

NATURAL RESOURCES COMMISSION

Minutes - September 25, 1997

MEMBERS PRESENT

Michael Kiley, Chair
Jack Arnett, Vice Chair
Larry Macklin, Secretary
John Goss
Jerry Miller
Steve Cecil
Damian Schmelz
Terri Moore
Joe Siener
Jane Ann Stautz

NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas
Sharon Turk

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Jack Costello	Executive Office
Lori Kaplan	Executive Office
Paul Ehret	Executive Office
Angie James	Executive Office
Carrie Doehrmann	Chief Legal Counsel
Gerald Pagac	State Parks
John Davis	Land Acquisition
Jim Slutz	Oil and Gas
Mike Nickolaus	Oil and Gas
Cheryl Hampton	Oil and Gas
Mike Sponsler	Reclamation
John Friedrich	Forestry
John Bacone	Nature Preserves
Angila Prather	Legal Counsel
Emily Kress	Outdoor Recreation
Jerry Sears	Outdoor Recreation
Bill Maudlin	Fish and Wildlife
Pat Sides	State Museums and Historic Sites

MONTHLY REPORTS

Michael J. Kiley, Chair, called to order the regular meeting of the natural resources commission at 7:42 p.m., CDT a.m., EST, on September 25, 1997 in Thrall's Opera House, New Harmony, Indiana. With the presence of ten members, the Chair observed a quorum.

Jerry Miller moved to approve the minutes of the August 19, 1997 meeting. The motion was seconded by Joe Siener. Upon a voice vote, the motion carried.

Larry Macklin provided the Director's Report. He introduced Carrie Doehrmann as the new Chief Legal Counsel for the Department of Natural Resources. "We're proud to have Carrie with us." He also welcomed Angie James back from medical leave.

Macklin said the Natural Resources Study Committee of the Indiana General Assembly met three times during the summer. He said the committee had "an ambitious discussion of the scenic river program" in Indiana, as well as the American Heritage River Program initiated by President Clinton.

Macklin said the DNR had been successful in its presentations to the Budget Committee. Approved programs included the Mine Land Acquisition Program where \$5,000,000 has been appropriated for the purchase of reclaimed coal mine lands in southwestern Indiana. He emphasized the agency was looking at all eligible properties and had not yet made any prioritization decisions.

Jerry Miller, Chairman of the Advisory Council for the Bureau of Lands and Cultural Resources, said his council considered only one item during its September meeting. That item was for the grant of an easement at Morgan-Monroe State Forest and was recommended for approval.

Jack Costello, Deputy Director for the Bureau of Lands and Cultural Resources, said the "deer control program" will be activated at nine parks this year. "That is a good number logistically for us to handle."

Costello said his bureau was developing standards for privately-financed inns on state parks. These standards would be brought to the commission for review during a subsequent meeting. Joe Siener, Chairman of the Advisory Council for the Bureau of Water and Resource Regulation, said his council was scheduled to meet October 15 in Indianapolis.

Lori Kaplan, Deputy Director for the Bureau of Water and Resource Regulation, said she had just attended the annual meeting of the Division of Outdoor Recreation held at Hovey Lake State Fish and Wildlife Area. Together they viewed an archeological dig in Posey County led by Indiana University.

Kaplan noted that zebra mussels have troubled the Aztar gaming boat. The boat is located on the Ohio River at Evansville. She said zebra mussels are a significant problem on the Ohio River, as well as Lake Michigan and other state waters.

Kaplan distributed copies of Indiana Land Use on the Edge. This recent publication by the Indiana Agriculture and Natural Resource Land Use Working Group presents issues and possible directions relative to problems associated with a diminishing agricultural base, due largely to suburban expansion. Additional copies are available from the Office of the Commissioner of Agriculture.

Paul Ehret, Deputy Director for the Bureau of Mine Reclamation, said it was a "pleasure for the Division of Reclamation to host the Natural Resources Commission" to tour coal mine reclamation and coal combustion waste disposal areas near Dale, Indiana. Those tours occurred earlier in the day.

Ehret reflected that tomorrow (September 26), the Division of Oil and Gas would coordinate a tour of wells within Harmonie State Park. He said the park contained both well managed wells sites and orphan wells which pose environmental challenges. He said it was "very satisfying" to have the Natural Resources Commission observe our activities.

Ehret also reflected that he had recently spoken with the Indiana Groundwater Task Force. The subject of the conversation was rule changes and initiatives by the Division of Reclamation directed to the protection of groundwater for lands regulated under Indiana SMCRA. Chairman Kiley congratulated the DNR and the Division of Reclamation for progress in addressing abandoned mine lands problems. "There are some moonscape properties out there, but not nearly as many as there used to be."

John Goss, who in addition to being a member of the commission is the Director of the Indiana Office of Tourism, distributed the Fall Color Guide. The Guide is a foldout identifying where, among Indiana's six geographic regions, a traveler may find not only turning trees but also "quaint shops, historic homes, natural wonders, and friendly folks."

Pat Sides, Assistant Property Manager for DNR properties at New Harmony, gave a brief overview of the utopian experiments by the Harmonists and later by Robert Owen. She said Thrall's Opera House was an original Harmonist building but was converted to an opera house in 1855. At one time, the building was the second largest theater in Indiana.

BUREAU OF LANDS AND CULTURAL RESOURCES

Personnel Interviews

Consideration of Appointments for Property Manager of Falls of the Ohio State Park and for Property Manager for Fish and Wildlife Public Access North

Terri Moore presented the results of personnel interviews held in September. She praised the the qualifications of all the candidates. Moore said after difficult deliberations, she and Steve Cecil determined to recommend Steve Knowles as Property Manager for Falls of the Ohio State Park and Paul Stork as Property Manager for Public Access North, Division of Fish and Wildlife. The latter position has responsibility for all DNR public access sites in the northern half of the state, with its offices located at Tri-Lakes.

Damian Schmelz moved to approve Steve Knowles as Property Manager for Falls of the Ohio State Park and to approve Paul Stork as Property Manager for Public Access North. The motion was seconded by Jack Arnett. Upon a voice vote, the motion carried.

DIVISION OF FORESTRY

Consideration of a Request by Ameritech for a Four-Year Permit for the Installation, Operation, and Maintenance of an Underground Telephone Cable Across Morgan-Monroe State Forest

John Friedrich of the Division of Forestry presented this item. He said the proposal was for an easement to place an underground telephone cable across Morgan-Monroe State Forest. The Ameritech line would parallel the South Central REMC line approved by the NRC in August. Both would service an atmospheric research tower being placed on Morgan-Monroe State Forest by Indiana University. Placement of the cable would require prior archaeological clearance as required by statute.

Jerry Miller moved to approve the request by Ameritech for a four-year permit to install, operate, and maintain an underground telephone cable across Morgan-Monroe State Forest. The motion was seconded by Joe Siener. Upon a voice vote, the motion carried.

DIVISION OF LAND ACQUISITION

Informational Item: History of Land Ownership in Harmonie State Park and a Comparison of Surface Ownership and Mineral Ownership

John Davis, Director of the Division of Land Acquisition, introduced this item. He explained that when the DNR purchased the land for Harmonie State Park, there were numerous existing mineral leases for oil and gas production. These were generally not acquired by the state but rather remain in private ownership. As a result, there are producing wells at the park, and new wells may lawfully be drilled upon the issuance of a permit from the Division of Oil and Gas.

Davis reflected that wells cover only a portion of the park. Several of these have not been acted upon for several years, and the "Dominant Minerals Act" will allow the DNR to seek the extinguishment of these inactive mineral leases. The DNR intends to aggressively pursue its rights under the Dominant Minerals Act. In other instances, wells are viable and likely to remain viable.

Jim Slutz, Director of the Division of Oil and Gas, explained there are 40 wells currently permitted within Harmonie State Park. Five of these are today actively producing. He said the park has both competent operators and orphan wells which can present environmental problems. He suggested that having derelict sites taken over by reputable operators, with a continuation of production contingent upon reclaiming those sites to environmental standards, may be the most practical option in some instances.

The commission asked Gerald Pagac, Director of the Division of State Parks, if the presence of oil wells at Harmonie State Park presented a management problem. He responded that every effort is made to keep park visitors a safe distance from well sites, but the wells do present management challenges.

The commission also enquired whether oil wells were located on any other DNR properties. John Davis said there were numerous properties which included oil wells or where persons other than the DNR owned mineral rights.

BUREAU OF LAW ENFORCEMENT AND ADMINISTRATION General Administration

Informational Item: Review of DNR Policy Regarding Hiring Practices of Family Members
Lori Kaplan presented this item. She explained the DNR was reviewing its policy with respect to hiring family members other than in a superior-subordinate relationship. The latter instance is controlled by the "nepotism" statutes, but the DNR has also followed a policy for employing family members working in proximity, other than where one individual works for another. Kaplan said the commission had some role in developing the current policy, so she wanted to communicate to the commission that the policy was now under review.

The Chair reflected that no action was needed for this informational item.

BUREAU OF MINE RECLAMATION Division of Oil and Gas

Informational Item: Presentation of Well Drilling and Production and the Role of the Department of Natural Resources in the Regulation of Oil and Gas Activities

Mike Nickolaus of the Division of Oil and Gas provided a slide presentation outlining the history of the regulation of oil and gas production and reclamation activities in Indiana. Jim Slutz, Division Director, noted there is some oil or gas production in 43 of Indiana's counties; the division has documentation of more than 53,000 wells drilled within the state.

DIVISION OF RECLAMATION

Informational Item: Report of Regulatory and Abandoned Mine Land Program Accomplishments and Results

Michael Sponsler, Division Director, presented this item. He distributed the "Indiana Division of Reclamation Putting it Back" and provided an overview of his division's recent efforts. Sponsler explained that nearly 267,000 acres have been permitted in Indiana for surface mining since 1982, with approximately 70 active surface mines today. He said there are twelve underground mines either permitted or pending approval, and these encompass about 78,000 acres of coal removal. Over 146,000 acres are under performance bond, and new acres are being bonded at a more rapid pace than bonded acres are being released. Sponsler reflected this trend "puts a big burden" on the division's regulatory staff. Sponsler also outlined awards earned by the division and by individual mine operators.

BUREAU OF WATER AND RESOURCE REGULATION
Division of Fish and Wildlife

Consideration of Approval of Additional Maps of Public Freshwater Lakes to Assist in Designating Significant Wetlands and Areas of Concern (as An Amendment to Commission Information Bulletin #10)

Bill Maudlin, Division of Fish and Wildlife, presented this item. He reminded the commission it had previously approved, as a nonrule policy document with publication in the Indiana Register on January 1, 1996, maps to assist in designating significant wetlands and areas of concern along specified public freshwater lakes. The current proposal would provide maps for 47 additional public freshwater lakes. He asked for approval of the maps as a supplement to those already included within Information Bulletin #10.

Jerry Miller moved to approve additional maps of public freshwater lakes to assist in designating significant wetlands and areas of concern as an amendment to commission Information Bulletin #10. The motion was seconded by Damian Schmelz. Upon a voice vote, the motion carried.

LEGAL PROCEEDINGS

Natural Resources Commission, Division of Hearings

Consideration of Report of Public Hearing and Recommendation of Hearing Officer for Final Adoption of Amendments to 312 IAC 26 Recodifying Rules which Govern the Hometown Indiana Grant Program and Other Grants applying the SCORP; Administrative Cause No. 97-105T (LSA #97-193(F))

Steve Lucas, hearing officer, presented this item. He explained that for consideration was the recodification of rules which govern administration of the Hometown Indiana Grant Program.

The program has separate elements within the DNR administered by

1. the Division of Outdoor Recreation;
2. the Division of Historic Preservation and Archaeology; and,
3. the Division of Forestry.

Lucas explained that, for the most part, the recodification carried forward existing language. The rules were scheduled for recodification as part of the general process renumbering DNR rules as NRC rules, but the process was moved forward because the most recent session of the Indiana General Assembly provided new funding for was previously an inactive program.

Notable changes are made mostly to the element administered by the Division of Outdoor Recreation. Standards would be liberalized to allow municipalities which have established recreation plans, but which do not have park boards, to qualify for grants. The minimum grant application amount would be raised from \$5,000 to \$10,000. The Statewide Comprehensive

Outdoor Recreation Plan ("SCORP"), as applied to Hometown Indiana Grants and other designated grants administered by the Division of Outdoor Recreation, would be incorporated by reference into the rules. A few modest changes would also be made to liberalize the element administered by the Division of Forestry. The element administered by the Division of Historic Preservation and Archaeology would remain essentially unchanged.

Lucas said the rule amendments included within the recodification were seemingly noncontroversial. There were very few comments, and those were supportive. He recommended final adoption be given to the establishment of 312 IAC 26 and the repeal of 310 IAC 17.

Larry Macklin said the DNR was "very pleased the General Assembly provided funding for the Hometown Indiana Grant Program." He said there was a great need for the funding locally, and the DNR anticipated more grant applications than could be funded.

Jane Ann Stautz moved to give final adoption to 312 IAC 26 and to the repeal of 310 IAC 17 regarding administration of the Hometown Indiana Grant Program, as well as other grant programs administered by the Division of Outdoor Recreation and using the SCORP. The motion was seconded by Joe Siener. Upon a voice vote, the motion carried.

Consideration of Report of Public Hearing and Recommendation of Hearing Officer for the Final Adoption of Amendments to the Quarantine for Larger Pine Shoot Beetles to Add Carroll, Fountain, Madison, Warren, and Wayne Counties; Administrative Cause No. 97-077E (LSA #97-178(F))

Steve Lucas, hearing officer, also presented this item. He said the proposal was an amendment to 312 IAC 18-3-12 to extend the quarantine of larger pine shoot beetles to add Carroll, Fountain, Madison, Warren, and Wayne Counties. Lucas explained that larger pine shoot beetles are also governed by federal regulations, and the U.S. Department of Agriculture is already implementing a quarantine for these counties in anticipation of the commission rule amendments. If the rule amendments are not adopted, the USDA will implement a statewide quarantine, rather than a quarantine limited to specified counties. He said the quarantine is intended to slow the spread of larger pine shoot beetles southward, where there are major concerns as to their likely impact on the timber industry.

Damian Schmelz spoke briefly to the commission regarding the devastation to evergreens which can result from the unchecked spread of insect pests. "That's why an effort like this quarantine is so important." He praised the competence of State Entomologist, Bob Waltz.

Jack Arnett moved to give final adoption to the amendments to 312 IAC 18-3-12 to extend the quarantine for larger pine shoot beetles to include Carroll, Fountain, Madison, Warren, and Wayne Counties. The motion was seconded by Steve Cecil. Upon a voice vote, the motion carried.

Consideration of Report of Public Hearing and Recommendation of Hearing Officer for Final Adoption of Amendments to the Fish and Wildlife Rules with Respect to the Use of Muzzle Loading Handguns and the Squirrel Hunting Season (312 IAC 9-3); Administrative Cause No. 97-017D (LSA #97-177(F))

Steve Lucas, hearing officer, also presented this item. He said for consideration were two technical corrections to the rules governing fish and wildlife. One amendment would clarify how the barrel of a muzzle-loading handgun is measured. The other clarify the limits of the season for hunting squirrels. He recommended the amendments for final adoption.

Jerry Miller moved to give final adoption to the amendments to 312 IAC 9-3 governing muzzle-loading handguns and squirrel hunting season. The motion was seconded by Jane Ann Stautz. Upon a voice vote, the motion carried.

Consideration of Report of Public Hearing and Recommendation of Hearing Officer for Final Adoption of the Recodification of Rules Governing the Administration and Regulation of Oil and Gas Production, Exploration of Wells, Test Holes, and Geophysical Surveying (312 IAC 16 and 312 IAC 17)

Steve Lucas presented this item on behalf of the hearing officer, Tim Rider. He explained the proposal would recodify the rules administered by the Division of Oil and Gas. While in many instances, these existing rules were of relatively recent derivation (example: administration of the Class II injection well program), in other instances the rules were changed little from their adoption in the 1940s (example: exploration for petroleum on state lands). Lucas said the recodification was a major undertaking and included a "lot of hard work" by the Division of Oil and Gas. He reflected that Exhibit B in the commission packet contained several clerical corrections urged by Ihor Boyko, and the hearing officer concurred in each of those corrections for final adoption. Lucas reflected that the proposed recodification did not include major policy changes from the existing language.

Damian Schmelz moved to give final adoption to 312 IAC 16 and 312 IAC 17 and to the repeal of 310 IAC 7 governing the administration and regulation of oil and gas production, the exploration of wells, test holes, and geophysical surveying. Included in the motion were the clerical corrections referenced by the hearing officer. The motion was seconded Joe Siener. Upon a voice vote, the motion carried.

Adjournment

At 9:04 p.m., CDT, the meeting adjourned.