

## **NATURAL RESOURCES COMMISSION**

Ballroom, The Garrison  
Fort Harrison State Park  
6002 North Post Road  
Indianapolis (Lawrence), Indiana

### **Minutes of March 15, 2011 Meeting**

#### **MEMBERS PRESENT**

Bryan Poynter, Chair  
Jane Ann Stautz, Vice Chair  
Robert Carter, Jr., Secretary  
Patrick Early  
Donald Ruch  
Thomas Easterly  
Phil French  
R.T. Green  
Troy Woodruff

#### **NATURAL RESOURCES COMMISSION STAFF PRESENT**

Stephen Lucas  
Sandra Jensen  
Debra Freije

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

John Davis	Executive Office
Ron McAhrn	Executive Office
Cheryl Hampton	Executive Office
Cameron Clark	Legal
Marian England	Legal
Linnea Petercheff	Fish and Wildlife
Phil Bloom	Communications
John Bacone	Nature Preserves
Monique Riggs	Water
Bruce Stevens	Reclamation
Coleen Baughman	Reclamation
Megan Abraham	Entomology and Plant Pathology
Dan Ernst	Forestry
Ginger Murphy	State Parks and Reservoirs
Lynda Ellington	State Parks and Reservoirs

## **GUESTS PRESENT**

Ann Sterling	Tracy Eads
Jan Turner	Michelle Menker
Holly Hadac	Kory VonderMeulen
Cecilia Lambert	Ben Reineking
Nikki DesChamps	Paul Arlinghans

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 10:05 a.m., EST, on March 15, 2011, at The Garrison, Fort Harrison State Park, the South Ballroom, 6002 North Post Road, Indianapolis, Indiana. With the presence of nine members, he observed a quorum.

Patrick Early moved to approve the January 11, 2011 meeting minutes. R.T. Green seconded the motion. Upon a voice vote, the motion carried.

## **Reports of the Director, Deputies Director, and Advisory Council**

Robert Carter, Jr. provided the Director's report. He introduced Cameron Clark as the Department's new Chief Legal Counsel. "We're very delighted to have Cam onboard the DNR team. He brings a lot of legal experience, and he's definitely passionate for the outdoors, which is a plus for us." Carter also introduced Lt. Colonel Steve Hunter as the new Executive Officer for the Division of Law Enforcement.

Director Carter said DNR's recreational season is "gearing up." Indiana's flooding and flood-prone areas, especially along rivers, "coincide with our effort to purchase land in these areas. We're hopeful that we're able to acquire some much needed property, particularly along the Wabash and Muscatatuck River watershed, that will help our Healthy Rivers Initiative." He added the DNR is currently working with the Eli Lilly people on a major land acquisition tract in Vermillion County. "So we've got a lot going on."

Chairman Poynter observed, "I know that whenever there's flooding in the State, there are all sorts of reciprocal departmental issues that have to be addressed, and I know you guys are working hard at that. Thank you for your initiatives."

John Davis, Deputy Director of the Bureau of Lands and Cultural Resources, provided his report. He echoed Carter's comments concerning the Governor's Healthy Rivers Initiative and said the DNR has continued to have meetings with local government officials and landowners. "We have a lot of landowner interests in projects both along the Wabash and the Muscatatuck." The Muscatatuck River is currently suffering with "lots of flooding". There were recent property inspections to check for needed log removal from the rivers.

Davis said the DNR has opened "a lot of trails around the state. It's kind of the season for ribbon cuttings." Davis added the DNR continues to battle Asian carp in cooperation with other States and the Federal agencies. The DNR recently met with the Corp of Engineers in Louisville to "work on some of the issues we raised when we met in January."

Ron McAhron, Deputy Director, Bureau of Resource Regulation, provided his report. McAhron said the DNR is working to refine rules on the emerald ash borer and aquatic weeds. Division of Fish and Wildlife staff member, Doug Keller, has had “an active and strong leadership role” in representing the Department on the Asian carp issue.

McAhron added the Department has been actively involved with coal bed methane legislation. “We’re not sure what the fate is going to be, but we’ve made a lot of progress with that.” Herschel McDivitt, Director of the Division of Oil and Gas, “has done an excellent job” representing the DNR on coal bed methane. McAhron said the Division of Water, the Division of Homeland Security, and the U.S. Army Corp are “working hard and cooperating well” to minimize the levee damage in Davies County.

Patrick Early, Chair of the Advisory Council, reported the Council met on December 15. He said the Council recommended approval of new firewood rules and of amended horse-tag rules, both with application to DNR properties. The meeting included an informative discussion of invasive aquatic nuisance species, particularly Asian carp, and of new rules from the State of New York pertaining to ballast water exchanges. There was discussion of the adverse effects the New York ballast water rules could have on Indiana ports, and the need to have technologically feasible management of ballast water that considered environmental and economic needs. He said the presentation was an information item which presently required no action.

#### **CHAIR AND VICE CHAIR**

##### **Updates on AOPA Committee by the Vice Chair**

Vice Chair, Jane Ann Stautz, reported the AOPA Committee would meet “today at 12:30 p.m. The Committee has been very active in recent months with several interesting and challenging issues.”

##### **Updates on Commission Plans by the Chair**

Chairman Bryan Poynter reflected, “One of the things that I’ve always felt strongly about as Chair is making sure we do move the Commission meetings around Indiana, but we’ve been constrained by budgetary issues in the last two years. As a Commission, we understand and have respected these constraints. But this year in light of some of the activities and issues that have come forth, we are planning a meeting in Northern Indiana at Pokagon State Park and in Southern Indiana at Clifty Falls State Park. We are hopefully going to have the Commission members there prior to our meetings for an opportunity for what this Commission should be doing, which is listening, meeting, greeting, and talking about those issues prior to our normal business meetings that evening.”

The Chair added, “I’ve always encouraged the purchase of our State Park Annual Passes.” He said Ginger Murphy of the Division of State Parks and Reservoirs was present and would have passes available for purchase. He encouraged Commission members to participate.

Poynter asked Troy Woodruff, Chief Operating Office for the Department of Transportation, to introduce himself as the day’s proxy for Commission member Michael Cline. Woodruff

introduced himself and said he was looking forward to the action items on the agenda. The Chair thanked Woodruff and INDOT for attending.

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

No new items were identified during the meeting.

## **NATURAL RESOURCES ADVISORY COUNCIL**

### **Consideration of Hearing Officer Report in Preparation for Advisory Council Summarizing Public Meetings and Making Recommendations to the Natural Resources Commission Regarding Request by Brookville Enhancement Partners for a Water Sale Contract Under IC 14-25-2 and 312 IAC 6.3; Administrative Cause No. 11-020V**

Monique Riggs, Environmental Specialist with the Division of Water, presented this item. She said for consideration was a contract for water supply from Brookville Lake. Brookville Lake was constructed by the U.S. Army Corp of Engineers for flood control purposes, and Indiana provided additional funding to include a water supply component. She said the State is authorized by IC 14-25-2 to enter contracts to provide water on a unit pricing basis, or to provide minimum quantities of stream flow from storage in the impoundments, for which Indiana is then compensated at a statutory rate of \$33 dollars per million gallons. IC 14-25-2 was amended significantly in 2008. Before the amendments, a request for use of water supply storage was “very informal in nature. The request was made to the Division of Water directly by an individual or an organization seeking water. The staff would recommend approval or denial of the request, and the recommendation would then be considered by the Commission.” The 2008 statutory amendments, and rules adopted at 312 IAC 6.3 to assist with implementation of the amendments, formalized the process with notifications, opportunities for public participation in potentially affected counties, and the consideration of use priorities. The Advisory Council was assigned responsibility for reporting its recommendations regarding proposed contract.

The Chair provided an opportunity for questions by Commission members. There were no questions.

Riggs added that since 312 IAC 6.3 became effective, contract requests have been received for Patoka Lake Regional Water and Sewer on Patoka Lake, Indianapolis Power and Light and Eagle Pointe Golf Course on Monroe Lake, and the current proposed contract on Brookville Lake. From the 17 public meetings held to consider these proposals, only the proposed contracts involving Monroe Lake were “very well attended.” Other public meetings were “very sparsely attended.”

Riggs said here the Brookville Enhancement Partners (“BEP”) request approval to purchase raw water from Brookville Lake for irrigation of an 18-hole golf course. The proposed contract would allow withdrawal of 35 million gallons per year, based upon an original engineering estimate for the golf course. The State’s maximum annual revenue for the proposed contract

would be approximately \$1,155. Brookville Lake has approximately 89,300 acre-feet of water storage, with the daily yield being approximately 82 million gallons. With the estimate of maximum daily withdrawal for both golf courses that have water supply contracts on Brookville Lake, the withdrawals would total about 0.16 million gallons, or approximately 0.2% of the lake's daily yield. "It's a very small amount of the water for Brookville Lake. Even if both were using their maximum capacity through the irrigation season, the total would be about 0.24 million gallons a day, so it's still a very small percentage of the available storage."

Riggs said the proposed ten-year contract period for BEP is consistent with existing golf courses on Brookville Lake and Monroe Lake. The potential impact for recreational facilities of the lake is expected to be negligible, and no environmental harm is anticipated. She said the Division of Water and the Advisory Council recommended the contract be approved.

The Chair asked Pat Early for his perspectives on behalf of the Advisory Council. Early said the Council reviewed the contract and concurred with the report from DNR's Division of Water.

Donald Ruch asked if a golf course was the lowest priority for water usage under the law. Riggs responded that because BEP has provided for a contingency plan and for conservation planning, "it gets bumped up a notch to four." Water allocation priorities are set by 312 IAC 6.3-4-1(5), and a contract for industry or agriculture that meets contingency planning provisions for drought alerts is given fourth priority.

Thomas Easterly moved to approve the hearing officer's report, as presented, and to authorize entry of the contract with BEP. Patrick Early seconded the motion. Upon a voice vote, the motion carried.

#### **PERSONNEL ACTIONS**

##### **Personnel interview of Lynda Ellington for appointment as the Assistant Manager for Shakamak State Park**

Ginger Murphy, Assistant Director for State Parks and Recreation, introduced Lynda Ellington as the recommended candidate for Assistant Manager at Shakamak State Park. She said Ellington is a 2006 graduate from Indiana State University with a BS in recreation and sport management and a park and community management emphasis. She was a naturalist aide at Lieber State Recreation Area, a seasonal staffer at DNR properties, and has helped with "a lot of special events in day camps in Terre Haute municipal parks." She also supervised roofing crews within her father's roofing business. Ellington is a certified wilderness firefighter and has performed a number of administrative tasks to help prepare her for purchasing duties. "We're excited to have Lynda be a part of our team in State Parks and Reservoirs and welcome her to the division. We think she's going to be a great addition to our staff."

Chairman Poynter asked Ellington to outline her expectations at Shakamak State Park. Ellington responded she was "looking forward to the opportunity to help with the property cabins and the fishing opportunities and be available to help with the deer and goose reductions." She would work closely with staff on building maintenance and to help assure the park runs smoothly.

The Chair thanked Ellington for her presence. “I know that you and Ginger made a special trip from Nashville, Indiana to be here, and we always appreciate having an opportunity to meet you and introduce you to the Commission.”

Jane Ann Stautz moved to approve the appointment of Lynda Ellington as Assistant Property Manager for Shakamak State Park. Thomas Easterly seconded the motion. On a voice vote, the motion carried.

## **DNR, DIVISION OF NATURE PRESERVES**

### **Consideration of the dedication of Wabash Border Nature Preserve, Posey County**

John Bacone, Director of the Division of Nature Preserves, presented this item. He said for consideration was the dedication of two significant natural areas located at Harmonie State Park. The first tract was located on the extreme north end of the park, along the Wabash River, and would be known as the “Wabash Border Nature Preserve”. The tract contains high quality forest remnants and rare species, as well as a horse trail. Both areas have prior oil well drilling rights and would be subject to oil exploration and extraction in the future. Bacone recommended the dedication of the Wabash Border Nature Preserve.

Donald Ruch noted a typographical error in the third line of the second paragraph of the Commission’s backup materials. The Chair thanked him for the observation and approved the correction.

Ruch moved to approve the dedication of the Wabash Border Nature Preserve. R.T. Green seconded the motion. Upon a voice vote, the motion carried.

### **Consideration of the dedication of Harmonie Hills Nature Preserve, Posey County**

John Bacone also presented this item. He said the proposed nature preserve was located near the southern extreme part of the Harmonie State Park. The tract includes high quality forest remnants and the state endangered *spottail darter*. The area has never had oil wells but is subject to liens for oil rights and could have drilling and production in the future. Bacone recommended dedication of the Harmonie Hills Nature Preserve.

The Chair asked Bacone when proposed nature preserves come before the Commission, what the Department’s procedure for procurement, “and how they came actually came before us today.”

Bacone replied, “We’ve been invited by the Division of State Parks over the years to conduct natural area surveys and replant inventories on the parks, and each individual park property pulls together a resource management plan. They also look at and identify parts of the park that are most appropriate to be set aside as nature preserves.” The inventory resource management plan was performed a number of years ago for these proposed nature preserves at Harmonie State Park. “We’ve been working hard trying to figure out how we could live with the existing oil rights. Working closely with Division of Oil and Gas, we just found out that we can actually

comply with the oil rights without harming the natural features on the property, so we finally decided to bring them forward.”

The Chair said it was interesting “to hear the story behind” each nature preserve. “We appreciate you coming before us.”

John Davis added, “There’s a really excellent interpretation of the oil industry in Harmonie State Park, also, so we take advantage of that situation and partner-up with a pretty good operator inside the park who has refurbished the old oil wells. It’s really a nice touch, I think.”

Bacon said the state endangered plant, *cimicifuga racemosa*, is present inside the proposed nature preserve. Because of over-browsing by deer before implementation of controlled deer hunts at Harmonie State Park, several of these plants were protected within a deer enclosure. The difference for health of the species inside and outside the enclosure “was remarkable.” As a consequence of the controlled hunts, the vegetation in the park has “really recovered well, so you don’t see nearly as much difference inside the enclosure as outside.”

Donald Ruch moved to approve the dedication of the Harmonie Hills Nature Preserve. R.T. Green seconded the motion. Upon a voice vote, the motion carried.

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

#### **Consideration for preliminary adoption of amendments 312 IAC 8-1-3 regarding firewood on DNR properties and to adopt a new nonrule policy document for “Firewood Management on DNR Properties”; Administrative Cause Nos. 10-204A and 11-014P**

Ginger Murphy, Assistant Director for the Division of State Parks and Reservoirs, presented this item. She said a proposed nonrule policy document was previously presented to the Advisory Council. “We’re here to consider firewood management on our DNR properties” and “request your approval of the nonrule policy document and preliminary adoption of a proposed permanent rule amendment. If approved, the nonrule policy document would be implemented for the 2011 camping season. The “intent is to manage firewood on DNR properties” and protect our natural resources. “There are many types of pest and pathogens that have the potential to affect our forests in Indiana.”

Murphy provided that the rule adoptions would require one of the following:

- (1) That the firewood be bundled and contain a Federal compliance stamp certifying that the firewood has been inspected.
- (2) That the firewood include a state compliance stamp certifying that the firewood has been inspected.
- (3) That the firewood be purchased from DNR’s concessions.
- (4) That the firewood be kiln-dried construction lumber having been through a heat treating process.
- (5) That firewood brought from home have the bark removed.

Murphy said a quarantine of pests, issued by rule, would take precedence over the ability to bring firewood onto DNR properties. When this proposal was previously presented to the Advisory Council, a 25-mile radius limit was endorsed. A DNR survey has revealed, however, 83% of campers travel at least 100 miles to DNR property. As a result, the DNR is now recommending the 25-mile radius restriction be deleted and replaced with a requirement that bark be removed from any firewood. “Requiring that the bark be removed from firewood is a visible way to say, ‘I brought my firewood from home, but it’s clean.’”

Murphy said the survey also addressed the cost of firewood. “That’s one thing we are certainly trying to be aware of.” Approximately 68% of respondents supported the new rule for added protection our forest resources. She said the Division of Entomology and Plant Pathology was also supportive of firewood management. “This approach to managing firewood honors our mission to protect and manage our natural resources. At the same time, we believe it considers the interests and needs of the people who use our campgrounds and provides them a safe way to bring their firewood in.”

Murphy recommended approval of the nonrule policy document and preliminarily adoption of rule amendments 312 IAC 8-1-3.

Chairman Poynter asked Murphy, “How many people in your survey show up at a gate to a State park with firewood that had no knowledge of any firewood restrictions.”

Murphy responded “6% or 7%.”

Director Rob Carter said, “I think, if I could add, that early on I heard from these folks, but it has quieted down a lot. Ginger and staff have done a great job of getting the message out to the properties, and the forestry division staff as well, and educating folks on what to do. The complaints are very minimal now. This was a thorough report that Ginger put together, and it’s anything you wanted to know about firewood.”

Ruch stated, “I’m not clear on one point. If the wood is 4½ feet, it’s not considered firewood. Is there then no restriction?”

Murphy responded the vast majority of people who bring wood bring pieces smaller than 4½ feet. “If they are bringing scrap from home, it’s going to be very, very small pieces that are really not going to be a problem. When you get past 4 ½ feet, I think [a restriction would begin] to impact loggers and their transportation of the wood.”

Ruch continued, “But that could be brought into the park?”

Murphy responded, “Potentially, it could, but we rarely see it. From conversations with our property managers and our staff, we rarely see anything anywhere near that large. Most of it is cut and split so it will fit in their fire ring.”



Ruch reflected, “What I potentially see here is somebody bringing in a log, one that doesn’t fit into your regulations, and then cutting it onsite to burn.”

Murphy replied, “I won’t say that can’t happen, but in my experience, that’s something that’s going to be really, really uncommon. I think we would probably end up at the campsite if somebody had a chain-saw running for something that was really large, but for a hand-saw, people may do it. It’s less of an issue with small pieces with branches and slash than it is with the logs, but thank you for the question.”

The Chair commented, “Good observation. The only thing I would suggest, because I do visit a lot of these parks, is to accompany this preliminary adoption process and the nonrule policy adoption to disseminate that and make sure there’s a public awareness. Most people will comply if they know what the rules are. I’d encourage the state parks to be proactive in their reach to those who are coming to the parks and make people aware.”

Thomas Easterly moved to approve the preliminary adoption of amendments to 312 IAC 8-2-3 regarding firewood on DNR properties, as well as to adopt the nonrule policy for firewood management on DNR properties. Patrick Early seconded the motion. Upon a voice vote, the motion carried.

#### **DNR, DIVISION OF FORESTRY**

#### **Consideration for preliminary adoption of amendments to 312 IAC 8-2-6 regarding horses brought on DNR properties, and to make a corresponding reference change to a nonrule policy document for “Horses on DNR Properties”, to make the requirement for horse tagging on DNR Properties apply year-round; Administrative Cause Nos. 10-202F and 11-022F**

Dan Ernst, Assistant State Forester, presented this item. He said for consideration was the proposed amendment of a rule and a nonrule policy document regarding horse tagging on DNR properties. The current rule requires either an annual or daily horse tag for the use of horses on any DNR facilities, except in December, January, February, and March. The rule is cross-referenced in the nonrule policy document. The amendments would require horse tag throughout the year. Ernst said that horse use on DNR properties “has increased over time.” There are nine state forests and eight state parks that have bridle trails and would be impacted by the rule change. The change would have no impact on annual horse tag holders since the tag is valid all year. “As far as the campground registration receipt, on many of our check-in stations or day-use areas, somebody could pick up a campground registration receipt for use as a daily pass in a day ride area when the offices are not open.... They could easily deposit the money in a collection tube.”

Ernst said DNR “has done a fair amount of outreach on this already.” The proposal was referenced in the recent Indiana Trail Riders Association’s newsletter. There also will be discussion at the Horse Council’s Annual Conference in April. “By-in-large, we’ve gotten fairly positive comments, recognizing that the primary horse users are buying annual tags already. Primarily, it will affect people doing daily passes during these few months out of the year.”

The Chair asked Ernst why there would be any opposition to the rule change.

Ernst suggested the main opposition that might be expected is for the inconvenience to obtain a daily permit if a property is closed. A person could buy a daily pass in advance during business hours. "I would really expect minimal, if any, opposition on this."

John Davis reflected, "That would encourage people to get an annual permit."

R.T. Green moved to approve preliminary adoption of amendments to 312 IAC 8-2-6 as presented, as well as the corresponding change to the nonrule policy document. Easterly seconded the motion. Upon a voice vote, the motion carried.

#### **DIVISION OF FISH AND WILDLIFE**

#### **Consideration of repeal of nonrule policy document (Information Bulletin #45) regarding the disposition of permanently injured, non-releasable animals; Administrative Cause No. 11-044D**

Linnea Petercheff explained the Division of Fish and Wildlife initiated a nonrule policy in 2004 for the disposition of permanently injured, non-releasable wild animals taken in by licensed wildlife rehabilitators. An agency rule then required a rehabilitator contact a conservation officer if a captured animal was unable to fend for itself and not releasable into the wild. The policy provided conservation officers and the DNR, generally, with consistent guidelines to respond to rehabilitators in dealing with increasing numbers of non-releasable animals.

Petercheff reflected that in January, the Commission gave final adoption to proposed rule changes to the wild animal rehabilitation permit rule. These included language allowing non-releasable wild animals to be kept only for educational purposes, or as foster parents, but not as pets. She said the rule changes also:

- 1) defined the term "non-releasable",
- 2) required a licensed veterinarian to make the determination of non-releasable,
- 3) specified conditions under which an animal is determined to be non-releasable, and
- 4) determined how many educational animals could be kept per species.

With these rule changes, she said there is no longer a need for the nonrule policy document.

The Chair thanked Petercheff for bringing the item forward. He said it was important to adopt this kind of housekeeping measure to help keep regulatory requirements streamlined and consistent.

Jane Ann Stautz moved to repeal the nonrule policy document (Information Bulletin #45) regarding the disposition of permanently injured, non-releasable animals. R.T. Green seconded the motion. On a voice vote, the motion carried.

## NRC, DIVISION OF HEARINGS

### **Consideration on rule processing, public comments, analysis, and recommendation regarding final adoption of rule amendments to 312 IAC 25 governing coal mining and reclamation; LSA Document #10-547(F); Administrative Cause No 09-177R**

Sandra Jensen, Hearing Officer, presented this item. She said the rule package includes a variety of topics relating to coal mining and reclamation operations, including four new definitions and the amendment of a fifth definition. The amendments would require compliance history reports be obtained and considered with respect to permit applications for both surface and underground mining. The amended rules would require permit holders to file timely notices of change in ownership and control and would authorize challenges to the determinations, as well as set forth DNR duties in addressing challenges to the determinations. The amendments would address blasting, permitting revisions, and post-mining land uses, including alternative stocking rates for forest reclamation. Included would be matters pertaining to informal conferences and public hearings associated with bond release and stays of cessation orders. The proposal would repeal two rules, because the Federal counterparts were repealed, making the State's rules unnecessary. No member of the public appeared at public hearing, and no written comments were received.

Jensen explained the Department of Interior's Office of Surface Mining provides Federal oversight for the Department's Division of Reclamation. The rule proposal is, in large part, a result of necessity to maintain a primacy program relating to coal mining and reclamation for the State of Indiana. The Legislative Services Agency, in its review of the rule's proposed language, suggested that certain stylistic revisions be made. Jensen said these revisions did not alter the substance of the rule. She then recommended final adoption of the amendments, as revised.

Thomas Easterly moved to approve the final adoption of the amendments, with the proposed revisions as set forth in the report, governing coal mining and reclamation at 312 IAC 25. R.T. Green seconded the motion. Upon a voice vote, the motion carried.

### **ADJOURNMENT**

The meeting was adjourned at approximately 10:55 a.m. EST.

The Chair said the next Commission meeting would take place on May 17, 2011 at 7:00 p.m., EDT, at Pokagon State Park, Angola.