

**NATURAL RESOURCES COMMISSION**  
Minutes of November 19, 2002

**MEMBERS PRESENT**

Michael J. Kiley, Chair  
John Goss, Secretary  
Damian Schmelz  
Jane Anne Stautz  
Beth Admire  
Jack Arnett  
Jerry Miller  
Raymond McCormick, II  
Rick Cockrum

**NATURAL RESOURCES COMMISSION STAFF PRESENT**

Stephen Lucas  
Jennifer Kane  
Debra Michaels

**DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT**

Carrie Bales	Executive Office
Carrie Doehrmann	Executive Office
Mickey James	Executive Office
Glen Salmon	Fish and Wildlife
Linnea Petercheff	Fish and Wildlife
John Friedrich	Forestry
Jeff Wells	Law Enforcement
Sam Purvis	Law Enforcement
John Bacone	Nature Preserves
Mike Nickolaus	Oil and Gas
Jim Hoffman	Soil Conservation
Jim Ray	Soil Conservation
Terri Swoveland	Water

**GUESTS**

Russell Reed	Tom Yoder
Kay Young	William J. McCoy
John Turner	Jeff Brookbank
Dick Mercier	Paula Yeager

## MONTHLY REPORTS

Michael J. Kiley, Chair, called to order the regular meeting of the Natural Resources Commission at 10:00 a.m., EST, on November 19, 2002, at The Garrison, Fort Benjamin Harrison State Park, Indianapolis, Indiana. With the presence of nine members, the chair observed a quorum.

Jerry Miller moved to approve the minutes of September 24, 2002. Jane Anne Stautz seconded the motion. Upon a voice vote, the motion carried.

John Goss provided the Director's Report. He reported Deputy Director, John Davis, recently suffered a mild heart attack. Goss added that Davis was doing well and hopes to return to work soon.

Goss said the two Advisory Councils recently met jointly to discuss and consider their future roles with the Department of Natural Resources and Natural Resources Commission. He indicated one concept was that the Commission and Advisory Councils could each meet six times annually on a rotating basis. Doing so would help reduce costs and the commitment of employee time. Goss added that a "special meeting" of the Commission could be called if needed. He said staff was working on a proposed schedule for 2003.

Goss said that DNR presented its budget to the State Budget Committee for the next biennium. He observed, "It went pretty well, all things considered. The State financial picture still varies and is difficult." Goss said DNR had taken another reduction of approximately \$4 million from the General Fund. He said the Commission would likely be asked to again consider user fee increases.

Director Goss reported deer season began last week. He said there have been numerous samples taken to check for Chronic Waste Disease (CWD). Goss deferred to Glenn Salmon, Director of Fish and Wildlife for more details on the deer season and CWD.

Salmon said the first weekend of deer season was "very active." Approximately 100 DNR professionals and 30 professionals from the State Board of Animal Health collected deer heads for testing. Salmon said 3,000 heads were collected of the 3,350 goal. He said that 1,000 heads would be sent to Ohio State University for CWD testing. Salmon said that DNR should have the results within two or three months. "Hopefully we'll have a good response and not have any CWD in Indiana. A lot of good staff people out there working. Overall, the deer hunters have been very responsive."

Ray McCormick asked Salmon how the deer could be tracked to the location from which it was taken. Salmon explained that each check station records pertinent information such as where the deer was harvested, the hunter's name, and information from the deer that is bagged and tagged. The information is then put into a permanent record. Salmon said, "the Board of Animal Health spent a lot of time making sure this was absolutely statistically perfect."

Damian Schmelz asked Salmon if there was any further research findings on whether CWD could be transferred to humans. Salmon said that thus far there have been no cases of CWD being transferred to humans.

Jerry Miller, Chair of the Advisory Council for Lands and Cultural Resources, said the joint meeting with the Advisory Council for Water and Resource Regulation was interesting and informative. He said the two Advisory Councils had a thorough discussion of the possibility of "uniting together".

John Davis, Deputy Director, was not present due to his recent hospitalization.

Ray McCormick, Chairman of the Advisory Council for Water and Resource Regulation, echoed Miller's report concerning the potential for joint Advisory Council meetings. He spoke positively about the memberships. "We have exceptional, qualified people. I think we have a real opportunity to utilize those assets."

McCormick observed the Advisory Councils met on Halloween. "Nothing was terrifying quite as much as a report from Dr. Robert Waltz on the invasive species that are invading this state. There is probably no other issue besides habitat loss that threatens the natural resources of this state as much as invasive species." He suggested this subject was a good one for the active participation by the Advisory Councils. "Once these invasive species enter into the state, then it becomes very difficult and very expensive to stop them." He said that DNR is hoping to form new partnerships and collaborate with other agencies and private organizations to help limit the spread of invasive species.

Paul Ehret, Deputy Director, was not present due to his participation out-of-state in a coal mining conference.

## **DIVISION OF NATURE PRESERVES**

### **Consideration of the Dedication of Bluffs of Beaver Bend Nature Preserve, Martin County**

John Bacone, Director of the Division of Nature Preserves, presented this item. Bacone said, "We're really delighted to bring this item to you today because the Bluffs of Beaver Bend has long been a target for preservation within the State of Indiana. He noted the site was a focal point of study by Damian Schmeltz and had been the subject of extensive data collection on tree species and growth. He said the Bluffs of Beaver Bend was a favorite site of William Barns, the first Director of the Division of Nature Preserves.

Bacone added, "this is a fantastic area." He said the property consists of a mile-long, steep-sided bluff situated in a bend of the White River. "It's a spectacular area both from a fish and aquatic resource standpoint, as well as the forests that are found there and some of the rare species that are found there." Bacone added that bank fishing would be allowed at designated spots.

Bacone recommended dedication of the Bluffs of Beaver Nature Preserve.

Jerry Miller moved to approve the dedication of Bluffs of Beaver Bend Nature Preserve. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

## **DIVISION OF FISH AND WILDLIFE**

### **Consideration of Preliminary Adoption of Amendments to Wild Animal Possession Permit to Allow the Possession of Qualified Alligator Snapping Turtles; Administrative Cause Number 02-154D**

Linnea Petercheff, Division of Fish and Wildlife presented this item. She said that, as a result of requests by the Natural Resources Study Committee of the Indiana General Assembly, the Department seeks to allow alligator snapping turtles to be used for commercial purposes if they were lawfully acquired before January 1, 1998. She said an Indiana resident purchased alligator snapping turtles outside of the state before January 1, 1998. Another rule exemption formerly provided that as long as the alligator snapping turtles were legally purchased outside Indiana, a permit could be acquired. The other rule was repealed early this year to comply with state

statutes regarding endangered species. She explained that the applicant obtained a Wild Animal Possession Permit for the alligator snapping turtles.

Petercheff said the law requires that to possess an endangered species a person must obtain a “wild animal possession permit”. She noted the rule language also states, “a person may not use a wild animal for commercial purpose unless the person is issued a commercial license by the USDA.” Petercheff said USDA licenses are issued only for wild animals that are covered under the Animal Welfare Act. By definition, animals under the Animal Welfare Act are limited to those that are warm-blooded. There is no USDA commercial license for the use of reptiles because they are cold-blooded. She said the amendment would allow the applicant to use his alligator snapping turtles for commercial purposes such as the Boat, Sport and Travel Show. Petercheff said the DNR recommended preliminary adoption of the amendments.

Ray McCormick said the Advisory Council also recommended preliminary adoption of the rule amendments.

Damian Schmelz moved to approve the preliminary adoption of the amendments to the rules for Wild Animal Possession permits. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

### **Consideration of Preliminary Adoption of Amendments to Game Breeder Licenses; Administrative Cause Number 02-100D**

Linnea Petercheff also presented this item. She said that in an effort to prevent Chronic Waste Disease (CWD) from entering in Indiana, the Director Goss approved an emergency rule effective June 30, 2002. Unless additional action is taken, the emergency rule will expire on June 30, 2003. She said the proposal before the Commission would make the emergency rule permanent.

Petercheff said the Indiana State Board of Animal Health also enacted an emergency rule earlier this year to prevent the importation of white-tailed deer into the State. The Commission rule would be administered in harmony with the ISBAH rule. “We want to make sure that game breeders comply with the Board of Animal Health regulations and make sure that a license can be denied or revoked should somebody not comply with the regulations. Therefore, with these regulations in place, we feel that we would have the conditions needed to prevent any spread of the Chronic Waste Disease should it occur in Indiana.” Petercheff said the DNR recommended preliminary adoption of the Game Breeder Licenses.

Ray McCormick said the Advisory Council also recommended preliminary adoption of the rule amendments.

Paula Yeager, Executive Director, Indiana Wildlife Federation said her organization supports the proposed changes to the rules for game breeders permit. She commended DNR and the Board of Animal Health for their efforts in addressing the issue and being proactive to prevent Chronic Waste Disease.

Dick Mercier, Indiana Sportsman Roundtable, next addressed the Commission. He said he and the sporting organizations and sportsmen he represents “all have a very serious interest in this CWD problem with the deer, so we are adamantly encouraging you folks to vote in favor it this.”

Jerry Miller moved to approve preliminary adoption of the amendments to the rules governing game breeder licenses. Jack Arnett seconded the motion. Upon a voice vote, the motion carried.

## **DIVISION OF FORESTRY**

### **Consideration of a Request by Patoka River Natural Wildlife Refuge for a Permit for Installation, Operation and Maintenance of Two Radio Units on Pike State Forest**

John Friedrich, Division of Forestry, presented this item. He said the Patoka River Natural Wildlife Refuge requests permission to use the Pike State Forest Headquarters Building and its existing tower for the installation of two radio units, an antenna, and an antenna cable. He indicated the installation would not interfere with the existing DNR Law Enforcement radio.

Friedrich introduced William McCoy, a representative from the Patoka River Natural Wildlife Refuge. McCoy noted that the Refuge was the 502<sup>nd</sup> refuge acquired by the United States. He said there are more than 5,000 acres within the Refuge. McCoy explained that the installation of the new two-way radio repeater would provide complete coverage of the river bottom as well as future acquisitions. Damian Schmelz commented that “Bill [McCoy] is the right man for the job” regarding the conservation of the Refuge.

Rick Cockrum moved to approve installation of the radios and related equipment as requested. Jane Anne Stautz seconded the motion. Upon a voice vote, the motion carried.

## **DIVISION OF WATER**

### **Consideration for Adoption of Proposed Conservancy District Nonrule Policy Document, Administrative Cause Number 01-207C**

Terri Swoveland, Division of Water, presented this item. She commended Steve Lucas and Jennifer Kane for the preparation of the proposed nonrule policy document. She referenced IC 14-33 and explained that conservancy districts are sought by local freeholders to solve water resources problems. She said the primary purposes of the document were as follows:

- to refine the functions currently addressed by Information Bulletins 6 and 12;
- to clarify the treatment of efforts to add an additional purpose to a district;
- to include standards for evaluating whether a district qualifies for the purposes of flood prevention and control; and,
- to consider the treatment of conservancy district elections.

Swoveland noted that the responsibilities were identified and delegated to the Commission’s Division of Hearings and to the Division of Water of the Department of Natural Resources. She noted the Advisory Council had endorsed the proposal and concluded saying, “I hope you give us a favorable recommendation, and I thank you very much.”

Jane Anne Stautz said she had reviewed the proposed nonrule document and believed it offered helpful information regarding the agency roles for both proposed and existing conservancy districts. The Chair noted the Commission was sometimes called upon to address complex and intense debates regarding the formation of districts, and he suggested this nonrule policy document would help guide the Commission’s responsibilities.

Jane Anne Stautz moved to approve the nonrule policy document. Rick Cockrum seconded the motion. Upon a voice vote, the motion carried.

**NATURAL RESOURCES COMMISSION  
DIVISION OF HEARINGS**

**Consideration of Findings of Fact and Conclusions of Law with Nonfinal Order of Summary Judgment in the matter of *Paula Klann and John Girdley v. Wright Timber & Veneer Company, Inc. , et al.*; Administrative Cause Number 00-151F**

Stephen Lucas, Administrative Law Judge, introduced this matter. He said that scheduled for consideration were objections to a nonfinal order construing the Timber Buyers Act. Lucas said the parties “contacted me yesterday, however, and informed me they have achieved a settlement.” As a result, this item should be removed from the agenda. Chairman Kiley then reported the item withdrawn.

**Consideration of Report of Hearing Officer and Recommendation for Final Adoption of Rule Amendments for Lake Wawasee and Syracuse Lake Watercraft Zones for the Protection of Fragile Ecological Sources. Administrative Cause Number 02-082S; LSA Document #02-162(F)**

Stephen Lucas, Hearing Officer, introduced this item. He said for consideration was a rule proposal that would establish idle speed zones, and two small no-boat zones, on Lake Wawasee and Syracuse Lake in Kosciusko County. The proposal followed a joint petition from the Wawasee Property Owners Association, the Wawasee Area Conservancy Foundation, and the Syracuse Lake Association. He said, “I want to thank several DNR professionals who lent their expertise to the evaluation of the petition and helped answer my questions and responded to citizen comments received at public hearing. I’m always reluctant to name individuals, knowing that I’ll leave someone out, but feel strongly that my appreciation should be shared here. I want to thank Paul Ehret, Major Sam Purvis, Jim Ray, Jill Hoffman, Gwen White, Steve Davis, and Dale Gick.”

Lucas said his report was 45 pages long, single-spaced, and included a lot of thoughtful citizen comments and DNR responses, and with time limitations, he could not cover all the subjects addressed. “I would be happy to respond to any questions the Commission may have, but will keep my comments brief.” He drew attention of the Commission to a drawing at the table provided by Bill Hess of a proposed bio-berm, noting it was not included in the electronic version of the report because of the large number of bites required for depiction.

Lucas said in most respects, the recommendation is that the NRC give final adoption to the rule proposal as published for preliminary adoption. The one exception is for Conklin Bay on Lake Wawasee, “where I recommend the back half of the bay to be kept open for high-speed boating and the buffer zones along the protected wetlands reduced from 100 feet to 50 feet. Although almost every aspect of the rule proposal drew comment and generated some level of controversy, the proposal to limit boats in the back half of Conklin Bay to idle speed drew the greatest negative response from citizens, including many of those who had supported the initial petition.”

He said key elements to developing the proposed changes at Conklin Bay were as follows:

- In order to be effective, the rules need a substantial level of citizen support, and there is fundamental opposition to closing Conklin Bay to high-speed boating.
- The level of scientific knowledge does not readily distinguish between the level of ecological protection afforded by a 50-foot buffer as opposed to a 100-foot buffer.

- This proposal would be the first implementation of 2000 legislation. “It offers a practical workshop for evaluating the level of protection afforded by a 50-foot buffer on Conklin Bay, as compared with the 100-foot buffer that has been approved for Johnson Bay. If the 50-foot buffer proves inadequate after a year or two of evaluation—however long the ecological professionals determine appropriate—the DNR will then have the scientific basis for asking that the rule be amended to be more protective.”
- Most importantly, if the buffer zone is not reduced from 100 feet to 50 feet, high-speed boating cannot be accommodated in the back of Conklin Bay. “While addressing the ecological concerns that are presented by this rule proposal, the consequences cannot be to create safety hazards. The same statutory section (IC 14-15-7-3) that authorizes the NRC to adopt rules for the protection of ecological zones also directs the NRC to address boating safety.” He said the Division of Law Enforcement had consistently testified that providing 100-foot buffers along the wetlands adjacent to Conklin Bay, without also closing the back of the bay to high-speed boating, “would constitute a safety hazard.”

James Ray, Chief of Land and Water for the Division of Soil Conservation, gave a slide presentation. He said, “I would first like to commend Steve Lucas for the excellent job he did in hearing this matter and making a decision and providing recommendations to you folks.” Ray said that there was one difference in Lucas’s recommendations from what was preliminary adopted, regarding Conklin Bay, and he wished to address this subject.

Ray reiterated what the staff’s role involved in the rule making. He explained that DNR had the responsibility to look at the ecological aspects and make a determination and recommendation regarding the lake ecology for both Syracuse and Wawasee Lakes. Ray explained that DNR’s recommendation would include a 100-foot buffer in the western part of Conklin Bay. Due to safety concerns, the 100-foot buffer would also necessitate closing off the back half of the bay to high-speed boating.

Ray said that although there were some differences of opinion expressed, “there seems to be general public agreement” about the concept for designating ecological protection zones in the lakes. He said, “basically, everyone seems to agree that the vegetated area needs some kind of protection.” The differences of opinion were in the details rather than the overall need. “We think that, in general, the proposal is sound. We’re very comfortable as a staff with the recommendations that we have made that became the proposed rule language.” There were reasons why the DNR would be more comfortable with a 200-foot buffer, but in the course of discussions, deliberations and looking at research, the recommendation was a 100-foot buffer.

Ray stressed that the purpose of the rule “is not to punish anyone. It’s not to punish lake users who want to go water-skiing in the lake. It’s not to limit any recreational opportunities. The purpose for these types of ecological rules is to protect the lakes into the future for other generations that are going to follow.” He said that to adequately protect Wawasee and Syracuse Lakes, there cannot be any allowance for any additional degradation for those wetlands for aquatic plant resources. “Too many” of the State’s lakes have declined “very dramatically” in the ecological sense. He stressed that if boats were to be allowed within 50 to 75 feet of the wetlands, the result would be damage to floating and submerged leaf plants.

Ray explained that once the DNR made the recommendation of 100-foot buffer in the western portion of Conklin Bay, it “pinched down” the narrow area and diminished the size of the open water area to the extent that the Division of Law Enforcement believed it posed a safety issue. He said, “the same statute that allows for these ecological aquatic zones also allows for the protection of users, so the DNR extended the rule making recommendations to include the elimination of high-speed boating in that area for that reason.”

Ray expressed, “in conclusion, again this is not a contest between the staff and Mr. Lucas, as a Hearing Officer. He’s reflecting the kind of decisions that you will have to be making, and things that you will have to take into consideration beyond the ecological aspects of this.”

Kay Young, President of Lake Wawasee Property Owners Association, thanked the Commission and Lucas for their efforts on the proposed rule amendments. She said the Association supported Lucas’s findings “not only for the environment, but also for the safety and the concerns of the property owners that uses Conklin Bay.” She concluded, “we do look forward to continued studies and we would support new studies on the environment. If it is shown that we do need to make some changes down the road, that would be something that we would certainly look at.”

Tom Yoder, Chairman of Wawasee Conservancy Foundation, said the Conservancy strongly endorsed actions to protect the ecological sensitive shoreline on the lakes. He said the Conservancy was formed about ten years ago, and its mission is protection and enhancement of water quality in the 23,000-acre watershed. One of the first actions that were taken by the Conservancy was, with the DNR, to jointly sponsor preparation of THE LAKE ENHANCEMENT DIAGNOSTIC FEASIBILITY STUDY FOR THE WAWASEE AREA WATERSHED by Commonwealth Engineering. One of the key recommendations by Commonwealth Engineering was the protection of shoreline sensitive ecological plant life.

Yoder said the Conservancy’s interest is that the plant life will “suck up nitrogen and phosphorus within our lakes and give us one more chance—one additional aspect of improving water quality.” He said the Conservancy understands the social issues, and said “it may be important to us sometime to separate the safety issue out in Conklin Bay.” He stressed, “to me it’s almost a separate issue from whether we use buoys to protect wetlands or not. So, I’d like to leave that as a separate issue.” Yoder complimented Steve Lucas and said, “we’d like to say we support both the staff and Judge Lucas. We think the staff has done a fine job, and it is our plan to work right with you. I think we’d like to hear more about the measuring process and how we’re going to evaluate success.”

Kiley asked Yoder if the Conservancy supported the recommendations made by Judge Lucas. Yoder said it did.

John Turner, a property owner on Lake Syracuse, said he attended the public meeting in August. Turner said that he and the other property owners were unable to ascertain the configuration and density of the buoys on Syracuse Lake. Turner asked for explanation of what the configuration and placement would be in terms of spacing.

Kiley responded by referring to page 43, paragraph two of the hearing officer’s report that covered the description of the buoy line in the southeastern portion of Syracuse Lake. Maj. Sam Purvis commented on the proposed buoy line for Syracuse Lake. He said there was a slide showing the GPS points. “It would almost seem obvious that we could at least start with the buoying on those GPS points. That would be very practical if there’s any measurement or anything done at that point. If there were something necessary between there, we would place a buoy for what would be practical to maintain a line of site. So, if two buoys were able to be placed there, and established a zone that was practical enough for a boater to be on the water and see it is an idle zone and come back to idle speed behind that buoy, then that is all the buoys that would be needed. If we notice that there’s a problem in a high traffic, and some boats can’t see or won’t see the buoys because they’re too far apart, then we’ll come in and place additional ones.”

Tom Turner continued, “So basically, what we’re going to do is we’re going to block off that whole section of the lake?” Purvis replied, “It will be an idle zone starting from the railroad bridge all the way wrapping around to the island.”



Turner asked Purvis, “So there would be no water skiing or high-speed boating in this area?” Purvis said, “No, it will come down to an idle speed only, which is five miles per hour.” Turner asked Purvis how many buoys would be out on the lake. Purvis said that they would probably start with four. Turner questioned the cost of enforcement. Chairman Kiley replied, “The cost of enforcement, of course, is a soft cost, which we just can’t fully project at this point in time.” Purvis added that the fiscal impact of the project was just over \$9,000 for both Syracuse Lake and Lake Wawasee. Kiley said, “The bottom line is it doesn’t appear there’s going to be any extra cost with respect to what it’s going to take to enforce the buoys, other than the placement of the buoys.” The Chair added there have been offers from various property owners and other groups to assist in placement of the buoys.

Turner referenced page 38 of the hearing officer’s report and noted that it reflected the use of floating barriers was technologically feasible and would be more effective than buoys. He said it was common knowledge that buoys would not control boat speeds. He asked, “To what extent are we talking at all about using” floating barriers. He noted the boating season is approximately 13 weekends in the summer. He said, “We’re talking about 30 to 40 days of high-speed boating a year in the lake, because during the week there’s very little banning of high-speed boating, except on the weekends and holidays.” He added, if “we’re talking about protecting the wetlands, are we going to do nothing about protecting the wetlands 365 days a year?”

Kiley deferred to Steve Lucas to respond to Turner’s question. Lucas indicated the cost of floating barriers would be greatly in excess of what would be required to place buoys. If the concept were to be seriously considered, there must be a funding source, and there needs to be strong local support. While the cost of buoying was less than \$10,000, floating barriers have been estimated to cost between \$300 and \$350 a lineal foot.

Turner argued that over a period of years there would be additional costs through the program for gradual placement of buoys. Lucas agreed and indicated there would be maintenance costs as with any other program. He said the use of floating barriers would have maintenance costs as well, and if floating barriers were to be placed, presumably buoys would still be needed to warn boaters of the potential hazard to navigation. Lucas said the NRC did not have the approval of a floating barrier system currently before it for action. A separate licensing or rule-making process would be required.

Jeff Brookbank said after the August public meeting he spoke with contractors from the area that use logs for pilings in the shallow areas. He said the logs range from 30 to 50 feet long and cost approximately \$80 to \$90 each, depending on the length. Brookbank said one gentleman actually volunteered to deliver a load of logs. He said that the anchoring system would be another expense, which he had not yet calculated.

Kiley said, “The only comment I have in respect to log barriers or any other kind of weight barriers is that, given the configuration of that lake and the boat traffic we have, I think log barriers would be a disaster from a safety standpoint.”

Rick Cockrum asked Lucas to “summarize where we are with discussions specifically on Conklin Bay.” Lucas answered that the NRC gave preliminary adoption to a proposal that would provide a 100-foot barrier around the wetland on Conklin Bay as well as on Johnson Bay. “The 100-foot barrier came from staff concerned with the ecological perspective, but as a consequence of that configuration, the Division of Law Enforcement reflected that it would be narrow enough in the area—as Mr. Ray pointed out—that it would pose a safety hazard. So, it was carried forward that to have a 100-foot barrier, there needed also to be a closure of that portion of Conklin Bay to boats traveling in excess of idle speed. My recommendation to the Commission, based largely upon public comments, is that the closure to high-speed boating not occur on the back of Conklin

Bay. Taking into account the safety concerns by the Division of Law Enforcement, that would mean a 50-foot protection barrier for the Conklin Bay wetlands, not a 100-foot barrier.”

Miller asked if there was going to be any education provided to inform the public regarding the idle speed zones. Purvis answered that, as with any rule change, during the first year of enforcing a rule, an education effort would be made to inform the public. He said that there would be postings at the ramp sites, as well as published in local newsletters for the property owners around the affected areas. Purvis said that the various bass tournaments groups would also be notified.

Goss asked Purvis if there would be permanent signs posted near the boat ramps. Purvis said that currently there is a large sign posted. He said adding a map to the sign would be “real easy.” He said the new rule information would also be on the DNR website.

Jack Arnett moved to accept the recommendation by the hearing officer for final adoption. Damian Schmelz seconded the motion. The Chair then asked for Commission discussion on the motion.

Cockrum asked Purvis, “at a 100 foot buffer, how narrow is that?” Purvis replied, “I think it is 206 feet with the 100-foot buffer and 256 with a 50-foot buffer.” Cockrum said he had major concerns for the protection of the wetlands.

Chairman Kiley said, “For now, a 50-foot recommendation is probably the best idea, only because it will help us as they say, establish some yard sticks for future measures. I, too, have some safety concerns with respect to the narrowing of that throat [as proposed at preliminary adoption], which is the natural buoy line established for idle speed. Then I think it would be necessary to probably shut down the west end of Conklin Bay to idle speed traffic only. And that’s where the rule is from the standpoint of acceptance from all the folks up there.” Kiley said 90% of the people that participated in deliberation greatly appreciate staff’s work, and we “are not in any way debating the staff’s recommendations. 50-foot is the most practical at the present time. With respect to all the testimony, we felt 50-foot would provide protection of the wetlands, yet permit a relative safe use of the area for water sports.”

Ray McCormick said he could not support any proposal that was not fully protective of the environment. The Chair responded that he should vote according to his beliefs. Kiley then called for a voice vote. The motion carried, with McCormick opposed.

**Consideration of Report of Hearing Officer and Recommendation for Final Approval of Rule 312 IAC 16, Amendments to Oil and Gas Rules to Implement Fee Changes Anticipated by P. L. 48-2002; Administrative Cause Number 02-033G; LSA Document #02-73.**

Stephen Lucas, Hearing Officer, introduced this item. He said the amendments would help implement 2002 statutory changes made to the fee structure and bonding structure of the Division of Oil and Gas. Lucas said the proposed amendments were not expected to be controversial, and no adverse comments were received. He added that recently appointed Director of the Division of Oil and Gas, Michael Nicholaus, was present to answer any technical questions.

Jerry Miller moved to approve for final adoption the amendments to 312 IAC 16 regarding fee structures and bonding. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

**Consideration of Report of Hearing Officer and Recommendation for Preliminary Adoption of Amendments to 312 IAC 3-1 for Delegation of Considerations of Legal Objections Filed in AOPA Proceedings to Committee of the Natural Resources Commission; Administrative Cause Number 02-138A.**

Stephen Lucas, Director of the Division of Hearings, introduced this item. He said the proposal would establish a committee of the Natural Resources Commission to review objections arguments received in the course of AOPA proceedings. The committee would emphasize the legal expertise on the Commission but would allow for the inclusion of non-attorneys with special expertise when the committee chair thought helpful. Lucas said most proceedings under AOPA were largely legal in nature, and this process would help communicate to litigants that we took seriously what is essentially a judicial process.

Beth Admire indicated she had discussed the proposal with Lori Kaplan, and they were supportive of the concept. The committee would bring the adjudicatory processes involving IDEM and DNR somewhat closer together and support the expectations of litigants. She observed that the various boards supporting IDEM functions had once heard adjudicatory matters, but legislation enacted a few years ago by the Indiana General Assembly removed them from the process, in favor of a more judicial system as well as to encourage the boards to focus more on rule adoption.

The Chair observed the formation of the committee was “long overdue”. He noted that both NRC members and litigants had expressed discomfort with the current system. The proposal was an important positive step.

Rick Cockrum expressed dissatisfaction with the proposal. He said these proceedings were important opportunities to decide policy and should not be left to the attorneys. He urged the authority should not be delegated.

Lucas observed very few cases that come before the Division of Hearings today are considered by the Natural Resources Commission. Of the roughly 150-200 cases heard annually, only about half-a-dozen are presented during oral argument on objections. For example, notices of violation issued under the Surface Mining Control and Reclamation Act never come to the Commission. Cockrum asked if it were not true that they would come to the Commission if requested by a party. Lucas responded they would not.

Jane Anne Stautz moved to give preliminary adoption to the amendments to 310 IAC 3-1 to establish a committee within the Commission to hear oral argument on objections. Jack Arnett seconded the motion. Upon a voice vote, the motion carried. Cockrum was opposed.

**Consideration of Approval of Proposed Nonrule Policy Document; Article Governs Use of Type I and Type II Marine Sanitation Devices on Navigable Waters in Indiana; Administrative Cause Number 02-097L.**

Maj. Sam Purvis, State Boating Law Administrator presented this item. He said the nonrule policy document would identify geographic areas where Type I or Type II Marine Sanitation Devices (MSDs) can lawfully be used. He said there is a three-mile limit off the coast of the United States outside of which raw sewage can be discharged into the oceans. Within that three-mile mark, the EPA requires a boater equipped with toilets to have a Type I, Type II or Type III MSD onboard. Type I MSDs and Type II MSDs provide for treatment of sewage before discharge. A Type II MSD is a holding tank, and sewage collected in a holding tank must be emptied at a pumpout station or otherwise properly collected for land-based treatment.

Generally, Type I and Type II MSDs can be used on waters that are directly navigable in interstate commerce—in other words without portaging around an obstruction. Through regulations adopted by the U.S. E.P.A. and the Coast Guard, inland waters can be declared no-discharge zones, but Indiana has not sought this designation for any of its waters.

Kiley asked Purvis, “where do we reach a point where a watercraft has to have a permanent plug in a Type I or Type II MSD?” Purvis replied that if a boat is brought to a DNR property with a Type I or Type II, the discharge has to be rendered inoperable. He said, “even though a DNR lake or reservoir may be a navigable water, they can’t get to it [directly by water] from an outside source.”

Lucas said that Charles Wilson, who sometimes attends the NRC meetings where watercraft issues are discussed, asked him to pass along that Wilson “supports the proposed nonrule policy document.”

Rick Cockrum moved to approve the nonrule policy document identifying navigable waters where Type I and Type II Marine Sanitation Devices can lawfully be used in Indiana. Jane Anne Stautz seconded the motion. Upon a voice vote, the motion carried.

**Consideration for Recommendation for Approval of First Amendment to Information Bulletin #16 that Governs Civil Penalty Schedule for Violations of Oil and Gas Production Laws; Administrative Cause Number 02-1113G.**

Mike Nicholaus, Director of Division of Oil and Gas, presented this item. He explained that in 2001, his division went through the promulgation process and updated its rules, adding specifications for spill management for oil and salt-water spills. He said as result of the statutory changes in 2002, the Division of Oil and Gas needed to update its penalty schedule. The proposed modifications to the nonrule policy document would reflect statutory changes and clarify several aspects of its implementation. He asked that the NRC approve the amendments to Information Bulletin #16.

Jerry Miller moved to approve the amendments to Information Bulletin #16. Jack Arnett seconded the motion. Upon a voice vote, the motion carried.

**Consideration for Rule Amendments to Nonrule Policy Document, Information Bulletin #1 Governing Establishment of Division of Hearings, Indexing of Final Adjudicative Agency Decisions, and Transcript Fees; Administrative Cause Number 02-144.**

Jennifer Kane, Division of Hearings, presented this item. She said the NRC now has more than 30 active nonrule policy documents. The first of these (Information Bulletin #1) established the Commission’s Division of Hearings, set fees for the preparation of transcripts, and recognized CADDNAR as the official compilation of adjudicatory decisions from the Commission and its Administrative Law Judges. Amendments currently before the Commission would update Information Bulletin #1 to incorporate various statutory, regulatory, and NRC policy pronouncements made since the nonrule policy document was adopted. There would, however, be no other changes.

Jane Anne Stautz moved to approve the amendments to Information Bulletin #1. Ray McCormick seconded the motion. Upon a voice vote, the motion carried.

## OTHER MATTERS

### **Informational Item: 2002 Natural Resources Interim Study Committee**

Dan Mathis presented this item. He reported on topics considered by the 2002 Natural Resources Interim Study Committee and shared a spreadsheet of the fee increases that were endorsed by the Natural Resources Study Committee. Mathis commended the DNR employees who contributed to the Natural Resources Committee, the Water Resources Study Committee, Environmental Quality Services Council and the Labor Study Committee. "I think the Department was really well served by the how staff presented our points, and I'm really pleased with that."

Mathis said, "substantially, you got the fees and we were thrilled to have those endorsed. Also endorsed was a computerized license sale system for selling fish and wildlife licenses. People are really excited about that." He said a bill was endorsed to empower judges to suspend a driver's license for failure to appear for a game law violation. Mathis said the Study Committee endorsed the consolidation of windbreak, forests, and wildlife "classified" programs, which would be administered by the Division of Forestry. The Study Committee also endorsed the Lake and River Enhancement Bill, previously authored by Representative Tonya Adams and sponsored by Senator Robert Meeks. He said Representative Michael Smith plans to author a bill to fund payment in lieu of taxes and to increase revenue to the Indiana Heritage Trust.

Mathis said the Study Committee heard a 2.5 hours of testimony on Chronic Waste Disease (CWD) and domestic deer farms. He said the meeting was testimony only. "There continues to be deer farmers who want to pursue that idea, and of course the Department is increasingly convinced with seeing the disease not only in Wisconsin but Illinois, that this is the wrong time to be doing this, and that's the message we'll take to the General Assembly."

Mathis said the Water Resources Study Committee endorsed the idea of obtaining additional Clean Water Indiana funding, but he said the members did not indicate a method for achieving the additional funding. He said that the Study Committee did not endorse a price, but did endorse the concept of charging a fee on bottled water. Representative Friend and Senator Wheeler offered the idea of 2.40 cents per liter fee on bottled water. He said that the Water Resources Study Committee considered, but did not take action on, the creation of a water shortage task force.

Mathis reported that Environmental Quality Service Council (EQSC) performed a lot of work, which took a great deal of participation and coordination among personnel in IDEM and DNR. "We appreciate the opportunity to work with IDEM and those great folks over there on that." Mathis reported that the EQSC submitted its report and said, "I think you will see a bill offered."

Mathis said the Labor Study Committee recommended the establishment of a commission on American Indian and Native Alaskan issues. He said, "we testified only to say there is a lot of things that DNR does a great job on, a lot of expertise we have, but job training is not in our expertise."

Mathis said that in the 2003 Session, we could expect to see wetlands, CWD, county maintenance ditch issues, and that DNR would be pursuing things such as point sale and fees. "A lot of people are trying to do fees." He said that Chamber of Commerce took aim at IDEM's proposed fees. He said that in a time of short revenue, people are looking toward dedicated opportunities to continue programs. Mathew said that DNR is trying to generate fees as a way to maintain DNR properties. "We'll be doing what we can."

## **ADJOURNMENT**

At 12:10 p.m., EST, the meeting adjourned

## **FUTURE MEETINGS**

December 2002—No meeting

January 21, 2003 —The Garrison, Fort Benjamin Harrison, Indianapolis, Indiana