

NATURAL RESOURCES COMMISSION

January 21, 2014 Meeting Minutes

MEMBERS PRESENT

Bryan Poynter, Chair
Jane Ann Stautz, Vice Chair
Cameron Clark, Secretary
Thomas Easterly
Patrick Early
R. T. Green
Phil French
Doug Grant

NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas
Sandy Jensen
Jennifer Kane

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

John Davis	Executive Office
Chris Smith	Executive Office
Joseph Hoage	Executive Office
Cheryl Hampton	Executive Office
Marty Benson	Communications
Steve Hunter	Law Enforcement
Danny East	Law Enforcement
Linnea Petercheff	Fish and Wildlife
John Bacone	Nature Preserves
Bourke Patton	Natural Resources Foundation
John New	State Parks and Reservoirs

GUESTS PRESENT

Barb Simpson
Jeff Wells

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 10:34 a.m., EST, on January 21, 2014 at The Garrison, Fort Harrison State Park, 6002 North Post Road, Ballroom, Indianapolis, Indiana. With the presence of eight members, the Chair observed a quorum.

Jane Ann Stautz moved to approve the minutes for the meeting held on September 17, 2013. Patrick Early seconded the motion. Upon a voice vote, the motion carried.

ELECTION OF THE OFFICERS

Thomas Easterly moved to re-elect for 2014 the same officers who served in 2013: Bryan Poynter, Chair; Jane Ann Stautz, Vice Chair; and Cameron Clark, Secretary. R. T. Green seconded the motion. No other nominations were offered. Upon a voice vote, the motion carried.

REPORTS OF THE DIRECTOR, DEPUTIES DIRECTOR, AND ADVISORY COUNCIL

Director Cameron Clark provided his report. He said the DNR's website is being revamped. The DNR had over four million visitors to its website in 2013, a 6% increase over the previous year and a 24% increase in repeat visitors. Nearly 2,000 State Park gift packs were sold in 2013.

The Director reported the Department had "a couple key additions" to the Healthy Rivers Initiative project. Forty acres were acquired near Fairbanks Landing, which will provide another public access at the southern tip of the Wabash River Corridor. "We picked up a couple other nice parcels" that are located near the northern end of the Wabashiki Fish and Wildlife Area Corridor.

The Director reported there was "tremendous participation" during the annual First Day Hikes event at Indiana's state parks and reservoirs with more than 1,200 participants. Monroe Lake, Mounds and Shakamak State Parks had a significant number of visitors.

Director Clark recognized the Indiana Conservation Officers for their performance during Indiana's recent snow storm. Approximately 1,500 calls were handled by central dispatch within a two-day period in response to slide offs, accidents, rescues, medical emergencies, and overturned semi's. The ICOs also assisted state troopers that were stuck in the snow. Approximately 65 Conservation Officers responded during the snow emergency. "They all performed very well."

Thomas Easterly asked, "This was all over the state, right—not just in the parks?"

Clark confirmed the assistance was statewide.

Chairman Poynter noted the increase in sales of the State Park Holiday Gift Pack in the past few years. He echoed Director Clark's comments and the appreciation for the hard work performed by the Conservation Officers during the snow storm.

John Davis, Deputy Director for the Bureau of Lands and Cultural Resources, provided his report. Davis reported the snowmobile and off-road vehicle licensure transition from the DNR to the Bureau of Motor Vehicles was a success and that the "go-live" date was January 1. "This will be better for customers, simpler for customers, good for BMV and good for us."

Davis provided an update on the white-nose syndrome, a fungus that affects bats. He reported that DNR negotiations will allow access to some caves, mostly in Spring Mill State Park. He

said the cavers “pledge to disinfect” according to the accepted guidelines. “We’ll continue our relationship with the cavers and the U.S. Fish and Wildlife Service as we look for solutions.”

Davis reported that the U.S. Army Corp of Engineers released their Great Lakes Mississippi River Interbasin Study. The study focuses on closing the Chicago Area Waterway System connection between the Great Lakes and the Mississippi River. Davis said he would provide Commission members with a web link to the report.

Davis said the DNR would have a booth at the Indianapolis Boat Sport and Travel Show which is scheduled for February 14 through February 23.

Chris Smith, Deputy Director for the Bureau of Water Resource and Regulation, provided his report. He said Steve Weinzapfel is the new Director of the Division of Reclamation. Weinzapfel has been a “long time fixture” with the division and has worked with the Abandoned Mine Land Program as well as with inspection and enforcement.

Smith reported the Division of Reclamation and the Indiana Society of Mining and Reclamation recently held their annual technology exchange conference in Jasper, Indiana. “It’s kind of a unique situation in where both industry and regulators and second party contractors come in, discuss the topics of the day, successes, or what’s not working for them and try to come to some consensus on how to move forward.” Approximately 250 people attended the conference.

Smith added that the Indiana Historic Preservation Review Board was scheduled to meet on January 22. The Board would consider additions to Indiana properties eligible for the State Register and for the Federal Register of Historic Sites.

CHAIR, VICE CHAIR, AND CHAIR OF ADVISORY COUNCIL

Updates on Commission and Committee activities

Patrick Early, Chair of the Advisory Council, reported meeting on January 15. With the “decline in rule activity, the Council’s role has somewhat evolved into helping to vet issues prior to them coming before the Commission.” The Division of Fish and Wildlife provided a presentation with recommendations and conclusions regarding the environmental impacts of a 2013 boat race that occurred on Stone Lake in LaPorte. Several of the Department’s senior staff attended and provided updates on current events. “The meeting was a good meeting.”

Chairman Poynter introduced Danny East as the new Director of the Division of Law Enforcement. He commented on the year-end staff evaluations for 2013. “I don’t even know why they ask me to do these because our staff is so supreme I might as well copy last year’s and make sure Vice Chair Jane Ann Stautz and I review them. We could just probably put ‘ditto’ for year after year. But, in all sincerity, this Commission operates so efficiently and the benefit of all of that is for all the people who participate in all of our Department of Natural Resources activities and especially with the Commission. So, thank you for all the work that you guys do across the board for being part of this.”

Jane Ann Stautz, Chair of the Commission's AOPA Committee, said the Committee had not convened since the September Commission meeting. The Committee was scheduled to meet in February, but since objections were filed in only one of seven eligible proceedings, the meeting was cancelled. The AOPA Committee is scheduled to convene in association with Commission's March 18 meeting.

DNR, EXECUTIVE OFFICE

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

No items were referred to the Advisory Council.

DNR, DIVISION OF NATURE PRESERVES

Consideration of the dedication of the Munsee Woods Nature Preserve

John Bacone, Director of the Division of Nature Preserves, presented this item. The Munsee Woods Nature Preserve was a former Girl Scout camp that was acquired by the Red-tail Land Conservancy. The property consists of high-quality forest and wetlands. Bacone said the preserve was acquired with the assistance of the Indiana Heritage Trust and would be managed by the Red-tail Land Conservancy. He recommended dedication of the Munsee Woods Nature Preserve.

Thomas Easterly asked, "Do we manage nature preserves at all or do we expect them to just take care of themselves for thousands of years?"

Bacone replied "There's a lot of management especially due to invasive species and due to the changing of context of location. Many of them were in a rural context when dedicated, but now they're in an urban context."

Easterly stated, "I was worried that maybe voting for these left them on some path to decline."

Bacone answered, "There's a lot of work that goes into it, especially invasive species management and sometimes neighbor problems. They are also usually opened up for passive recreation, so they'll get a trail and a parking lot, things like that. It's a lot more management than you might think."

John Davis commented, "I'd say early on in the history of nature preserves we thought that the dedication just protected them from everything." Our subsequent experience has shown management is needed. "With John's leadership, we have to have the ability to do things to keep [the properties] what they are. Otherwise, they would disintegrate."

Easterly replied, "I was just worried I was voting to not let you manage them, so I thought I should at least ask."

Phil French moved to approve dedication of the Munsee Woods Nature Preserve. Thomas Easterly seconded the motion. Upon a voice vote, the motion carried.

Consideration of the dedication of the Trevlac Bluffs Nature Preserve in Brown County

John Bacone, Director of the Division of Nature Preserves, also presented this item. He said Trevlac Bluffs was an “interesting small town” and “has one of the few last remaining populations of hemlocks.” The property adjoins the Yellowwood State Forest along its eastern border and was acquired with funding from both the Indiana Heritage Trust and the Bicentennial Nature Trust. The tract is owned and managed by the Sycamore Land Trust. He recommended the dedication of the Trevlac Bluffs Nature Preserve.

The Chair asked if all the properties being acquired through the Bicentennial Nature Trust or the Indiana Heritage Trust have signage.

Bacone replied each nature preserve has signage which includes the funding source.

The Chair commented, “It’s nice. I noticed these signs on these pictures representing where the money comes from. I think that’s important for people to see.”

Thomas Easterly moved to approve dedication of the Trevlac Bluffs Nature Preserve. R. T. Green seconded the motion. Upon a voice vote, the motion carried.

Consideration of approval of nonrule policy document to assist with the process for amending nature preserves articles of dedication; Administrative Cause No. 13-172N

Stephen Lucas, the Director of Division of Hearings, presented this item. He said the new nonrule policy document, Nature Preserves Articles of Dedication Amendments (Information Bulletin #72), would provide a template for how amendments for nature preserves are processed and considered. When dedicating a new nature preserve, IC 14-31-1-13 requires the Natural Resources Commission to approve articles of dedication that apply to an individual nature preserve. As management practices advance and site conditions change, amendments may be needed to the articles of dedication and to the master plan. An example would be for prescribed burns that are appropriate for some nature preserves, but which were not authorized by the articles of dedication for early nature preserves. In order to approve amendments to the articles of dedication, the Commission must issue a finding the amendments will not permit: (1) an impairment; (2) a disturbance; (3) a use; or (4) a development inconsistent with IC 14-31-1. He recommended the nonrule policy document for Commission adoption.

Jane Ann Stautz moved to approve the nonrule policy document, Nature Preserves Articles of Dedication Amendments (Information Bulletin #72), to assist with statutory compliance in amending nature preserve articles of dedication. R. T. Green seconded the motion. Upon a voice vote, the motion carried.

DNR, DIVISION OF LAW ENFORCEMENT

Consideration of preliminary adoption of amendments to 312 IAC 4 that governs the Division of Law Enforcement; LSA Document #13-448; Administrative Cause No. 12-119L

Director East of the Division of Law Enforcement presented this item. He said for consideration is the adoption of amendments to 312 IAC 4-4-6 which would allow the spot appointment of a captain, major or lieutenant colonel by the Division director upon approval by the DNR Director. The amendment would provide that a captain, major or lieutenant colonel, who is spot-appointed pursuant to 312 IAC 4-4-6(d), may be returned to the officer's last permanent grade at the will of the Division director upon approval by the DNR Director without the action being deemed a demotion or entitling the officer to seek the administrative review of the action by the Commission.

Thomas Easterly moved to approve for preliminary adoption of amendments to 312 IAC 4 which governs the Division of Law Enforcement. R. T. Green seconded the motion. Upon a voice vote, the motion carried.

Consideration of preliminary adoption of consolidated amendments to 312 IAC 5-8 that governs restricted boating zones along the Indiana shoreline of Lake Michigan; Administrative Cause No. 14-017L

Lieutenant Colonel Steve Hunter presented this item. He said for public and navigational safety, rule amendments are needed to boating restrictions on designated portions of Lake Michigan. With respect to 312 IAC 5-8-2 for Lake County, improvements to facilities along public beaches in East Chicago and in Gary have caused changes so that 2001 geographic descriptions of no-boat zones are no longer compatible. With respect to 312 IAC 5-8-3 for Porter County, the Lake Michigan Water Trail (designated as a National Recreation Trail by the U.S. Department of the Interior in 2011) results in the need for kayakers to use the westerly corridor of a no-boat zone for ingress and egress to Indiana Dunes State Park. In all three situations, the amendments would make the rules consistent with how the areas were managed in 2013.

Doug Grant moved to approve preliminary adoption of amendments to 312 IAC 5-8. Thomas Easterly seconded the motion. Upon a voice vote, the motion carried.

DNR, DIVISION OF FISH AND WILDLIFE

Consideration of request for approval of amendments to nonrule policy document, Information Bulletin #2, Roster of Indiana Animals, Insects, and Plants that are Extirpated, Endangered, Threatened, or Rare (also described as Special Concern); Administrative Cause No. 13-211D

Linnea Petercheff, Staff Specialist in the Division of Fish and Wildlife, presented this item. She said the amendments to Information Bulletin #2 were needed primarily to provide consistency with current Commission rules for endangered species of birds and mussels. Recently the peregrine falcon was removed from the state's endangered species list, and two species of mussels were added to the list, one of which is already federally endangered. Additional changes

would be made to the vertebrates that are considered rare or of special concern, including the addition of the Eastern small-footed myotis (bat) and short-billed dowitcher.

Petercheff said that although the vertebrates listed as being of special concern are not referenced in the rules, the changes were needed because of new information their populations are on the decline and threatened. DNR nongame research biologists focus efforts on species that are listed as endangered or of special concern.

Petercheff explained that changes were being made to the list of extirpated, endangered, threatened, and rare insects and plants as recommended by the ecologists within the Division of Nature Preserves, some of which are the result of new research information.

Thomas Easterly commented, “I keep getting these notices from the U.S. Fish and Wildlife Service about the progression of adding some kind of long-eared bat to the endangered species list. What would we do if that happens, because it seems like they’re pretty close to doing that.”

Petercheff replied, “Actually, we are planning on a rule package that will propose that the long-eared bat be added to the state’s endangered species list. But we do that in rule first. Once it’s in rule, then we follow up with the change to this policy to make sure it matches. We already have that planned to start later this year. That will match that federal timeline. That’s an important one. The white-nose syndrome has definitely had an effect on some of our bat populations.”

Doug Grant commented, “This morning on *Morning Joe*, there was a discussion about endangered [delta] smelt out in California, and the allocation and the water for it, as opposed to the folks in the valley really wanted the water—a big drought, and what they’re trying to get the water diverted from the endangered species to the valley. What do they have to do to do if they do that? Isn’t that federal?”

Petercheff explained that if an animal is on the federal list, “it wouldn’t be on our list unless it was found here in the state. I know we have some smelt here in the state but I’m not familiar enough with that species.”

Grant asked, “If you want to endanger an endangered species, what has to be done? Who can do that?”

Petercheff explained that a situation occurred downstream of Lake Freeman and Lake Shafer last year that impacted an endangered mussel population, a violation under the Federal Endangered Species Act. There was an inadequate amount of water being released from the upstream dam, which caused mussel mortality. The U.S. Fish and Wildlife Service required an increase in water flow “to a certain level to make sure that enough water was coming down stream to cover up enough mussels to keep them alive.” If there is a permit application for construction in a floodway that is going to impact an endangered species, “we can request that they make some modifications or do some minimization to that species because it’s endangered. There are some things we can do to curb impacts to those species as a result of their status.”

Grant commented, "But if you were going to do it on purpose you need an incidental takings permit?"

John Davis added, "I think this is similar to our impact of bats as we cut timber in a state forest. What the U.S. Fish and Wildlife Service requires is a habitat conservation plan, which allows you to have a process to take, in this case, the smelt. You'd be taking the smelt by denying enough water for the smelt to live, and you'd have to get permission from the U.S. Fish and Wildlife Service. Our experience has been that that would be very difficult."

Easterly asked, "It's a federal permission?"

Davis replied that it may be under the joint purview of the U.S. Fish and Wildlife Service and the state of California.

Petercheff said a person would also have to apply for a federal incidental take permit and to provide a habitation conservation plan. "They would have to take measures to help offset what's being done that's destroying the smelt there. They have to actually do work elsewhere to make up for that to help improve" the smelt population.

Davis commented, "That would be the usual drill. Now, of course, there's going to be millions of dollars from this drought due to damage to crops, so maybe that would have some bearing."

Easterly commented, "It's slow though, right? It takes years usually."

Thomas Easterly moved to approve the amendments to the nonrule policy document, Information Bulletin #2, Roster of Indiana Animals, Insects, and Plants that are Extirpated, Endangered, Threatened, or Rare (also described as Special Concern). R. T. Green seconded the motion. Upon a voice vote, the motion carried.

NRC, DIVISION OF HEARINGS

Consideration of report of rule processing, consideration of public comments, analysis and recommendation regarding final adoption of amendments to rules governing fish and wildlife permitting under (312 IAC 9); LSA Document #13-24(F); Administrative Cause No. 12-183D

Sandra Jensen, Hearing Officer, presented this item. She said the proposed rule amendments involved several licensing and permitting rules within 312 IAC 9. Preliminary adoption was granted November 20, 2012, and the Notice of Intent was posted January 16, 2013. The Notice of Intent was submitted to Legislative Services Agency on January 11, 2013, which qualified the proposal as a "pending nonfinal rule" that did not require an exemption from the moratorium on rules established by Executive Order 13-03.

Jensen said the various fiscal analyses associated with the rule were submitted to the Office of Management and Budget and were approved. The OMB approval for the rule took eight months, which prompted the need to submit notification to the Administrative Rules Oversight

Committee that the rule would not be adopted within the one-year period. The notice was issued on September 10, 2013 and provides until June 1, 2014 to adopt the rule. The fiscal analyses were also reviewed and accepted by the Indiana Economic Development Council on October 29, 2013 and posted on the Commission's website on October 30, 2013. Written comments were accepted from the public between November 2012 and November 12, 2013. A public hearing was conducted on November 12, 2013. Jensen informed that all the comments were reproduced or summarized in Exhibits A and B of her report.

Jensen said that as a result of input from the Legislative Services Agency, two revisions were being recommended. The first is the reformatting of 312 IAC 9-10-11(h)(2). The revision was being recommended in an effort to comply with LSA's suggestions even though the subdivision was not a part of the proposed amendments. The second revision would include the words "and permits" in 312 IAC 9-1-1(d).

Jensen stated that as a result of public comment and subsequent review of the comments by the Division of Fish and Wildlife, two additional revisions were recommended. One would involve 312 IAC 9-10-11 at subsections (b) and (p), that leaves intact the 48-hour time limit on the possession of live animals but eliminates that time limit with respect to parts and carcasses. The second would modify the size of the signs required by new 312 IAC 9-10-22 for shooting preserves and would establish a phase-in for the signage requirement. These revisions are intended to eliminate or alleviate the financial impact on the shooting preserve operators.

Jensen informed that the four revisions were included in the rule language provided at Exhibit D of her report. She then offered the proposed rule amendments with the revisions for final adoption.

Jane Ann Stautz moved to approve final adoption of amendments to rules governing fish and wildlife permitting under 312 IAC 9. R. T. Green seconded the motion. Upon a voice vote, the motion carried.

Consideration of report of rule processing, public hearings, and Hearing Officer analyses, with recommendation regarding final adoption of amendments to 312 IAC 8, governing activities on DNR properties; LSA Document #13-294(F); Administrative Cause No. 13-116P

Steve Lucas, Hearing Officer, presented this item. For consideration on final adoption were several amendments to 312 IAC 8 governing DNR properties. The amendments would authorize possession and consumption of alcohol on the licensed premises of a pavilion at Indiana Dunes State Park. They would prohibit the possession alcohol at a designated youth tent area. They would allow the release of a pet or service animal from its leash where authorized by the DNR. They would clarify that a person using a trail on a DNR property could leave the trail if participating in an activity authorized by a DNR. An erroneous cross-reference would be redirected to dog running rather than as currently directed to hunting and trapping.

Lucas said two public hearings were conducted on the proposed amendments, one in Indianapolis and the other at Indiana Dunes State Park in Chesterton. No member of the public

appeared. One comment supporting the proposed changes was received through the NRC's online rule docket. After the comment period closed, two people also inquired concerning the status of alcohol at the pavilion in Dunes State Park. These two comments did not address the rule except in the indirect sense of interest in retooling the pavilion as a restaurant. He then offered the amendments for final adoption.

Thomas Easterly moved to approve final adoption of amendments to 312 IAC 8, governing activities on DNR properties. R. T. Green seconded the motion. Upon a voice vote, the motion carried.

Consideration of approval of process to update records retention schedules for the Natural Resources Commission including the Division of Hearings and the AOPA Committee; Administrative Cause No. 12-101A

Sandra Jensen, Assistant Director of the Commission's Division of Hearings, presented this item. She said all state agencies are obligated to comply with general retention policies for public documents. All but two types of records within the Division of Hearings meet one of the general retention schedules. The two types of records for which there is not a corresponding general retention schedule were the adjudication case files and the mediation files. With the assistance of the Indiana Commission of Public Records (ICPR), the Division of Hearings drafted an agency specific retention schedule. The ICPR staff preliminarily reviewed the draft retention schedule for the adjudication case files and the mediation files. But this draft schedule requires Commission approval before submission to the ICPR for final acceptance. The retention policies cannot become effective until ICPR acceptance.

Easterly asked, "For these adjudication case files is it a statute that says you have to keep them for 50 years for good practice?"

Jensen answered these files are transferred on microfilm to the Archives Division of the Commission on Public Records. A copy of the microfilm and a CD are retained by the Division.

Easterly commented, "But that costs money, and I didn't know you really had to keep them. Unless you have a better deal than we do, you have to pay for the microfilming."

Jensen responded, "We already microfilm everything that we do on the adjudication case files." Since establishment of the Division of Hearings, the custom has been to microfilm the adjudication files, and microfilming was in accordance with 60 IAC 2. "I believe the microfilming is required, regardless. The maintenance for 50 years may not be absolutely required, but this retention period and retention schedule was in conjunction or coordination with input from the Commission on Public Records." Other agencies, including the Office of Environmental Adjudication, use the same retention schedule for adjudication files. "If the cost of the microfilming is the issue, the microfilming is required. The retention for that period of time, I would have to look at the rule again to determine whether that retention time period is required. But, the microfilming is required."

Jane Ann Stautz asked, “Where did the 50 years come from? Is that kind of a consistent practice across the other agencies?”

Jensen said the Division of Hearings 50-year period was based on the approved practice of the Office of Environmental Adjudication. “I believe it is also used for another agency, but can’t recall which agency.”

Easterly commented, “In our case, you have to appeal these within a certain period of time.... After the appeal time is over, I’m sure...you want to know what the decision was.”

Jensen replied that according to the proposed retention policy, “what would happen is the microfilming would be completed after the final adjudication of the appeal. Once we’ve verified that the microfilm is complete, the hard copies are all destroyed, so there is no storage associated with the hard copies. We now have everything on microfilm reels.” The Division of Hearings receives a copy of the microfilm, and the master film is kept in Archive, which is to be maintained for 50 years. In recent years the microfilmed material has been saved on CD as well, “which has become very useful on many occasions for people who want to see old records.” Jensen reiterated that she was uncertain as to whether there is a statutory requirement for the microfilmed records to be maintained for 50 years. She also stated that she was uncertain if there was any cost to the agency associated with the storage of the microfilm reels.

Jensen added the draft retention schedule would save money because the Division of Hearings has learned from staff at the ICPR that some types of files were being microfilmed unnecessarily. With approval of the draft, the files would be held for the required time and then destroyed.

Thomas Easterly moved to approve the records retention schedules for the Natural Resources Commission including the Division of Hearings and the AOPA Committee. R. T. Green seconded the motion. Upon a voice vote, the motion carried.

Introduction of New Chief Legal Counsel, Joe Hoage

Prior to adjourning Chairman Poynter asked Joseph Hoage, DNR’s new Chief Legal Counsel, to introduce himself.

Joe Hoage stated, “I come from the Public Access Counselor’s Office where I served for two years after being appointed by Governor Daniels.” Before that he worked with the Indiana Gaming Commission and the Marion County Prosecutor. “I’ve enjoyed my first six months so far with the Department. There are a lot of things to learn and a lot of people to meet, but it has been a great experience, and I’m glad I came onboard.”

Perspectives on Future Meetings

The Chair said all of the 2014 Commission meetings were currently scheduled for the Fort Harrison State Park Garrison, but his hope was the Commission would meet twice outside Indianapolis to gain first-hand experience regarding regulatory and property responsibilities of the agency. “Are there any places that you would like to see the Commission perhaps go this

year? Issues that might have us traveling north, south, east or west, or to a property that might be of interest to anybody on the Commission?”

Phil French responded, “I think every year we should go to one of the state parks.”

The Chair replied, “I agree. We will review the schedule for the summer. We will re-circulate dates and meet here in March. We would love to travel to different places, and I think our state parks are a great background for that.”

MEETING ADJOURNMENT

The meeting was adjourned at approximately 11:28 a.m., EST.