Macklin, Secretary
Damian Schmelz
Jack Arnett
Steve Cecil
Elizabeth Admire
Jane Ann Stautz
Jerry Miller
Terri Moore

NATURAL RESOURCES COMMISSION STAFF PRESENT

Steve Lucas
Sylvia Wilcox
Tim Rider
Jennifer Kane

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Jack Costello	Executive Office
Paul Ehret	Executive Office
David Vice	Executive Office
Brent Shike	Executive Office
Carrie Bales	Executive Office
Mark Reiter	Fish and Wildlife
George Bowman	Water
Terri Swoveland	Water
Larry Allen	Law Enforcement
Jeff Wells	Law Enforcement
Greg Dye	Law Enforcement
Steve Hunter	Law Enforcement
Paul Bykowski	Law Enforcement
Jerald Jackson	Law Enforcement
Lee Casebere	Nature Preserves
Mike Nicolaus	Oil and Gas
Mona Nemecek	Oil and Gas
Stephanie Roth	Legal Section
Greg Ellis	Legal Section
Terry Slywka	Legal Section
Ihor Boyko	Legal Section
Marian England	State Parks and Reservoirs
Rachel Perry	State Museums and Historic Sites
Link Ludington	State Museums and Historic Sites
Eric Myers	Natural Resources Foundation

Dan Saffen Engineering

GUESTS

Melvin R. Daniel Daniel Deeb
Alan M. Hux Ron W. Goff
David Van Gilder

MONTHLY REPORTS

Michael J. Kiley, Chair, called to order the regular monthly meeting of the Natural Resources Commission at 10:10 a.m., on March 14, 2000 in the Garrison at Fort Benjamin Harrison State Park, Lawrence. With the presence of nine members, the chair observed a quorum.

Jerry Miller moved to approve the minutes of January 18, 2000. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Larry Macklin provided the Director's report. He said the "legislature is over for the year." The session ended somewhat ahead of the legal deadline. This session was non-budgetary, but the next session will approve a budget. He said the agency would begin outlining a budget within the next six weeks.

Director Macklin related that the assessment of wildlife damages to the West Fork of the White River was begun earlier than anticipated because of unseasonably warm weather. He said Dave Vice would report on this subject during his report.

The Director then reported on progress regarding the new Indiana State Museum. He said bids will be opened for construction about March 28. Joe Shacter from the Chicago Museum of Science and Industry has been successfully recruited to coordinate construction of the new facilities, and he will begin working with the DNR yet in March.

In other matters, Director Macklin said he would be attending a meeting of the Great Lakes Commission next week in Chicago. There have been preliminary meetings with Dr. Parker concerning the need to control deer populations in the state parks. The drought continues to be a major concern for the agency.

Jerry Miller, Chair of the Advisory Council for the Bureau of Lands and Cultural Resources, said the council considered two items for action. Both were non-controversial and are on the agenda for final action by the Commission.

Jack Costello, Deputy Director of the Advisory Council for the Bureau of Lands and Cultural Resources, distributed copies of the INDIANA 2000 RECREATION GUIDE. He said the publication is intended to help citizens plan travel to state parks, state park inns, state forests, reservoirs, state museums and historic sites, fish and wildlife areas, and camp

grounds. Additional copies can be obtained through the DNR. The GUIDE is also available online at <http://www.state.in.us/dnr/statepar/pdf/recguide.pdf>.

Costello reminded the Commission that the U.S. Army Corps has determined it must lower Mississinewa Lake while repairs are undertaken during the next three to five years. Because the Corps sees lowering the dam as addressing any emergency condition that might otherwise be posed, funding is limited to the regular federal budgetary cycle. The impact to the DNR facilities, the local marina operator, and the regional economy will be very negative.

Chairman Kiley said he would be meeting with local citizens who are extremely concerned with the consequences of having the lake lowered for the next several years. He asked what might be done to minimize the adverse consequences. Costello responded that encouraging the federal government to appropriate additional funding could hasten the process. The Chair replied the state needed to do whatever was reasonably possible to encourage the Army Corps to act so that the period the lake is impacted is "more like three years than five years."

Director Macklin agreed. He said an education campaign was also needed so citizens could better understand the issues. "It's a matter of public safety, and safety must come first." The Corps owns the dam, and certainly the dam must be repaired. He expressed hope, however, the repairs could be completed sooner not later.

Costello said there was also a "very serious problem" with fires being started at Morgan-Monroe State Forest. There have been "30 fires in the last nine months."

Dave Vice, Deputy Director for the Bureau of Resource Management, said seven bobcats have been trapped and fitted with radio collars. They will be tracked throughout the year to obtain a better understanding of their habits.

He reported upon improvements at DNR shooting ranges. The Kingsbury range will be the premier range in Indiana with \$1.4 million spent to update to NRA standards. The site will be fully staffed, with bullet catchers and baffles, as well as an office with restrooms. Improvements will also be made at Sugar Ridge, Pigeon River, Tri-County, and Atterbury.

Vice reported upon successful participation in the Boat, Sport and Travel Show. He said the event was second only to the Indiana State Fair in terms of agency participation with the public. "We sold about \$62,500 in licenses, about \$6,500 more than we sold last year."

He provided a preliminary report on the results of studies to measure the damage to fish and other wildlife populations on the West Fork of the White River. Areas north of Anderson provided excellent counts in terms of both numbers and varieties of fish. Almost all fish between Anderson and Marion County were killed. More live fish were found on the north side of Indianapolis as investigators moved further downstream. On

the north side of Indianapolis, fish survival may have been attributable to the presence of three adjacent ponds, formed by gravel pits, that could have provided refuge from pollutants. Bluegill and largemouth bass, as well as a few smallmouth bass were found in the deeper pools north of Broad Ripple and at Lake Indy. Smallmouth bass and four species of darters were found in a riffle area downstream of the Broad Ripple dam. Few of the bottom feeders, such as carp, redhorse, and catfish, survived. Vice said IDEM is simultaneously doing invertebrate studies. He said three officers in the DNR's Environmental Section continue to work full-time in the criminal investigation associated with the loss of wildlife in White River.

Vice also said all 53 members of the ICO Search and Recovery Team recently completed a two-day ice dive training session at Pokagon State Park and Lake James. "We hope it's the kind of training that's never needed, but unfortunately sometimes it is. People aren't endangered just in the summertime."

Vice said citizens within and around Marion County will receive notification of the pheromone treatment program for gypsy moth is slated to begin late June or early July. He also said evaluations were ongoing regarding the movement of the South American small hive beetle.

Kiley asked if there was satisfaction whether the White River has been sufficiently cleaned up. Vice explained that the assessment will continue through the summer; however, initial stocking will begin April 28, with a major stocking in the fall.

Paul Ehret, Deputy Director of the Bureau of Resource Regulation, reported the Advisory Council for Water and Resource Regulation had a "very, very full agenda" this month. Four rule packages were considered. These deal with issues arising from construction in Lake Michigan and with the expansion of "general permits" to facilitate activities in public freshwater lakes that are either less environmentally damaging than the alternatives or supportive of public health and safety. He said he expects these proposals will be on the Commission agenda for possible preliminary adoption within the next two meetings. In addition, the council reviewed two nonrule policy documents. One was directed to elections by conservancy districts and the other looked to establishing uniform processes for assessing easement requests across DNR lands and navigable waters. These also will be submitted later to the Commission for possible action. Finally, the council received a "very fine presentation by John Davis" regarding issues associated with the DNR purchase of reclaimed mine lands for public recreational usage.

Ehret outlined to the Commission discussions with the Army Corps regarding Sylvan Dam. He said an update would be provided when a determination was made as to how to proceed. Ehret also said the Divisions of Oil and Gas and Reclamation held their annual meetings.

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

Permanent Appointment of Richard Gambill as Assistant Property Manager at Ferdinand State Forest

Tom Lyons presented this item on behalf of the Division of Forestry. Referring both to Richard Gambill and Edward Bohman, he said "They've had a great start with us." He said the Division of Forestry recommended Richard Gambill for permanent appointment.

Damian Schmelz moved to approve Richard Gambill for permanent appointment as the Assistant Property Manager at Ferdinand State Forest. Jack Arnett seconded the motion. Upon a voice vote, the motion carried.

Permanent Appointment of Edward Bohman as Assistant Property Manager at Greene-Sullivan State Forest

Tom Lyons also presented this item. He said Bohman was "doing very well" in his new position. He said the Division of Forestry recommended Edward Bohman for permanent appointment.

Damian Schmelz moved to approve Edward Bohman for permanent appointment as the Assistant Property Manager at Greene-Sullivan State Forest. Jack Arnett seconded the motion. Upon a voice vote, the motion carried.

Personnel Interview for Curator at Lanier Mansion State Historic Site.

Terri Moore presented this item on behalf of the Personnel Committee. She said, "We had two extremely qualified candidates, both with a great love for historic preservation." She said after difficult deliberations the committee recommended Link Ludington as Curator at Lanier Mansion State Historic Site.

Jerry Miller moved to approve Link Ludington as the Curator for the Lanier Mansion State Historic Site. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

Chairman Kiley then offered his congratulations to Ludington. "Welcome. We know you are going to render fine service to us."

DIVISION OF NATURE PRESERVES

Consideration of the Dedication of Buffalo Pond Nature Preserve, Dubois County.

Lee Casebere of the Division of Nature Preserves presented this item. He said the proposed nature preserve is a 338-acre tract of land located northeast of Jasper in Dubois County. The land was purchased with the assistance of The Nature Conservancy using

money from the Indiana Natural Heritage Protection Campaign and the Land and Water Conservation Fund.

Casebere said Buffalo Pond was thought to have been frequented by bison during their migrations along the nearby Buffalo Trace. The tract is a large natural wetland located in the flood plain of the Patoka River. He explained, "The site is quite unique. It has quite a lot of plants and animals with southern affinities." Several of the species are rare or endangered within Indiana. He recommended the property for dedication.

Damian Schmelz moved to dedicate the Buffalo Pond Nature Preserve in Dubois County. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF STATE PARKS AND RESERVOIRS

Consideration of a Request for an Easement in Favor of Williams Communications, Inc. for a Fiber Optics Cable Across a Portion of Prophetstown State Park.

Dan R. Saffen of the Division of Engineering presented this item. He said the proposal was for an easement to place a fiber optics cable across a portion of Prophetstown State Park. The easement was part of a project that will carry the cable across 287 miles of the state and would be placed along an existing easement in favor of Amoco Pipeline. He said the fiber optics easement would extend outward an additional ten feet from the existing easement, however, in order to facilitate construction activities. Saffen recommended the easement for approval.

Damian Schmelz moved to approve an easement in favor of Williams Communications, Inc. for the placement of a fiber optics cable across a portion of Prophetstown State Park, as more particularly described in the Commission packet. Steve Cecil seconded the motion. Upon a voice vote, the motion carried.

BUREAU OF RESOURCE MANAGEMENT DIVISION OF FISH AND WILDLIFE

Consideration of a Request by Southern Indiana Gas and Electric Company for an Easement for the Installation of an Electric Service Line at Sugar Ridge Fish and Wildlife Area

Mark Reiter of the Division of Fish and Wildlife presented this item. He said the proposal was for a request by Southern Indiana Gas and Electric Company for an easement to install an electric service line at Sugar Ridge Fish and Wildlife Area. The proposed easement is ten feet wide and 473 feet long. The line would serve the new office building under construction at Sugar Ridge. Reiter said the electric line would benefit only the DNR and he recommended approval.

Jerry Miller moved to approve the installation of an electric service line in favor of Southern Indiana Gas and Electric Company at Sugar Ridge Fish and Wildlife Area according to the terms of an "Electric Distribution Line Easement" contained in the Commission packet. Terri Moore seconded the motion. Upon a voice vote, the motion carried.

LEGAL PROCEEDINGS NRC DIVISION OF HEARINGS

Consideration of Motion to Modify Final Order of the Natural Resources Commission in Steven T. Gerber v. DNR; Administrative Cause No. 98-157L

Chairman Kiley opened the discussion of this item. He reminded the Commission that it had, during its October 1999 meeting, affirmed a majority opinion by a panel of administrative law judges upholding a letter of reprimand against Steven Gerber. Subsequently, Gerber filed a "Motion to Modify Final Order of the Natural Resources Commission." The motion was previously set for action during the December 1999 meeting, but it was continued from that meeting on Gerber's motion. Because extended discussions were anticipated for the January 2000 meeting regarding the disposition of coal combustion waste, the item was not heard then but was rather placed on the current agenda. He reflected the item was set for Commission discussion in an open forum but without further comment from the parties.

The Chair observed the Administrative Orders and Procedures Act (IC 4-21.5) does anticipate a party may petition to modify a final order by an agency. He said an essential element of the petition is a showing of newly discovered evidence. Because Gerber's petition made no such showing, on this basis alone, he believed the motion should properly be denied.

Jack Arnett said he was not present for the October 1999 argument in this case. From reading the minutes, he noted that at least some members appeared to have reservations about the disposition. He asked Damian Schmelz the reason for his abstention. Schmelz responded he no longer recalled.

Arnett reflected that Gerber's motion suggested the Secretary of the Commission cast a tie-breaking vote to affirm the letter of reprimand. Yet the minutes seemed at odds with this allegation. He asked Steve Lucas to explain the discrepancy. Lucas responded the Commission previously approved the minutes, and he believed they accurately reflected the action taken. "Not everyone voted in favor of the motion to affirm the findings by the panel, but there were no dissenting votes." He could not speak for the allegations in Gerber's motion.

Terri Moore said she had participated in the October discussions of Gerber's appeal and thought the letter of reprimand was well supported. In light of his conduct, a letter of

reprimand was appropriate. She saw no reason why the Commission's order should be set aside.

Jerry Miller moved to deny the "Motion to Modify Final Order" filed by Steven Gerber. Moore seconded the motion. Upon a voice vote, the motion carried.

Consideration of Report, Findings of Fact, Conclusions of Law, and Nonfinal Order of the Administrative Law Judge (and Objections to the Disposition) in the matter of Shoaff, Mullin, and DeVille v. Fort Wayne Zoological Society and the Department of Natural Resources; Administrative Cause No. 99-066W

Sylvia Wilcox, Administrative Law Judge, introduced this item. She started by asking that Finding 27 be stricken. The finding might give the false impression there was conflicting evidence in the case. The evidence was not in dispute. The Claimants had provided no affidavits or other facts to refute the evidence offered by the Respondents in their motions for summary judgment.

Wilcox said at issue is a permit under the Flood Control Act for construction activities in the floodway of Spy Run Creek in Allen County. The Department of Natural Resources granted the permit in favor the Ft. Wayne Zoological Society. The Claimants took administrative review of the initial determination to issue the permit. The Respondents provided affidavits in support of motions for summary judgment favorable to the permit, and the Claimants did not offer counter-affidavits. Where the DNR has made an initial determination to grant a license under the Flood Control Act, the burden of proof rests with the person seeking to set aside the permit. Because there were no genuine facts in dispute, grant of the permit must properly be affirmed.

Daniel J. Deeb spoke as attorney for the Ft. Wayne Zoological Society. He urged the Commission to affirm the Administrative Law Judge and grant of the permit in favor of his client. He said the affidavits presented by the DNR showed proper support for all elements of the permit, including the agency's consideration of cumulative impacts. A party has the responsibility to offer affidavits or other evidence in response to affidavits supporting a motion for summary judgment, and in this case, the Claimants failed in that duty.

Deeb said the Claimants had waived any argument they might offer concerning the ability of the agency to issue "after-the-fact" permits under the Flood Control Act. FW-19,300 was not fashioned as an "after-the-fact" permit, and the Claimants raised no objection to its form. They were precluded from later raising the argument.

Deeb also said he understood the Claimants would argue the Fort Wayne Zoological Society had abandoned FW-19,300. This perspective was factually inaccurate. While the Ft. Wayne Zoological Society might or might not modify its parking lot design for the portion of the lot outside the floodway, the modification would not impact the terms of its permit. He asked the Commission to clarify this point by adding language to its findings

to say: "The permit applies only to the portion of the construction that is in the floodway."

Deeb also argued the Commission lacked authority to set aside the nonfinal order of the Administrative Law Judge. In order to set aside the nonfinal order, the entire record must be presented to the Commission. The record of this case is not presently before the Commission.

David C. Van Gilder spoke as attorney for the Claimants. He said the Claimants initiated their objections to the project in September 1998 when the Fort Wayne Zoological Society began construction activities in the floodway of Spy Run Creek without a permit. He said this case is being presented without an evidentiary hearing. The Administrative Law Judge improperly weighed the evidence as demonstrated by Finding 27 that she now wishes to strike. At a minimum, the Commission should remand the case to the Administrative Law Judge with instructions to receive all relevant evidence.

Van Gilder said the Commission lacks authority to grant after-the-fact permits. There are numerous violations of the Flood Control Act, and the practice of granting approvals supports this unlawful practice. He said the language of the Flood Control Act makes it clear the DNR can only grant a permit where properly sought in advance of floodway construction activities. "The DNR does not have authority to violate the law."

Van Gilder urged the DNR had not created a sufficient basis to make determinations relative to FW-19,300. There was not a sound basis upon which to determine the cumulative impacts of the project. A HEC 2 model was lacking, so the Claimants could not realistically respond to the Department's action. The DNR did not adequately analyze the circumstances surrounding the permit application, so the ALJ "looked at part of the picture but not the whole picture."

In addition, Van Gilder urged the case was moot. Lacking local support for the project, the Ft. Wayne Zoological Society has since revamped its construction plans. The approval granted by FW-19,300 is no longer relevant.

Stephanie Roth spoke as attorney for the Department of Natural Resources. She said she generally joined in the arguments made by counsel for the Fort Wayne Zoological Society. She said the basic point was that the Claimants had failed to respond to the DNR's motion for summary judgment with any material to show a genuine dispute as to the facts. The Claimants have the burden of proving FW-19,300 was wrongfully granted. Although making many allegations, they presented no evidence in support of those allegations. "The Administrative Law Judge really had no choice but to find against them." She asked the findings and nonfinal order of the ALJ be affirmed.

Deeb said the case clearly was not moot. The Fort Wayne Zoological Society intended to move forward with the construction of site improvements. If the Claimants truly believed the case was moot, they would not have filed objections to the findings and nonfinal order of the Administrative Law Judge.

Roth added that the recipient of a permit is not required to act on the permit. Also, it was not uncommon for a permittee to construct a less ambitious project than was approved in the permit.

The Chair then asked for discussions or motions by the Commission. Larry Macklin recused himself from the discussion.

Jack Arnett moved to affirm the findings and nonfinal order of the Administrative Law Judge with the deletion of Finding 27. Jerry Miller seconded the motion. The motion carried on a voice vote. Macklin abstained.

Consideration of Report of Hearing Officer to the Natural Resources Commission with Respect to the Petition for Adding Area Filed on December 17, 1999 in the matter of the Petition by the West Central Conservancy District to Add Additional Territory; Administrative Cause No. 99-193C; Hendricks Circuit Court 32C01-91007-MI-257

Steve Lucas, Hearing Officer, introduced the item. He said for consideration was a proposal by the West Central Conservancy District in Hendricks County to add additional territory. The area is experiencing rapid suburban growth, and no one has seriously questioned that new subdivisions and commercial centers will need sewage collection and treatment. The circumstances surrounding the area are complex, and many of those complexities were raised in the public hearing process.

He said the greatest of these complexities might be posed by the positioning of the West Central Conservancy District relative to the Town of Plainfield. The two entities both seek to provide services to this growing community, and the Town of Avon is generally allied with the West Central Conservancy District in its petition to expand. The West Central Conservancy District and the Town of Plainfield contest who can provide more cost-efficient, timely and attractive services. The Town of Plainfield also points to an extended process for the development of a Master Plan that includes some of the same territory as the West Central Conservancy District proposes to add.

Another complexity is that the West Central Conservancy District proposes to absorb White Lick Sewer, Inc. into the District. White Lick supports the petition, but while White Lick has a "Certificate of Territorial Authority" from the Indiana Utility Regulatory Commission, a conservancy district does not enjoy territorial exclusivity and would not retain the standing relative to White Lick's territory if the latter is absorbed.

A third complexity is there are several landowners that wish to retain the rural or agricultural nature of their properties and who oppose inclusion in the proposed expanded boundaries of the West Central Conservancy District. There was insufficient specificity with respect to the evidence presented upon which to grant or deny relief to these persons. Legal descriptions were not offered, and the relationship of their tracts to the proposed district expansion could not be analyzed.

Lucas said the complexities all raise important issues. "I don't want to minimize them in any way, but I believe most of these issues are outside the Commission's legal responsibilities, at least at this preliminary stage of the conservancy district proceeding." He said the Commission essentially acts as a "friend of the court" providing answers to five technical questions. The Commission is not authorized to compare the respective abilities of the West Central Conservancy District and the Town of Plainfield to provide services, only to review the petition in terms of the five statutory factors. Evaluation of these factors does not establish an exclusive territory where only the West Central Conservancy District can operate. The authority to create or condition a district rests within the purview of the Hendricks Circuit Court. Determining services among qualified providers is a local issue not within the authority of the Commission. He then directed the Commission to page 20 of his report and provided an overview of the five technical questions the Commission was to answer and his proposed answers to those questions.

Lucas also reflected upon a possible technical error in the description of the proposed additions to the district as pointed out by the DNR's Division of Water. This error was described in the final paragraph of the answers to the fourth question-whether the proposed addition would cover and serve a proper area. He asked if the Division of Water still wished to pursue this matter. Terry Swoveland of the Division of Water responded she did not believe the possible error posed a major problem. Lucas said he then recommended that the paragraph be stricken from the report to the Hendricks Circuit Court.

Alan Hux spoke as attorney for the West Central Conservancy District. He urged the Commission to adopt the report of the hearing officer and move the process forward for action by the Hendricks Circuit Court. Hux reflected the hearing officer had provided a full opportunity for public comment on the petition relative to the five technical factors to be decided. The record was complete and ready for judicial scrutiny.

Hux also discussed the consequences if the addition of territory were to be approved. He said the territory would be non-exclusive, allowing developers and other freeholders to choose whether to have services provided by the West Central Conservancy District or the Town of Plainfield.

He agreed with the hearing officer that the Commission does not have legal jurisdiction to decide who provides sewage collection and treatment for a particular area. Denying the inclusion of a territory within the district would, however, in effect make the territory the exclusive territory of the Town of Plainfield. He urged the Commission to "let the marketplace decide" which entity should provide services to a particular locality.

Melvin Daniel spoke as attorney for the Town of Plainfield. He said in controversy is only about 16% of the territory sought by the West Central Conservancy District. The Town of Plainfield agrees the West Central Conservancy District can suitably serve the remaining 84%.

Daniel urged that within the 16% of territory in controversy, the Town of Plainfield could provide services at more competitive rates than the West Central Conservancy District. He said the physical terrain works to the benefit of the Plainfield and adversely to the West Central Conservancy District. In addition, years of planning have produced and refined a Master Plan that includes the contested territory within Plainfield's coverage. The consequences to taxpayers must be considered. He said the Hendricks Circuit Court would consider seriously the Commission's report, and he urged the Commission to remove the 16% in controversy from the area approved for inclusion in the West Central Conservancy District.

Chairman Kiley asked whether Plainfield contemplates incorporation of the area in controversy. Daniel responded it had not.

Terri Moore asked whether Plainfield had jurisdiction over a two-mile radius around the municipality. Daniel responded that formerly this jurisdiction existed, but the Hendricks County Plan Commission rescinded the authority.

Jerry Miller asked Steve Lucas whether the Commission had authority to decide who could provide sewer services to an area. Lucas responded that currently for consideration was a preliminary stage in a multi-stage process for providing services. In effect, the five factors to be considered by the Commission, when taken as a whole, provide a basis for determining whether a proposal by a conservancy district is feasible. If the Hendricks Circuit Court determines to add the territory, a District Plan or Unit of Work will define the specifics of on-site services. The Department of Natural Resources is involved in the process, and an opportunity is provided for public participation and review of the process. Chairman Kiley added that the Commission was charged with determining the proper boundaries of a district. Alan Hux said he wanted to emphasize to the Commission that "just because territory is in our district doesn't mean Plainfield can't serve it." A determination of boundaries is not a determination of exclusivity. In response to the earlier question by Chairman Kiley, he reflected that annexation is a consideration. A freeholder who is served by the Town of Plainfield cannot remonstrate against annexation. He said this scenario is a concern to some developers and freeholders. Also, he reflected part of the 16% of territory in controversy is now served by White Lick Sewer. If effectively made the exclusive territory of the Town of Plainfield, the entire inclusion of White Lick Sewer by the West Central Conservancy District would be placed in jeopardy.

Melvin Daniel said the response by Lucas to the question by Miller needed to be included in the report. He said this point is an important one if the report is to move on to the Hendricks Circuit Court as written. If the current approval of territorial inclusion in the West Central Conservancy District is only conceptual, and there is an opportunity later for review of the specifics of on-site sewer facility construction, that point needed to be emphasized.

Steve Cecil asked Lucas what happens, as a practical matter, when a person is ready to choose a particular sewer provider. Lucas said he could speak generally to the process for

conservancy districts but was not well enough informed to speak to the process for municipalities. He said he believed the answer was also responsive to the comment by Melvin Daniel. Lucas then directed the attention of the Commission to page 20 of the report-the second paragraph and footnote 1: "If the Hendricks Circuit Court determines to approve the addition of territory to the WCCD, its Board of Directors must prepare a 'district plan,' a 'unit of work,' or both under IC 14-33-6. . . . The NRC provides for administrative review by affected persons from determinations by the Department of Natural Resources, Division of Water, with respect to district plans and units of work. A person who wishes to be informed of this type of determination may direct a written request to the Division of Water under IC 4-21.5-3-5(b)(4)."

Michael Kiley said he thought Cecil's question was answered by the next sentence from the text in the hearing officer's report. "The statute does not authorize the NRC to determine which entity that is able to provide needed services is most able."

Jane Ann Stautz moved to adopt the report of the hearing officer as the report of the Natural Resources Commission to the Hendricks Circuit Court with respect to the petition by the West Central Conservancy District to add territory. The following paragraph would, however, be deleted: "Professional personnel within the Department of Natural Resources, Division of Water, have noted a possible technical error in the description of the boundaries of the proposed addition of territory relative to Old U.S. 36. The possible error should be addressed during or before the judicial hearing anticipated by IC 14-33-2-25." Jack Arnett seconded the motion. Upon voice vote, the motion carried.

Consideration of Preliminary Adoption of Amendments to 312 IAC 16-5 Governing the Management of Spills of Oil and Saltwater from Oil and Gas Operations under IC 14-37; Administrative Cause No. 00-030G

Sylvia Wilcox introduced this item. She reminded the Commission that it had received a detailed analysis of the proposal during the November 1999 meeting at St. Meinrad. She said Michael Nickolaus was present from the Division of Oil and Gas to answer questions.

Chairman Kiley observed that "a lot of work has gone into this proposal, and it demonstrates what can be accomplished where two agencies work in harmony." He congratulated the Division of Oil and Gas and IDEM for their efforts in assembling the rule proposal. He asked whether any member of the Commission had questions or comments.

Jerry Miller moved to give preliminary adoption, and to commit to public hearing, the proposed amendments to 312 IAC 16-5 governing the management of spills of oil and saltwater from oil and gas operations. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

Consideration of Recommendation by the Hearing Officer to Adopt an Idle Speed Zone in the Channel Adjacent to Trail Creek that Harbors the Blue Chip Gaming Boat; Administrative Cause No. 99-085L; LSA 99-83(F)

Steve Lucas, hearing officer, presented this item. He said the Commission had previously given preliminary adoption to a proposal that would make permanent a "no-boat zone" on the channel adjacent to Trail Creek, in Michigan City, that harbors the Blue Chip Gaming Boat. At public hearing, no one spoke in support of the proposal. The Division of Law Enforcement did not believe a no-boat zone could be justified in terms of unusual safety hazards. Blue Chip Casino indicated it considered the channel to be public waters and acted accordingly. The Save the Dunes Council said having the site a no-boat zone improperly privatized public waters and violated the public trust doctrine.

During the public hearing, Lt. Ed Troche of District 10 (the District that patrols Northwest Indiana) said he believed the only realistic safety hazard in the channel was caused by the possibility of personal watercraft operated at a high rate of speed. The suggestion was made that the "no-boat zone" instead be made an "idle-speed zone"- limiting vessels to five miles per hour. This suggestion met with universal approval among those participating in the hearing process. Lucas said on this basis, he recommended a no-boat zone not be made permanent but rather that the area be declared an idle speed zone.

Chairman Kiley observed comments at public hearing by Gaming Boat Captain, Lisa Streckfus. "She said that while cruising, she monitored conditions within the channel. In response to a question, Capt. Streckfus said the maximum speed of the gaming boat was less than ½ knot."

Jerry Miller moved to approve the recommendations of the hearing officer that the channel holding the Blue Chip Gaming Boat be made an idle speed zone. Jack Arnett seconded the motion. Upon a voice vote, the motion carried. Damian Schmelz abstained.

ADJOURNMENT

At 12:00 Noon, EST, the meeting was adjourned.