

**ADVISORY COUNCIL**  
January 12, 2016 Meeting Minutes

**ADVISORY COUNCIL MEMBERS PRESENT**

Patrick Early, Chair  
AmyMarie Travis Lucas, Vice Chair  
Bill Freeman  
Thomas Hastings  
Bart Herriman  
Tim Karns  
R. Ross Williams

**NRC, DIVISION OF HEARINGS STAFF PRESENT**

Sandra Jensen  
Dawn Wilson  
Scott Allen

**DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT**

Cameron Clark	Executive Office
John Davis	Executive Office
Chris Smith	Executive Office
Carl Wodrich	Land Acquisition
Linnea Petercheff	Fish & Wildlife
Brian Schoenung	Fish & Wildlife
Mark Reiter	Fish & Wildlife

**GUESTS PRESENT**

Heather Harwood  
Diana Castell

**Call to Order**

Patrick Early, Chair, called the meeting to order at 10:08 a.m., EST, at the Fort Harrison State Park Garrison, 6002 North Post Road, Lawrence Room, Indianapolis, Indiana. With the presence of seven members, the Chair observed a quorum.

Chairman Early introduced newly appointed Advisory Council member, Tim Karns, and asked Karns to provide a brief autobiography.

Karns said that he is an attorney, and stated, "I'm very excited to be a part of this Board. I grew up going to Indiana state parks."

### **Election of Officers (Chair & Vice Chair)**

Bill Freeman moved to re-elect Patrick Early as Chair and AmyMarie Travis Lucas as Vice Chair. Ross Williams seconded the motion. Upon a voice vote, the motion carried.

### **Approval of minutes of meeting held on April 8, 2015**

AmyMarie Travis Lucas moved to approve the minutes of the meeting held on April 8, 2015, as presented. Bill Freeman seconded the motion. Upon a voice vote, the motion carried.

### **Reports of Deputies Director**

Chris Smith, Deputy Director of the Bureau of Water Resource and Regulation, provided his report. The Division of Reclamation spent the summer of 2015 reviewing and commenting on the Office of Surface Mining's (OSM) proposed amendments to federal regulations governing stream protection. The Division submitted comments and is anticipating discussion with OSM this summer or early fall.

Smith noted that Indiana is a member of the Great Lakes-St. Lawrence River Basin Water Resources Council (the "Council"). He said Waukesha, Wisconsin submitted a request to divert water from the Great Lakes Basin for use as a municipal water supply. The water diversion request is subject to the Great Lakes-St. Lawrence River Basin Water Resources Compact, which is an international agreement regarding the movement of water in and out of the Great Lakes Basin. The DNR, Division of Water will review Waukesha's request; however, the Council is the ultimate authority regarding requests for water diversion. "This is the first time we have a proposal so it will be interesting." Smith indicated that he would provide updates to the Advisory Council as the review progresses.

Patrick Early asked for a brief summary of pending legislation.

Smith indicated that Senator Crider submitted a bill to re-establish the DNR's authority regarding the possession of Indiana's wildlife, which was stripped by a 2015 Court of Appeals' decision. SB 109 amends statutes governing the regulation of wild animals and hunting preserves. SB 109 sets forth the framework and guidelines for hunting deer in hunting preserves and provides for the initial licensing by the State Board of Animal Health.

Patrick Early asked Sandra Jensen, Director of the Commission's Division of Hearings, to comment on Senate Bill 1 (SB 1).

Jensen stated that SB 1 proposes to eliminate the Commission's Division of Hearings. The Commission would remain as the ultimate authority for all DNR actions, but would not have staff to do its work. "How that would play out in reality, from a practical standpoint, I have no idea." She noted that concerns regarding portions of SB 1 were forwarded to the Governor's Office. Jensen said SB 1 would also strike all of the provisions of the Administrative Orders and Procedures Act (AOPA) that provide standards for the disqualification of administrative law judges who may have been involved in investigative stages of cases or who may be biased or

prejudiced through involvement in the subject matter or acquaintance with the parties. SB 1 also removes any requirements that administrative law judges disclose to parties any ex-parte communication. “According to conversations with the Office of Environmental Adjudication, the other concern is that some of the federal pass-through programs and some of what has been proposed will be problematic for the OSM and the EPA.” Jensen said SB 1 was assigned to the Senate Judiciary Committee.

The Chair commented that SB 1, if enacted, would be bad policy. He noted that the Commission’s staff, among other duties, process rule adoptions, as well as hold adjudicatory hearings to resolve disputes. “There is no way in the world the Commission can handle all of that.” The Chair said there are two administrative law judges with the Division of Hearings; however, SB1 would create an administrative court and the Commission’s judge positions would be eliminated.

Jensen said SB 1 would also add a \$150 filing fee, which may interfere with a citizen’s ability to receive due process. She explained that SB 1 is broad-based and impacts other state agencies, such as the Professional Licensing Agency, Office of Environmental Adjudication, and the Indiana Utility Regulatory Commission. Administrative law judges and environmental law judges would be replaced by an administrative court.

Bart Herriman asked whether SB 1 would amend AOPA statutes (IC 4-21.5) as opposed to just statutes governing the DNR and the Commission (IC 14). Jensen explained that IC 4-21.5 would be amended impacting many state agencies governed by AOPA and would be a “very, very significant change to the state.”

The Advisory Council members discussed possible motivations for SB 1. Both Smith and Jensen noted that there had been similar bills proposed in previous Legislative Sessions regarding pooling of state administrative law judges.

John Davis, Deputy Director for the Bureau of Lands and Cultural Resources, provided his report. He explained some of the Advisory Council’s roles. He noted that the Advisory Council has specific duties regarding requests for water withdrawal from reservoirs where DNR administers the water distribution, such as Patoka Lake, Brookeville Lake, and Lake Monroe. The Advisory Council holds public hearings to gather comment regarding water withdrawal requests. Davis explained that the Advisory Council also reviews and makes recommendations to the Commission regarding proposed rule amendments. Davis also reported that DNR staff is actively maintaining and repairing property facilities to get ready for warmer weather.

Bill Freeman asked whether DNR staff could update the Council regarding SB 365 (HB 1155), which would require the DNR, before January 1, 2017, to designate as an old forest area at least one undivided area comprising at least 10% of each state forest. John Davis stated that the DNR has made presentations periodically to the Legislature since 1991 to explain the DNR’s array of land holdings and its management practices. He noted that DNR owns approximately one-half million acres, with 160,000 acres under the management of the Division of Forestry. Davis explained that the Division of Forestry was created about 1901, and one major reason for its creation was to address the decimation of Indiana’s wood lots and forests. “The Division of Forestry was, in part, created to illustrate that, in fact, you can have a woods that does all the

functions of a woods (clean water, soil conservation) and also take timber out of the woods and still have those values and still have an ecosystem that functions for small game birds. It doesn't have to be one or the other...but to illustrate that there could be income from a forest." He commented that DNR land holding divisions use income from timber sales, and stated that it would be a mistake to prescribe land management in the Indiana Code. Davis said the DNR has a good story to tell and is this year celebrating its State Park's Centennial. The acquisition of Indiana's first state parks—Turkey Run and McCormick's Creek—was due, in part, to protect the property from the timber buyers and the harvesting that was proposed to be done in 1916. He noted that 70,000 acres of state park land is set aside and never timbered. The acreage is preserved, old growth, and becoming old growth. "We are proud of our forests and what they do now."

### **Discussion of the In-Lieu Fee for Mitigation Program**

John Davis explained that the in-lieu mitigation fee program is supported by the Governor's Office, state agencies, and the regulated community. He then introduced Carl Wodrich, Director of Ecological Services with the DNR, Division of Land Acquisition.

Wodrich gave a brief presentation regarding the Indiana Stream and Wetland Mitigation Program. The Program would provide stream and wetland mitigation credits that can be used for compensatory mitigation for unavoidable impacts to waters and isolated wetlands in the Indiana. Permits proposed for the Program are: Army Corps of Engineers (Section 10 Harbors Act, Section 404 of Clean Water Act (CWA)); Indiana Department of Environmental Management Section 401 Water Quality Certifications (CWA), Indiana Isolated Wetlands Law, and DNR Division of Water for construction in a floodway, public freshwater lake or navigable waterway. In 2014, the Commission formally adopted 312 IAC 9.5, which established an option for an in-lieu fee to mitigate for adverse impacts to fish, wildlife and botanical resources for construction in a floodway, public freshwater lake or navigable waterway. DNR permit staff determines appropriateness of proposed mitigation.

Davis explained that a mitigation bank is a wetland, stream, or resource area (maybe hundreds of acres) that has been restored, established, enhanced, or (in certain circumstances) preserved for the purpose of providing compensation for permitted and unavoidable impacts to resources. Mitigation banks are private efforts approved by the Army Corp of Engineers, with five or six approved mitigation banks in Indiana. One of Indiana's mitigation banks is located at the head waters of White River in Henry County. A permittee would have the option to buy credit from this mitigation bank, if the permittee's disturbance is located in the upper White River watershed. Indiana has 12 state-wide watershed-based service areas and the existing banks would have preference. Davis said that within those services areas, if there is an existing private mitigation bank, that bank would have preference "so we are not running a private business out of business by this program." The first preference is that mitigation bank credits be used before using in-lieu fee credits. The Natural Resources Foundation will manage the funding collected under the Program. Davis stated that the Department is hoping the Program becomes available July 2016.

Bart Herriman asked who would get notice of an impact or mitigation effort. John Davis explained that there has been outreach and discussion with interested persons and agencies. He

said the Department has been gathering contact information for potential credits in service areas over the last year and a half. “I would hope we would have a portfolio of five or six sites in every one of the service areas that we could investigate, and hopefully...two or three would be real projects.”

Tim Karns asked about the timeline between a permitted project’s impact and when the new wetland (or resource) is purchased. “It sounds like you have five or six parcels lined up. Is it going to be something where the agency already has a bank of properties that are going to be paid for or would the site be purchased when the funds come in?” Davis said that both scenarios may occur. He explained that when DNR sells a mitigation credit, the Department has to be doing restoration within three growing seasons. “With the first credits sold, we’ll be racing to get a 20 or 30-acre parcel started. ...that’s why we are looking for [acreage] that is already owned by [the DNR] or partners of [DNR] like The Nature Conservancy or the Central Indiana Land Trust.” He noted that there may be credits leftover when the restoration is completed.

Bill Freeman asked for clarification regarding the sale price discrepancy between mitigation banks and the in-lieu fees. He reflected that the price of credits from a mitigation bank is much higher than the in-lieu fees, which are far below the market price. Wodrich explained that because DNR is a government agency it cannot add a profit margin in the credit price. Wodrich said the permitting authorities are likely going to add a 15% to 20% increase in the number of credits so that a permittee would need to buy on top of the mitigation ratio if the permittee elects to go through the In-Lieu Fee Program in order to account for the three year lag. “So while it sounds cheaper...it may end up being actually a pretty level playing field at the end of the day.”

### **Discussion of drone use on public lands**

John Davis presented this item. He said that the DNR has received requests from people to fly drones over DNR property, for instance, to film, tape, or record a timber harvest. “I think we are at the very baby stages of this...and I feel like we probably should allow people to see things and record things that we do. I don’t have a problem with giving someone permission to film what actually happens..., but I’m very worried about ‘hobby drone’ people flying drones” along the beach at the Indiana Dunes State Park, in campgrounds, or flying a drone around a hunter or flying around wildlife in order to move that wildlife from one place to another.

Davis said the Department’s Property Rules Committee, which is made up of central office staff and field staff, is reviewing drone use on DNR owned property and will make recommendations. He noted that the existing aircraft provisions state that unmanned aircraft cannot take off or taxi on state land. He stated, however, that existing regulations may have anticipated the use of model airplanes, but those provisions are no longer adequate.

Bart Herriman commented that drones should not be armed.

Bill Freeman noted that drone technology has advanced significantly. He said drones could be launched from private property and flown onto DNR property.

AmyMarie Travis Lucas noted that certain drones can travel 6,000 feet line of site. She stated that there have been criminal cases involving young children being photographed. Travis Lucas also reflected that there is a potential for problems at state park beaches.

John Davis said the Department will propose rule amendments to address the use of drones on DNR property and present the proposal to the Advisory Council.

Williams asked whether the DNR has received complaints regarding the use of drones. Davis answered in the negative.

### **Discussion of scouring of lake bottoms by boats**

The Chair noted that over the last couple of years the Advisory Council and the Commission have discussed the issue of lake bed scouring by high speed boating. He explained that a rule amendment is not being proposed today to address the issue, but this agenda item is to provide additional information for broad discussion. The Chair then deferred to Brian Schoenung, Chief of Fisheries with the DNR's Fish and Wildlife.

Sandy Jensen introduced Heather Harwood from Lake Wawasee Conservancy Foundation (the "Foundation"). Jensen said Harwood is in attendance to observe, but said Harwood would, if asked, provide information regarding the Foundation and lake bed scouring specific to Lake Wawasee.

Brian Schoenung provided a brief presentation regarding the issues surrounding scouring of lake beds by boating. He said scouring impacts water quality, turbulence, and shoreline erosion. He explained that nutrients that have settled at the bottom of lakes become suspended in the water column, which attributes to alga blooms. Aquatic plants (and aquatic nuisance species) are uprooted either by turbulence or direct contact. He noted that many aquatic plants are spread by fragmentation. Increased turbidity will decrease light penetration, which ultimately reduces the amount of aquatic vegetation. Schoenung explained that wave action impacts emergent and submerged aquatic vegetation. He noted that all boats have the potential to scour the lake bottom, not just high-speed boats. Schoenung explained that there are several mechanisms to protect aquatic resources, such as the establishment of ecozones and the prohibition of operating a boat above idle speed within 200 feet from the shoreline. Ecozones are generally initiated by the local community surrounding the public freshwater lake, and the petition for an ecozone is reviewed by the DNR and the Commission.

The Chair reflected that Commission and DNR jurisdiction regarding the creation of ecozones applies to public fresh water lakes, but would not apply to a lake or reservoir owned by a utility, such as Geist Reservoir, or a privately owned lake. Davis agreed, and said that Geist Reservoir and a few other lakes are specifically excluded by statute.

Heather Harwood noted that the first ecozone established in Indiana was on Lake Wawasee. Harwood stated that she would like to have a study conducted to determine the impacts of the ecozones on the aquatic habitat. "We're interested in getting another study or more science on the effect of the downdrafts of the boats and how effective the ecozone buoys are actually

protecting the edge of the wetlands.” She thanked the Advisory Council for meeting to discuss this important issue.

Davis asked Harwood to comment regarding potential reaction of the local Lake Wawasee community if the ecozones were changed or increased. Harwood noted that there are local citizens sensitive to the issues. She noted that the ecozones have not impacted Conklin and Johnson Bays to the point where people cannot ski in the bays. She said that if there was more science to support a change in an ecozone or establishing a new zone, there would be acceptance by the local community.

Harwood introduced Diana Castell, the Chair of the Foundation’s Ecology Committee.

Castell noted that Lake Wawasee is the largest natural inland lake and “we are destroying it basically. What can we do? We are not going to do away with the boats in the lake.” She also requested that additional studies be conducted to determine the effectiveness of ecozones in order to demonstrate to the local community that ecozones have contributed to the conservation of Lake Wawasee. “This would help us a lot...and help other lake communities.”

The Chair thanked Harwood and Castell for traveling and providing their comments. He noted that if there is definite science indicating that lakes are being destroyed by boat scouring, then it is the responsibility of the DNR and the Commission to take action to preserve the resource.

Chris Smith asked whether a scientific study would qualify under the Lake and River Enhancement Program (LARE).

Mark Reiter said if the scientific parameters involved impacts on aquatic vegetation, the study may qualify for LARE funding.

John Davis noted that a DNR biologist may be able to meet with the Foundation to provide guidance and resources, such as maps and other information, which may benefit the Foundation’s efforts.

Schoenung noted that the science is settled regarding the impacts of lake bed scouring by boats.

Bill Freeman noted that scouring of lake bottoms by boats is a state-wide issue. John Davis agreed.

The Chair noted that today’s discussion was preliminary in order to familiarize the Advisory Council with some of the issues. He stated that the Advisory Council will conduct a more in-depth review of all the issues in the future.

## **Adjournment**

The meeting adjourned at 10:50 a.m., EDT.