

ADVISORY COUNCIL
January 9, 2018 Meeting Minutes

ADVISORY COUNCIL MEMBERS PRESENT

Patrick Early, Chair
AmyMarie Travis Lucas, Vice Chair
Ross Williams
Tim Karns

NRC, DIVISION OF HEARINGS STAFF PRESENT

Sandra Jensen
Scott Allen

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Cameron Clark	Executive Office
John Davis	Executive Office
Chris Smith	Executive Office
Linnea Petercheff	Fish & Wildlife
Mark Reiter	Fish & Wildlife
Terry Hyndman	Law Enforcement
Lloyd Arnold	Law Enforcement
David Bausman	Legislative
John Seifert	Forestry
John Bacone	Nature Preserve
Cary Floyd	Nature Preserve

GUESTS PRESENT

Herb Higgins

Call to Order

Patrick Early, Chair, called the meeting to order at 10:03 a.m., ET, at the Fort Harrison State Park Garrison, 6002 North Post Road, Blue Heron Ballroom, Indianapolis, Indiana. With the presence of four members, the Chair observed a quorum.

Election of Officers (Chair and Vice Chair)

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

Reports of Deputies Director

John Davis, Deputy Director for the Bureau of Lands and Cultural Resources, provided his report. Davis stated that the Department has been working on the In-Lieu Mitigation Program

(Program) for two years. He stated that the U.S. Army Corp of Engineers is reviewing the Program documents, and an agreement is expected soon.

Davis announced that the Division of Nature Preserves celebrated its 50th Anniversary in 2017. Davis said that 2018 marks the 40th Anniversary of the Indiana Heritage Database, a database that identifies animal and plant species of significant concern and that are both state and federally protected. Davis noted that the Department accesses the Indiana Heritage Database in its permit review process.

Davis stated that the Department established an orientation class for new Division of State Parks employees called “Pro School.” He explained that the class is held at a state park property on a biennial schedule, and will provide new employees an opportunity to share experiences and how they have learned from those experiences.

Davis noted that the Department is in need of upgrading its software regarding special hunts in order to promote the best possible experience for the users.

Chris Smith, Deputy Director of the Bureau of Water Resource and Regulation, provided the Department’s new organizational chart to the Commission members, and noted the list of contact numbers. Smith stated that he and John Davis are also available to answer questions and direct Advisory Council members to the right Department staff to answer questions or help with an issue.

Smith stated that Russell “Rusty” Retherford is the new Director of the Division of Oil and Gas, replacing Herschel McDivitt who retired in June 2017. He noted that Retherford has employment history with both the Division of Oil and Gas and the Division of Reclamation. Smith announced that Ryan Mueller is the new Director of the Division of Water, replacing Michael Neyer who retired after 42 years of service. Smith explained that Mueller previously served as Director of the Missouri Department of Natural Resources’ Water Resource Center. Smith noted that Steve Morris, the Director of the Division of Outdoor Recreation, retired in September 2017, but the position remains open. Smith said that Samantha DeWester was hired as the Department’s new General Counsel, the position previously held by Joe Hoage who transferred to the Bureau of Motor Vehicles. Smith also noted that Lloyd Arnold is the new Director of the Division of Law Enforcement, and following Phil Bloom’s recent retirement, Tara Wolf was hired as the Director of the Division of Communications. Smith said that Sam Hyer transferred to the Bureau of Motor Vehicles and David Bausman has become the new Legislative Director.

Smith stated that the Division of Entomology and Plant Pathology had an increase of 40,000 requests for phytosanitary inspections. Smith explained that phytosanitary inspections are pest and disease inspections of grain export shipments. He said that Indiana saw an increase of grain being shipped out of state causing the increase.

Smith stated that in 2017, the Division of Historic Preservation and Archaeology had 57 accidental discoveries of archaeological remains, with four of those discovering human remains. He explained that when there is a discovery of human remains, the site review is a much slower process than if the site had just contained artifacts. Smith said that when artifacts are identified a

private consultant must be engaged to develop an archaeological plan to monitor and ensure that best practices are used in removing the artifacts from the site.

Smith stated that on September 19, 2017, the Commission repealed 312 IAC 16, which governed oil and gas well activities, and gave final adoption to 312 IAC 29 governing the same subject matter. Smith reported that the Division of Oil and Gas has been educating oil and gas operators on the new regulation changes.

Smith stated that the Division of Reclamation received the Mid Continent Abandoned Mine Land Program Award from the federal Office of Surface Mining and Reclamation Enforcement. He stated that the award recognized the Sugar Ridge Fish and Wildlife Area project, which fixed dangerous high walls and an eroding gob pile enhancing the water quality and wildlife habitat on the former surface mined land. Smith noted that Jack McGriffin, the Assistant Director of Operations for the Division of Reclamation, retired at the end of 2017. He said that McGriffin was hired when the Division of Reclamation was created in the 1980s, noting that McGriffin and his knowledge will be missed.

Smith stated that the Division of Water is upgrading its “Unity System”, which is the Division’s electronic permitting and database system. He noted that the new Windows based system will be coming online in the next month. Smith stated that the Division of Water has been involved in water infrastructure discussions throughout the state with regards to municipal water.

Approval of minutes of meetings held on January 11, 2017

The chair called for a vote to approve the minutes of the meeting, held on January 11, 2017, as presented.

AmyMarie Travis Lucas, moved to approve the minutes of the meeting held on January 11 2017, as presented. Tim Karns seconded the motion. Upon a voice vote, the motion carried.

Discuss proposed amendments to rules governing the use of rifles during hunting season on public property

David Bausman, Legislative Director, presented this item. Bausman stated that SB 20 provides some clarification regarding rifle use on Department properties. Bausman said that the Department has provided educational information and provided technical assistance to the Indiana House and Senate by offering suggested language to address the use of rifles while hunting on public land. He noted that both houses are working to amend IC 14-22-2-8 to fix the issues. Bausman noted that the technical language the Department proposed provides clarity while allowing the Commission to adopt rules that govern rifle use on public land. Bausman stated that he anticipates that State Representative Eberhart will approve similar language for HB 1292, which is the Department’s Omnibus Bill.

Reiter clarified that the proposed amendment to IC 14-22-2-8(e) would give the Department the authority to adopt rules to authorize the use of rifles on public property.

Davis asked whether the Department would also have the authority to adopt rules governing special antlerless season and deer reduction season.

Reiter answered in the affirmative, and explained that the Department would have the authority to adopt rules for all seasons in which firearms would be allowed.

The Chair asked whether the Department has had an increase in firearm related accidents.

Reiter indicated that there has not been an increase in firearm related accidents, and noted that there has been an increase over the past few years of those who hunt with rifles and the number is expected to continue to rise.

The Chair asked whether the Department was still pursuing deer reduction.

Reiter stated that the Department was conducting strategic deer reduction in certain targeted counties, but noted that the current goal is to manage the deer population rather than reduction. Reiter stated that recent surveys show that people generally report seeing fewer deer. In response, the Department's next five year strategy is to engage in reduction efforts only in those counties where deer overpopulation still exists. Reiter stated that the Department is developing a new system to replace the bonus county for antlerless deer.

The Chair asked whether the Department adopted a special, late hunting season, for antlerless deer for deer reduction.

Reiter answered in the affirmative. He stated that the antlerless deer reduction emergency rule is still in effect, but only for counties that have a bonus antlerless deer number of four or larger. Reiter said that there is a balance of making sure there are enough deer to make deer hunters interested, but not too many deer where land owners lose crops.

Davis stated that it is Department policy to try to reduce the deer population in places that are more urban and cannot be hunted with a firearm.

The Chair asked if a hunter would be permitted to hunt on public and private land with any caliber larger than a .243 inches if the statutory amendments at IC 14-22-2-8 are enacted.

Reiter said "No" and explained that on public land rifle cartridges would be consistent with the administrative rule that was originally adopted in 2007 and that has been amended once to increase the case length.

The Vice Chair asked whether law enforcement has to repeatedly engage in educating citizens on the difference between "public land" and "private land."

Terry Hyndman stated law enforcement does not have an educational piece for that distinction and said that citizens understand. He noted that the hunters that hunt Department properties are already aware that the properties may have unique differences in what is allowed, and the hunters do their research.

Lloyd Arnold, Director of the Division of Law Enforcement, added that the 2017 hunting season was the first time that hunting deer with certain rifles was legal and there were no major concerns.

Bausman stated that, if amendments are enacted, IC 14-22-2-8 is set to expire in June of 2020, and this will have the effect of setting everything for public lands back to what was allowed by the 2007 rule. If the section expires and there is no further legislation the private land piece would remain in effect according to Bausman. Bausman said that HB 1292 also addresses the rifle deer hunting season under IC 14-22-2. Bausman explained that a provision in HB 1292, SECTION 7, would exempt a federal wildlife management agency employee who is acting in performance of the employee's duties from the prohibition regarding hunting, shooting, or killing a wild animal from within, into, upon or across a public highway. Bausman indicated that he did not believe this provision will be one that causes controversy.

Higgins asked whether the Department could foresee authorizing the use of rifles on public land in the future.

Bausman explained that under IC 14-22-2 the Commission is presently authorized to adopt rules to allow the use of rifles on public property. He stated that the addition of IC 14-22-2-8(e) is a reaffirmation of that rulemaking authority.

Information Item: Presentation by the Division of Forestry on the Timber Buyer Licensing Program

John Seifert, State Forester and Director of the Division of Forestry, presented this item. Seifert noted that IC 25-36.5 (Indiana Timber Buyer's Statute), enacted in 1972, gives the Department the authorization to regulate the timber industry. He noted that, before 1972, there were landowner reports of stolen trees or non-payment for cut trees, and prosecutors were unwilling to prosecute the offenders. He noted that IC 25-36.5 was amended in 2016 increasing timber buyer license fees and also increasing the performance bond amount to \$5,000 minimum and \$50,000 maximum, effective January 1, 2017.

Seifert noted that there are currently 520 timber buyer licenses issued and over 1,000 timber buyer agent licenses. He said that the Division of Forestry conducts appraisals to determine the value of timber, and works with the Division of Law Enforcement and local prosecutors to prosecute cases involving timber theft. Seifert noted that there are timber contract disputes where the property owner did not receive the payment that the property owner expected from the cut timber. Seifert said that the Division of Forestry may, in its discretion, suspend a timber buyer's license or deny a license due to a conviction, including a conviction that does not necessarily involve timber theft. He noted that suspending or revoking a license impacts a timber buyer's ability to make a living or pay restitution so the Division of Forestry has been conservative as to revoking a license, but this has sometimes resulted in a timber buyer continuing to operate in an illegal manner and accumulating additional violations. Seifert added that in the past the Division of Forestry has conducted more timber buyer education and he explained that IC 25-36.5 authorizes the Commission's Division of Hearings to decide

complaints filed by property owners seeking restitution from a timber buyer or a complaint filed by the Department against a timber buyer or a timber buyer's agent under IC 4-21.5 and 312 IAC 3.

Seifert stated that the Department is drafting a proposed rule and statutory amendments to allow timber buyers with convictions to be able to reapply for a timber buyers license. He noted that an amendment to allow an individual to hold a timber buyer's license not sooner than five years post-conviction is being considered. The proposal is intended to require the timber buyer to post the maximum bond amount for two years any subsequent violation of IC 25-36.5 would result in immediately license revocation or suspension.

The Vice Chair asked whether the Division of Forestry only revoked a timber buyer's license after a felony conviction. Seifert answered in the affirmative.

The Vice Chair suggested that the Department consider allowing reapplication for a timber buyers license only after an expungement of the arrest and conviction. She explained that if a timber buyer obtains an expungement, then a felony conviction would be removed from the individual's record and the conviction would not be able to be considered in the licensing review. She noted that this option would eliminate the need for additional rulemaking.

Chris Smith asked whether it would be the felon's responsibility to seek to have the conviction expunged.

The Vice Chair answered in the affirmative. She explained that a felon would have to file a petition with the court to begin the expungement process. She noted that there are certain requirements, but that it is a process that can be done without an attorney. She stated that the Department could also contact the Indiana Prosecuting Attorneys Council to discuss opportunities to provide an educational presentation on timber theft. The Vice Chair noted that some prosecutors in counties where timber theft does not often occur may not be aware of the importance or impact of timber theft.

Tim Karnes asked whether the Division of Forestry appraises timber on a civil action that has already been filed or whether a petitioner requests an appraisal as part of a dispute before an action is filed. He also asked whether the Division charges an appraisal fee.

Seifert responded that the Division of Forestry could be involved either before or after a civil case is filed, but noted that the Division does not currently charge an appraisal fee.

Karnes recommended the Division of Forestry begin charging a fee for timber appraisals to recoup the resources that are being spent. He also inquired as to the reason why the Department would not be more aggressive in revoking or suspending a timber buyer's license, particularly if the timber buyer is a repeat offender. Karnes suggested a more aggressive enforcement of timber theft regardless whether the offense rises to the level of criminal action.

Seifert said that the more egregious violators are already operating outside of the law, but that some county prosecutors will not pursue prosecution of timber violators. Seifert gave an example

of a violator who has had multiple infractions in multiple counties, but the Department could not find a prosecutor who would file the case.

The Vice Chair said that the Department could discuss with the prosecutor the concept of concurrent jurisdiction. She said that concurrent jurisdiction allows a prosecutor to combine cases from other counties, if all the facts are the same and witnesses are similar. The Vice Chair asked what reasons local prosecutors gave for not filing a timber case.

Terry Hyndman said that local prosecutors respond that due to existing case load or other priorities prevent the filing of timber theft cases. Hyndman stated that another reason may be that local prosecutors are not familiar with the complexities of timber cases or Department regulations.

Karnes stated that a solution may be to create a rule or statute that would assess a monetary penalty for violations. He suggested that in addition to a penalty there could be an educational requirement before license reinstatement.

Seifert stated that there are monetary penalties associated with stumpage values of timber theft and other civil penalties that may be imposed.

The Vice Chair stated that, as the Jackson County Prosecutor, she manages six deputy prosecutors, and indicated that she does not understand why a prosecutor would be confused by IC 25-36.5. She noted that if prosecutors are confused, prosecution could proceed under the theft statutes.

Discuss adding definition of “ginseng grower” to IC 14-31-3 to distinguish from a ginseng dealer

Terry Hyndman, Lieutenant Colonel with the Division of Law Enforcement, presented this item. Hyndman stated that Charles Anders (Petitioner) filed a petition on October 10, 2017 seeking to amend rules governing ginseng to allow for the harvesting of cultivated ginseng. Hyndman noted that currently the Indiana regulations are stricter than the federal guidelines administered by the U.S. Fish and Wildlife Service. Hyndman said the Petitioner is requesting to have the ability to harvest the seeds from cultivated ginseng for sale to other growers; that cultivated ginseng be allowed to be sold at a younger plant age than is currently allowed; and that cultivated ginseng be allowed to be sold outside what is currently the primary season established for wild ginseng.

Hyndman explained that a committee was appointed to review the petition. John Bacone and Cary Floyd, from the Division of Nature Preserves, Jack Seifert, from the Division of Forestry, Megan Abraham, from Entomology and Plant Pathology, and Hyndman made up the Committee. Hyndman said the review committee believed the petition was reasonable and would support the rule amendment; however, he said that ginseng is governed by both 312 IAC 19-1 and by IC 14-31-3. He noted that the administrative rule cannot be changed until a statutory change is made.

Hyndman stated that the federal government recognizes a difference between wild ginseng, wild simulated ginseng, woods grown ginseng, and cultivated ginseng, but Indiana does not. He noted

that woods grown and cultivated ginseng are grown in tilled or raised beds. Hyndman stated that ginseng is governed by the Convention on International Trade in Endangered Species (CITES), which ensures that international trade in specimens of plants does not threaten their survival. Davis stated that ginseng cannot be exported internationally unless the ginseng has been inspected and certified.

The Vice Chair asked about how to distinguish between a cultivated ginseng root and a wild ginseng root.

Hyndman explained that the wild root of ginseng has ridges and growth rings (nodules) on the rhizome. Hyndman noted that cultivated ginseng is very smooth and grows quicker, but is more susceptible to disease. Hyndman stated that cultivated ginseng's susceptibility to disease is the reason for proposing that ginseng be allowed to be harvested at a younger age than is currently allowed for wild ginseng.

The Chair asked if the sale and harvesting of ginseng is a big business in Indiana and whether wild ginseng is common in Indiana.

Hyndman stated that ginseng is an endangered plant protected by CITES. Hyndman stated that dried ginseng roots are valued at \$400 to \$800 per pound. Hyndman said that a person would not be allowed to harvest ginseng on someone else's property without permission and to do so would be theft. Hyndman said that when the ginseng is harvested the whole plant is removed.

The Vice Chair noted that the Jackson County Prosecutor's Office has prosecuted ginseng theft. She noted that the prosecution of ginseng cases has led to the prosecution of other crimes involving methamphetamine.

Davis commented that there are instances where people will drop someone off on a state property and pick them up later after that person has searched a property or dug up ginseng. Davis said that ginseng requires shade to grow and can be found in wooded areas.

Hyndman explained that there is a large investment with cultivated ginseng due to the necessity of building large artificial shade over raised beds.

Ross Williams asked if the areas where cultivated ginseng is grown in Indiana would be considered large nursery operations.

Hyndman answered that Indiana has a few farms where ginseng is grown, but under current law it is difficult for those farms to be profitable. Hyndman noted that Wisconsin and Ontario have large cultivated ginseng farms that are profitable.

Hyndman said that there needs to be a change in the IC 14-31-3 to define the different types of ginseng and to distinguish between licenses to sell wild ginseng and cultivated ginseng. Once IC 14-31-3 is amended, the Department could then proceed with rule amendments (312 IAC 19-1) to allow the farming and sale of cultivated ginseng. Hyndman noted that changes to the statute and rules would allow the harvest and sale of the seeds from cultivated ginseng; the sale of

cultivated ginseng at a younger plant age than is currently allowed for wild ginseng; the sale of cultivated ginseng outside the current primary season established for wild ginseng.

The Chair asked about the use and purpose of ginseng.

Floyd explained that a chemical in the American ginseng plant is categorized as a stimulant, but in Asian ginseng that chemical is considered to be a sedative. Floyd said that in Asian culture for very large ginseng plants that could get over 50 years old, with very large roots, are given as gifts and can be purchased in boutiques. Hyndman also noted that ginseng is used for medicinal purposes.

Williams asked whether it was legal to pick ginseng in state parks.

Hyndman stated that ginseng is a protected plant on all state and federal property.

Hyndman noted that the Petitioner had been working with State Senator Brandt Hershman in drafting amendments to IC 14-31-3 and that David Bausman, the Department's Legislative Director, is working with the Legislature on a statute that would distinguish wild ginseng from cultivated ginseng. Smith stated that State Senator Brandt Hershman has since vacated his seat in the State Senate.

Karnes asked whether there have been any issues with the spreading of disease from cultivated ginseng to wild ginseng.

Floyd stated that he was unaware of any disease spread from cultivated to wild ginseng.

Karnes asked why Indiana law governing ginseng is stricter than the federal law.

Hyndman stated that federal law has been changed in the last couple years and has reversed some of the federal policies that governed ginseng. Hyndman noted that a ginseng farmer would not plant cultivated ginseng anywhere close to wild ginseng, because wild ginseng is so much more valuable than cultivated ginseng.

Adjournment

The meeting adjourned at 11:31 a.m., ET.