

# **NATURAL RESOURCES COMMISSION**

November 18, 2014 Meeting Minutes

## **MEMBERS PRESENT**

Bryan Poynter, Chair  
Cameron Clark, Secretary  
Patrick Early  
Thomas Easterly  
Phil French  
Doug Grant  
R. T. Green  
Laura Hilden  
Ali Meyer  
Don Ruch  
Robert Wright

## **NATURAL RESOURCES COMMISSION STAFF PRESENT**

Sandra 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
Danny East	Law Enforcement
Steve Hunter	Law Enforcement
Mark Reiter	Fish and Wildlife
Linnea Petercheff	Fish and Wildlife
Doug Keller	Fish and Wildlife
Brian Schoening	Fish and Wildlife
John Bacone	Nature Preserves
Mark Basch	Water
Terri Price	Water
John Seifert	Forestry
Dan Bortner	State Parks and Reservoirs
Phil Bloom	Communications

## **GUESTS PRESENT**

William Joseph  
Tammy Mebane  
Herb Higgins

Andy Patterson  
Paul Arlinghaus  
Barb Simpson

Frank Merritt  
Dale Sides  
Erin Huang

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 10:08 a.m. EST, on November 18 at Fort Harrison State Park, Ballroom, 6002 North Post Road, Indianapolis. With the presence of eleven members, the Chair observed a quorum.

Thomas Easterly moved to approve the minutes for the meeting held on September 16, 2014. Donald Ruch seconded the motion. Upon a voice vote, the motion carried.

## **REPORTS OF THE DIRECTOR AND DEPUTIES DIRECTOR**

Director Cameron Clark provided his report beginning with an update on the Hoosier Outdoor Experience. Clark indicated that the weather was good for hosting the 18,000 – 20,000 people who participated in the event. Clark reported that attendance was “down considerably from the year before” but observed the decreased numbers proved more manageable. Clark noted that participants were able to move around more freely and get through lines quicker, which provided a more enjoyable experience. Another important factor to consider according to Clark is that the Central Indiana Ford Dealers, the primary sponsors, “were very happy with what they saw...” Clark also recognized the assistance provided by the Friends of the NRA and the National Wild Turkey Federation.

Clark reflected upon the rededication of a shelter at Shakamak State Park in October. The shelter, which was completely restored with most of the work completed by Department staff, was originally constructed by the CCC. Clark noted that a nice crowd was present for the dedication and a picnic that followed.

Additionally, Clark offered that a CCC workers statue was dedicated at Ouabache State Park. Clark noted that this is the second statue dedicated in Indiana and the 62<sup>nd</sup> statue dedicated throughout the United States. The statue commemorates CCC Company 1952 Camp S-93 that built bird pens, fish hatcheries and recreational structures between 1935 and 1940. Clark extended a word of appreciation to the Ouabache State Park friends group for raising a significant portion of the funds for that project.

The Chair noted that the statue is “quite impressive”.

Chris Smith, Deputy Director for the Bureau of Water Resource and Regulation, provided his report. Smith offered that the Division of Reclamation recently received the 2014 National Abandoned Mine Reclamation Award for its work on the Mill Creek Highwall in Pike County that through erosion was jeopardizing an adjacent road base. Smith reported that the award not only recognized the work associated with rehabilitating the highwall but also highlighted the

cooperative efforts between the Division and Triad Mining, a company operating an active mine in the area, which allowed the project, to be completed at a fraction of the expected cost. Smith reported that the project was originally estimated to cost approximately 5 million dollars to be completed for approximately \$300,000.

Smith also noted that Sam Hyer, who has spent the last three years in the Indiana House as a Legislative Assistant, has joined the Department as its Legislative Director. Smith noted that Hyer was unable to be present because it is organization day and he is representing the Department at the Statehouse.

John Davis, Deputy Director for the Bureau of Lands and Cultural Resources, provided his report. Davis stated that “today is our second day of our deer reduction in state parks” indicating that 40 deer were taken at Fort Harrison State Park on the first day.

Davis noted that some sites in southern Indiana, including Governor Whitcomb’s cabins in Perry County, were visited in the past weeks. Davis described the area around Governor Whitcomb’s cabins as “very remote” and “primitive” and offered the hope that at least one of the cabins will be available for rent in the spring or summer. Davis stated that they had the pleasure of visiting with Governor Whitcomb, which “was a treat.”

Davis added that the Department is planning to do some sediment removal from the Spring Mill Lake at Spring Mill State Park to restore the recreational capability of that lake. Davis observed that presently the lake is only about one foot deep in most places.

Finally, Davis advised that they had met with Paul Labovitz, the new Superintendent at the Indiana Dunes National Lakeshore. Davis expressed the Department’s continued interest in that partnership and noted that Paul is very friendly and open.

#### **CHAIR, VICE CHAIR, AND CHAIR OF THE ADVISORY COUNCIL**

#### **Updates on Commission, AOPA Committee, and Advisory Council**

The Chair reflected upon the “substantial change” within the Commission’s Division of Hearings relating to the retirement of the Commission’s Chief Administrative Law Judge Stephen Lucas. He advised that a hiring committee comprised of himself and Commission members, Patrick Early, R.T. Green and Jane Ann Stautz, with the assistance of Lucas, participated in an “arduous process” for locating a new Chief Administrative Law Judge. The Chair noted that through three rounds of interviews of “outstanding candidates” and “some lively debate” it was “the clear choice of Commission representatives that Sandy Jensen has now been elevated to our new Chief Administrative Law Judge and will now run the Division of Hearings.”

The Chair stated that another Administrative Law Judge is needed to support the workings of the Commission and reported that the position is presently posted. He also noted the equal importance of finding a replacement for Debbie Freije, who retired from her position as the Commission’s Court Reporter. The Chair recognized Jennifer Kane’s efforts to fulfill the responsibilities of two positions stating, “Many people don’t realize the extraordinary amount of

work that Debbie and Jennifer and all of them working together support”. The Chair recognized that Jensen is “managing chaos and doing a very good job and hopefully developing some plans to carry us through at least quarter one and quarter two of next year managing workloads. I do ask in an official way that the constituents that come here and come before this Commission understand that we are working on a...skeleton isn’t really even the right word...a very understaffed Commission office and the Director of the Division of Hearings is doing a great job.”

The Chair also recognized the new permanent proxy for the Commissioner of the Indiana Department of Transportation (“INDOT”), Laura Hilden, and asked that she introduce herself. Hilden offered that she is the Director of Environmental Services for INDOT, which oversees the office that prepares the NEPA [National Environmental Policy Act] documentation as well as cultural resources documentation and pre-reviews of permit applications for submission to the Department of Environmental Management and the Department of Natural Resources.

The Chair also recognized Ali Meyer, who served as the proxy on behalf of the Department of Tourism in Jake Oakman’s absence. Meyer explained that she is a Project Manager for the Department.

The Commission set the following meeting dates for 2015: January 20, March 17, May 19, July 21, September 15, and November 17. The meetings are currently scheduled to be held at Fort Harrison State Park, Garrison, or another Indianapolis location.

Patrick Early, Chair of the Advisory Council, indicated that the Advisory Council did not meet last month.

In the absence of Jane Ann Stautz, Chair of the AOPA Committee, Sandra Jensen confirmed that the AOPA Committee did not meet.

#### **DNR, EXECUTIVE OFFICE**

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

There were no items identified as appropriate for referral to the Advisory Council

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

#### **Consideration of the dedication of the Kokiwanee Nature Preserve in Wabash County**

John Bacone, Director of the Division of Nature Preserves, presented this item. Bacone described the proposed Kokiwanee Nature Preserve as a large tract of land located across the river from Salamonie Reservoir and Salamonie River State Forest that used to be a Girl Scout camp. Bacone recognized the ACRES Land Trust for acquiring the property with the assistance of the Indiana Heritage Trust and many other sources. Bacone advised the tract contains geologic features and some high quality natural communities.

Bacone identified a cluster of buildings at the center of the property that were used as the Girl Scout camp noting that this area is being withheld from the dedication. Bacone explained that there is hope for the buildings in this area to eventually be used as office space and a nature center. Bacone directed the Commission members' attention to some additional photos distributed during the meeting.

Cameron Clark moved to approve the dedication of the Kokiwanee Nature Preserve. Donald Ruch seconded the motion. Upon a voice vote, the motion carried.

### **Consideration of the dedication of the Russell Bend Nature Preserve in Parke County**

Bacone also presented this item. Bacone described the Russell Bend Nature Preserve site as being "located along Sugar Creek a couple miles west of Turkey Run State Park". Bacone advised that the property consists of three tracts of the Sugar Creek Conservation Area owned and managed by the Division of Fish and Wildlife and noted that the site is also a part of the Healthy Rivers Initiative. Bacone added that one of the tracts "abuts the Coal Hollow Nature Preserve and rounds out the rest of that canyon." Bacone observed that the site features rugged and diverse topography and contains interesting geologic features as well as a number of rare plants and animals.

Doug Grant moved to approve the dedication of the Russell Bend Nature Preserve. Thomas Easterly seconded the motion. Upon a voice vote, the motion carried.

### **DNR, DIVISION OF FISH AND WILDLIFE**

#### **Request for preliminary adoption of amendments to 312 IAC 9-12 governing the special circumstances hunter safety card for individuals with a disability; Administrative Cause No. 14-141D**

Lieutenant Colonel Steve Hunter, Division of Law Enforcement, presented this item. Hunter explained that in 1995 it became mandatory for any individual born after December 31, 1986 to complete a hunter education course before they may purchase a hunting license. Hunter noted that the education course must include components of hunter safety, conservation principles and sportsmanship and is administered by Indiana Conservation Officers. Approximately, 16,000 students are certified annually through these courses, according to Hunter.

Hunter observed that in 2008 the apprentice hunting license became available. Hunter explained that with an apprentice hunting license an individual who would otherwise be required to complete the hunter education course and pass the test could hunt without completing the course provided the individual was accompanied by a licensed hunter aged 18 years or older. Hunter reported that an individual is limited to purchasing three apprentice licenses.

Hunter conveyed that based upon the request of a parent of a child with a developmental disability, Representative Arnold authored a bill that upon passage by the Indiana General Assembly in 2014 became I.C. 14-22-12-1.8. According to Hunter, I.C. 14-22-12-1.8 authorizes

certain individuals who complete the hunter education course but who cannot successfully pass the test to obtain a “special circumstances hunter safety card”. With this card the individual may purchase a license and hunt while in close proximity to a licensed hunter age 18 years or older.

Pursuant to the statute, the individuals who may obtain a special circumstances hunter safety card are individuals with a developmental disability as defined by I.C. 12-7-2-61 or a child with a disability defined at I.C. 20-35-1-2. Hunter noted that the statute authorizes the Commission to adopt rules to carry out the statutory requirements and to identifying other individuals with permanent disabilities who may qualify for this safety card.

Hunter stated that this rule “reiterates some of the statute language” that identifies a human services statute and an education statute both of which would limit the benefit gained by a special circumstances hunter safety card to individuals who are under 22 years of age. Hunter added that this rule, at section (a)(3) “extends the opportunity to persons with similar disabilities” that manifest after the individual is 22 years of age or older.

The Chair inquired “how many do you anticipate this applies to a year?”

Hunter responded, “It’s a handful.” Hunter added that the application form is prepared and the card is available but noted that no applications have been filed and no cards have been issued.

The Chair recognized Barb Simpson, Executive Director of the Indiana Wildlife Federation, who offered support for the rule proposal.

Pat Early moved to approve preliminary adoption of amendments to 312 IAC 9-12 governing the special circumstances hunter safety card for individuals with a disability. Thomas Easterly seconded the motion. Upon a voice vote, the motion carried

**Request for preliminary adoption of amendments to 312 IAC 9-7 and 312 IAC 9-8 governing the taking of catfish under a sport fishing license and a commercial fishing license on the Ohio River and on inland water; Administrative Cause No. 14-142D**

Linnea Petercheff, Division of Fish and Wildlife, presented this item. Petercheff offered that this is the final proposal resulting from the Division’s biennial rule revision process and proposes amendments that are the same for both sport fishing and commercial fishing relating to the taking of catfish.

Petercheff elaborated that the proposal will establish a minimum size limit of 13 inches and a bag limit of “one channel catfish per day that is 28 inches in length or longer from rivers and streams statewide and no more than one flathead catfish and one blue catfish that could be taken per day that is 35 inches or more in length in streams statewide.” Petercheff confirmed that this proposal is applicable to the Ohio River as well as inland waters and the Wabash River boundary waters.

Petercheff explained that the minimum size is being increased from 10 to 13 inches because “this is closer to their reproductive size” and affords the opportunity for anglers to take catfish home

to eat. Petercheff noted that the proposed rule will not impact the ability of anglers to take 10 catfish per day from lakes and reservoirs without regard to size.

Commercial fishermen will continue to be allowed to take and sell an unlimited number of channel catfish between 13 and 28 inches in length and flathead catfish and blue catfish between 13 and 35 inches in length. Petercheff reported that Kentucky will have this same regulation in place in December with respect to the Ohio River; however Petercheff noted that Kentucky's regulation will include an exception for a limited number of commercial fishermen. According to Petercheff, the exception in the Kentucky regulation will allow 56 commercial fishermen to take four flathead catfish and blue catfish per day that are at least 40 inches and four channel catfish per day that are 30 inches or more. Petercheff added that Kentucky's portion of the Ohio River is below the Cannelton Lock and Dam, which is located near Tell City. Additionally, Petercheff advised that the Illinois DNR is presently working on the same regulation to be in place on the Wabash River.

Easterly expressed confusion regarding how many catfish may be taken.

Petercheff clarified that an unlimited number of channel catfish between 13 inches and 28 inches or blue catfish and flathead catfish between 13 inches and 35 inches may be taken but confirmed that for catfish above those upper limits only one may be taken per day.

The Chair recognized Barb Simpson, Executive Director of the Indiana Wildlife Federation, who offered general support for the rule proposal. Simpson, however, questioned the proposal's establishment of 13 inches as the minimum size limit in light of the Department's indication in background material that the reproductive size of catfish is approximately 15 inches. Simpson expressed the position that a 13 inch minimum size "does not go far enough to protect breeding populations..."

Simpson urged that in addition to the one fish per day bag limit for blue catfish and flathead catfish over 35 inches and channel catfish over 28 inches that bag limits be established on the total number of catfish that may be taken per day. Simpson noted that presently there is no daily bag limit for catfish under these maximum sizes.

Simpson also observed that commercial fishermen are presently required to report only the pounds of fish taken; not the number of fish. Simpson offered that these reporting requirements need to be changed as this data may prove useful to the future protection and management of the resource.

Simpson also highlighted the disparity between the fees for commercial fishing licenses and sport fishing licenses. Simpson noted that commercial fishermen are charged \$4.00 per net per year as compared to sport anglers being charged \$17.00 for a license. Simpson noted that commercial fishing industry is profiting from resource conservation and management efforts funded largely by sport anglers' license fees and associated federal grant funds. For this reason, Simpson urged that the fees for commercial fishing and sport fishing need to be more equitably balanced.

Also related to the establishment of appropriate fees, Simpson pointed out that presently the sport angler license fees are established by the Commission while commercial fishing fees are set by the legislature. Simpson offered the opinion that the fees should be set by one body and should be established to adequately offset administrative costs.

Observing the proposal to be a “good first step”, Simpson stated, “Overall we are concerned about the commercialization of wildlife. We are all familiar with the North American Model of Wildlife Conservation...commercial taking of catfish in unlimited quantities for sale violates this key tenant. Wildlife is owned by the public for the benefit of the public.”

The Chair recognized Andy Patterson of the Indiana Catfish Conservation Association (“ICCA”). Patterson offered general support for the rule proposal and general agreement with the comments offered by Simpson. Patterson suggested however that additional refinement of the rule may be needed in the future.

The Chair inquired, “How many members do you have?”

Patterson responded that the ICCA membership numbers approximately 100.

The Chair sought background information about ICCA noting his lack of familiarity with the organization.

Patterson explained that ICCA started approximately three years ago through social media as people increasingly observed problems occurring on Indiana’s rivers. Patterson offered that two of ICCA’s members “are a little more knowledgeable on the biology of the rivers” noting that customarily they would have been present for the meeting but were, unfortunately, not available to attend. Patterson offered that the group charges no membership fee and is made up of sport anglers.

Cameron Clark inquired as to the ICCA’s desired refinements to the rule.

Patterson indicated that ICCA’s concern relates primarily to the “transportation of live fish”. Patterson indicated the ICCA has “no problem with the pay lakes” but noted that the ease of publicity through social media has significantly increased the demand for catfish by the pay lakes. Patterson observed that in the past the pay lakes were stocked with farm-raised catfish whereas the catfish are now being taken from the rivers and streams and transported to the pay lakes. Echoing the statement of Simpson, Patterson stated that “it just doesn’t seem fair for the recreational angler who has to go buy a license, has to have the equipment to go fish but yet a pay lake can buy all these fish from commercial fishermen but to go fish a pay lake you don’t have to have a fishing license.”

Clark inquired whether pay lakes are obtaining catfish solely from commercial fishermen or whether recreational anglers are selling fish to the pay lakes.

Patterson remarked that a pay lake operating on the south side of Indianapolis was “caught buying fish from recreational anglers.” Patterson advised that he is personally familiar with



sport anglers who were approached at the boat ramp near that pay lake and asked to sell any large fish they caught. Patterson recognized that the sale of fish by recreational anglers is a violation of the law but acknowledged that it does occur because of the commercial demand being placed upon this resource. Patterson stated, “As we all know, money gets everybody’s attention and if somebody is offering money to somebody who’s out fishing that’s a possibility.”

The Chair inquired whether Patterson is familiar with any commercial fishing organizations.

Patterson responded that there are commercial fishing organizations but was not able to provide the names. Bill Avery, also an ICCA member, joined Patterson and advised that one commercial fishing organization is the Kentucky Commercial Fishermens Association. Avery indicated that, to his knowledge, no commercial fishing organization exists in Indiana.

The Chair reiterated that this matter has been presented for preliminary adoption and recognized that additional opportunity will be provided for Simpson, the Indiana Wildlife Federation, the ICCA and others to offer their concerns and input.

Thomas Easterly moved to approve preliminary adoption of amendments to 312 IAC 9-7 and 312 IAC 9-8 governing the taking of catfish under a sport fishing license and a commercial fishing license on the Ohio River and on inland water. Don Ruch seconded the motion. Upon a voice vote, the motion carried.

#### **NRC, DIVISION OF HEARINGS**

#### **Consideration of Recommended Report of the Natural Resources Commission regarding the Petition for the Dissolution of the Raceway Water Conservancy District (Hendricks Circuit Court 32C01-9508-MI-194); Administrative Cause No. 14-102C**

Jennifer Kane, Hearing Officer, presented this item. She explained that statutorily, a circuit court determines whether to approve the establishment or dissolution of a conservancy district and has jurisdiction for oversight of an existing conservancy district. The Commission serves important roles at six crucial stages in the formation, management, and dissolution of conservancy districts. At the formation and dissolution of a conservancy district, a public hearing is required. The hearing stage is the primary forum for the receipt and evaluation of scientific and technical data. Kane said the Commission brings together reports and analyses of the DNR, primarily through its Division of Water, as well as other state and local agencies, such as the Department of Environmental Management, Indiana State Department of Health, and the Utility Regulatory Commission. Comments are also solicited from local governmental entities.

Kane said the Commission is to make a report of its findings to the circuit court within 120 days of the referral. She said for consideration is the Recommended Report regarding the Petition for Dissolution of the Raceway Water Conservancy District (the “Conservancy District”). The Conservancy District was established in 1996 for the purpose of providing water supply to the residential development, Wynbrooke. Also in 1996, two other purposes were added: (1) development of forests, wildlife areas, parks and recreation facilities in connection with beneficial water management; and (2) providing for the collection, treatment and disposal of

sewage and other liquid wastes. She noted that at the outset and continuing today, the Citizen's Energy Group (formerly the Indianapolis Water Company) has provided the water supply to Wynbrooke, the residential community within the Conservancy District boundary. "The Conservancy District never realized its purpose of providing water."

Kane noted that in 1997, the Conservancy District entered into an agreement with the Hendricks County Regional Sewer District for the Sewer District's purchase of the Conservancy District's sewer facilities. The Conservancy District has lost its purpose for the treatment and disposal of sewage and other liquid wastes from Wynbrooke. She said the remaining purpose of the Conservancy District is the development of forests, wildlife areas, parks and recreation facilities in connection with beneficial water management. Kane noted that the Conservancy District and the Wynbrooke residential development boundaries are the same, and explained that the Wynbrooke Homeowner's Association has accepted responsibility for maintenance of the common areas and park facilities within the Conservancy District. "The Conservancy District has lost its remaining purpose." She noted that Recommended Finding 9 on page ten of the Report provides a summary of the Conservancy District's change in circumstances supporting loss of benefit.

Kane explained that the Conservancy District does not have any bonds or notes outstanding and has an account balance of \$61,582.73. "After payment of expenses incurred in the course of the dissolution, the net balance will be transferred to the Wynbrooke Homeowner's Association" for the maintenance of the common areas and park facilities. Kane recommended that the Commission adopt the Recommended Report as the Commission's determination and fact finding report under IC 14-33-2-18 and IC 14-33-15.

Cameron Clark moved to approve the Recommended Report as the Commission's determination and fact finding report under IC 14-33-2-18 and IC 14-33-15 regarding the Petition for Dissolution of the Raceway Water Conservancy District. R. T. Green seconded the motion. Upon a voice vote, the motion carried.

**Consideration of report of rule processing, public hearing, and hearing officer analysis with recommendations regarding final adoption of amendments to 312 IAC 15 governing forest and resource management; LSA #14-294(F); Administrative Cause No. 14-098F**

Jennifer Kane also presented this item. For consideration as to final adoption, are the proposed amendments to 312 IAC 15, which provides minimum standards of good timber management for property that is classified as forest plantation or native forest land under IC 6-1.1-6. She noted that the rule proposal was posted on the Commission's online rule docket; however, no comments were received through the online form or through regular mail regarding the proposed rule amendments.

Kane reflected that in 2006 the General Assembly merged the Classified Forest Program with the Classified Wildlife Habitat Program into the "Classified Forest & Wildlands Program". Several amendments proposed would reflect this merger, along with other technical amendments. She said the definitions of "district forester" (312 IAC 15-1-6) and "professional forester" (312 IAC 15-1-9) are amended to clarify that a district forester, an employee of the Department, may also

qualify as a professional forester. A definition of “wildlife biologist” is also added at 312 IAC 15-1-11. “Currently, only a district forester or a professional forester (with approval from the district forester) may prepare the management plan for classified acreage.” 312 IAC 15-1-7 is amended to allow a wildlife biologist, with approval of the district forester, to also prepare a management plan.

Kane explained that effective July 1, 2014, the governing statute (IC 6-1.1-6-9(b)) was amended to allow a professional surveyor to use a geo-referenced aerial photograph in order to prepare a description of the parcel to be classified. Prior to July 1, 2014, IC 6-1.1-6-9(c) provided Commission authority to adopt rules to allow other means to describe and plat a parcel. Kane said the statute was “unclear as to whether a surveyor would need to be used to describe land considered for classification for all means of parcel description.” She noted that subsection (c) was amended to provide authority for the Commission to adopt rules to allow other means of “depicting and identifying parcels classified as native forest land, forest plantation, or wildlands, provided that the means do not result in a real property description of the parcel. 312 IAC 15-3-1 is added to provide an alternative method for describing land to be enrolled in the Classified Forest & Wildlands Program. The alternative method would allow the use of geographic information systems (“GIS”), in accordance with state of Indiana GIS standard, to describe a parcel. She noted that since the alternative method would not result in a real property description, this method would not require a surveyor. A surveyor may also use the GIS alternative method to describe a parcel at the landowner’s request. Kane recommended the proposed amendments to 312 IAC 15, as contained in “Exhibit A, be given final adoption.

Patrick Early moved to approve for final adoption amendments to 312 IAC 15, which provides standards for the management of forest resources. Donald Ruch seconded the motion. Upon a voice vote, the motion carried.

**Consideration of report of rule processing, public hearing, and hearing officer analysis with recommendations regarding final adoption of new rule 312 IAC 12-2-4 and 312 IAC 13-8-1 governing minimum pump settings for small capacity wells and use of high solids bentonite grout containing graphite for vertical closed loop geothermal systems; LSA #14-204(F); Administrative Cause No.14-081W**

Jennifer Kane also presented this item. For consideration are proposed amendments to 312 IAC 12-2-4 to specify minimum pump setting depths for small capacity water wells that must be met to qualify for protection under IC 14-25-4, emergency regulation of ground water rights. Also proposed are amendments to 312 IAC 13-8-1 to allow for the use of industry standard grout materials for geothermal wells and to allow the DNR, Division of Water to approve other grout additives. She reflected that the rule proposal was posted on the Commission’s online rule docket; however, no comments were received through the online form or through regular mail regarding the proposed amendments.

Kane explained that 312 IAC 12 establishes minimum construction standards for small capacity water wells in order to be protected under IC 14-25-4. She said constructions standards in 312 IAC 12 are not mandatory; however, a water well driller or water or plumbing contractor must advise the person for whom a water well is drilled or equipped of the statutory and rule

provisions. She explained that the proposed amendments to 312 IAC 12-2-4 would provide consistency with the pump installer licensing and mandatory minimum construction standards in IC 25-39 and 312 IAC 13. “Currently, a water well driller or plumbing contractor must advise the person for whom a water well is drilled or equipped of the statutory and rule provisions before a small capacity well can be drilled or equipped.” With the proposed amendments, the water well driller or water well pump installer would be required to obtain approval from the Division of Water for the installation of a small capacity well that does not comply with IC 14-25-4 or 312 IAC 12. Kane explained that 312 IAC 12-2-4(a)(2) allows the Division of Water to consider approval for a small capacity water well that cannot be constructed according to the requirements in statute and rule, such as in cases where the minimum pump setting depths cannot be met due to limiting conditions at the location of the proposed well. “The proposed amendments would help owners of small capacity domestic wells to meet the requirements for protections provided under the law if the domestic wells are impacted by local high-capacity pumping.”

Kane noted that the proposed amendments to 312 IAC 13-8-1 are in response to the current use of high solids bentonite grout containing graphite, and other neat cement based geothermal grouts, for vertical closed loop geothermal systems. She explained that the use of graphite to thermally enhance geothermal grout material has proven to be effective and environmentally safe, and has been approved for use in other states. Kane also noted that various other neat cement based geothermal grouts have also been found to be effective and environmentally safe, and approved for use in other states.

Kane said the existing rule allows only for the addition of sand to enhance the thermal conductivity and pumpability of geothermal grout. The proposed amendments would allow for the addition of graphite to high solids bentonite grout and the use of neat cement based grouts. The addition of 312 IAC 13-8-1(c)(3), allowing the use of “another material approved by the division” provides the Division of Water regulatory flexibility to approve new additives that become available and have been found to be effective and environmentally safe.

Kane explained that last year the DNR Director adopted an emergency rule (LSA Document #13-499(E)), which authorized additionally the use of graphite or other materials approved by the Division of Water to enhance thermal conductivity. She noted that the emergency rule was renewed (LSA Document #14-452(E)). She noted that the emergency rule would be effective until the permanent rule is in place. She then recommended the proposed amendments to 312 IAC 12-2-4 and 312 IAC 13-8-1, as presented, be given final adoption.

Thomas Easterly moved to approve for final adoption amendments to 312 IAC 12-2-4 and 312 IAC 13-8-1, which governs installation of water wells. R. T. Green seconded the motion. Upon a voice vote, the motion carried.

**Consideration of report on rule processing, consideration of public comments, analysis and recommendation regarding final adoption of new rule 312 IAC 5-6-11 to establish a special boating zone on Simonton Lake located in Elkhart County; LSA Document #14-17(F); Administrative Cause No. 14-005D**

Sandra Jensen, Hearing Officer, presented this item. Jensen offered that this proposal seeks to add 312 IAC 5-6-11 to establish a special boating zone covering approximately 10 acres in the southeast portion of Simonton Lake in Elkhart County, as depicted in an aerial photograph she was distributing. With the boating zone the operation of boats with other than an electric trolling motor or paddle would be prohibited. Anchoring boats within the zone would also be prohibited, Jensen added. Jensen noted that the rule, as proposed, does contain a 5 year sunset provision for the purpose of evaluating the effectiveness of the zone.

Jensen explained that the proposal results from a citizen petition for rule change filed by the Simonton Lake Area Homeowners Association (“the Association”) based upon recommendations of a Lake Diagnostic Feasibility Study that was completed in June 2012. Jensen related that the citizens’ petition was handled in accordance with Information Bulletin #7 (Third Amendment), “Petitions for Rule Change and for Nonrule Policy Document Change”, which involved requesting the Department’s establishment of a committee to evaluate the merits of the petition.

Jensen explained that the committee was comprised of Doug Keller, Aquatic Habitat Coordinator for the Department’s Division of Fish and Wildlife, who was by that time already involved with the Association having participated in Association meetings for the purpose of addressing inquiries and providing information. Other members of the committee were identified by Jensen as James Hebenstreit, Assistant Director of the Division of Water, and Lt. Kenton Turner of the Division of Law Enforcement. The committee determined that the establishment of the boating zone was appropriate and authorized by I.C. 14-15-7-3.

Jensen noted that upon request by the Department an exception to the suspension of rulemaking action, mandated by Executive Order 13-03, was approved on May 7, 2014, which allowed for the Commission to grant preliminary adoption of the proposal. Jensen advised that the Notice of Intent to adopt the proposed rule was posted to the INDIANA REGISTER on July 30, 2014 and fiscal analyses submitted to the Office of Management and Budget were approved on August 27, 2014. Jensen confirmed that the proposed rule language and notice of public hearing was posted to the INDIANA REGISTER on September 9, 2014 and published in the Elkhart Truth, a publication of general circulation in Elkhart County, on September 19, 2014. Jensen advised that she conducted a public hearing, as scheduled, on October 23, 2014 and noted that written comments were accepted from the public between July and October 2014. Jensen observed that all of the comments received support the establishment of the boating zone.

Jensen highlighted Keller’s statement to the Commission at the time of preliminary adoption on July 15, 2014:

The area is extremely shallow (three feet deep or less) with a fair amount of emergent and submerged vegetation. Despite the shallow and vegetated nature, motorboats and personal watercraft commonly utilize the area, which damages aquatic habitat and suspends nutrients and sediment. The shallow nature of the area also offers a boating hazard. The shoreline bordering the zone consists of undeveloped shoreline and mostly wetlands. There are no residential areas that would be “boxed-in” as a result of the proposed ecozone.

Jensen offered that the public comments and other information received through the rule adoption process support Keller's and the Department's committee's representations and recommendations. Jensen offered the proposed rule, as attached to her report, for final adoption without revision.

Doug Grant stated that "this used to be known as two lakes; this used to be Simonton Lake and Little Simonton. Now are we calling all this acreage just one lake?"

Jensen agreed that the area was considered to be one lake. Keller concurred.

Grant questioned how the Department changes "two lakes that are closely adjoined by a channel, which have two lake names and are controlled separately and then you say it's only one lake and then regulate it differently? What standard do we use?"

Jensen indicated that she had no knowledge whether the lakes were at one time legally considered to be two lakes or how that may have changed or when. Keller could offer no insight as to what the historic classification of the lake(s).

Grant asked how big Little Simonton is.

Keller responded saying that he did not know the size of Little Simonton but explained that the entire area is 301 acres noting the need for a lake to be 300 acres in order to allow high-speed boating.

Grant inquired whether high-speed boating is allowed on Little Simonton?

Keller answered in the affirmative.

Jensen noted that she did not know the history without having the opportunity to research the issue but offered to look into the question and provide a response.

Thomas Easterly sought clarification "some of this will grow into vegetation but there will be someplace for boats to go in here or not...I didn't understand?"

Jensen clarified that the area to be included in the special boating zone is only approximately 10 acres as outlined with blue lines depicted on the bottom of the photograph that was distributed. Jensen explained that boating will not be impacted except within this limited area where boats may only be propelled by electric trolling motor or paddle and boats may not anchor.

Pat Early moved to approve for final adoption the addition of 312 IAC 5-6-11, establishing a special boating zone on Simonton Lake in Elkhart County. Don Ruch seconded the motion. Upon a voice vote, the motion carried.

**Consideration of preliminary adoption of amendments to 312 IAC 3-1-7 governing filing and service of pleadings and documents with the Commission, and repeal of various rule**

**sections in response to the Governor's initiative to reduce and simplify regulation;  
Administrative Cause No. 14-092A**

Jensen also presented this item. Jensen explained that this rule proposal stems from the portion of Executive Order 13-03 requiring agencies to review and eliminate unnecessary rules and regulations. Through that review, Jensen advised, the Division of Hearings determined that administrative rules at 312 IAC 1-1-7 through 312 IAC 1-1-12 duplicate definitions provided in statute. Jensen added that the review revealed the existence of a rule at 312 IAC 3-1-16 that pertains to matters also addressed by the Indiana Rules of Trial Procedure, which are applicable to proceedings before the Commission by operation of 312 IAC 3-1-10. Jensen stated that for these reasons the Division of Hearings has concluded that these rules are appropriate for repeal.

Jensen advised that the review also identified certain portions of 312 IAC 3-1-7 that are duplicitous, obsolete or in need of clarification and for that reason the proposal offers amendments to that rule. The amendment of 312 IAC 3-1-7, Jensen offered, is mostly technical in nature but noted that the amendments will specify the correct email address for filing pleadings and establish a cut off time of 4:45 p.m. ET for filing pleadings by email. Jensen explained that the practical effect of the latter proposal will be that pleadings submitted by email after 4:45 p.m. ET will be filed as if received the next business day. Jensen observed that this is more consistent with the concept of filing pleadings on the date received if hand delivered during usual business hours or if received by regular mail in accordance with the postmark date. This change is also consistent with other agency rules and the Indiana Rules of Trial Procedure, Jensen said.

Thomas Easterly moved to approve for preliminary adoption the repeal of 312 IAC 1-1-17 through 312 IAC 1-1-12 and 312 IAC 3-1-16 as well as amendments to 312 IAC 3-1-7 governing filing and service of pleadings and documents with the Commission. R. T. Green seconded the motion. Upon a voice vote, the motion carried.

**Adjournment**

The meeting was adjourned at approximately 11:42 a.m., EST.