

## **NATURAL RESOURCES COMMISSION**

Fort Benjamin Harrison - The Garrison  
6002 North Post Road, Indianapolis, Indiana

Minutes of May 16, 2006

### **Members Present**

Richard J. Cockrum, Chair  
Jane Ann Stautz, Vice Chair  
Kyle Hupfer, Secretary  
Matthew T. Klein  
Bryan Poynter  
Raymond McCormick  
Damian Schmelz  
Richard Mangus

### **NATURAL RESOURCES COMMISSION STAFF PRESENT**

Stephen Lucas  
Debbie Michaels

### **DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT**

John Davis	Executive Office
Ron McAhron	Executive Office
Cheryl Hampton	Personnel
Glen Salmon	Fish and Wildlife
Linnea Petercheff	Fish and Wildlife
Wayne Bivans	Fish and Wildlife
Bill James	Fish and Wildlife
John Seifert	Forestry
Tom Lyons	Forestry
Rick Edwards	Human Resources
Mike Crider	Law Enforcement
Samuel Purvis	Law Enforcement
Marian England	Legal
John Bacone	Nature Preserves
Dan Bortner	State Parks and Reservoirs
John Bergman	State Parks and Reservoirs
Jim Gerbracht	State Parks and Reservoirs
Mark Basch	Water

### **GUESTS**

Dick Mercier	Patrick Bennett
Doug Allman	Jack Corpuz

Richard J. Cockrum, Chair, called to order the regular meeting of the Natural Resources Commission at 1:10 p.m., EDT, on May 16, 2006 at The Garrison, Fort Benjamin Harrison State Park, 6002 North Post Road, Indianapolis, Indiana. With the presence of eight members, the Chair observed a quorum.

Jane Ann Stautz moved to approve the minutes of March 21, 2006. Bryan Poynter seconded the motion. Upon a voice vote, the motion carried.

Director Kyle Hupfer deferred his report due to the lengthy agenda as well as having been on vacation just prior to this Commission meeting.

John Davis, Deputy Director, reported that treatment of Brazilian elodea (*Egeria densa*) in Bloomington's Griffy Lake has begun. He said, "Griffy is one of five lakes in the state that has that infestation." Davis said that the Department is "exploring" the certification of the State Forest program. The Classified Wildlife and Classified Forest programs will be merged and administered out of Division of Forestry, which "we think will help and be more efficient and probably cheaper."

Davis reported that revenue received during Division of State Parks and Reservoirs' "Welcome Back Weekend", the first weekend in May, "more than doubled" from the same time last year. He concluded, "That's a healthy sign."

Director Hupfer indicated that a Department revenue report will be presented to the Commission at its July meeting. "Recreation season is really just cranking up" and the early returns are "pretty positive. There has been very little, if any, drop-off, thus far, as a result of rate changes."

### Personnel Interviews

#### **Consideration of a recommendation by the Personnel Committee for the Appointment of Martin Durant to the property manager position at East Fork Fish Hatchery**

Jane Ann Stautz reported on this item. She said the Personnel Committee recommends for appointment Martin Durant for the property manager position at the East Fork Fish Hatchery. "He brings a wealth of experience, and has served and operated hatcheries out on the East coast." She concluded, "I think Mr. Durant will be a great addition."

Jane Ann Stautz moved to approve the appointment of Martin Durant as property manager at East Fork Fish Hatchery. Richard Mangus seconded the motion. Upon a voice vote, the motion carried.

#### **Consideration of a recommendation by the Personnel Committee for the Appointment to the Assistant Property Manager at Charlestown State Park**

Bryan Poynter presented this item together with the subsequent agenda item. Poynter indicated that he conducted the personnel interviews. He said that "both candidates were outstanding in their quality. Both were extremely qualified and will be absolute assets to the Division of Parks and Recreation for both Charlestown State Park and O'Bannon Woods State Park."

Bryan Poynter moved to recommend appointment of Andrea Robertson as Assistant Property Manager at Charlestown State Park. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

## **Consideration of a recommendation by the Personnel Committee for the Appointment to the Assistant Property Manager at O'Bannon Woods State Park**

Bryan Poynter moved to recommend appointment of Leslie Grow as Assistant Property Manager at O'Bannon State Park. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

### **Division of Nature Preserves**

#### **Consideration of the Dedication of Jordan Seeps Nature Preserve, Owen County**

John Bacone, Director of the Division of Nature Preserves, presented this item. Bacone said Jordan Seeps is located in Owen County near Spencer. "It's actually right across the road from Barnes Lake, a resort area in Spencer." He said the 29-acre tract of land is "very interesting" as it's a forested seep with high acidity of a bog, and "so there's a lot of rare and uncommon plants found in the area." He said the tract is owned and managed by the Division of Nature Preserves, and was acquired "quite a few years back" with the assistance of The Nature Conservancy. Bacone recommended the dedication of Jordan Seeps as a nature preserve.

Jane Ann Stautz moved to approve the dedication of the Jordan Seeps Nature Preserve in Owen County. Raymond McCormick seconded the motion. On a voice vote, the motion carried.

### **Division of Forestry**

#### **Consideration of request by the Division of Forestry to establish fees for Conservation Nursery Seedlings and Select Tree Seedlings**

John Seifert, Director of the Division of Forestry, presented this item. He referenced printed material included in the Commission's packet that provided a synopsis of the Division of Forestry's history regarding revenue and expenses. He indicated that statute prohibits the revenues of the Conservation Nursery Seedlings Program to exceed expenses. He said, "When we anticipate our revenue versus our expenditures, we will recover about 98% of our expenses given the scenario that we're operating under right now. He noted that the Commission was also provided a history of the percent increases. "We're proposing a 10% increase at this point in time." Seifert explained that the Division of Forestry is proposing the introduction of Indiana Select hardwood seedlings—five new genetically enhanced line of seedlings. "It sort of puts us into a different kind of market that we have historically been. Again, we're trying to capture our expenses, and this would be a cooperative adventure with Purdue University and the Hardwood Tree Improvement Center."

Chairman Cockrum said, "I know this is a discussion going back a few years ago to make sure that the Department is recapturing its cost, and that the taxpayers were not subsidizing the sale of the seedlings." He commended the Department staff, "98% is pretty close to that target." Seifert noted that the "numbers" will be reviewed next year. "We may be a little over or a little less, but if we are looking at an increase, we would rather bring it every year as opposed to every five or six years as we had done in the past." Seifert explained that the federal and state cost share has increased to offset the increase cost per seedling.

Director Kyle Hupfer commented, "We're still investigating to make sure we are capturing all the costs. He said that overhead costs such as personnel salaries and prison labor are not included in the cost estimate. "The 98% is basically direct measurable cost, and if you would get into unmeasurable overhead

costs there is still plenty of wriggle room.”

Chairman Cockrum noted that in the past there were some purchasers who were buying “huge amounts” of seedlings. “I think there was discussion among Commission members to make sure that average citizens had access to purchases.” Cockrum asked, “Is there any further development in this area?” Seifert said the seedling program is based on a lottery, which occurs on October 15<sup>th</sup> of each year. “So, everybody puts their request in. Short of that, you know, there’s not a lot of way for us to control how those seedlings get allocated.” He said that after the lottery draw “anybody can come in after-the-fact and buy whatever the residual stock is.” Seifert noted that there is potential for some landowners to have access to a disproportionate amount of seedlings after-the-fact, but the lottery system was instituted to “at least level the playing field at the first go around.”

Jane Ann Stautz inquired of the overall sales. Seifert noted that this year’s seedling sale is “good”. He said the conservation reserve program is currently being monitored, which is in the sign up period right now. “If you asked me what the future looks like, I don’t think we’ll see an expansion of our nursery tree program right now.” Regarding the number of seedlings sold, Seifert commented, “I think our hay day is over, unless the new Farm Bill changes that.” He said the consolidation of the Division’s nurseries is part of the strategic plan to control costs.

Raymond McCormick questioned whether there were limitations as to where the trees could be planted, or by whom they can be purchased. “Can a forester from Illinois buy Indiana seedlings and plant them in Illinois?” Seifert explained that, historically, the seedlings were sold through the lottery, and out-of-state purchases were held until after the first of the year to make sure the demand was met in Indiana. He also noted that the Division of Forestry has “no peers in the nursery business. In the Midwest, private or public nurseries, there is no body that does it better than we do.”

Chairman Cockrum noted that someone in the lottery could be from another state and have “equal access” to the seedlings. Seifert said lottery applicants must indicate on the order form where the seedlings will be planted.

Richard Mangus, Commission member, noted that a hybrid butternut is offered as an Indiana Select seedling, and asked, “How long has that been on the market?” Seifert indicated that the hybrid butternut was produced from the Purdue Research effort in Wisconsin. “This will be the first year, with your approval, and this will give us the opportunity to sell this line of seedlings. That’s not been done any place else.” Mangus inquired of the growth rate of a butternut. Seifert explained that from a merchantability standpoint the butternut will produce seed in less than ten years, and provide lumber in approximately 50 to 60 years. Seifert added that the hybrid butternut is the “closest species that would be considered rare and endangered in Indiana from a vascular woody plant.”

Mangus also inquired concerning the availability of a hybrid chestnut seedlings. Seifert said chestnuts are at the nursery, but are currently in the “breeding line.” Chestnut seedlings may be available in less than ten years, and will be considered “back crosses third line and will have about a 90% chestnut disease resistance.”

Cockrum asked whether the Division of Forestry had a policy for sales to local government. “Could they be a priority?” Director Hupfer commented, “You are getting out in front of us.” Hupfer explained that local governments, such as county parks, are looking for containerized trees rather than bare root seedlings. John Davis asked Seifert whether states without a comparable tree seedling nursery could be targeted for sale of “large amounts” of seedlings. Seifert noted that at least one northern state has sales to other states. “That is something that would have to come from the Director’s initiative. But, there’s no question, I think that we could do that and do it well. We’re trying to position our nursery to be at the cutting edge both technologically and quality-wise.”

Chairman Cockrum commended the Division of Forestry's efforts. "I appreciate your trying to hit dead on your cost both direct and indirect toward the citizens. But if they are going out of state, I think we should give some consideration of a surcharge." Director Hupfer noted, "That would require a legislative change."

Jane Ann Stautz moved to approve the request by the Division of Forestry to establish a fees schedule for Conservation Nursery seedlings and Select Tree seedlings. Matthew Klein seconded the motion. Upon a voice vote, the motion carried.

### **Division of Fish and Wildlife**

#### **Consideration of Request to Lower the Fee for the Second and Any Additional Resident Bonus Antlerless Deer License to \$15, and Lower the Fee for the Second and Any Additional Nonresident Bonus Antlerless Deer License to \$24**

Linnea Petercheff with Division of Fish and Wildlife presented this item. She explained that the General Assembly amended in the 2006 session IC 14-22-12, the statute listing license types and minimum fees. As amended, the statute sets the minimum license fees at \$5 for resident license and \$10 for nonresident license. The Commission may set license fees for a "bonus or antlerless" deer license above the minimum statutory amount. "The proposal today is to create a financial incentive for individuals to purchase that second, third, or fourth bonus antlerless deer license." Petercheff noted the current resident deer license fee is \$24, and \$150 dollars for non-resident deer license. Subsequent license purchases would be reduced to \$15 for resident license, and \$24 for non-resident. "We found that about 43,000 residents purchase a one-deer license, but that number drops to around 4,600 who actually purchase a second license." Petercheff noted that the number "decreases drastically" for non-residents from 560 down to 16 who actually purchase a second license. "So, this is a substantial incentive primarily for non-residents to take additional deer with a license."

Director Hupfer said, "One thing that I've learned over the past 15 months is that management of our deer herd is much more of an art than a science to some extent." The incentive is proposed to "hopefully drive license sales". He explained, "We didn't want to drop the price too low where we sell too many licenses. We're going to do this as a trial run this year and see how it affects the sales", and the incentive will be revisited on a regular basis over the next few years.

Doug Allman asked whether Department had a check system in place that would make sure an initial license is purchased prior to the purchase of a second license. The Director explained that staff is working with Access Indiana to configure online purchases to automatically "pop up the lower price. You won't be able to buy the second one until you have bought the first one."

Richard Mangus asked whether the interest in deer hunting has decreased. Allman replied, "I think it's about stationary. I think hunters are more efficient today than they have in the past. The hunters have been educated. I think the step that the Department's taking will help in controlling the population." Allman concluded, "This should encourage people to participate more with reduction versus recreation. I think it's a step in the right direction." Director Hupfer said that the DNR has looked at reducing the \$125 nonresident doe license. "We sold around 6,000 nonresident doe licenses last year." The second license fee is proposed to be reduced, but "we didn't want to lose the sales revenue for the first doe license."

Raymond McCormick moved to approve the request to lower the fee for the second and any additional

resident bonus antlerless deer license to \$15, and lower the fee for the second and any additional nonresident bonus antlerless deer license to \$24. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

**Request for Preliminary Adoption of Amendments to 312 IAC 9. Includes New and Amended Sections Pertaining to the Following: Hunting Deer by Bow and Arrows; Cottontail Rabbits; Squirrels; Wild Turkeys; Taking Turtles; Endangered Species of Reptiles and Amphibians; Reptiles and Amphibians Native to Indiana; Reptile Captive Breeding License; and, Game Breeder License; Administrative Cause Number 06-077D**

Linnea Petercheff also presented this item. She provided a summary of the proposed amendments to 312 IAC 9 governing fish and wildlife. She said an amendment is proposed to add a definition of “immediate family” for clarification of intent of an administrative rule that was given final adoption in March. Another amendment would clarify license types that can be used to take an extra deer, including the youth and lifetime licenses, and resident, nonresident licenses. Madison would be removed from the list of urban deer zones. “With the special deer hunts in state parks that take place at Clifty Falls State Park and increased number of antlerless deer that can be taken in Jefferson County, there is no longer a need for Madison County to be listed as an urban deer zone.”

Petercheff said a proposed amendment to 312 IAC 9-3-16 would extend the season for rabbits statewide from January 31 to February 15, except for the DNR properties listed. “It adds an additional two weeks of hunting opportunities, and rabbits, as prolific as they are, they should be able to withstand a couple more weeks of hunting pressure at that time of year.” The rule lists the state Fish and Wildlife Areas where the taking and possessing cottontail rabbits is allowed starting October 1 through January 31. The rule exempts Goose Pond due to “special management” practices within the area. An amendment to 312 IAC 9-3-17 would extend the season for gray and fox squirrels to January 31 statewide. The current season for taking squirrels north of U.S. 40 is December 31. “This will provide an extra month of hunting opportunity and make the season statewide.” At 312 IAC 9-4-11, Big Oaks National Wildlife Refuge is removed from the locations where special spring and fall turkey hunting seasons can take place. Provisions would also allow spring turkey hunting statewide except in Henry County. “The turkey releases done a few years ago have worked well, except for Henry County.” Also added is a special youth turkey hunting season to take place the weekend before the spring season to allow youth hunters less than 16 years of age, who are accompanied by an adult, to take a bearded male wild turkey. “If a turkey is taken during this special youth season, that person would not be able to take another turkey during that following spring season that same year.”

Petercheff said several amendments are proposed for the reptile and amphibian rules. Amendments update common and scientific names of several species of turtles, snakes, and frogs. “Again, we are trying to be consistent with the Center for North American Herpetology as they continue to do research. We are trying to remain consistent with professional journals.” Petercheff explained that the last amendment in the proposal is to 312 IAC 9-10-4 governing game breeder licenses and would require an 8-foot perimeter fence enclosure for white-tailed deer. The inventory requirements for species possessed under a game breeder license would also be clarified. Amendments are proposed that game breeder licenses would expire December 31 of the year the license is issued and license renewal application to be filed by February 15 of each year. “The 8-foot fence requirement is already in the Board of Animal Health [BOAH] administrative code, so this is already a standard that we use and the owners already have to do.” Petercheff said, “We also want to make it clear for law enforcement purposes and for license holders.” She noted that individuals who keep white-tailed deer have to comply with BOAH regulations in registering their cervids, and to get a DNR game breeder license. “We are trying to match up with some of the inventory and record keeping requirements.” Petercheff recommended preliminary adoption be given to the proposed rule amendments.

Doug Allman, from Indiana Wildlife Association, addressed the Commission. He urged both the DNR

and BOAH to adopt a 10-foot fence standard. Allman highlighted CACC [Citizens Advisory Council on Captive Cervids] negotiations and discussions” regarding white-tailed deer enclosures. Allman concluded, “From our standpoint, and members of other organizations like the Indiana Sportsmen’s Roundtable, the Indiana Deer Hunters Association, we would like to see both the DNR and BOAH adopt a 10-foot fencing standard for both protection of wild deer as well as it would also help the industry that claims they are more at risk from wild deer.”

Raymond McCormick commented, “If the standard is 8-foot at this point, and we have a lot of fences out there that are 8-foot, it seems like it’s going to be pretty difficult to now ask them to put two more feet of fence. Their posts aren’t going to be 10-foot tall.” McCormick questioned its practicality.

The Chairman Cockrum asked whether the proposed 8-foot requirement mirrors BOAH’s policy” Petercheff responded in the affirmative. The Chair stated that Allman’s comments are noted and “well taken.” He said that since this is a preliminary adoption stage, there will be an opportunity at the public hearing to “weigh in further.”

McCormick commented, “I guess I could live with the 8-foot fence at this point, but as Chronic Wasting Disease, if it becomes more of a threat to the Indiana deer herd, I think that the Commission and the DNR should seriously consider the double fence, so that we cannot have deer, in the captive pens, touching noses and making contact with the wild herd. It doesn’t matter if it is 20-foot tall or 5-foot tall, if they can touch noses that can promote the spread. That’s when I think we should look seriously at the double fencing.”

The Chair addressed Stephen Lucas and asked, “If that were to come later on where the staff attorney’s opinion and that’s a substantial change and is a new rule, or could that come back to us in the form of a final rule recommendation after the hearings? I think Ray raises a very good point about the Chronic Wasting Disease.” Lucas indicated that Adam Warnke, DNR’s Chief Legal Counsel was present and could speak to the question. Lucas explained that the Commission could, as it has done in the past, preliminarily adopt two different alternatives for a particular section and place the proposals before the public. Adam Warnke said, “That’s certainly one option, and it’s probably one of the more transparent options and gives the public notice of what’s intended.” Warnke continued, “The standard for any change would be whether there’s a logical outgrowth of the rule and of the public comment on that rule.”

Director Hupfer added, “I think we need to take a step back. The reason why we’re doing this is to just boot strap our ability to enforce. We are not inspecting these things. This rule is not being put out there so that we get into the arena of animal health. BOAH is charged with that. We’re doing it for enforcement purposes from the DNR perspective and not from a policy perspective. It’s really just enforcement at this point.”

Raymond McCormick moved for preliminary adoption of amendments to 312 IAC 9 as written. Richard Mangus seconded the motion. Upon a voice vote, the motion carried.

**Request for Preliminary Adoption of Amendments to 312 IAC 9. Amends the Provisions that Govern the Following Administrative Rules Pertaining to Fish Management: Definitions Pertaining to Fish and Fishing Activities; Fish Measurement; Areas Closed to Fishing; Sport Fishing Methods, Except on the Ohio River; Black Bass; Trout and Salmon; Fish with No bag Limit, Possession Limit or Size Limit; Shovelnose Sturgeon; Commercial Fishing, Except on the Ohio River; and Commercial Fishing on the Ohio River; Administrative Cause Number 06-081D**

Chairman Cockrum reported this agenda item withdrawn.

## Division of State Parks

### **Consideration of Preliminary Adoption to Rule Amendments Pertaining to the Administration of DNR properties and to the Administration of Fishing Tournaments, Whether within and outside of DNR properties; Administrative Cause Number 06-082A**

Stephen Lucas introduced this item. He noted that the proposed amendments to various property provisions were a product of the DNR Properties Workgroup, a workgroup with representation from the DNR property divisions and the Division of Law Enforcement. Marian England chairs the workgroup. Lucas said the workgroup's goal was to "come forward with a unified perspective rather than piecemeal", which could result in one division's property management policy being "inconsistent or incompatible" with another division's property management practice. Lucas then deferred to John Bergman.

John Bergman from the Division of State Parks and Reservoirs addressed the Commission. He said the Commission approved the reintroduction of the daily horse tag for this year. Bergman said the current property rules only address the annual horse tag and its display. "Both the creation of a daily horse tag and having to display the daily horse tag was going to take quite a bit of time, effort, and money. We believe that buying and getting a receipt upon arrival, carrying that with you, and whenever you are asked by law enforcement or other DNR personnel to produce that receipt, that would suffice for showing of horse tags." Bergman said that the Division of State Parks wished to eliminate the requirement for the display of a daily horse tag.

Bergman referenced the establishment of the Lake Permit. He explained that DNR used to have a boat launch permit, which was "very difficult to enforce because in the Corps leases there was always a requirement for a free launch on most of our Corps reservoirs." By having a lake permit, the Department would have a more enforceable permit. "It doesn't matter where you launch. If you are on a DNR lake you have to have this permit on your boat. So far it has been very lucrative, as we also believe it's going to have quite a bit of increase in income to our Department."

Bergman said the Division of State Parks and Reservoirs and the Division of Law Enforcement worked together to propose modifications to the fishing tournament rules. The proposed amendments would give the Department some flexibility with fishing tournaments and the number of tournaments requested in a given year. "Right now we think there's a lot of abuse with people drawing for tournaments that they really have no intention of using. There are a lot of cancellations going on." The proposed rules address these issues.

The Chairman Cockrum asked how the public would be educated regarding the enforcement of the new lake permit. Director Hupfer indicated that DNR has had "extensive education pieces. It's been in the fishing Guide and there are handouts at every single property. We are not, early in the season, writing people up." Director Hupfer also indicated that boat ramps around the state are still being manned to educate the public. Maj. Samuel Purvis added, "The boat launch permit is actually fairer to the boaters, and more equitable to the users." Bergman explained that the lake permit applies to all DNR property lakes except for lakes on Fish and Wildlife Areas. "Lake permits apply to reservoirs and state park lakes." Director Hupfer indicated that the lake permit is not "lake specific."

Jane Ann Stautz moved to approve the preliminary adoption of the rule amendments pertaining to the administration of DNR properties and to the administration of fishing tournaments. Bryan Poynter seconded the motion. Upon a voice vote, the motion carried.



## NRC, Division of Hearings

**Consideration of Final Adoption to Address Technical Matters that may be Raised by the Attorney General's Office for the Following Rules Given Final Adoption in March: (a) Wild Animal Possession, Mute Swans, Ground Hogs, Deer, and Various Other Amendments to the Fish and Wildlife Rules (LSA Document #05-214(F)); Youth Deer Hunts (LSA Document #05-262(F)); Intermediate Casing Amendments (LSA Document #05-248(F)); Oil and Gas Definitions (LSA Document #05-288(F)); and Turtle Creek Bay Watercraft Restriction Amendments (LSA Document #05-263(F)); Lawful Nonconforming Uses on Public Freshwater Lakes (LSA #05-274(F))**

Linnea Petercheff discussed LSA Document #05-214(F), the only aspect of the agenda item on which the Commission was being asked to take action. "This package comes with a lot of different rule proposals. The first one being clarification of some exemptions for owners and lessees of farmland when owned by corporations and or business entities." Petercheff provided that the rule proposal was submitted to the Attorney General's office for review as to legality. Subsequently, LSA Document #05-214(F) was recalled. Petercheff said that the Attorney General's office provided draft language that would accomplish the same or similar goals by defining the term "owner, lessee and business entity" in proposed 312 IAC 9-2-14.

Petercheff referenced that another part of the rule package was the taking of mute swans. She noted that several issues have been brought to the DNR's attention referencing the taking of mute swans, and the Division of Fish and Wildlife was now requesting the entirety of this section be deleted from this rule package. She said a temporary amendment would be prepared to address the subject for the short or medium term. Director Hupfer added that the agency would likely adopt a temporary rule to allow the mute swan to be harvested during traditional, non-recreational hunting seasons.

Glenn Salmon, Director of the Division of Fish and Wildlife, said "We do have a variety of concerns about the mute swan. They do displace our native wildlife; they do destroy the wetlands. From an environmental standpoint and biological standpoint, they are an exotic animal. And, they really need to kind of go away, but not in front of six-year-old children."

Bryan Poynter moved to re-approve LSA Document #05-214(F) for final adoption but with the modifications recommended by the Division of Fish and Wildlife. These would incorporate the language for proposed 312 IAC 9-2-14 as drafted by the Attorney General's office. Also, the language pertaining to mute swans would be deleted, Ray McCormick seconded the motion. Upon a voice vote, the motion carried.

**Consideration of Rule Processing, Report of Public Hearing and Comments, and Recommendation for Final Adoption of Updates and Corrections to Rules of the Natural Resources Commission; Administrative Cause Number 05-184A; LSA #06-09(F)**

Stephen Lucas, Hearing Officer, presented this item. He explained that the proposed final adoption was an effort to clean up language where there are problems throughout the Commission rules. The updates and corrections were not intended to have any substantive changes, but rather to update cross references to status and other rules, correct clerical errors and other mistakes, and make grammatical modifications.

Richard Mangus moved for the approval for final adoption of updates and corrections to 312 IAC of the Natural Resources Commission. Bryan Poynter seconded the motion. Upon a voice vote, the motion carried.

**Consideration of Rule Processing Report of Public Hearing, Comments, and Presentation for Final Adoption of Amendments to 312 IAC 13 Governing Water Well Drillers; Administrative Cause Number 05-191W; LSA #05-341(F)**

Stephen Lucas also presented this item. He said presented for consideration as to final adoption were amendments to the rules governing water well drilling contractors. He then deferred to Mark Bash from Division of Water who is primarily responsible for administering the rules.

Basch provided the Commission members with a photograph of equipment for a “direct push” well. He explained that the thermal grouts are used for monitoring wells. The new process would allow a temporary casing to be installed, a well to be set, and then the casings to be removed afterwards. He said that the current rules were written before the new technology was available. “Therefore, we’re looking to change the rule to allow for its installation.”

Patrick Bennett with the Indiana Manufacturers Association addressed the Commission. He said, “I was here in November to encourage your preliminary adoption, and am here to encourage your final adoption of this rule. It saves time, it saves money. This is an exceptional method for use in monitoring wells, and we’d appreciate your consideration and we encourage you to final adopt the rule.”

Jane Stautz moved to give final adoption to amendments to 312 IAC 13 governing water well drillers to approve use of the “direct push” method for monitoring wells and to make other changes as published for preliminary adoption. Damien Schmelz seconded the motion. Upon a voice vote, the motion carried.

**Consideration of Rule Processing, Report of Public Hearing, Comments, and Recommendation for Final Adoption of Amendments to 312 IAC 8-2-8 to Provide for the Use of Motorized Carts on DNR Properties in Implementation of P.L. 225-2005, Section 15; Administrative Cause Number 05-148; LSA #05-344 (F)**

Steve Lucas introduced this item. He said the proposed rule is ready for final adoption to authorize the use of motorized carts on state parks and recreation areas in conformance with a 2005 statutory mandate. “Historically, these kinds of vehicles have not been available for use within DNR properties.” He explained that the proposed rule would authorize the usage of motorized carts under “some limited circumstances and some campground scenarios.” Lucas indicated that Maj. Samuel Purvis and John Bergman could address the practical application of the rule amendments if given final adoption.

Maj. Samuel Purvis said the issue was initiated by situations of motorized conveyances coming onto DNR properties. He explained that the Commission adopted the definition of a DNR property road being the same as a public highway, which limited the use of certain vehicles and put age restrictions on those operators. “The changes in definition lead to the legislative amendment on motorized carts.” Chairman Cockrum stated, “In essence, you are implementing the policy and the will of the Legislature.”

Jane Ann Stautz moved to give final adoption of amendments to 312 IAC 8-2-8 to provide for the use of motorized carts on DNR properties in implementation of P.L. 225-2005, Section 15. Bryan Poynter seconded the motion. On a voice vote, the motion carried.

**Consideration of Rule Processing, Report of Public Hearing and Comments, and Recommendation for Final Adoption of Rule Amendments to 312 IAC 5-9-5 establishing Special Watercraft Restrictions on Sullivan Lake in Sullivan County; Administrative Cause Number 05-106L; LSA #05-324(F)**

Steve Lucas introduced this item as Hearing Officer. He said a hearing was convened in Sullivan to consider the proposal that was initiated by a petition from the Sullivan County Park and Lake Recreation Board to establish rules for watercraft operations on Sullivan Lake. He deferred to Maj. Samuel Purvis to discuss the background of the rule proposal.

Maj. Purvis said he and local Conservation Officers have been working for some time with the local park board to assist with converting a local ordinance that governs watercraft operations to have watercraft instead governed by NRC rules. He said the local citizens were appreciative of DNR efforts and great to work with. The Division of Law Enforcement recommended the rules be given final adoption. Lucas added that if Sullivan Lake is to be treated as a public watercourse, the NRC is the state agency with regulatory authority to adopt rules regarding the operation of watercraft, and these amendments can provide an improved level of comfort for enforceability.

Raymond McCormick moved to give final adoption to 312 IAC 5-9-5 to govern the operation of watercraft on Sullivan Lake in Sullivan County. Damien Schmelz seconded the motion. On a voice vote, the motion carried.

**Information Item: Brief Overview of the Indiana Statutory Responsibilities of the Natural Resources Commission**

Steve Lucas said that, over the past several months, individual NRC members have requested an overview of its statutory responsibilities. In response to the requests, he was providing an overview of the applicable statutes. Although set forth in more detail in the written materials, he said he also wished to highlight a few items. He acknowledged that some aspects of the governing legislation were probably archaic and might need updating or repeal.

Lucas said rule adoption (sometimes supported by nonrule policy documents) was arguably at the core of NRC responsibilities. As the Commission was well aware, rule adoptions were a consideration in nearly every meeting. He said his intention was to ask the NRC to review the existing nonrule policy documents during the September meeting.

Adjudications under IC 4-21.5 were also crucial. The day-to-day work of adjudication is performed by the Commission's administrative law judges, paralegal, and court reporter. Through an NRC delegation, these activities are directed by its AOPA Committee. He thanked Jane Ann Stautz, Chair, and members Mark Ahern, Linda Runkle, and Matt Klein for their participation on the AOPA Committee. "I strongly suspect there are lots of months when they must put more energy and time into the AOPA Committee than the regular NRC meeting. It's a huge job." Lucas added that he would provide an update on recent AOPA decisions at the July meeting.

Lucas said the NRC has been on the cutting edge for the use of mediation as an alternative to litigation for dispute resolution. The Commission was the first state agency to opt into mediation when authorized for AOPA by the implementation of IC 4-21.5-3.5, and it had approved mediation for the resolution of disputes under the Timber Buyers Act even before that. He reflected that one aspect of mediation, originally enacted in 1955 and now codified at IC 14-25-1-8, was developed to assist with resolving water

supply disputes. Unfortunately, the legislation is difficult to implement within the modern understanding of mediation and probably needs to be updated or repealed.

Lucas then quickly referenced a laundry list of specific statutory authority directed to the Commission. One illustration was that its hearing officers conducted general fact-finding hearings, an authority used to collect comment for the Commission to consider slip rates and other fees on DNR reservoirs. He said the Commission is empowered to establish a “restricted use area” as needed in the public interest where the withdrawal of groundwater exceeds or threatens to exceed replenishment. A responsibility that occasionally achieves a high profile is to perform functions pertaining to the establishment, technical oversight, and dissolution of conservancy districts. He said provisions in IC 14-10-2-1 pertaining to historic preservation were probably obsolete, at least in part, having been superseded by the establishment of the Historic Preservation Review Board.

Chairman Cockrum said he had been looking forward to this report. He thanked Lucas for providing the briefing and said he believed the written materials would be a helpful reference to Commission members.

### **Adjournment**

At approximately 3:20 p.m., the meeting adjourned.