

NATURAL RESOURCES COMMISSION
Meeting Minutes, July 17, 2018

MEMBERS PRESENT

Bryan Poynter, Chair
Jane Ann Stautz, Vice Chair
Cameron Clark, Secretary
Bruno Pigott
Laura Hilden
Patrick Early
John Wright
Jeff Holland
Phil French

NATURAL RESOURCES COMMISSION STAFF PRESENT

Sandra Jensen	Dawn Wilson
Scott Allen	Jennifer Kane

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

John Davis	Executive Office
Chris Smith	Executive Office
David Bausman	Legislative
Tara Wolf	Communications
Dan Bortner	State Parks
Anthony Sipes	State Parks
Ginger Murphy	State Parks
Mark Basch	Water
Vanessa Gonzalez	Water
John Bacone	Nature Preserve
Megan Abraham	Entomology & Plant Pathology
Phil Marshall	Forestry

GUESTS PRESENT

Sydney Allen	Lynn Burry	Rebecca Thiele
Dawn Slack	Gary Ramege	Ellen Jacquart
Brenda Howard	Stephanie Schuck	Katherine Sauage
Ton Hohman	Helen Steussy	Marilee Burnside
Marilyn Whitesell	Jack Corpuz	Brenda Howard

Katherine Simmons
Don Gorney
Emily Finch
Jane Savage
Linda Sutkrer
Tessa Aby
Greg Shannon

Cindy Monnier
Ruth Ann Ingraham
Kyle Daniel
Jeannine Mattingly
Denise Egel
David Gorden

Rick Haggard
Evie Sehr
Barry Banks
Amy Perry
Wes Homoya
Jess Gwinn

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 10:01 a.m., ET, on July 17, 2018, at Fort Harrison State Park, Garrison, 6002 North Post Road, Ballroom, Indianapolis. With the presence of nine members, the Chair observed a quorum.

APPROVAL OF MINUTES

The Chair asked for a motion for the approval of the Commission's May 15, 2018, minutes.

Jane Ann Stautz moved to approve the minutes of the meeting held on May 15, 2018, as presented. John Wright, seconded the motion. Upon a voice vote, the motion carried.

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

Director Cameron Clark provided his report and updated the Commission on Kankakee Fish and Wildlife Area levee breaches and subsequent meetings conducted to discuss a basin wide approach to reduce future flooding. Clark stated that he attended portions of the Ducks Unlimited annual national conference, which was conducted in Indianapolis. Clark also noted that the Department conducted tours of Yellowwood State Forest to provide public education regarding forest management and dedicated a new beach at Ouabache State Park.

John Davis, Deputy Director for the Bureau of Lands and Cultural Resources, provided his report, noting the upcoming dedication of a fire tower at Ouabache State Park. Davis also announced that the Department of Natural Resources Building will be host to "Birds of Prey", reptiles, and the fishing pond again this year for the State Fair. Davis reminded that the Department is engaged in a partnership with the Department of Tourism to promote activity opportunities in Indiana.

Chris Smith, Deputy Director of the Bureau of Water Resource and Regulation, provided his report. Smith noted that Mitchell Zoll, the Director of the Division of Historic Preservation and Archaeology, passed away unexpectedly and that Steve Kennedy is acting Interim Director. Smith stated that the Division of Reclamation and the agency equivalent from Illinois recently participated in a meeting with the U.S. Office of Surface Mining. Smith reported the Division of Entomology and Plant Pathology has experienced increases in timber inspections due to new fumigation requirements for international log shipping. Smith also recognized the Division of

Water for its participation in meetings to address drought related issues primarily in the White River Valley.

Patrick Early, Chair of the Advisory Council, provided an update on the activities of the Advisory Council. He stated that the Advisory Council met on June 12, 2018, to consider the application, by Salt Creek Services, for a water sale contract from Monroe Lake and consideration of the Hoosier Mushroom Society's petition for rule change, which are on today's agenda.

The Chair noted that the Outdoor Writers Association of America Conference was held in Fort Wayne, on June 2 through June 4, 2018. The Chair said that Phil Bloom, the former Director of Division of Communications, Mark Newman, Director of the Indiana Office of Tourism Development, and hundreds of high profile outdoor journalists attended the conference.

CHAIR, AND VICE CHAIR

Updates on Commission and AOPA Committee

Jane Ann Stautz, Chair of the Commission's AOPA Committee, indicated that the Committee has not met since the last Commission meeting.

Information: Remaining 2018 meeting dates (Fort Harrison State Park–Garrison, Indianapolis)

The Chair noted that the remaining 2018 Commission meeting dates are scheduled for September 18, and November 13.

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 Hoosier Mushroom Society's petition for rule change, amending the definition of "mushroom" (312 IAC 8-1.5-15); Administrative Cause Number 18-045P

Anthony Sipes, the Division of State Parks' Chief of Natural Resources, presented this item. Sipes recognized the Department's great partnership with the Hoosier Mushroom Society (HMS) and noted that the HMS provides assistance through expertise and education.

Sipes said that HMS's petition to change the definition of "mushroom" from "edible fungi" to be redefined as "the macroscopic fruiting body of a fungus", was considered by the Department's review committee. He explained that the review committee does not recommend an amendment to the definition. Sipes noted that the current permitting framework already exists to allow the collection of non-edible fungi on Department property. He explained that groups are able to apply for a Scientific Collecting Research Permit and that this permit could also be obtained to allow for mushroom forays or a bio-blitz.

Sipes said there is much unknown about mushroom conservation or the implications of additional collecting of mushrooms, which are some of the reasons for the review committee's recommendation. He noted that mushroom forays and bio-blitzes have a potential for soil disturbance, trampling of vegetation, or introduction of invasive species. Sipes said that the Scientific Collecting Research Permit is a way to regulate the areas where people are allowed to go and the methods for collecting.

Early noted that Stephen Russell, President of the HMS, spoke at the June 12, 2018, Advisory Council meeting. Early said that the Advisory Council agreed that HMS's work is valuable to the Department, but controlling off trail foot traffic is equally important. Early observed that the ability to collect mushrooms exist through the Scientific Collecting Research Permit.

French inquired as to the length of permit processing.

Sipes said that the permit application is forwarded through a permitting coordinator and the process varies by the complexity of the permit request, but could take more than a month. He noted, however, that some permits are issued within a week if the requested permit is for a single property.

Davis stated that the Department is committed to working with the HMS to issue permits in a timely manner and exercising flexibility. He noted that he has seen permits approved within a day of the request.

Early noted that no permit is needed to search for edible mushrooms on Department property.

Patrick Early moved to accept the recommendation of the review committee to reject the request of the Hoosier Mushroom Society to amend the definition of "mushroom" at 312 IAC 8-1.5-15. Jeff Holland seconded the motion. Upon a voice vote, the motion carried.

Consideration of the dedication of Dewey Hickman Nature Preserve in Harrison County

John Bacone, Director of the Division of Nature Preserves, presented this item. Bacone stated that the proposed nature preserve is located southwest of Corydon in Harrison County. He said that the land was a gift to The Nature Conservancy by Richard K. Stem, President of Chester B. Stem Inc., in memory of Dewey Hickman in honor of his love for healthy forests. Bacone noted that Dewey Hickman was the superintendent of CCC Camp Wyandotte, located in what is now O'Bannon Woods State Park.

Bacone said the proposed nature preserve consists of a variety of forested natural community types from dry-mesic upland forest, wet-mesic floodplain forest, steep ravine slopes, and limestone cliffs. He noted there are rare animal species, including bird species in the proposed nature preserve. Bacone recommended the proposed site be dedicated as a nature preserve.

Bruno Pigott moved to approve the dedication of the Dewey Hickman Nature Preserve. Jeff Holland seconded the motion. Upon a voice vote, the motion carried.

Consideration of the dedication of Mary Gray Nature Preserve in Fayette County

Bacone also presented this item. Bacone stated the proposed nature preserve is part of the much larger Mary Gray Bird Sanctuary located in Fayette County. Bacone said that the land was donated by the parents of Mary Gray, in her memory, and is managed by The Indiana Audubon Society.

Bacone said that the proposed nature preserve contains high quality forest remnants and is host to a lot of ongoing bird research. Bacone recommended the proposed site be dedicated as a nature preserve.

Jane Ann Stautz moved to approve the dedication of the Mary Gray Nature Preserve. John Wright seconded the motion. Upon a voice vote, the motion carried.

The Chair asked Bacone to provide additional information about the guided field day hikes on nature preserves.

Bacone stated that the guided field day hikes take place from the spring through the fall seasons at various nature preserves throughout the state on either standalone nature preserves or nature preserves within state forests. Bacone said that regional ecologists lead the hikes of about 30 people and registration is available on-line at <https://www.in.gov/dnr/naturepreserve/8661.htm>.

DNR, DIVISION OF STATE PARKS

Consideration of State Parks fee increases

The Chair noted that this agenda item had been withdrawn.

DNR, DIVISION OF WATER

Consideration of Hearing Officer report in preparation for Advisory Council summarizing public meetings and making recommendations to the Natural Resources Commission regarding contract application MWS-18-001, by Salt Creek Services, for a Water Sale Contract from Monroe Lake under IC 14-25-2 and 312 IAC 6.3; Administrative Cause No. 18-040V

Mark Basch, Section Head, Water Rights/Use Section of the Division of Water, presented this item. Basch explained that a contract for the sale of water under IC 14-25-2 must provide compensation to the state of not less than \$33.00 per one million gallons of water. Basch said that Salt Creek Services, Inc. (Salt Creek) has contracted with the State of Indiana for withdraw of water from Monroe Lake since 1968. He stated that the contract expired February of 2018 and Salt Creek would like to enter into a new contract for another 50-year term.

Basch said the new contract term would provide domestic water supply for 70 residential lots, eight lots have permanent residents, and approximately 47 lots have seasonal residents. Basch said that Salt Creek is requesting a contract providing an average annual water withdrawal of 25,000 gallons per day, a volume equal to a maximum of 9.125 million gallons per year. Basch noted that during the past ten years, Salt Creek has reported an annual withdrawal of 1.2 million gallons per year representing a revenue of approximately \$39.00 for the State of Indiana annually.

Basch stated that the State has rights to 160,000-acre feet of water supply storage and low-flow augmentation from Monroe Lake, which equals 122 million gallons a day. Basch said that all current water supply contracts for withdraw on Monroe Lake represent 17.59% of the available water supply volume. Basch said that the proposed water withdrawal of the pending request would increase the total committed annual contractual limits to just under 17.61% of the available volume in the lake.

Basch stated that two public meetings were conducted by the Division of Water on April 10, 2018, in Bloomington and on April 11, 2018, in Nashville, to gather testimony regarding the application for the proposed contract as required by IC 14-25-2. He stated approximately ten people from the public attended the meetings and noted that participation in meetings included residents, board members of Salt Creek Services, Inc., and the President of the Patoka Lake Water and Sewer District Board. He stated that the Department received an email comment from an individual from the Friends of Lake Monroe.

Basch said that the Department's opinion is that the 50-year contract for a maximum annual withdraw of 9.125 million gallons of water, under the proposed contract application MWS-18-001, allows Salt Creek to provide water to its residents. Basch said the Department believes the volume of water in Monroe Lake is adequate to supply the annual water withdraw amount requested and the potential impact to recreational facilities to the lake is expected to be negligible.

Basch stated that the Advisory Council considered the matter at its meeting held on June 12, 2018 and recommended approval of and requested the Commission approve the water supply contract application MWS-18-001, between Salt Creek Services, Inc. and the State of Indiana, as presented.

The Chair recognized Gary Ramege.

Ramege, the President of Salt Creek Estates, requested that the Commission approve the renewal of the water supply contract with Salt Creek Services, Inc.

Pigott asked whether there is a cap on what the Department is permitted to charge for water use.

Smith said, “Statutorily, it’s no more than \$33.00 for a million gallons.”

Bruno Pigott moved to accept the Hearing Officer’s report for contract application MWS-18-001, by Salt Creek Services, for a Water Sale Contract from Monroe Lake under IC 14-25-2 and 312 IAC 6.3. Cameron Clark seconded the motion. Upon a voice vote, the motion carried

DNR, DIVISION OF ENTOMOLOGY AND PLANT PATHOLOGY

Consideration for preliminary adoption of a new rule, 312 IAC 18-3-25, governing prohibited invasive terrestrial plants; Administrative Cause No. 17-114E

Megan Abraham, Director of the Division of Entomology and Plant Pathology and State Entomologist, presented this item. Abraham said that Indiana land managers spend an estimated \$8.6 million in managing invasive plants annually. She noted that invasive species regularly move into Indiana’s forests restricting the ability of native plants to regenerate. Abraham said that the 2010 Indiana Statewide Forest Assessment, a survey of all private, public, urban and rural forest resources in the state, found that invasive species is the third most important issue facing forests and natural resources management. She said that the cost of treating invasive plants in woodlots varies from a reported \$100 to \$1,000 per acre per year. Abraham said that without control measures the harvested lands would be taken over by invasive plants that are able to regenerate faster than the desired species.

Abraham stated that proposed rule 312 IAC 18-3-25 governing prohibited invasive terrestrial plants will assist the Department, private land managers, and public land managers in controlling invasive species. She added that the Department is requesting preliminary adoption of the proposed rule to remove particular invasive plants from trade.

Abraham said that a risk assessment tool was developed by the Invasive Plant Species Advisory Working Group, which is a group of terrestrial invasive species experts and members representing the plant trade. She noted that the group was tasked with assessing which species threaten natural areas in Indiana and developing recommendations on how to regulate those identified species. Abraham stated that the results from the risk assessment were used to select the species that should be included in the proposed rule.

Abraham said that the proposed rule would prohibit the sale, transport, introduction, or distribution of 44 invasive terrestrial plants inside Indiana. She stated that the Department has determined that 22 of those plants can be found in trade, however, only four species are sold with any regularity. Abraham said that the majority of small businesses that sell the prohibited species will have plenty of time to reduce or eliminate existing stock prior to the rule’s implementation, which will decrease potential fiscal impact to small business in Indiana. Abraham added that allowance has been made for an additional year from the effective date of the rule for small

business to sell stock that may currently exist prior to any violations being issued by the Department.

Abraham said that wholesale and retail outlets would replace the invasive species that are proposed for regulation with a non-invasive species that will have similar customer appeal. She noted that there are many plants with similar characteristics to the species proposed for regulation that can be substituted and that do not pose a threat to the environment.

Abraham stated that the Division of Entomology and Plant Pathology performs annual nursery inspections to maintain pest and pathogen free nursery stock. She said that certification of nursery stock allows vendors to export out of the United States and Department staff will enforce the invasive terrestrial plant prohibition during inspections.

Abraham noted that removing species from trade will reduce the number of plants able to escape into the wilderness thereby reducing the amount of state and federal funding required to control invasive plants. Abraham said that the proposed rule would assist in promoting the health and safety of forests and the \$7 billion timber industry in Indiana.

The Chair asked about what types of invasive plants can be found in trade in Indiana and where could invasive species be purchased.

Abraham responded that invasive species could be purchased at nurseries or local hardware stores. She said that black alder and the wintercreeper are invasive plants that are currently available for sale.

The Director noted that at the Commission meeting held on March 15, 2016, students from the Orchard School gave a presentation on their petition to amend 312 IAC 18-3-25 to include wintercreeper as a prohibited invasive terrestrial plant.

The Chair recognized Lynn Burry, member of the Board of Directors with the Indiana Wildlife Federation.

Burry stated the Indiana Wildlife Federation (IWF) supports the proposed rule governing prohibited invasive terrestrial plants. He noted that IWF has worked with nurseries and has promoted limiting invasive plants through sustainable habitat programs.

The Chair recognized Dawn Slack

Slack stated that she represents The Nature Conservancy and is the Chair of the Invasive Plant Advisory Committee to the Indiana Invasive Species Council. Slack stated that she supports the proposed rule governing prohibited invasive terrestrial plants.

The Chair recognized Marilee Burnside

Burnside stated that she and her husband own land in Floyd County, Indiana where she is a Board Supervisor on the Floyd County Soil and Water Conservation District. Burnside stated

that she has taken the Indiana Master Naturalist Course and the Purdue Extension Master Gardner Course and has noticed several invasive trees in Floyd County, and said that she supports the proposed rule.

The Chair recognized Ellen Jacquart

Jacquart stated that she represents, and is speaking on behalf of, the Indiana Native Plant and Wildflower Society (INPAWS), which is a nonprofit that promotes protection and education about native plants. Jacquart stated that she was previously with The Nature Conservancy for 18 years and is the former Chair of the Invasive Plant Advisory Committee to the Indiana Invasive Species Council. Jacquart stated that invasive plants are the greatest threat to native plants in Indiana and for this reason INPAWS is strongly in favor of the proposed rule. Jacquart said that she has been working with the Department for 20 years on a rule to govern invasive species of plants and INPAWS has partnered with other groups to address invasive plant issues.

Jacquart stated that INPAWS would suggest an amendment to the rule proposal. Jacquart said that two invasive species, the callery pear and Norway maple, were removed from the proposed rule prior to consideration for preliminary adoption due to potential economic impact to the businesses that grow the species in Indiana based on a 2014 assessment. She said that INPAWS believes that the two species can be added back into the proposed rule and economic impact can be avoided by setting an effective date of five years in the future. Jacquart stated that Ohio has a model for the future effective date for enforcement of a prohibited invasive species. She said that INPAWS does not want to slow down the adoption of the proposed rule, but would like to see the callery pear and Norway maple added back into the proposed rule.

Abraham noted that the Division of Entomology and Plant Pathology staff travel to all 350 nurseries in Indiana and the fiscal impact to small business would be in the millions of dollars. She noted that there are businesses that will not stop growing callery pear until there is a prohibition.

Stautz asked whether the five year future effective date is an appropriate time for the callery pear and Norway maple to mature in growth to a marketable size.

Abraham stated that Ohio is the only state that has attempted a future effective date to enforce a prohibitive invasive species, but noted that Ohio does not have a list of prohibited species in its rules. She explained that the Ohio has a rule, which gives a director the authority to create a list so that the list is not static. Abraham stated that the Department decided to leave the callery pear and Norway maple out of the proposed rule and would review prohibition in a couple of years. Abraham noted that the Department is conducting education and outreach on the invasiveness of the callery pear.

Smith added that the list of invasive species as proposed is not the perfect list, but the list can be amended in the future.

The Chair stated that the Department appears to be committed to continue dialog regarding the proposed amendment, but noted that preliminary adoption of a new rule, 312 IAC 18-3-25 could still move forward.

Jacquart commented, "I think there does need to be continued dialog. I think if the rule is preliminarily adopted, there should be an understanding that a conversation is taking place over the next several months as we move toward a final rule." Jacquart said that what she is hearing from growers is that growers are already phasing out some species with the knowledge that a rule governing prohibited invasive terrestrial plants would be coming.

The Director asked if the Division of Entomology and Plant Pathology has seen a change in mindset of landscapers and nurseries on a long-term plan with invasive plants.

Abraham said that there is more industry awareness, but some businesses are more concerned with their bottom line than the issue of invasive species. She noted that small businesses are faced with the dilemma of selling invasive plants that are in demand to compete with larger businesses that continue to sell invasive plants.

The Chair noted that the matter for a new rule governing prohibited invasive terrestrial plants is on the agenda for preliminary adoption and there will be an opportunity for public input.

The Chair recognized Dr. Helen Steussy

Steussy stated that she and her husband own 33 acres in Henry County, Indiana and spend a lot of time and are passionate about fixing up the property for habitat and education. Steussy said they spend too much time fighting invasive plants emphasizing that it is a landowner issue. Steussy stated that she has spent an inordinate amount of time and money fighting invasive species and her neighbors have received grants to remove invasive species. She noted that there is a fiscal impact to landowners and the ones who care are fighting a losing battle because businesses are selling and people are planting invasive plant species. Steussy said that because they are allowed to be sold by nurseries and landscapers continue to plant them, people think the plants are not harmful. She said that people are trusting that the Department and that the laws in Indiana regarding invasive plant species will "do no harm."

Cameron Clark moved to approve preliminary adoption of a new rule, 312 IAC 18-3-25, governing prohibited invasive terrestrial plants. Jeff Holland seconded the motion. Upon voice vote, the motion carried.

Stautz encouraged the Department and other organizations to continue to work together to address and study additional invasive species that could be added to the prohibited invasive terrestrial plants list. She added that there could be additional evaluation of the fiscal analysis of additional invasive plant species to bring back to the Commission in the future.

Consideration of Hearing Officer report rule processing, public hearing, and hearing officer analyses with recommendation regarding final action to amend 312 IAC 3-1-7 and 312 IAC 3-1-9, AOPA Procedural Rule Amendment; LSA #17-553(F); Administrative Cause No. 17-002A

Dawn Wilson, Hearing Officer, presented this item. Wilson explained that currently 312 IAC 3-1-7 does not provide a description of the time when pleadings and documents are filed with the Commission's Division of Hearings. The proposed rule amendment would require that emailed documents be emailed to the nrcaopa@nrc.in.gov mailbox. She explained the rule amendment specifies the delivery date for different methods of delivery to provide clarity for participants, when deadlines are critical. Wilson added that the proposed rule amendment repeals some definitions that were previously determined to be duplications.

Wilson said that currently, 312 IAC 3-1-9 provides that the Commission's secretary must approve or affirm an Administrative Law Judge (ALJ) entry approving an agreed entry. She stated that the proposed rule amendment recognizes that the ALJ may be designated as the ultimate authority for the Commission in some instances and adds language to clarify that the Commission's secretary would be required to approve the entry only when the ALJ is not the ultimate authority.

Wilson explained that the Commission's AOPA Committee initially reviewed the proposed rule amendment at its meeting held on April 20, 2017, and the full Commission gave preliminary adoption of the proposed rule amendment package on November 14, 2017.

Wilson noted that all required approvals have been obtained, and the Commission has maintained the appropriate required documentation. She noted that the Economic Impact Statement is included in the Hearing Officer's Report. Wilson said that the Legislative Service Agency published Notice of Intent on November 22, 2017. Wilson noted that seven of the eight comments received referred specifically to other rulemakings and were not included in the report because they clearly did not pertain to the proposed rule. She observed that the remaining comment provided insufficient information to determine the intent. Wilson noted that no comments were hand delivered or sent by regular mail, and said that no one attended the public hearing held on May 14, 2018.

Wilson said that she was both the Small Business Regulatory Coordinator and the Hearing Officer for the proposed rule amendments and recommended final adoption of the proposed rule as presented and as published in the *Indiana Register*.

Bruno Pigott moved to give final adoption to the proposed amendments to 312 IAC 3-1-7 and 312 IAC 3-1-9. John Wright seconded the motion. Upon voice vote, the motion carried.

Report and recommendation regarding temporary suspension and referral to the AOPA committee for review as to continued viability of 312 IAC 3-1-8 authorizing automatic change of Administrative Law Judge; Administrative Cause No. 18-066A

The Chair noted that this agenda item had been withdrawn.

Adjournment

The meeting was adjourned at approximately 10:57 a.m., ET.