

# NATURAL RESOURCES COMMISSION

Minutes of July 17, 2002

## MEMBERS PRESENT

Michael J. Kiley, Chair  
John Goss, Secretary  
Jane Anne Stautz  
Megan Murphy  
Jerry Miller  
Larry Goode  
Raymond McCormick, II

## NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas  
Sylvia Wilcox  
Jennifer Kane  
Debbie Michaels

## DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Carrie Bales	Executive Office
John Davis	Executive Office
Paul Ehret	Executive Office
Carrie Doehrman	Executive Office
Jim Wichman	Forestry
Greg Ellis	Legal
John Bacone	Nature Preserves
John Baker	Parks and Reservoirs
Jerry Pagac	Parks and Reservoirs
John Richardson	Reclamation
Marvin Ellis	Reclamation
Brock Mayes	Reclamation
Doug Noble	State Museum

## GUESTS

Kenneth Lauter	Martha Clark
Bruce Clear	Brian Wright
Nat Noland	Tim Maloney
Randy K. Jones	Greg Hersberger
Dennis C. LeMaster	Jane Stout Fribley

## MONTHLY REPORTS

Michael J. Kiley, Chair, called to order the regular meeting of the Natural Resources Commission at 10:00 a.m., EST, on July 17, 2002, at The Indiana State Museum Auditorium, Indianapolis, Indiana. With the presence of seven members, the chair observed a quorum.

Jerry Miller moved to approve the minutes of May 22, 2002. Jane Anne Stautz seconded the motion. Upon a voice vote, the motion carried.

John Goss provided the Director's Report. "First of all, I would like to say that we are really happy to be here in the new museum auditorium." Director Goss called on Doug Noble to give an update on the progress of the museum.

Doug Noble, Chief Executive Officer, Indiana State Museum, reported that since opening day May 22 and through June 30, 2002, the museum had 38,377 visitors. Noble reported that there has been an "enormous interest" in museum membership. He said the membership program has acquired 3,527 new members since opening day, and "we are looking forward to doubling or tripling at the end of the year." He noted that the IMAX, since its inclusion as "part of an institution," has experienced "much better" attendance. Noble said that the IMAX Theatre has had 28,209 visitors.

Noble said that on July 10, 2002, the public was able to make Christmas reservations for the "recreated" L. S. Ayres Tea Room, with 525 calls thus far. He said that as people call for reservations, they have related their memories of the original restaurant. Noble reported the "most popular" item on the menu is Chicken Velvet Soup. "It's a great and wonderful opportunity to have all this stuff up and running so very successfully."

Director Goss reported that Dave Vice, who had been a DNR Deputy Director for approximately twelve years, recently took a position with the Indiana State Police. He said Vice would be implementing the new statewide radio communications system program. "He will be working with us to get our law enforcement people on that same process."

Director Goss deferred to Colonel Bruce Clear to give a report on the North America Wildlife Enforcement Officers Association (NAWEA) Conference being held at the Holiday Inn in Columbus, Indiana. Clear said the conference was the Association's 21<sup>st</sup> annual event, and reported 400 conservation officers from all over North America were in attendance. "We are really excited to host the event." Clear said there were several guest speakers and other educational and training sessions, such as Game Warden Skill Day, scheduled throughout the weeklong conference.

Goss reported on the national deer problem of Chronic Waste Disease. He said the DNR is working with the Indiana State Board of Animal Health on the ban of importation of deer into the state. He said there has been "good cooperation" between the agencies. He explained that a scientific sample would be taken at each check station during opening weekend of deer season to make sure Indiana's deer population is not impacted with the disease. "This is a top concern for our Division of Fish and Wildlife." He also noted that Chronic Waste Disease is a major concern in the state of Wisconsin.

Goss gave a brief budget report. “We have finally a budget for this year, and we are getting ready to prepare the budget for the next two years. Things are still very tight. We did not get any relief. No additional money is going to be available to undo any of the program cuts that we had to make for this season. Our instructions are to plan on a flat budget for the next two years.” Goss provided Commission members with a packet of news clippings addressing DNR fee increases. He said the DNR is “getting quite a lot of coverage” regarding the raise in fees.

Jerry Miller, Chairman of the Advisory Council for Lands and Cultural Resources, reported the Council had not met since the last Commission meeting.

John Davis, Deputy Director, reported that the Division of State Parks and Reservoirs completed three open houses during the past three weeks to gather public input about fees. Davis also reported that Potato Creek State Park celebrated its 25<sup>th</sup> Anniversary this month. He noted that “very fittingly” Dr. Otis Bowen was in attendance and gave a “pretty close repeat of the dedication speech he gave 25 years ago. It was a very nice ceremony and good to have Dr. Bowen come back and take part.”

Davis reported that there was an unveiling of the new Lewis and Clark audio/visual program at the Falls of the Ohio State Park Interpretive Center. Also on exhibit is Dr. John Hankla’s private dinosaur collection.

Davis reported that the administrative responsibility of the Jones House and Mansfield Mill, two historic sites, was transferred to the Division of State Parks and Reservoirs. He said, “We thought it would be better administered in the program of Lincoln State Park, which is connected with the Abraham Lincoln house located in the park.”

Davis reported that a court case has been filed for the culling of timber in Morgan-Monroe and Yellowwood State Forests. He said that three timber sales have been completed. Davis commented that the Division of Forestry has multiple staff and fire crews in the field throughout the West fighting the fires. He informed, “Everything is going pretty well for all of them.”

Davis stressed that the new Farm Bill is a “big issue” within the Division of Forestry. “We have new money, a new program, some of which came from the Natural Resource Conservation Service and some from the U. S. Forest Service.” Davis also said that 18 district foresters would be administering the program along with private landholders throughout the state.

Ray McCormick, Chairman of the Advisory Council for Water and Resource Regulation, reported the Council had not met since the last Commission meeting.

Paul Ehret, Deputy Director, commented that with the DNR reorganization he has “picked up” the responsibility of the Divisions of Historic Preservation and Archaeology and Entomology and Plant pathology. “I think that’s going to keep me busy relative to coming up to speed on a variety of programs and the controversies that they’re involved in.”

Ehret reported that the public hearing on the proposed rule establishing ecozones on Lakes Wawasee and Syracuse is scheduled for 6:00 p.m. on August 5, 2002, at the Oakwood Inn Conference Center in Syracuse, Indiana. Ehret informed that Steve Lucas would conduct the hearing. “I’m sure that’s going to be an interesting hearing. We’ve had some pretty good

feedback, and I think there's some support for that rule. However, I'm sure it will probably have it's own share of controversy."

Ehret said a meeting was scheduled for July 29<sup>th</sup> to discuss boating activities with interested parties and representatives. "We hope to have a final draft of the rule available to present to the Advisory Council on August 8, 2002. "If that goes well, we are hoping to get it on the August 20<sup>th</sup> NRC agenda. As a fall back, we can possibly put it on the September NRC agenda. Ehret said that the NRC meeting for September is scheduled to take place in South Bend, Indiana, "which might not be a bad location for that discussion anyway."

Ehret reflected on the significance of the Farm Bill to the Division of Soil Conservation. He said that implementation of the Farm Bill is a "huge issue with them. The amount of money that is available for that is somewhat unprecedented. Staff is going to be very busy implementing those programs with the assistance of the conservation districts and also the NRCS."

Ehret reported that the Coastal Zone Management Program has been submitted to NOAA for final fiscal approval. "It is hoped that the program will be approved in September." He stated, "This has been a long course, and we are looking forward to participation in the program and bringing in some much needed Federal money for good projects in the coastal area."

Chairman Kiley reported that Damian Schmelz, a long-time Commission member and a representative from the Indiana Academy of Sciences, recently underwent triple-bypass heart surgery. Kiley informed that Schmelz is recovering at the infirmary at St. Meinrad Archabbey. He said Schmelz hoped to be recovered by the October 2002 Commission meeting.

## **PERMANENT APPOINTMENTS AND PERSONNEL INTERVIEWS**

### **Permanent Appointment for the Assistant Property Managers at Jasper–Washington State Forest and Jasper–Pulaski State Tree Nursery**

Jim Wichman from the Division of Forestry Nursery Section presented this item. He announced that Jeremiah Lemmons and Benjamin McKinney were recommended for permanent appointments as Assistant Property Manager at Jasper–Washington State Forest and Jasper–Pulaski State Tree Nursery, respectively.

Jerry Miller moved to approve Jeremiah Lemmons for Assistant Property Manager at Jackson-Washington State Forest and Benjamin McKinney for Assistant Property Manager at Jasper-Pulaski State Tree Nursery. Jane Anne Stautz seconded the motion. Upon a voice vote, the motion carried.

### **Permanent Appointment for the Assistant Property Manager at Glendale Fish and Wildlife Area**

Jim Wichman from the Division of Forestry Nursery Section presented this item. Wichman said that there were two personnel interviews for the position of Assistant Property Manager at Glendale Fish and Wildlife Area. Robert Tarter was recommended for permanent appointment as the Assistant Property Manager at Glendale Fish and Wildlife Area.

Jane Anne Stautz moved to approve Robert Tarter for permanent appointment as Assistant Property Manager at Glendale Fish and Wildlife Area. Megan Murphy seconded the motion. Upon a voice vote, the motion carried.

## **DIVISION OF NATURE PRESERVES**

### **Consideration of the Dedication of Stout Woods Nature Preserve, Henry County**

Chairman Kiley said, in opening remarks, “It is always a very pleasant task of the Commission” to consider dedication of nature preserves.”

John Bacone, Director of the Division of Nature Preserves, presented this item. He said, “We are happy here today to bring you the dedication of Stout Woods Nature Preserve.” This is an old growth remnant woods. “It’s a very small remnant of what was once much of East Central Indiana, most of which is now farm ground.” Bacone said the Stout family gave the tract of land to Purdue University. “It is a wonderful old growth woods,” and owned and managed by Purdue University, Department of Forestry. He said Dennis LeMaster was present from Purdue to make comment.

Dennis LeMaster is a professor and the head of the Department of Forestry and Natural Resources at Purdue University. “We work closely with the Indiana Department of Natural Resources.” LeMaster explained that Purdue has had Stout Woods since 1964. It was given to us by the Samuel and Stella Stout for education and research purposes. “It’s a rather smallish tract of land, which is somewhat problematic. While it is a remnant old growth, someone snuck in many years ago and took out some black walnut trees. You can see the stumps in some places if you know where to look. Nevertheless, it is a fine example of the ecology of the flatwoods in Central Indiana. There are not many places left like that.”

LeMaster said the Stout family wanted to have greater use of the property, so they came to Purdue University in 2001. “We decided to develop a nature trail working with the Redtail Conservancy. I have walked it several times. We have agreed to have a perpetual conservation easement on that property. We are going to develop a nature trail working through 4-H, the Division of Nature Preserves, and the Redtail Conservancy. We will soon be dedicating this so that young people can walk through the woods and see the significance.”

Dennis LeMaster ended by saying, “I would like to extend my appreciation to John Bacone and the Division of Nature Preserves as well as the Department of Natural Resources for their cooperation.” Chairman Michael Kiley reflected, “We all know and appreciate the relationship we have with Purdue in many facets of jurisdiction that we have. We appreciate and thank you for your participation.”

Jane Stout Fribley spoke in support of the dedication, and introduced herself as one of three sisters who make up the fifth generation of Stouts to save this woodland. “We are very interested in seeing that the conditions that of which my father gave it to the Purdue Forestry Department, have assistance in carrying out those desires which were to preserve it, to help young people to learn to appreciate the woodland and to know more about it. We have been encouraging Purdue, DNR, and the Red Tail Conservancy to develop programs.”

Chairman Kiley thanked Fribley and her family on behalf of the Department and the Commission, by stating, “Thank you for the generous contribution that your family has made in the preservation of this great resource for Indiana. I can assure you that with the help of Purdue University and our professional staff, we are going to our very best to be good stewards for this land that your family has given the State.”

Ray McCormick moved for dedication of the Stout Woods, located in Henry County, as a Nature Preserve. The motion was seconded by Jane Anne Stautz. Upon a voice vote, the motion carried.

Stautz reflected the Indiana Heritage Trust has received very favorable press. She asked whether there was any reaction or follow-up to the article. Bacone said it was his understanding that there has been “a lot of interest of people after they read the article, and they actually bought plates.” Stephen Sellers, Communications said several calls have been received from people who want to donate money or purchase license plates. “Hopefully, this will be a kickoff for us.”

## **DIVISION OF RECLAMATION**

### **Consideration of Preliminary Adoption of Proposed Rule to Amend 312 IAC 25 that Assists in the Implementation of IC 14-34 (sometimes referred to as the “Indiana Surface Mining Control and Reclamation Act” or “Indiana SMCRA”); Administrative Cause Number 02-034R**

Marvin Ellis, Hydrologist for Division of Reclamation presented this item. Ellis said he has been involved in the surface and underground standards and issues for the past five years. He said Indiana’s Ground Water Protection Act requires that any agency with jurisdiction over an activity adopt rules to help implement groundwater quality standards established by the Water Pollution Control Board. The WPCB adopted new rules effective March 6, 2002, and these anticipate the creation of management zones for regulated activities. Ellis said, “As the Division of Reclamation is the regulatory authority for coal mining in the State of Indiana, we are recommending rules regarding groundwater standards” pertaining to mining activities.

Ellis said that Division of Reclamation has met with staff of IDEM’s office of Water Quality Drinking Water Branch to help ensure the DNR would develop a proposal that is consistent with the intent of Indiana’s Groundwater Protection Act. “We wish to express our appreciation to the staff at IDEM who have allowed us to take part in their rule making process and for providing us input while we were drafting this rule.” Ellis said there were also meetings to discuss the rule proposal with representatives from the Hoosier Environmental Council and from the coal industry. He said that suggested changes presented in the meetings would be “taken into full consideration” for inclusion in the rule. Specifically, the Hoosier Environmental Council has submitted preliminary written comments to include non-drinking water supply wells as compliance points and to apply the standards at the property boundary. “We look forward to continuing discussion on this rule and to obtaining additional comments from these and other stakeholders throughout the hearing and public comment period.” Ellis said the Division of Reclamation extends its appreciation to the partners for their time, attention and comments. Ellis thanked the Commission for its consideration of the preliminary adoption of the rule.

Martha Clark, Chief of the Groundwater Section, represented the Indiana Department of Environmental Management. Clark confirmed the Division of the Reclamation had been working with IDEM throughout the development of the Water Pollution Control Board's rule, as well as the Division of Reclamation's draft. Clark informed the Commission that IDEM believes proposed rule is consistent with the statutory intent and supports its preliminary adoption.

Brian Wright represented the Hoosier Environmental Council. He argued the draft language presented by the Division of Reclamation did not properly consider uses such as agriculture, irrigation, and livestock. Wright said there needed to be additional standards for the protection of the water wells. He also expressed concerns pertaining to the language with respect to where the standards would be applied. He commented, "there's no mention about the permit boundary or property boundary for a groundwater management zone. The proposed rule says the zone will extend 300 feet from the mining operation." Wright argued the need for provisions to hold the mine liable for meeting regulatory standards and to minimize damages caused by mining activities. "It's better for both sides involved if there's a set standard stating what minimize means." Wright requested that an evening hearing be held in the southwestern part of Indiana since the proposed rules would affect a large number of people living around the mines.

Nat Noland represented the Indiana Coal Council. He said the council is not opposed to the preliminary adoption of the rule amendments. "We have been involved in groundwater issues since 1988 in Indiana, and it is time to get these issues resolved." Noland reflected Brian Wright's concerns regarding application of standards at the mines. "That's very much an issue for us as well, which we will address during the public comment period. We feel that it should be applied about 450 feet away from the mine's activity, which is consistent with what the EPA has done with other rules." Noland concluded again saying, "we will address those issues during the comment period."

Jane Anne Stautz moved to approve preliminary adoption of the proposed rule amendments. Jerry Miller seconded the motion. Upon a voice vote, the motion carried.

## **STATE PARKS AND RESERVOIRS**

### **Consideration of a Request to Adjust or Establish Certain Recreation Fees at Department of Natural Resources Properties**

Jerry Pagac, Director of Parks and Reservoirs presented this item. He emphasized the importance of the fees for the Division of Parks and Reservoirs. These fees currently generate approximately 59% of the operating cost for his division. "We want to keep going in the direction of raising that amount and lessening our dependence on the general fund." Pagac explained that currently the fees include sales tax. He explained the new fees and system would not include the sales tax "to make things work a little easier for people in terms of having to make change.

Pagac provided the following handout to the Commission and explained each of the proposed fee adjustments.

DEPARTMENT OF NATURAL RESOURCES  
 Recreational Fees Request for Adjustment  
 July 17, 2002

The Department of Natural Resources is recommending the following fee changes for the 2003 recreation season. Rate changes are effective March 1, 2003 unless otherwise noted.

**1. Indiana State Sales Taxes**

**Recommendation:** Eliminate inclusion of Indiana sales tax in lodging and recreation building fees. Effective date is December 1, 2002 (when the increased state sales tax is effective).

Currently, several DNR lodging fees are inclusive of Indiana sales tax so that customers are charged an even dollar amount for their lodging. Eliminating the need to make odd change for customers greatly improved the ability of attendants to expedite camping rentals in the past. Two new factors, the increasing use of credit cards to pay for DNR lodging and the proposed reservation system handling the bulk of taxable revenue via the internet or by phone, will obviate the need to include the sales tax and will further streamline the processing of camping rentals.

Certain taxable recreation fees that still depend on processing a large volume of cash will remain inclusive of the Indiana sales tax. Among these fees are toboggan, ski, paddleboat, rowboat and canoe rentals.

**2. Camping:** Comparisons of Indiana's rates with private campgrounds indicate that DNR recreation fees are significantly lower and in some cases less than half the private rates for campsites with comparable amenities. Indiana will implement a Centralized Reservation System to provide DNR customers with the ability to reserve campsites, cabins, shelters and recreation buildings through a toll free telephone number or the Internet. The current paper-based reservation system is cumbersome, inefficient, and outdated. The \$6 campground reservation fee will be eliminated.

The CRS will expedite customer reservations and rentals for campsites, cabins, shelters and recreation buildings and will allow DNR staff to better manage camping and other facility inventories. The addition of a cancellation fee will discourage misuse of the expanded ability to reserve DNR facilities. Cancellation of a camping rental will result in forfeiture of all or part of the first night's rental fee depending on the amount of notice given.

	<u>PRESENT RATES</u>	<u>2003 Proposed Rate</u>
Reservation Fee	\$6.00/reservation	\$0.00/reservation
Primitive "C"	8.00 per night	10.00 per night
Horseman's Primitive "C"	8.00	12.00
Electric or Showers "B"	13.00	16.00
Horseman's Electric or Showers "B"	13.00	19.00
Electric & Showers "A"	16.00	22.00
Horseman's Electric & Showers "A"	16.00	25.00
Sewer, Water, Electric & Showers "AA"	21.00	30.00

*(Primitive camping includes canoe, rally, and backpack camping. Winter camping rates will be 1/2 normal rate.)*

**3. Annual Entrance Permits for all DNR properties at which gate fees are charged:**

	<u>PRESENT RATES</u>	<u>2003 Proposed Rate</u>
2003 Annual Entrance Permit (resident)	\$22.00 per year	\$24.00 per year

*(While the Annual Entrance Permit fee increased for the 2002 recreation season, this was the first increase since 1987. It remains a tremendous bargain relative to the cost of the \$4 daily entrance fee. Annual permits allow one Hoosier family in a non-commercial vehicle entrance to any DNR property for one calendar year.)*

2003 Annual Entrance Permit (non-resident)	\$26.00 per year	\$30.00 per year
<i>(By statute the non-resident Annual Entrance Permit must cost more than a resident permit. The daily non-resident entrance fee is \$5. .</i>		
2003 Golden Hoosier Permit	\$11.00 per year	\$12.00 per year
<i>(By statute this permit, issued only to Hoosier residents, costs one-half the rate of the annual entrance permit.)</i>		

Note: **Entrance permit fee changes are effective with the sale of the 2003 permits.** At the proposed annual entrance rates, the ratio between daily and annual fees for both the resident and non-resident entry will be 6:1. The annual permit is a good deal for any visitor planning more than six visits to DNR properties in a calendar year.

**4. Cabins:**

PRESENT RATES	2003 Proposed Rate	
Lincoln	\$40.00 per night	\$50.00 per night
McCormick's Creek	\$40.00	\$50.00
Shakamak 9-26	\$35.00	\$45.00
Shakamak Lakeview	(new duplex)	\$125.00
Shakamak B, C, D	\$40.00	\$50.00
Draper Cabin (Morgan/Monroe)	\$20.00	\$25.00

Cancellation of a cabin rental will result in forfeiture of all or part of the first night's rental fee depending on the amount of notice given.

**5. Swimming:**

	<u>PRESENT RATES</u>	<u>2003 Proposed Rate</u>
Swimming Permit	\$26.00	\$30.00
<i>(The swimming permit is NOT an annual permit. It is valid for 20 pool visits, whether for individuals, groups or families. Note: Daily swimming admission is \$3. The proposed permit rate will average \$1.50 per visit.)</i>		

**6. Annual Horse Permit**

	<u>PRESENT RATES</u>	<u>2003 Proposed Rate</u>
Annual horse permit (trail fee)	\$9.00 per year	15.00 per year
<i>(Allows one horse entrance to any DNR property for the calendar year, as authorized in the DNR Horse Policy.)</i>		

**7. Shelters and Recreation Buildings:**

	<u>PRESENT RATES</u>	<u>2003 Proposed Rate</u>
Rec. Bldg. & Facility Rental	\$25 - \$75	\$50 - \$100 per day
<i>(Rental of a designated building for one day. Rates to be determined according to the particular facility and amenities provided.)</i>		
Shelters	\$25 - \$40	\$30 - \$50 per day
<i>(Reserves a picnic shelter for one day. Rates to be determined according to the particular facility and amenities provided.)</i>		

Cancellation of a shelter or recreation building will result in forfeiture of all or part of the rental fee depending on the amount of notice given.

## **8. Parking Fee Pilot**

	<u>2003 Proposed Rate</u>
Parking Fee	\$2.00 per day

*(The purpose of this pilot is to test an automated fee collection system. This technology may have particular utility for boat ramps. This pilot fee would NOT be applied to parking lots in gated areas where entrance fees are collected. This provision will take effect August 1, 2002.)*

**9. Discounts:** Recreation fees approved by the Commission are the maximum rate that may be charged. The DNR Director may authorize promotions or other discounts for NRC-established fees.

**Fiscal Impact:** DNR anticipates that the revenue increase for the fee adjustments above (excluding the pilot) will be approximately \$3 million for FY 2004.

Pagac said the Division of State Parks and Reservoirs would be implementing a computerized reservation system where the public can make reservations for campsites. He said the new system would not include the current \$6 reservation fee. The current reservation system is processed through the U.S. mail, which is a "slow process." The new reservation system will allow the public to reserve a campsite through the Internet or by telephone. He said Indiana is one of the largest states, in terms of campsites, that has not converted to an automated reservation system. Pagac explained there has been public interest in an automated reservation system for several years. "People will receive better service and be able to get what they want."

Director John Gross reflected, "I think it's incredibly important if we are going to be efficient in using our campsites and for the public's benefit. We really need this reservation system. We hope that 90% or more of the camping public will use the reservation system to find a campsite and have the peace of mind that they know they have the campsite. The customer service will be well worth the investment."

Pagac said an inventory, including specifics for each campsite, has been implemented. The new system will offer information to the public such as the size of a particular campsite, whether it is a shaded area, and distance from public facilities.

Greg Hersberger, representing the Indiana Trail Riders Association, offered several comments. "We were one of the first groups to step forward to say we are more than willing to pay our fair share. We feel that we do use it. We do a lot of volunteer work in the park." He expressed concerns, however, for two camping fee increases within the past two years. "I kind of feel they went a little overboard on the camping fee increase by adding the extra horse fee. If you are going to have an increase of this amount, we would ask that maybe we could see some dedicated fees." Hersberger added, "I think the reservation system will work and work well. It will really help in the places like Brown County. It won't help with the non-game facilities and most of those are State Forests."

Chairman Kiley thanked Hersberger. "Your comments are very well taken, and please give our thanks to your group for the stewardship that you are doing with respect to our facilities." John

Davis addressed the comments by stating, “We really appreciate what the Trail Riders and horse riders do and the kind of energy that they devote.” Davis said that there are “administrative fixes” needed at unmanned campgrounds. He noted there have been meetings and discussions with Division of Forestry, Division of Fish and Wildlife, and Division of Parks and Reservoirs to “overcome those problems.” Davis stated there have also been discussions about dedicating money to certain properties.

Jerry Pagac said campgrounds without DNR staff would not be included in the reservation system. He stressed the need for staff presence in order to avoid reservations conflicts.

Jerry Miller moved to approve the proposed recreational fees for Department of Natural Resources properties. The motion was seconded by Ray McCormick. Upon a voice vote, the motion carried.

### **Consideration of the Declaration of Surplus of Bass Lake State Beach, Starke County**

Jerry Pagac, Director of State Parks and Reservoirs presented this item. He said in its present condition, Bass Lake State Beach is surplus to the needs of the Department of Natural Resources. The property contains 21 acres and consists of a beach, 68 Class A campsites, and a picnic area. It is located approximately eight miles north of Tippecanoe River State Park. Pagac said the DNR has been working with Starke County to take over the property. Deed restrictions would require that the property be maintained for outdoor recreation purposes only.

Ray McCormick expressed concerns that the Starke County Commissioners had adopted a resolution to preclude the DNR from acquiring another property in the county. He questioned the wisdom of transferring what has been state beach under DNR jurisdiction to this local governmental subdivision. John Davis indicated McCormick’s concerns could be communicated to Starke County. In response to a question, Pagac reflected the deed did not contain a reversionary clause if the property were later used for other than outdoor recreation, but conditions derived from the expenditure of Federal Land and Water Conservation funds at the site would have this effect.

Jane Anne Stautz moved to declare Bass Lake State Beach as surplus to the State’s needs and to transfer the property in fee simple to the Starke County Commissioners to be used for outdoor recreation. The motion was seconded by Jerry Miller. Upon a voice vote, the motion carried.

## **DIVISION OF WATER**

### **Consideration of the Transfer of Contract for Water Supply from Monroe Lake to Eagle Pointe Golf Resort**

Mark Basch, Division of Water, Ground Water Section, presented this item. Basch explained a contract with the same effect was brought to and approved by the Commission in April 2002. “Since that time, there was a backing out of the agreement by Phoenix, and the sale is being made instead to R. N. Thompson.” Basch said the Division of Water recommended that the rights and responsibilities of the contract MWS-90-3 be transferred to R. N. Thompson.

Jane Anne Stautz moved to approve the transfer of the contract for water supply from Monroe Lake to Eagle Pointe Golf Resort. The motion was seconded by Ray McCormick. Upon a voice vote, the motion carried.

## NRC DIVISION OF HEARINGS

### **Consideration of Interlocutory Order in Response to Motion to Disqualify A Panel Member; *Steven T. Gerber v. Department of Natural Resources; Administrative Cause Number 01-159L***

Sylvia Wilcox, member of the Panel of Administrative Law Judges, introduced this item. She said at issue is an interlocutory appeal of the panel's ruling in a personnel case from the Division of Law Enforcement. She said Officer Gerber filed a motion requesting removal Lt. Col. Wells from the panel, based on bias. Wilcox stated that AOPA and the rules for discipline of law enforcement officers contemplate the participation of the Executive Officer on the ALJ panel. The panel concluded the facts contained in the motion did not support a finding of bias.

Ken Lauter spoke as the attorney for Steven Gerber. He said on March 12, 2002, a motion was filed to disqualify Lt. Col. Jeffrey Wells based on his participation on the three-member Board of Review for Law Enforcement. The Board recommended termination of Officer Gerber. Lauter argued that Lt. Col. Wells is predisposed in the case to a finding that is adverse to Gerber. Lauter indicated it was important to note that on March 20, 2002, the Department filed a response to the motion. The Department's response did not oppose Lt. Col. Wells' removal from the panel. Lauter explained the Department did argue that Officer Gerber should not be allowed to choose Lt. Col. Wells' replacement. He said the ALJ panel issued a ruling in May denying the Motion because there was no evidence to support of a finding of bias.

Lauter said subsequent to the panel ruling, Steven Gerber filed a federal lawsuit that contained two counts. In the first count, Gerber contends he had been retaliated against because he exercised rights protected under Title VII of the Civil Rights Act. Lauter stated, "secondly and more importantly," Count 2 was a section 1983 action for violation of Gerber's constitutional rights under the 1<sup>st</sup> and 14<sup>th</sup> Amendments. He said Lt. Col. Wells has been named individually in the lawsuit. Lauter again noted the federal civil suit was filed after the ALJ panel's ruling. He said Gerber brought the issue before the NRC at this early stage "because we think it is more efficient to get the issue decided here. This is an important issue because it shows an interest on the part of Lt. Col. Wells."

Lauter presented three reasons why the motion should be granted. First, the DNR appoints panel members, and since the DNR did not oppose the removal of Wells, the ALJ panel erred by denying both parties' wishes. Secondly, "we have demonstrated, in our opinion, bias." Participation by Wells on the Board of Review that recommended termination of Gerber's employment establishes a hostile predisposition toward Gerber. Third, even if that participation does not in itself support a finding a bias, the subsequent lawsuit creates an interest in Lt. Col. Wells in the disposition of the issues before the panel. Lauter concluded by indicated his client requested a reversal of the ALJ panel's ruling.

Greg Ellis represented the DNR. Ellis said as set forth in the interlocutory ruling, IC 4-21.5-3-10 requires a showing of bias to remove an administrative law judge under AOPA. Ellis said the

ruling was correct in that there was no showing of bias. Ellis agreed that a federal lawsuit was filed after this ruling; however, the DNR still contends there is no showing of bias. State administrative law and federal law are separate – that it is a decision for the federal court to decide. Ellis said he believed the ruling was correct in that there was no showing of bias, and he requested the ruling be upheld.

Chairman Kiley asked whether there was any evidence at the hearing “relative to the alleged bias” on the part of Lt. Col. Wells. Wilcox answered the motion to disqualify was done entirely by written motions, and these motions did not include evidence. Jane Ann Stautz stated that the current issue is technical in nature, and she agreed the federal and state administrative actions should be separately considered.

Lauter asserted it is important to maintain the perception that there is going to be a fair hearing on administrative review. He conceded he knows of no comments by Wells to reflect bias, but as a result of the subsequent Federal lawsuit, Wells now clearly has a personal interest in the outcome. Lauter said his client only asks for his fair day in court.

Jane Ann Stautz moved to uphold the ALJ panel’s interlocutory ruling. Ray McCormick seconded the motion. Upon a voice vote, the motion carried. John Goss abstained.

**Consideration of Recommendation by Hearing Officer for Final Adoption of Rule Amendments to Incorporate Responsibilities of the Division of Hearings to the Soil Scientist Registration Board; Administrative Cause No. 01-100Z; LSA #02-100Z**

Steve Lucas, Hearing Officer, reported on this item. He explained that, if the rule is given final adoption, the Commission would not have further contact with the process. For consideration as to final adoption were amendments to the procedural rules used by the NRC Division of Hearings for actions governed by IC 4-21.5 (the “Administrative Orders and Procedures Act”). The amendments would extend the rules to include the division’s new statutory responsibilities to the Soil Scientist Registration Board. Lucas indicated the only persons to appear for the public hearing were Board Chairman, Donald Franzmeier, and Michael Hancock, Fertilizer Administrator in the Office of Indiana State Chemist. They both supported final adoption. Lucas recommended the amendments for final adoption.

Jerry Miller moved to give final adoption to the amendments to 312 IAC 3-1 to recognize and include the responsibilities of the Commission’s Division of Hearings to the Indiana Board of Registration for Soil Scientists. The motion was seconded by Jane Anne Stautz. Upon a voice vote, the motion carried.

**ADJOURNMENT**

At 11:30 a.m., EST, the meeting adjourned.

**FUTURE MEETINGS**

August 20, 2002, —The Garrison, Fort Benjamin Harrison, Indianapolis, Indiana (tentative)

September 24–25, 2002 — South Bend, Indiana

October 22, 2002 —McCormick’s Creek State Park

November 19, 2002 — The Garrison, Fort Benjamin Harrison, Indianapolis, Indiana

December 2002—No meeting.

January 2003 —The Garrison, Fort Benjamin Harrison, Indianapolis, Indiana (tentative)