

NATURAL RESOURCES COMMISSION

Minutes of October 25, 2000

MEMBERS PRESENT

Michael J. Kiley, Chair
Larry Macklin, Secretary
Damian Schmelz
Sylvia Wilcox
Jane Ann Stautz
John Goss
Rick Cockrum
Steve Cecil
Terri Moore

NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas
Jennifer Kane
Debbie Michaels

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Jack Costello	Executive Office
Paul Ehret	Executive Office
Dave Vice	Executive Office
John Davis	Executive Office
Carrie Bales	Executive Office
Glen Salmon	Fish and Wildlife
John Bacone	Nature Preserves
Scott McDaniel	Law Enforcement
Eric Myers	Foundation/Trust
Stephanie Roth	Legal
Terri Swoveland	Water
George Bowman	Water

GUESTS

Jim and Lolla Heyde
Jeffrey and Christine Arnold
Peter Burrell
Terry and Martha Heath

MONTHLY REPORTS

Michael J. Kiley, Chair, called to order the regular monthly meeting of the Natural Resources Commission at 10:07 a.m., EST, on October 25, 2000 at The Garrison, Fort Benjamin Harrison State Park, Indianapolis, Indiana. With the presence of nine members, the chair observed a quorum.

Jane Ann Stautz moved to approve the minutes of September 20, 2000. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

Larry Macklin gave the Director's Report. He said October 26, 2000 would mark the final summer meeting of the Natural Resources Study Committee. This summer, the committee was chaired by Senator Harold Wheeler, who has been a "good friend" to resource and environmental issues. The committee "had an excellent summer with lots of good reports and good conversation." Part of the discussion was dedicated to historic preservation issues and forestry issues. DNR participation consisted mostly of technical reports and updates on existing programs. Macklin said he does not contemplate a large number of bills or any highly controversial bills coming from the committee.

Director Macklin said interviews for the museum position vacated by Joe Shacter would be completed later in the day. He said there is a great pool of candidates for the position, and he was "very pleased by their excitement to come here." The intention was to choose a candidate within the next ten days and have a commitment from the candidate by mid-December. Macklin said construction of the new Museum is "going quite well and is reasonably on time." He said the steel arrival is 20 days late, but that it was "not expected to hold up the project."

Macklin said he and Steve Lucas attended the Great Lakes Commission meeting in Hamilton, Ontario on October 23rd. We "learned a lot about Ontario and Quebec's work and what they are doing in the Great Lakes." The two provinces recently joined the eight Great Lakes states, making the GLC truly binational.

The Director said he returned to Harrison Crawford State Forest where the last Commission meeting was held. He joined John Davis for a meeting of the Advisory Council for Lands and Cultural Resources. He said he also attended an informal presentation on the hay press with the Division of Forestry. Macklin said the event was "laid-back for local folks and local media to keep them informed of the project."

Macklin said he and John Davis traveled to the recently acquired Interlake Mine property in Warrick County to visit with some horseback riding leaders and local enthusiasts concerning their needs for horseback riding in southern Indiana and the possibility of developing corridors on some of the newly acquired properties. Macklin said horseback riding is a rapidly growing leisure time activity all across the state. "DNR is trying to

keep on top of some of those needs.” He added, “Although we can’t satisfy all recreational needs, Mr. Chairman, we may be able to help in this particular case.”

Macklin commented upon the final farewell retirement party for Jack Costello. “It was a very fun evening, good food and very emotional.” There were about 100 of Jack’s friends and relatives who attended the party. Macklin concluded, “it was a very good evening, and we really appreciate it.”

Kiley asked John Goss about requests to increase the number of public horse trails in Indiana. Goss answered that “the horse people are anxious to have some new trails.” He said there is a trail study group and but he did not know the current status of the study.

Macklin said the DNR is “looking to work out all the paperwork and be sure the horse trails are safe” and “be sure we have done the right things”. He indicated the DNR would like to work out an agreement with the horse people to use reclaimed coalmines in the southern part of Indiana. Trails could be identified along “old haul roads” previously used in mining operations, but strategies would need to be developed to help keep “riders away from highwalls and other potential safety hazards.” Macklin added, “there’s also a huge concern in the northern part of the state,” but obtaining access to suitable new sites for riding there is very challenging.

Damian Schmelz inquired as to “how the trails were holding up in Brown County State Park.” He said the “terrain is so rough” that extensive use of riding trails poses problems of erosion and other environmental concerns. Chairman Kiley responded he thought the “trails were pretty well maintained within the park.” John Goss said he had not heard any complaints about these trails and said “they seem to be pretty smooth.”

Jerry Miller, Chairman of the Advisory Council for Lands and Cultural Resources, was not present.

John Davis, Deputy Director for the Bureau of Lands, Recreation, and Cultural Resources, said the Advisory Council met October 19 at Wyandotte Woods Nature Center. He said he believed the Commission would “enjoy a trip to Wyandotte Woods once the hay press was put back up.” The Advisory Council recommended approval of dedication of the Judy Burton Nature Preserve. He said four Council members “floated successfully down the Blue River” on the morning after the meeting.

Davis reported there was “another episode of vandalism at the Martin State Forest.” Two private contractors had machinery vandalized and painted with the ELF insignia. He said the incident is being investigated.

Davis said there was a “great turnout” of family and friends for the Costello retirement party. The farewell was “really spectacular and quite a testimony to Jack--a lot of love in the room that night.”

Davis reported on the O’Brian Historic Preservation and Archeology Conference held at French Lick. Those in attendance could tour the new West Baden Hotel Resort. The site was “brought back” through the generous contributions of the Cook family. Davis said the Cooks did a “spectacular job” in supporting renovation of the building.

Kiley asked Davis if tree spiking by vandals has continued. He responded that no spikes were found at Martin State Forest, but “there was still great concern.” Davis said the Division of Forestry has acquired metal detectors for most of its properties and is “on the alert.”

Joe Siener, Chairman of the Advisory Council for Water and Resource Regulation, was not present.

Dave Vice, Deputy Director for the Bureau of Resource Management, said the Advisory Council for Water and Resource Management met last week. He said as of July over 1000 acres have been purchased with Heritage Trust funds. Environmental License Plate sales are up 2.5% over last year.

Vice said the Division of Entomology and Plant Pathology and Division of Forestry held two meetings for property managers concerning the spread of gypsy moths. These were held October 10 in Spring Mill State Park and October 19 in Pokagon State Park. Each session had approximately 30 people in attendance.

Vice reported in addition to an overview of gypsy moth biology status, and newly proposed initiatives to combat gypsy moths on DNR properties, the property managers were briefed on a survey of DNR properties for possible nontarget insect concerns to begin next spring. Vice said property managers were asked to assemble a folder for each property to assist in management as moth populations increase.

Vice reported upon developments from the Division of Law Enforcement. District 7 has nearly completed the move into new Headquarters at Sugar Ridge Fish and Wildlife area. Formerly, the Headquarters were located at Pike State Forest. Sixteen Indiana Conservation Officers received training from their Oklahoma counterparts with respect to the Boat Emergency Operation Course—training that will later be shared with all Indiana Conservation Officers. The training focuses upon the operation of boats in high-speed pursuits and in highly congested traffic areas. Vice said the Division of Law Enforcement now has eleven certified K-9 Officers, making Indiana the largest Natural Resources Protection K-9 Team in the nation.

Vice reported a public access ramp has been completed in conjunction with the city of Vincennes and the Indiana Waters Grant Program. This week signals the beginning of Wildlife Regulations open houses that will involve 16 locations across the state. These open houses give individuals an opportunity to come in and speak one-on-one to biologists and conservation officers about rules. Vice reported on rehabilitation of Fish Lake Public Access site in Steuben County. He said an ADA ramp was added to assist handicapped boaters and fishermen in loading and unloading from their watercraft.

Vice reported on DNR's fall restocking of the White River. He said the restocking is "well underway." It began with a "Restock Festival" on October 7 organized by White River Rescue 2000, the Noblesville and Hamilton County parks departments and other sponsors. The White River Rescue group has raised over \$130,000 to help aid the restocking of the river. Vice said about 1,500 people attended "on a chilly Saturday and helped bucket 2000 smallmouth bass and nearly 10,000 channel catfish to the river at Potter's Bridge park in Noblesville." Flathead catfish and largemouth bass were also stocked at other locations that same day. Vice said state hatcheries have stocked over 32,000 smallmouth bass and 64,000 bluegill. State hatcheries will also supply 10,000 rock bass and 60,000 more largemouth bass. A private hatchery in Ohio has been contracted to supply 132,000 channel catfish, as well as some crappies. Vice said by mid-November, "this fall's stockings should be completed."

Chairman Kiley asked if DNR and IDEM were satisfied with the quality of the water in White River. Vice responded, "everything seems to be going pretty well." Kiley asked, "what's the status of litigation?" Vice responded, "Ongoing,"

Paul Ehret, Deputy Director for the Bureau of Resource Regulation, provided his report. He said the Advisory Council for Water and Resource Regulation was updated on the recently-approved rules by the Commission on procedures to address oil spill at production sites. He said the Council was updated by the Division of Reclamation on the idea of "unit price contracting." Ehret said the Division of Reclamation submitted the idea to the Indiana Quality Award Group, and for the third consecutive year, the Division received an Indiana Quality Award.

Ehret reported that the Division of Soil Conservation updated the Advisory Council on Clean Water Indiana and how it is being funded. He said there was also a presentation by Sgt. Dean Shadler concerning recent amendments to Indiana boating statutes. He said there were updates on the purchases of Interlake properties and a brief discussion concerning property taxes.

Ehret said the major issue of discussion was related to the presentation by the Division of Water on the recodification and amendment of its flood plain management rules. The Council was pleased with most of the rules, but there were several parts in which the Council asked the Division to go back and make adjustments. Ehret said the goal is to "ambitiously" have the changes completed by December.

Ehret said he attended an award meeting of the National Association on Abandoned Mine Land programs. The Division of Reclamation received two awards from the office of Surface Mining. One was for the Midwest site, also known as the Ellis property, which contains about 1,500 acres, and is being purchased by the DNR. He said, "That property is a magnificent piece of property," and it will make a "wonderful addition" to our holdings.

Ehret reported another award was given to Black Beauty's Columbia Mine as being the most outstanding mine in the nation. "We're really proud of that." The award was given at the National Mining Association in Las Vegas.

Ehret said he attended a "well plugging" ceremony. Joyce Martin from the Governor's office was also present. The ceremony was to mark the working partnership that the Division of Oil and Gas has formed with the Indiana Oil and Gas Association. Ehret said that DNR has entered into an agreement with operators and members from the Oil and Gas Association to subsidize the plugging of some orphan wells. The DNR pays for certain expenses incurred by oil operators who cover the wells, and the operators donate their labor and equipment to plug the wells. Ehret said DNR is "getting an extremely good deal on the plugging of these wells, that would otherwise cost a lot more money." This initiative is the first of its type of which he is aware nationwide. "There has been a lot of interest from other states in duplicating this method in order to deal with their well problems."

BUREAU OF LANDS, RECREATIONAL, AND CULTURAL RESOURCES

PERMANENT APPOINTMENTS AND PERSONNEL INTERVIEWS

Permanent Appointments

There were no permanent appointments.

Personnel Interviews

Personnel Interview for Assistant Curator at Lanier Mansion State Historic Site

Terri Moore reported the interview for this position was postponed.

Personnel Interview for Assistant Curator at Vincennes State Historic Site

Terri Moore presented this item. She said, "As always, it was an extremely difficult choice. We had two very qualified candidates, but we chose Mr. Richard Day who is currently on site and has a long history with the property." Moore recommended Richard Day be approved as the Assistant Curator at Vincennes State Historic Site.

Damian Schmelz moved to approve Richard Day for permanent appointment as the Assistant Curator at Vincennes State Historic Site. Rich Cockrum seconded the motion. Upon a voice vote, the motion carried.

Personnel interview for Assistant Property Manager at Minnehaha Fish and Wildlife Area

Steve Cecil presented this item. Cecil said, “We chose Deanna Luczynski. He selection is the Division of Fish and Wildlife’s gain and Paul Ehret’s loss. She has been with the Division of Reclamation for ten years waiting for a position like this to come along.” Cecil recommended Deanna Luczynski as Assistant Property Manager at Minnehaha Fish and Wildlife Area.

Damian Schmelz moved to approve Deanna Luczynski for permanent appointment as the Assistant Property Manager at Minnehaha Fish and Wildlife Area. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Personnel interview for Assistant Property Manager at Glendale Fish and Wildlife Area

Steve Cecil presented this item. Cecil said, “We had two very extremely well qualified candidates, and we picked Joshua Griffin.” Cecil said, “Joshua could not be with us today because he’s stocking fish in the White River.” Cecil recommended Joshua Griffin as Assistant Property Manager at Glendale Fish and Wildlife Area.

Rick Cockrum moved to approve Joshua Griffin for permanent appointment as the Assistant Property Manager at Glendale Fish and Wildlife Area. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

Personnel interview for Assistant Property Manager at Sugar Ridge Fish and Wildlife Area

Steve Cecil presented this item. Cecil said, “Our recommendation, and I put that in the form of a motion, is Dave Parker.” He said Dave Parker has been with the Department of Natural Resources since 1985.

Damian Schmelz moved to approve Dave Parker for permanent appointment as the Assistant Property Manager at Sugar Ridge Fish and Wildlife Area. Rick Cockrum seconded the motion. Upon a voice vote, the motion carried.

Chairman Kiley reflected, “We have such loyal employees at DNR, that if they are persistent, we try to move them along within the system.” He congratulated all of the successful candidates.

DIVISION OF NATURE PRESERVES

Consideration of the Dedication of Judy Burton Nature Preserve, Fulton County, Indiana

John Bacone, Director of the Division of Nature Preserves, presented this item. He said the proposed Judy Burton Nature Preserve consists of a complex of high quality marsh and shrub swamp, including islands dominated by oak and hickory forest. Bacone added that the uplands are extremely important to the wildlife that thrive in the wetlands of Lake Manitou. "It's a very special place, and with this dedication, we're honoring a very special person."

Jim Heyde of Rochester also spoke regarding the proposed nature preserved. He said Judy Burton was instrumental in the early 1970s in helping to acquire the original Manitou Island wetland property in Fulton County. Heyde said Burton was a political rival but a dear friend. He said she was devoted to the protection of fragile wildlife habitats and to the site on Lake Manitou in particular. "I know Judy would be awed with this as humble as Judy was. Judy was a devoted bird watcher and longtime conservationists and a wildlife advocate, and I just thank you on behalf of all of us."

Christine "Susie" Arnold said she was one of six daughters of Judy Burton. She indicated they all grew up with a deep respect for natural areas. My mom was "very much a nature person" and always supported Indiana and Fulton County. Arnold said that with her mother's dedication, she "is nature. I remember articles often appeared" in the local media because "mother would call the newspaper and say, 'Hey, there's a wild whatever here, or there's an unusual bird, or, hey, the cranes are up in the tree.'" Mom "was just always right there." Christine Arnold said she was appreciative that her husband, Jeffrey, had encouraged participation in this process, and she thanked the Commission for its approval in dedicating the site.

Chairman Kiley said he had known Judy Burton "very well, and for a long time. I just cannot think of a more fitting type of dedication in that area, because she, in my judgement, represented what was really good in that natural area and fought hard to preserve that area over the years." He asked the Commission to be informed when the spring dedication of the preserve was scheduled. "Members of the Commission will want to participate and have an appropriate ceremony for Judy Burton."

John Goss moved to approve dedication of the Judy Burton Nature Preserve in Fulton County. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

LEGAL PROCEEDINGS

NRC DIVISION OF HEARINGS

Consideration of “Report, Findings of Fact, Conclusions of Law, and Nonfinal Order of the Administrative Law Judge on Remand from the Court of Appeals of Indiana” (32A01-9812-CV-441) in the Matter of *Norman Cowper v. Ray Collier and John Collier*; Administrative Cause Number 94-276F

Chairman Kiley reported that, upon joint request by the parties, this item was deferred.

Consideration of “Report, Findings of Fact, and Nonfinal Order of the Administrative Law Judge” in the Matter of *DNR (and Heath, Intervenors) v. Wal-Mart Stores, Inc.*; Administrative Cause Number 96-183W

Sylvia Wilcox was the Administrative Law Judge for this proceeding. She has since left employment with the Natural Resources Commission to become Assistant Commissioner of Legal Affairs at the Indiana Department of Environmental Management. Recently she was, under IC 14-10-1-1, named the Designated Deputy for IDEM Commissioner, Lori Kaplan, to serve as a member of the Natural Resources Commission. Wilcox explained that because she had previously served as the Administrative Law Judge, she was disqualifying herself from participation as a Commission member in its review of this proceeding.

Peter M. Burrell, attorney for Terry Heath and Martha Heath, opened the presentations. He explained his clients had sought and been granted intervention in the case. At issue is a complaint brought by the Department of Natural Resources against Wal-Mart Stores, Inc. for fill wrongfully placed in the floodway of Wilson Creek in Dearborn County. The fill occurred as a result of a landslide during improperly managed construction activities by Wal-Mart at an adjacent site. His clients contend they have suffered flooding due to the unlawful fill. He conceded that subsequent to filing the complaint, Wal-Mart had undertaken some remedial action, but he contended there was evidence to support the proposition that not all fill had been removed.

Burrell asked the Commission to remand the case to the ALJ for further proceedings. He said summary judgment was wrongly granted against his clients because a material issue of fact remains. His clients’ expert provided an affidavit stating fill remains in the floodway. This affidavit and another by DNR’s expert are in factual disagreement. As a result, there is a disputed issue of fact that must be resolved following a completed hearing. He reflected, “When you’re dealing with a motion for summary judgment, the motion can only be granted where no disputed issue of fact remains.”

Larry Eaton presented argument on behalf of his client, Wal-Mart Stores, Inc. Eaton asked the Commission to affirm the nonfinal order of the Administrative Law Judge. He contended at issue is whether there is an outstanding violation of the Flood Control Act (IC 14-28-1). He said the pertinent statute is applied based whether fill would adversely affect the efficiency of or unduly restrict the capacity of the floodway. He said the affidavit filed by the expert for the Heaths contended only that some fill remained in the floodway, and not that the amount of fill was significant to floodway capacity. While the affidavit for the Heaths might not be factually identical to the DNR’s, the difference did not demonstrate a material issue of fact was in dispute. For this reason, the ALJ properly granted summary judgment.

Stephanie Roth presented argument on behalf of her client, the Department of Natural Resources. She contended that intervenors participate in a case under the Administrative Orders and Procedures Act as the case stands at the time of intervention. She said when the Heaths intervened, the DNR and Wal-Mart had already reached closure upon whether unlawful fill remained in the floodway of Wilson Creek. Abatement of the violation had already taken place, and the only issue still outstanding was the amount of civil penalty to be imposed. Roth said the Heaths were, in effect, asking the ALJ to re-open the case on the merits, and their effort was untimely. Roth asked the Commission to affirm the nonfinal order of the Administrative Law Judge.

Burrell responded he did not believe the administrative record supported the proposition that the issue of whether unlawful fill remained had been resolved when the Heaths sought to intervene. He agreed that, at least in part, the ALJ's nonfinal order was based on this proposition. Burrell said the ALJ's articulation of this theory had been unanticipated. He asked the NRC to remand the case to allow him to clarify the status of the record in this regard.

Chairman Kiley asked about the status of pending civil litigation in federal court between Wal-Mart and the Heaths. Burrell responded the litigation was moving forward and was based upon a claim for damages resulting from flooding to Heaths' property.

Damian Schmelz asked whether John Hall had determined there was no fill in the floodway based upon his inspection of the site. He noted Hall's substantial experience as a professional engineer with the DNR's Division of Water. Burrell said Hall had expressed this opinion but the opinion was in factual dispute with Heaths' expert and summary judgment should not have been granted.

Steve Cecil asked whether the pending federal litigation was relevant to the disposition of this proceeding. Chairman Kiley responded it was significant in that the Heaths yet enjoyed a possible avenue for relief, but the federal case was not directly applicable to the present case.

Damian Schmelz moved to affirm the findings of fact and nonfinal order of the Administrative Law Judge. The motion was seconded by Jane Ann Stautz. Upon a voice vote, the motion carried. Sylvia Wilcox abstained.

Consideration of Recommendation of Hearing Officer for the Report of the Natural Resources Commission with Respect to the *Petition for Creation of the Nyona/South Mud Lake Conservancy District*. Administrative Cause Number 00-125C; Fulton County Circuit Court Cause Number 25C01-0002-CP-67.

Jennifer Kane presented this item. She said that Nyona Lake and South Mud Lake are adjacent natural freshwater lakes located in southern Fulton County. Kane the proposed Nyona/South Mud Lake Conservancy District would be established for the purpose of providing for the collection, treatment, and disposal of sewage and other liquid wastes.

Kane said evidence given at the public hearing characterized the existing septic systems in the proposed district area as "barely adequate" to support seasonal and weekend use.

She said with the added pressures of residents converting summer cottages into full-time residences, there is an “increase in the probability of septic failure.” Kane explained many of the septic systems around the lake are in need of repair and few of the repairs can meet current code.

Kane said the potential for private septic system failure in the Nyona and South Mud Lake communities is not an uncommon problem for communities located along Indiana’s natural inland lakes. Citizens living along nearby Lake Bruce and Bass Lake have each formed conservancy districts to help address lake pollution caused by septic system failures. With other successful lake community conservancy districts as models, evidence supports the proposed district holds promise.

Kane stated that, on page eight of the Report under Roman Numeral II, clerical errors referencing “Porter Circuit Court” should be corrected to read “Fulton Circuit Court.” Kane recommended the Natural Resources Commission adopt the Proposed Findings, with clerical amendments, as its report to the Fulton County Circuit Court.

Damian Schmelz moved to adopt the Hearing Officer’s Report of the Natural Resources Commission with Respect to the Petition for Creation of the Nyona/South Mud Lake Conservancy District. Terri Moore seconded the motion. Upon a voice vote, the motion carried.

Consideration of Preliminary Adoption of Rules to Provide for Mediation of Disputes on Public Freshwater Lakes; Administrative Cause Number 00-056A; LSA #00-154

Steve Lucas, Director of the NRC Division of Hearings, presented this item. He explained a rule currently provides an opportunity for the mediation of disputes pertaining to the placement of piers, dry hydrants, and other temporary structures on public freshwater lakes. As a practical matter, mediation has arisen exclusively in the context of pier disputes and most typically between neighbors. Although the DNR is notified of the mediation and can participate, often the dispute does not involve matters of concern to the Department and it does not.

Lucas said SEA 44 enacted by the last session of the Indiana General Assembly extends the opportunity for mediation to all disputes on public freshwater lakes among riparian owners, as well as to disputes between a riparian owner and the DNR. This rule adoption would implement the statutory mandate, although recent experience suggested usage would occur mostly in the context of pier disputes.

Chairman Kiley expressed concerns the DNR and the NRC could lose control to address problems that can arise with the placement of piers, seawalls, boat wells, and other structures within public freshwater lakes. He said the DNR also has regulatory authority over excavations from public freshwater lakes. Lucas responded the DNR would always have the opportunity to participate in mediation, and he assumed it would do so where there appeared to be an issue of concern to the agency. Mediation would only result in a

final disposition where agreeable to all parties. The Commission would still receive cases not resolved by mediation or before an ALJ on administrative review. The Chairman underscored that the Commission needed to continue its traditional role in preservation of Indiana's inland lakes.

Damian Schmelz moved to give preliminary adoption, and to commit to public hearing, amendments to 312 IAC 11 that would allow broader access to mediation for disputes arising with respect to the usage of public freshwater lakes. The motion was seconded by Terri Moore. Upon a voice vote, the motion carried.

Consideration of Supplementation of Navigable Waters Roster to Include Tippecanoe River to Approximately River Mile 32.0; Administrative Cause Number 00-185A

Steve Lucas introduced this item. He briefly reviewed the Commission's nonrule policy document entitled a "Roster of Indiana Waters Declared Navigable or Nonnavigable" that was published in the INDIANA REGISTER and is available on the Commission's website at <http://www.ai.org/nrc/navigati.htm/>. The listing includes those waterways found to be navigable or nonnavigable by a court, the Indiana General Assembly, or an agency of competent jurisdiction.

Lucas said notably absent from the listing has been the Tippecanoe River, but very recently the Federal Energy Regulatory Commission found the Tippecanoe River to be navigable from its mouth on the Wabash River upstream to Norway Dam in White County. The dam forms Lake Shafer. He said FERC indicates the site to be river mile 30.2, but references by the DNR Division of Water indicate the reference should be to river mile 32.0.

Lucas said any listing on the navigable waters roster is based upon best information currently available and is potentially subject to change. He added that the Division of Water has been informed NIPSCO may appeal the FERC ruling on the Tippecanoe River, and the FERC statutory standards for navigability are not identical to Indiana common law, so a change in status could occur. He said the NRC could ask that this item be deferred because of the potential for reversal of the FERC decision, given approval but with a directive the DNR not make a determination based upon navigability while the case is pending, or given approval with the understanding the decision might later need modification.

Chairman Kiley asked why a determination of navigability was of interest to the Natural Resources Commission, or, more broadly, Indiana citizens. Lucas responded that bed ownership is determined by navigability. If a waterway is navigable, the bed is owned by the State of Indiana, and the DNR is the agency with "general charge" of the state's navigable waters. In addition, a determination of navigability has regulatory consequences. If a waterway is navigable and a license is requested pursuant to the Flood Control Act, the DNR will consider the potential impacts of a project upon navigation

and upon cultural resources. These factors are not otherwise considered. Kiley reflected, “then it definitely does have major importance to all of us.”

John Davis noted the lower reaches of the Tippecanoe River bordered Prophetstown State Park and that the area was rich in prehistoric and historic sites. Probably the best known of these was the location of the Battle of Tippecanoe in 1811.

Rick Cockrum indicated he had recently reviewed the navigable waters roster. He noted “some pretty thin streams” are listed as navigable and expressed the perspective the Tippecanoe River was much more substantial than many on the list. He suggested inclusion of the Tippecanoe River on the listing was appropriate and should be approved.

Cockrum moved to approve inclusion of the Tippecanoe River on the Commission’s navigable waters roster from its mouth on the Wabash River upstream to the Norway Dam in White County (river mile 32.0). Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

At 11:37 a.m., the meeting was adjourned.

FUTURE MEETINGS

November 28, 2000, 10:00 a.m., EST (The Garrison, Ft. Benjamin Harrison State Park, Indianapolis, Indiana)

December 20, 2000, 10:00 a.m., EST (The Garrison, Ft. Benjamin Harrison State Park, Indianapolis, Indiana)

January 17, 2000, (time and location to be announced)