

NATURAL RESOURCES COMMISSION
Meeting Minutes, September 15, 2020

MEMBERS PRESENT

Bryan Poynter, Chair
Jane Ann Stautz, Vice Chair
Dan Bortner, Secretary
Bruno Pigott
Laura Hilden
Noelle Szydlyk
Bart Herriman
John Wright

NATURAL RESOURCES COMMISSION STAFF PRESENT

Sandra Jensen	Dawn Wilson
Billie Davis	Scott Allen

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

John Davis	Executive Office
Chris Smith	Executive Office
Terry Coleman	State Parks
Jim Webb	State Parks
Ginger Murphy	State Parks
Steve Hunter	Law Enforcement
Thomas Swinford	Nature Preserves
Amanda Wuestefeld	Fish & Wildlife
Linnea Petercheff	Fish & Wildlife
Joe Caudell	Fish & Wildlife
David Smith	Water
James B. Brindle	Communications

GUESTS PRESENT

Gary Hancock	Jim Kaminski	Raymond Rehlander
Robert Dempsey	Robert Lenzen	Marvin Templin
Wieslaw Kaminski		

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 10:05 a.m., ET, on September 15, 2020, at the Fort Harrison State Park, Garrison, 6002 North Post Road, Blue Herron Ballroom, Indianapolis, Indiana. With the presence of eight members, the Chair observed a quorum.

APPROVAL OF MINUTES

The Chair asked for a motion for the approval of the Commission's July 21, 2020 meeting minutes. Bruno Pigott moved to approve the minutes, as presented. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

ELECTION OF SECRETARY

Bruno Pigott, in recognition of the vacancy created by the departure of former DNR Director Cameron Clark and the appointment of a new DNR Director, made a motion to slate Daniel Bortner, as Secretary for the remainder of the 2020 term. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion was unanimously carried.

REPORTS OF THE DNR DIRECTOR, DEPUTIES DIRECTOR, AND THE CHAIR OF THE ADVISORY COUNCIL

Dan Bortner, Director of the Department of Natural Resources (Department), provided his report. Bortner thanked the Chair and Sandra Jensen, Director of the Commission's Division of Hearings, for providing him with an orientation on Commission protocol. He also said he has been working on better understanding of the Division operations within the Department that are not directly related to his experiences with State Parks. Bortner said the Department continues to work through the challenges presented by the pandemic, will continue to serve the public, and expect capacity crowds throughout October. Bortner noted budget challenges and expressed confidence that the Department will overcome those challenges.

Bortner stated that the search for a new Director of State Parks is ongoing and the goal is to have the position filled by October. Bortner noted all Department properties are open with limited restrictions and the Governor attended the opening of Ravinia State Forest in Morgan County and Mountain Tea State Forest in Brown County in August.

Bortner said the Department broke ground on the Charters of Freedom Exhibit at the Garrison that will be completed in October 2020. Bortner explained the Charters of Freedom Exhibit is a North Carolina businessman's venture to place copies of the Declaration of Independence, the U.S. Constitution, and the Bill of Rights in every county in the United States. He said the Garrison was selected as the site for Marion County because of its military history and partnership with the National Parks Service. Bortner said the exhibit would be constructed of

limestone and bricks, the three documents will be displayed, the display will be lighted, and there will be flags on flagpoles.

John Davis, Deputy Director for the Bureau of Lands and Cultural Resources, provided his report. Davis stated National Public Lands Day on September 26, 2020, is a day to volunteer for various projects and visit Department properties.

Davis noted record campground visitors on Department properties over the summer with only four days between Memorial Day and the Labor Day weekends below 90% occupancy. Davis stated that a lifeguard at Dunes State Park tested positive for COVID-19 causing the Department to close the swimming area for the last two weekends of the season. He said the Department completed its investigation into the incident at Monroe Lake over the summer and all information has been turned over to the county prosecutor.

Davis said normally in the fall the Department of Corrections assists the Division of Forestry by providing inmate crews to lift trees and plants, but they will not be available this year because of restrictions. Davis explained that the Division of Forestry will need volunteers.

The Chair asked about deferred maintenance money that was set aside for Department property restorations.

Davis reported that the hope was to receive \$90 million total funds. The Department was actually allocated \$28 million to work on projects, noting that there may be additional money made available later. He said one of the first-round projects is currently underway and includes redoing the annex at Brown County State Park.

Chris Smith, Deputy Director of the Bureau of Water Resource and Regulation, provided his report. Smith said the Division of Communications is working to communicate with first-time users of Department properties to educate them on property uses and how to be courteous with other people while using Department properties. He noted the Division of Communications received three national awards at the Association of Conservation Information Awards program in August 2020.

Smith said that the Division of Reclamation will receive the highest regional award the federal Office of Surface Mining Reclamation and Enforcement (OSMRE) issues annually for the Buttermilk Highwalls project in Pike County. Smith stated the mine operated from 1953 to 1955 in what is now a section of Sugar Ridge Fish and Wildlife Area and the project included two high walls and an acidic mine pit lake with poor water quality. He noted the Division of Reclamation has received the OSMRE award for the last six out of seven years.

Smith stated in August that Louisville Gas and Electric (LG&E) had a wellhead separate on one of their natural gas storage wells in the Doe Run Storage Field in Pike County. He said no one was injured; it took a couple of days to get the issue resolved, and LG&E lost an estimated 24,000 Mcf of gas during the event. Smith noted that 1 Mcf is 1,000 cubic feet.

Smith said the Division of Water is monitoring the current water availability levels in the state. He said that last week's report shows 49% of the state as "abnormally dry" and 14% as "moderate drought". Smith noted the Kankakee River and Maumee River systems are currently experiencing low flow volumes.

Smith stated the Division of Historic Preservation and Archeology awarded Historic Preservation Fund grants totaling more than \$481,000 for historic preservation and archaeology projects in Indiana communities. Smith said in most cases, these grants require a dollar for dollar match of local or private funds for a total projected investment of \$929,000 in cultural resource projects across the state. He noted that September is archaeology month, events will be virtual, and the schedule of programs can be viewed on the Division of Historic Preservation and Archeology calendar.

Smith said the Division of Entomology and Plant Pathology is dealing with over 1,000 packets of mystery seeds received in Indiana from China. He stated that the Department continues to work with partners in the Indiana Department of Agriculture, Purdue University, and the Office of the State Chemist to collect, identify, and destroy the seeds. Smith stated the seeds are part of a "brushing scam" that is designed to improve the company's customer service rating by completing a survey after shipping an item to someone who did not order the item. Smith said the staff is receiving several calls from citizens confusing Cicada Killers with the Asian Giant Hornet.

The Chair noted the Advisory Council has not met since the last Commission meeting.

The Chair thanked the Division of Hearing staff for the work they do and asked for a status update on operations during COVID restrictions.

Jensen reported that the Division shares a suite with two other agencies and a schedule has been worked out so there is office coverage by at least two people every day. She said the Division of Hearings covers the office on Mondays and Fridays and that the number of people coming to the office to conduct business is almost non-existent. Jensen expressed that the Division continues to operate fully despite staff being at remote work locations.

The Chair asked how the Office of Tourism Development is doing during COVID restrictions.

Noelle Szydlyk, Director of Planning and Development, Sport Tourism and Outdoor Recreation, reported the year has been rough with restrictions impacting the industry overall and conventions being canceled. She noted that the Division of State Parks and other outdoor activities are doing well, and the Office of Tourism Development continues to promote outdoor activities. Szydlyk stated the Office of Tourism Development is transitioning to the Indiana Destination Development Corporation (IDDC) that will incorporate more than tourism and reported that there will be opportunities to refocus and bounce back from the effects of COVID. Szydlyk stated IDDC is offering a \$10 million grant to provide operating support to arts and cultural organizations, local events, and tourism organizations whose normal business has been interrupted due to COVID.

The Chair recognized the good work of the Division of Fish and Wildlife and stated that he heard positive feedback from fellow hunters on **the** opening day of dove season at Deer Creek Fish and Wildlife Area. He noted the comments from hunters were that, “they had never seen better preparations for a start of a traditional hunting season” and that the fields looked fantastic.

Amanda Wuestefeld, Director Division of Fish and Wildlife, thanked the Chair and said there has been a little adjustment but the staff has done a lot of work at the properties.

CHAIR, AND VICE CHAIR

Information: Consideration of 2020 meeting dates:

The Chair noted that the remaining 2020 Commission meeting date is November 17 scheduled to take place at the Fort Harrison State Park Garrison in Indianapolis.

Updates on Commission and AOPA Committee

Jane Ann Stautz, Chair of the Commission’s AOPA Committee, stated that the AOPA Committee is scheduled to meet at 11:00 a.m. ET following the Commission meeting.

DNR, EXECUTIVE OFFICE

Consideration and identification of any topic appropriate for referral to the Advisory Council

No items were identified for referral to the Advisory Council.

DNR, DIVISION OF NATURE PRESERVES

Consideration of the dedication of the Elkhart Bog Nature Preserve Addition in Elkhart County

Tom Swinford, Division of Nature Preserves, presented this item. Swinford stated that the proposal is to add 57 acres to the existing Nature Preserve that will protect habitat, will allow for public access, and develop a boardwalk.

The Division of Nature Preserves recommended dedication of the site as an addition to the Elkhart Bog Nature Preserve.

Bart Herriman moved to approve the dedication of the Elkhart Bog Nature Preserve Addition. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Davis added the Elkhart Bog Nature Preserve is an amazing place and thanked the Division of Nature Preserves for their hard work in making the acquisition of the additional land possible.

NRC, DIVISION OF HEARINGS

Consideration of recommended report of the Natural Resources Commission with respect to the Petition for the Establishment of the Turkey Creek Dam and Dike Conservancy District; Administrative Cause No. 20-014C

Dawn Wilson, Hearing Officer, presented this item. Wilson noted the Kosciusko County Circuit Court entered an order referring the Petition for the Creation of the Turkey Creek Dam and Dike Conservancy District (TCCD) to the Commission on March 5, 2020, in accordance with IC 14-33-2-17. Wilson explained that the Commission coordinates with the Department's Division of Water and acts as a "friend of the court". She noted that the Commission's role includes the receipt of information from government entities, notice of and participation in a public hearing where evidence is publically presented, and the filing of a fact-finding report to the court within 120 days of the Court's referral. She noted that the petitioner did not provide the Court's Order to the Commission at the time it was ordered and that the Court has extended the date by which the report is to be filed.

Wilson said the Petition to establish the TCCD appears to be for the purposes of providing for flood prevention and control, improving drainage, and operation, maintenance, and improvement for water based recreational purposes or other work of improvement that could have been built for any other purpose.

Wilson said the Hearing Officer's report (Report) includes a five step analysis for each purpose and includes attachments for summarized testimony from the July 23, 2020, public hearing, written public comments, comments from government agencies and the Department's technical review. She noted no comments in opposition to the establishment of the TCCD were received.

Wilson noted that the TCCD-Dike was not originally constructed as a flood control work of improvement and the Petitioners identified the cost of repair to be \$100,000 to \$300,000. Upgrades to the TCCD-Dike would be necessary in order for the current de-facto berm to be considered a flood control structure. Wilson stated the Report advises consideration of the repairs proposed to ensure that the TCCD-Dike fulfills the purpose of flood control. Wilson said the TCCD-Dike ownership is not clear and the Report advises consideration of the ownership to determine if the owners of the TCCD-Dike are freeholders of the proposed TCCD and if the TCCD would have authority over the owners to ensure the performance of required activities on the property. As long as sufficient activities qualify the dike as a flood control structure and authority over the owners allows for performance of activities, Wilson said the establishment of the TCCD for the TCCD-Dike appears to be necessary for the purpose of flood prevention and control.

Wilson said the TCCD-Dam is owned by the Town of Syracuse. The dam currently maintains the legal lake level of both Syracuse Lake and Lake Wawasee, but the Town of Syracuse performed

no repairs until recently. She noted critical and intermediate repairs of the TCCD-Dam's control structure, were fully funded at an approximate cost of \$600,000, and should have been completed on August 8, 2020. Upon the anticipated transfer of the dam to TCCD, the report recommends consideration regarding the need for the establishment of the TCCD for the Petitioners' estimate annual costs of approximately \$5,000 for regular inspection and maintenance. If so, Wilson stated said the establishment of the TCCD for the TCCD-Dam appears to be necessary for the purpose of drainage.

Wilson noted that the TCCD-Dike cost of repairs presented was rough estimate and that a topographical survey of the dike and a geotechnical investigation would be needed to determine the actual repair cost. Wilson said the Petitioners' estimated TCCD annual budget is \$135,000 and that the budgeted amount could be achieved through multiple funding sources. She noted that the Petitioners' estimated an annual assessment of \$50 for each freeholder. She noted that the Petitioners also anticipate the placement of \$100,000 of the annual budget, if not otherwise used, in a cumulative improvement fund regulated by the Indiana Department of Local Government Finance. Wilson stated it is not clear from the available information that the annual assessment would ultimately be sufficient to repair and maintain the TCCD-Dike. Wilson stated the proposed TCCD-Dike may hold the promise of economic and engineering feasibility, but a conclusion cannot be reached based upon the information available. For the purpose of drainage, Wilson stated the ongoing cost to inspect and maintain the TCCD-Dam at its current level of safety holds the promise of economic and engineering feasibility.

Wilson stated establishment of the TCCD for the purpose of flood control through repairs to the TCCD-Dike would benefit an area that may also include the proposed TCCD. The Report suggests consideration to determine the benefit to freeholders for the purpose of flood control. Wilson said that a full evaluation of costs is not currently available due to the rough estimate of costs presented. For these reasons, while the benefits of establishment of the TCCD, for the purpose of flood control, may exceed the costs and potential damages such a conclusion cannot be reached based on the information available. Wilson stated total property value for the properties anticipated for inclusion in the TCCD was not made available, but the Department concluded that maintaining the lake level would have a positive impact on freeholder property values and provide sustainable funding for improvements to the TCCD-Dam. Wilson said that the potential costs and damages to freeholders that could result from loss of the lakes supports the Report's conclusion that the proposed district seems to offer benefits in excess of costs and damages for purposes of drainage.

Wilson said the proposed TCCD appears to be contiguous. In that way, the proposed TCCD would cover and serve a proper area for the purpose of flood control and drainage. Wilson noted that the Report suggests additional inquiry to determine the extent that non-freeholders would benefit to determine if the establishment of the TCCD for purposes of flood control would sufficiently benefit freeholders.

Wilson reported that evidence presented by the Petitioners and information gathered from state agencies does not reveal the existence near the proposed TCCD boundaries of a conservancy district, flood control project, reservoir, lake, drain, levee, or other water management or water supply project with which the establishment of the TCCD would interfere.

Wilson reported that analysis for the third purpose proposed, the operation, maintenance and improvement of a work of improvement, would be the same as for flood control or drainage purposes.

Bruno Pigott moved to accept the report with respect to the Petition for the Establishment of the Turkey Creek Dam and Dike Conservancy District. John Wright seconded the motion. Upon a voice vote, the motion carried.

Consideration of Hearing Officer report on rule processing, public hearing, and hearing officer analyses with recommendation regarding final action to amend 312 IAC 9, biennial wildlife rulemaking package; LSA #20-069(F); Administrative Cause No. 19-042D

Wilson also presented this item. Wilson noted the Commission granted preliminary adoption to the proposed amendments at its regular meeting held on January 21, 2020 and all approvals have been obtained.

Wilson said the Notice of Intent to adopt the rule amendments was published in the Indiana Register on February 19, 2020. She stated that public hearings were held on July 29, 2020, at Mounds State Park and on July 30, 2020, at McCormick's Creek State Park. She noted the public comments attached as Exhibit A and the Department's response to the comments as Exhibit B within the Hearing Officers Report.

Wilson said there were multiple comments on two aspects of the proposed amendments within the wildlife package. The first pertained to the definition of "air gun" under 312 IAC 9-1-1.2 and governing air guns for deer hunting under 312 IAC 9-3-3. She said that some comments expressed support or opposition to various parts of the rule amendments regarding air guns. She noted that some comments expressed concern that air guns would not generate revenue through the Pittman-Robertson fund, which the Department acknowledged. Wilson stated the Department also noted that to hunt deer, individuals would still need to buy a hunting license.

Wilson stated there were also multiple comments regarding the addition of roughed grouse to the list of endangered species of birds in 312 IAC 9-4-14. She said the majority of the comments supported the addition but expressed concern that the addition of ruffed grouse as an endangered species would result in clearcutting Indiana's old growth forests to promote habitat for the ruffed grouse.

Wilson noted there were Division of Fish and Wildlife staff available to answer technical questions and recommended final adoption of the proposed revisions to 312 IAC 9, as proposed.

The Chair asked what other states around Indiana are doing with regards to allow or not allowing air guns.

Petercheff said that Illinois, Ohio, and Wisconsin do not allow air guns or air rifles, and that Alabama, Kentucky, Michigan, and Missouri allow certain caliber air guns, but not air bows. She

said that Texas, Maryland, and Tennessee allow both air bows and air rifles and that the trend to allow or not allow air guns, air rifles, and air bows is mixed.

Davis stated that during preliminary adoption he had raised concerns that air guns would not have the same federal tax as other firearms and that he is not sure what to recommend but feels the issue is still relevant. Davis suggested, if the air guns are added to the rule, that the Commission and the Department review the issue in the future to see if it has caused any unintended consequences that might need to be changed.

The Chair stated that it is his intent to revisit the air gun rule in the future, if the Department's loss of revenue becomes an issue or if some other issue comes up.

Bruno Pigott moved to give final adoption to amend 312 IAC 9, biennial wildlife rulemaking package. Jane Ann Stautz seconded the motion. Upon voice vote, the motion carried.

Consideration of Hearing Officer report on rule processing, public hearing, and hearing officer analyses with recommendation regarding final action to amend 312 IAC 9-6, 312 IAC 9-7, and 312 IAC 9-9, biennial fisheries rulemaking package; LSA #20-081(F); Administrative Cause No. 19-037D

Sandra Jensen, Hearing Officer, presented this item. Jensen noted the proposed amendments in the biennial fisheries rule include proposals to add definitions, add or remove certain species from the list of endangered fish, with correlating amendments to prohibit the taking of fish on the list of endangered fish. Jensen said there are proposals to amend bag and size limits on black bass taken in Bixler Lake, Henderson Lake, Little Long Lake, and Round Lake, all located in Noble County and also the taking of saugeye from Glenn Flint Lake in Putnam County.

Jensen stated the Office of Management and Budget (OMB) granted moratorium exception for the biennial fisheries rule on January 8, 2020. The Commission granted preliminary adoption to the proposed amendments at its regular meeting held on January 21, 2020, and it was added to the rulemaking docket on that date, which opened the comment period.

Jensen said the Notice of Intent to adopt the rule amendments were published by the Legislative Service Agency on February 26, 2020 and fiscal analyses were submitted to the OMB and the Legislative Council on February 27, 2020. She stated that public hearings were held on July 29, 2020 at Mounds State Park and on July 30, 2020, at McCormick's Creek State Park. Jensen stated that no member of the public attended the public hearings. She explained that there were six written comments received during the comment period, but two of the comments did not pertain to this rulemaking.

Jensen noted two comments related to the prohibition on fishing for cisco as a result of the species' identification on the list of endangered species of fish. Jensen observed that the Department provided justification for adding cisco to the list of endangered species of fish and noted that the justification also supported the prohibition on fishing for the species.

Jensen stated that one comment addressed amendments to 312 IAC 9-7-16(b)(2) regarding the use of free-float lines on the Ohio River. The comment suggested a clarification be made to clarify that an angler may use an “unlimited” number of free-float lines while sport fishing on the Ohio River. Jensen noted the person commenting was a retired Indiana Conservation Officer who had also filed a citizen petition for rule change seeking this same type of clarifying amendment because he believes there has been a misinterpretation of the law.

Jensen explained that in the citizen petition it was reported that some sport anglers on the Ohio River believe they are limited to the use of only five free-float lines, which is a limitation applicable to inland waters but inapplicable to sport fishing on the Ohio River. The request is to clarify that sport anglers on the Ohio River may use an unlimited number of free-float lines. Jensen stated that the amendment is a clarification that, in her opinion, does not constitute a substantial change, however, she noted that the Office of the Attorney General (OAG) will make the final decision whether the revision constitutes a substantial change in the proposed rule. Should the OAG opinion that the revision does constitute a substantial revision, the revision must be supported by a written comment and be a logical outgrowth of the original rule, which it is. She offered the opinion that the revision was appropriate and noted that the Department agrees with the revision.

Jensen noted the copy of the rule, with the proposed revision, is identified as Exhibit C attached to the Hearing Officer’s Report and recommended final adoption of the proposed rulemaking, with revisions to 312 IAC 9-7-16(b)(2).

Bruno Pigott moved to give final adoption to amend with revisions to 312 IAC 9-6, 312 IAC 9-7, and 312 IAC 9-9, biennial fisheries rulemaking package. John Wright seconded the motion. Upon voice vote, the motion carried.

Consideration of recommendation for final action on readoption of 312 IAC 5, providing standards for the use of a boat on public waters of Indiana; LSA #20-355(F); Administrative Cause No. 20-LE-003

Billie Davis, Hearing Officer, presented this item. Davis stated preliminary adoption of 312 IAC 5 was approved by the Director of the Division of Hearings on January 2, 2020, “Notice of Intent to Readopt” was posted to the Indiana Register on July 1, 2020 and the fiscal analyses was forwarded to the Legislative Council on July 1, 2020. Davis noted that no written request seeking to have a particular section of the rule readopted separately was received.

Davis recommended approval of the readoption of 312 IAC 5.

Jane Ann Stautz moved to readopt 312 IAC 5 without amendment. Noelle Szydyk seconded the motion. Upon voice vote, the motion carried.

Consideration of recommendation for final action on readoption of 312 IAC 9.5, providing standards for article establishes an option to request an in-lieu fee to mitigate adverse

impacts to fish, wildlife, or botanical resources for activities authorized in permits issued; LSA #20-410(F); Administrative Cause No. 20-FW-006

The Chair noted that Laura Hilden would be abstaining from the vote due to a conflict of interest.

Davis also presented this item. Davis stated preliminary adoption of 312 IAC 9.5 was approved by the Director of the Division of Hearings on January 2, 2020, “Notice of Intent to Readopt” was posted to the Indiana Register on August 5, 2020 and the fiscal analyses was forwarded to the Legislative Council on August 5, 2020. Davis noted that no written request seeking to have a particular section of the rule readopted separately was received.

Davis recommended approval of the readoption of 312 IAC 9.5.

Bruno Pigott moved to readopt 312 IAC 9.5 without amendment. Bart Herriman seconded the motion. Upon voice vote, the motion carried.

Consideration of recommendation for final action on readoption of 312 IAC 10, providing standards for the delineation and regulation of flood plains to decrease existing flood damages, mitigate future flood damages, and promote the health, safety, and welfare of the people of Indiana; LSA #20-345(F); Administrative Cause No. 20-WA-007

Davis also presented this item. Davis stated preliminary adoption of 312 IAC 10 was approved by the Director of the Division of Hearings on January 2, 2020, “Notice of Intent to Readopt” was posted to the Indiana Register on June 17, 2020 and the fiscal analyses was forwarded to the Legislative Council on June 17, 2020. Davis noted that no written request seeking to have a particular section of the rule readopted separately was received.

Davis recommended approval of the readoption of 312 IAC 10.

Bruno Pigott moved to readopt 312 IAC 10 without amendment. Noelle Szydlyk seconded the motion. Upon a voice vote, the motion carried.

Adjournment

The meeting was adjourned at approximately 11:09 a.m., ET.