

# **NATURAL RESOURCES COMMISSION**

Minutes of November 28, 2000

## **MEMBERS PRESENT**

Michael J. Kiley, Chair  
Jack Arnett, Vice Chair  
Larry Macklin, Secretary  
Damian Schmelz  
Sylvia Wilcox  
Jane Ann Stautz  
John Goss  
Jerry Miller

## **NATURAL RESOURCES COMMISSION STAFF PRESENT**

Stephen Lucas  
Tim Rider  
Jennifer Kane  
Debbie Michaels

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

Paul Ehret	Executive Office
John Davis	Executive Office
Carrie Bales	Executive Office
Glen Solomon	Fish and Wildlife
Steve Jose	Fish and Wildlife
George Bowman	Water
Jerald Jackson	Law Enforcement
Gary Miller	State Parks and Reservoirs
Jerry Pagac	State Parks and Reservoirs

## **GUESTS**

Jim Behrman	Marsha Fallon
Jeff Dukes	Christopher Cogan
Shellie Dukes	Curt Cogan
Bernie Fallon	Dave Cable
	Harold Graham

## MONTHLY REPORTS

Michael J. Kiley, Chair, called to order the regular monthly meeting of the Natural Resources Commission at 10:15 a.m., EST, on November 28, 2000 at The Garrison, Fort Benjamin Harrison State Park, Indianapolis, Indiana. With the presence of eight members, the chair observed a quorum.

Jerry Miller moved to approve the minutes of October 25, 2000. Jack Arnett seconded the motion. Upon a voice vote, the motion carried.

Larry Macklin gave the Director's Report. Macklin reported Indiana hosted the National Conference State Historic Preservation Officers (NCSHPO) meeting. He said many states were represented, with participants attending from as far away as Alaska. He reflected upon the extraordinary efforts by Jon Smith and the Division of Historic Preservation and Archaeology in developing and managing the conference. "In my view, they are very special people. My interest in historic preservation continues to grow." Macklin said the conference held its reception at the "Tuck-Away," a house with Turn of the Century décor. Macklin reflected, "just to walk into the house was fantastic."

Macklin said he presented DNR's proposed operating budget for 2001-2002 to State Budget Committee. "We feel really good about our operating budget," and the responses received to it. He said the Capital Budget presentation would be held on December 7, 2000.

Macklin reported on the status of the development of the new Indiana State Museum. "The building is growing very fast. It is very exciting to watch the building grow." Macklin explained there are two cameras on the construction site, making it possible to view the museum's progress on the Internet at [www.indianamuseum.org](http://www.indianamuseum.org).

Jerry Miller, Chairman of the Advisory Council for Lands and Cultural Resources, reported there was no meeting this month.

John Davis, Deputy Director for the Bureau of Lands, Recreation, and Cultural Resources, said he also attended the NCSHPO meeting. He said a reception was held at the Frank Lloyd Wright home in West Lafayette, as well as tours of Lockerbie Square. Davis said the Lanier Mansion in Madison is being retrofitted for the Boys Club. Davis said the Golden Eagle Environmental Professional of the Year Award was formally presented to Jack Costello. He added that November 28 was the last day of the deer reduction program at the state parks. Preliminary figures on the numbers of deer taken suggest "our methods are having their desired effect." Kiley asked whether the deer reduction was going smoothly. Davis said, "so far, there has not been much opposition activity."

Dave Vice, Deputy Director for the Bureau of Resource Management was not present.

Paul Ehret, Deputy Director for the Bureau of Resource Regulation reported items within the Bureau's four divisions were generally routine since the last report to the Commission. He said he attended the fall business meeting of the Interstate Mining Compact Commission (IMCC) in

Washington, D.C. and had an opportunity to meet with the Acting Director of the federal Office of Surface Mining (OSM), Kay Henry. Discussion items included the recently approved federal budget, which has small increases in funding for state AML programs and enforcement programs. Federal funding of the programs “has, for the most part, been flat for the last five years or more.”

Ehret circulated copies of this year’s Indiana Society of Mining and Reclamation (ISMR) program to be held December 3 and 4, 2000, at the Holiday Inn in Jasper, Indiana. Commissioner members were invited to attend. He also provided a copy of the National Association of Abandoned Mine Land Programs (NAAMLN) newsletter that included a write up on the Division of Reclamation’s Mid-Continent Regional AML Award and the nationwide “Peoples’ Choice Award” given to DNR’s Division of Reclamation. Kiley congratulated the Division of Reclamation, and said the award is “ a real great credit to this Department.” Ehret said the trophy is located in the Jasonville Field Office trophy room—“a room filled with innovative idea” awards.

## **BUREAU OF LANDS, RECREATIONAL AND CULTURAL RESOURCES**

### **PERMANENT APPOINTMENTS AND PERSONNEL INTERVIEWS**

#### **Personnel Interview for Assistant Curator at Lanier Mansion State Historic Site**

John Goss reported this item. He said he and Sylvia Wilcox interviewed two well-qualified candidates, but ultimately determined to support the “current employee to move up.” He said the committee recommended Phyllis Stephens for permanent appointment as Assistant Curator at Lanier Mansion State Historic Site.

John Goss moved to approve Phyllis Stephens for permanent appointment as the Assistant Curator at Lanier Mansion State Historic Site. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

#### **Personnel Interview for Assistant Property Manager at Greene-Sullivan State Forest**

John Goss presented this item. He said the committee recommended Beth Hippensteel for permanent appointment as Assistant Property Manager at Greene-Sullivan State Forest. As was the case with the previous interview, both candidates were well suited to the position, and the edge was given to the candidate with extensive experience within the agency. Kiley stated that “this is just another example of the opportunities affordable to the people of DNR for advancement.”

John Goss moved to approve Beth Hippensteel for permanent appointment as Assistant Property Manager at Greene-Sullivan State Forest. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

## **DIVISION OF STATE PARKS AND RESERVOIRS**

### **Consideration of Proposals to Operate Lick Fork Marina at Patoka Lake**

Chairman Kiley introduced this item. He reminded the Commission it was a resumption of an agenda item previously on the September 20, 2000 agenda. “There was a significant amount of testimony concerning this item at that time, and the public had an ample opportunity to be heard.” He said there would be no additional testimony during the November meeting. He directed attention to letters supporting Bernard Fallon distributed to the members prior to the meeting.

The Chair reflected the DNR had been asked to review and compare the applications of Jeff Dukes and Bernard Fallon. He said the Commission had asked for internal DNR investigations from the Division of State Parks and Reservoirs and the Division of Law Enforcement, as well as the perspectives of the U.S. Army Corp of Engineers. Kiley asked John Davis to give a summary of the reviews, studies and investigations on the history of Lick Fork Marina.

Davis then outlined a packet presented to Commission members prior to the meeting. The packet contained: (1) The Offering. (2) A November 16, 2000 Memorandum from Colonel Larry Allen to John Davis regarding Lick Fork Marina, Patoka Reservoir. (3) Lick Fork Marina—Americans with Disabilities Act Compliance Visit. (4) Statements concerning the financial capabilities of the two applicants.

Davis said the record of performance by Fallon included an excessive number of citizen complaints. He said the Army Corps declined to make a formal recommendation, but one of its representatives indicated she “felt personally intimidated” when seeking to inspect the marina. Davis reflected that the ADA report regarding Lick Fork Marina was probably unremarkable. He said the Division of State Parks and Reservoirs recommended the Commission give its approval to pursue contract negotiations with Jeff Dukes. Davis said he agreed with the recommendations by the Division of State Parks. He said Gerald Pagac, Gary Miller, and Larry D. Allen were present to answer questions.

Jane Ann Stautz inquired as to the financial capabilities of the two applicants. John Davis responded, “We are comfortable with their financial standpoints. We believe both parties are financially capable.”

Davis added, “If you follow our recommendation, there will be negotiations, and we will have a transition period that we think is pretty sensitive to all parties. We do not know if Mr. Dukes will accept our proposal.”

John Goss said Bernie Fallon was a “good promoter” of Patoka Lake. Goss said he also had a personal relationship with Fallon. “Therefore, I am going to abstain.”

Jerry Miller moved to approve Jeff Dukes as operator of the Lick Fork Marina at Patoka Lake, subject to successful completion of negotiations with the Department of Natural Resources. Jack Arnett seconded the motion. Upon a voice vote, the motion carried. John Goss abstained.

Following the completion of voting, Bernard Fallon rose and objected to the selection of Jeff Dukes as operator of Lick Fork Marina. Fallon also protested his own lack of opportunity to speak to this issue during the November meeting. Christopher Cogan then rose and joined in the objection and in the protest. Fallon requested and was provided a copy of the Commission packet, referenced previously, that contained the Offering and other information.

## **LEGAL PROCEEDINGS**

### **NRC DIVISION OF HEARINGS**

#### ***Consideration of Report of Public Hearings, Analysis, and Recommendation by Hearing Officer for Final Adoption of Rule Amendments to Lake Preservation Act Rules to Liberalize “General License” Provision Regarding Glacial Stone Seawall Replacements and Dry Hydrants; Administrative Cause No. 00-94W; LSA #00-126(F)***

Steve Lucas, Hearing Officer, presented this item. He said for consideration were several amendments to the rules (312 IAC 11) that assist in administration of the Lakes Preservation Act. The amendments would establish a new general license for qualified seawall replacements with glacial stone and would also somewhat liberalize the existing general license for the placement of dry hydrants. He said the proposals were initiated by citizens and encouraged good stewardship of the lakes by its residents in the construction of seawalls, as well as supporting positive public safety benefits with respect to the reasoned placement of dry hydrants.

Lucas said public hearings were held along the northern tier of Indiana counties—at Valparaiso, Syracuse, and Angola—where most regulated lakes are located. In addition, a public hearing was convened in Indianapolis. There were few public comments, and those that were received were all supportive of the amendments. He recommended the amendments be given final adoption in the form given preliminary adoption.

Jane Ann Stautz moved to give final adoption to the proposed amendments to 312 IAC 11 as published for preliminary adoption. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

#### ***Consideration of Report of Hearing Officer and Recommendation for Final Adoption of Amendments to AOPA Procedural Rules to Address Modifications of Final Orders and Remands; Administrative Cause No. 00-055A; LSA #00-125(F)***

Steve Lucas, Hearing Officer, also presented this item. He said the proposal would modify the multi-section rule (312 IAC 3-1) governing AOPA proceedings before the Natural Resources Commission and its Division

Hearings. Two subjects would be addressed: (1) The modification of final orders. (2) Proceedings remanded the Commission from a trial court or a higher court. Lucas said these situations did not arise frequently, but when they did the current absence of a process had sometimes led to unneeded delays. A proceeding would be required to await a specific delegation of authority, from the Commission or its Chair, before moving forward. He said the proposals were not expected to be controversial, and, in fact, drew no public comments. Lucas recommended the amendments be given final adoption in the form published for preliminary adoption.

Damian Schmelz moved to give final adoption to the amendments to 312 IAC 3-1, addressing modifications of final orders and remands, in the form published for preliminary adoption. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

***Consideration of Report by Hearing Officer of Public Hearings, Analysis, and Recommendation for Final Adoption of Amendments Navigable Waters Rules to Address Emergency Licenses and Licenses for Permanent Structures on Lake Michigan; Administrative Cause No. 00-012W; LSA #00-123(F)***

Steve Lucas, Hearing Officer, also presented this item. He said for consideration were proposed new rules (312 IAC 6-7 and 312 IAC 6-8) to codify procedures for the review of Lake Michigan licenses governing emergency construction activities and permanent structures. Although there are not a large number of licenses issued in these categories, he said those that are issued have the potential for a significant impact to the environment and to other riparian property owners.

During a public hearing in Michigan City, the Save the Dunes Council and DNR's Lake Michigan Specialist offered suggested changes to language given preliminary adoption. Lucas said he believed these changes to be well-founded. He recommended they be incorporated in the language to be given final adoption (as set forth in the Commission packet). No one appeared for a subsequent public hearing scheduled in Indianapolis.

Chairman Kiley asked whether these rules would have applied to the experimental groins placed in Lake Michigan several years ago. Lucas responded they would.

Jack Arnett moved to give final adoption to the new rules to govern emergency licenses (312 IAC 6-7), and licenses for permanent structures (312 IAC 6-8), to be placed in or along the Indiana waters of Lake Michigan. Jerry Miller seconded the motion. Upon a voice vote, the motion carried.

At 10:48 a.m., the meeting was adjourned.

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