

NATURAL RESOURCES COMMISSION

Minutes of September 18, 2001

MEMBERS PRESENT

Michael J. Kiley, Chair
Larry Macklin, Secretary
Damian Schmelz
Jerry Miller
Jane Anne Stautz
John Goss
William Smith

NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas
Jennifer Kane

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Carrie Bales	Executive Office
John Davis	Executive Office
David Vice	Executive Office
Daniel Mathis	Executive Office
Paul Ehret	Executive Office
Gwen White	Fish and Wildlife
Jill Hoffman	Soil Conservation
John Friedrich	Forestry
Lee Casebere	Nature Preserves
John Bacone	Nature Preserves
Jeff Wells	Law Enforcement
John Sullivan	Law Enforcement
Tom LaHay	Law Enforcement
Jay Baker	Law Enforcement

GUESTS

Mike Schnarr	Ken McIntosh	John Linton
Bob Dickinson	Dave Culp	Mary Culp
Bob McNary	Bob Anwalen	Deb Patterson
Tom Plew	Peggy Bailey	Terry Frederick
Barb Grant	Doug Grant	Doug Yoder
Helen Yoder	Tracy Stevens	Bonnie Hendricks
Bruce Weldy	Jody Weldy	Dave Herbst
Kevin Galbreath	Tom Yoder	

MONTHLY REPORTS

Michael J. Kiley, Chair, called to order the regular meeting of the Natural Resources Commission at 7:10 p.m., EST, on September 18, 2001, at the Oakwood Inn and Conference Center, Syracuse, Indiana. With the presence of seven members, the chair observed a quorum.

Jerry Miller moved to approve the minutes of August 22, 2001. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

Director Larry Macklin provided the Director's Report. Director Macklin said he attended the quarterly meeting of the Indiana Heritage Trust Foundation. Discussed was the need for new direction, goals, and concepts to ensure future purchases of land for preservation. Director Macklin said one goal would be broadening land preservation to include the purchase of quality buffer strips and conservation easements upstream of DNR properties. He said the "eagle license plate" (Heritage Trust license plate) continues to be the number one selling plate in Indiana.

Director Macklin announced the Division of Law Enforcement will be the point-of-contact for administration of licensing of organized boating activities, including fishing tournaments. He reminded the NRC this function is one element of HEA 1075 enacted by the Indiana General Assembly in 2000—this element now codified at IC 14-15-7-3(a)(7). New rules adopted by the Commission to help implement the legislation become effective on January 1, 2002. The determination to appoint the Division of Law Enforcement came following a consensus communicated to him from the three Deputies Director. Divisions other than the Division of Law Enforcement will provide input into the evaluation of any site-specific proposal to license a fishing tournament or other organized boating activity. He said the DNR divisions are faced with a "new challenge" to work together and with constituent groups "to make the process work."

Director Macklin reported he took a "working vacation" at the newly renovated Clifty Inn located in southeastern Indiana. The manager of the Clifty Inn "has done a wonderful job." He also visited the Falls of Ohio State Park and the Hovey Lake Fish and Wildlife Area, the latter of which preserves a cypress grove—a "treasure in its own." Director Macklin said visiting DNR properties allows him an "excellent opportunity to meet with folks."

Jerry Miller, Chairman of the Advisory Council for Lands and Cultural Resources, said the Council did not meet in September but is scheduled to convene next month.

John Davis, Deputy Director for the Bureau of Lands, Recreation, and Cultural Resources, reported he visited Angel Mounds Historic Site. He announced that the opening of its newly renovated visitor center is slated for November. He said the center contains new exhibits and site interpretations.

Davis reported the National Parks Service awarded the Division of Historic Preservation and Archaeology a \$250,000 grant to renovate the Madame Walker Theatre in

Indianapolis. He said the division has been “working diligently” for preservation of the theatre.

Davis reported the fire fighters that battled the western U.S. forest fires have returned to Indiana. Kiley requested an information item be presented to the Commission reporting on the fire fighting. Davis added that Steve Creech, a natural science manager for the Division of Forestry, is in New York assisting local authorities (fire and police departments, the Port Authority, and SEMA) in setting up a unified command system to facilitate the recovery and rescue of victims of the September 11th bombing.

Davis announced the Division of Historic Preservation and Archaeology is holding its conference September 27th through the 29th. He said September 29th is National Public Lands Day. Davis said the day is dedicated to “environmental good turns—sprucing up public lands.”

Dave Vice, Deputy Director for the Bureau of Resource Management, reported Dr. Jim Mitchell sustained critical injuries in a boating accident on Lake Monroe. He added Mitchell was cognizant after the accident, however, and was now recuperating and doing “pretty well.”

Vice also reported Garold Spoonmore, a 48-year DNR veteran, retired from the Avoca Fish Hatchery. He said Spoonmore “will be missed, and his knowledge should be written down and preserved.”

Vice said a multi-agency task force has been formed to address an algae bloom in Ball Lake in Steuben County. He noted zebra mussels have been found in Big Long Lake. Vice reported 33,000 turkey hunting licenses were sold with a harvest of 9,900 turkeys—a 30% harvest rate. He also reported work is ongoing to make possible the online purchase of hunting and fishing licenses.

Vice said Indiana Conservation Officers worked with other security entities at federal and state offices, including and the Port of Indiana, following the New York City tragedy. In an unrelated matter, he reported DNR’s website received 200,000 “hits” between August 25 and September 3, 2001.

Paul Ehret, Deputy Director for the Bureau of Resource Regulation, reported staff has been working on strategic planning, performance and budget issues. He said work is ongoing on lake ecological zones and fishing tournament issues. Ehret said several internal meetings have taken place to discuss fishing tournament matters, as well as meetings with interested parties and constituents.

**BUREAU OF LANDS, RECREATIONAL
AND CULTURAL RESOURCES**

DIVISION OF FORESTRY

Consideration of a Request by Verizon North, Inc. for an Easement for Installation, Operation and Maintenance of an Underground Telephone Line on Ferdinand State Forest.

John Friedrich from Division of Forestry presented this item. He explained that Verizon's request for an easement to install, operate, and maintain a telephone line along County Road 880E—crossing Ferdinand State Forest—to provide residential telephone service was conditionally approved by the Commission at its August. The Commission gave a temporary right-of-entry for installation of the line with the condition a Verizon representative make an appearance before the Commission. Friedrich said Michael Schnarr from Verizon was now present.

Chairman Kiley asked whether any Commission member wished to inquire of Michael Schnarr. There were no questions.

Jane Anne Stautz moved to approve the easement in favor of Verizon North, Inc. consistent with the recommendations of the DNR's Division of Forestry. The motion was seconded by Jerry Miller. Upon a voice vote, the motion carried.

DIVISION OF STATE PARKS AND RESERVOIRS

Request for Approval of Fee Simple and a Temporary Right-of-Way to be Transferred from the Department of Natural Resources to the Indiana Department of Transportation for Bridge Construction at Prophetstown.

John Davis, Deputy Director of the Bureau of Lands, Cultural, and Recreational Resources, presented this item. He said Prophetstown State Park is "bisected by State Road 225." The proposed transfer of real estate would allow the construction of a bridge so the highway would go over an internal park road.

Damian Schmelz moved to approve the request for approval of fee simple transfer and a temporary right-of-way from the DNR to INDOT. The motion was seconded by Jerry Miller. Upon a voice vote, the motion carried.

BUREAU OF RESOURCE MANAGEMENT

DIVISION OF LAW ENFORCEMENT

Informational Item: 2002 North American Wildlife Enforcement Officers Association Conference

Lt. Col. Jeff Wells introduced this item. He explained that Indiana was successful in its effort to host in 2002 the annual conference of the North American Wildlife Enforcement Officers Association. He introduced Conservation Officers Tom Lahay and Jay Baker who offered greater detail. They explained the conference would be held July 15 through July 21 in Columbus. The conference will provide a forum for both personal and professional development among law enforcement officials in the United States and Canada who specialize in wildlife and natural resource protection. A brief introductory video, that includes a presentation by Larry Macklin, was shown to the Commission. The conservation officers also distributed brochures entitled "Working for Wildlife Together" and "Destination Indiana" which outline the purposes of NAWEOA and the 2002 conference.

BUREAU OF RESOURCE REGULATION

DIVISION OF SOIL CONSERVATION

Informational Presentation Updating Rulemaking Efforts to Establish Zones on Lake Wawasee and Lake Syracuse where the Use of Watercraft may be Limited or Prohibited for Reasons Relating to Fish, Wildlife, or Botanical Resource Management and Protection.

James Ray, Division of Soil Conservation, presented this item. He said HEA 1075 enacted in 2000 allows for the establishment, by Commission rule, of watercraft zones to protect sensitive ecological zones on public waters. The legislation was codified at IC 14-15-7-3(a)(6)(A). Ray reminded the Commission a joint petition to establish ecological zones was received from the Wawasee Area Conservation Foundation, the Wawasee Property Owners Association, and the Syracuse Lake Association to cover portions of Lake Wawasee and Syracuse Lake. During the June meeting, the Commission authorized DNR professionals to begin evaluating the petition. On September 1, 2001, a "notice of intent" to adopt a rule for ecological zones on Lake Wawasee and Syracuse Lake was published in the Indiana REGISTER, although the final form of the rule would not necessarily match the terms of the joint petition.

Ray gave a presentation using overhead projections as to areas proposed by the petitioners to be covered, as well as a shallow sandbar not included in the petition but which might warrant special attention. He said "multiple divisions" were already involved in the evaluation process, and considerable public participation was expected. Ray reflected the purpose of the proposed rule adoption could not properly be "to effect a social change as to boating usage." The statutory authority is "limited to ecological protection." He added some of our public waters "are very stressed already" by intensive human usage, and "we're going to approach this task very scientifically."

Robert Dickinson spoke as President of the Wawasee Property Owners Association. He said the Association supported the basic concepts outlined by Jim Ray, although it had not met to discuss the new proposal for the sandbar. He expressed interest in having an active role as the review process moved forward.

Tom Yoder spoke as Chair of the Wawasee Area Conservation Foundation. He explained its background and goals and added the Foundation “relies a lot on science.” Recent studies demonstrated a need to focus on the protection of wetlands in the lake; and, more generally, “we need to do some things to protect aquatic life.”

Pat Myers expressed opposition to the proposal for watercraft restricted zones. “I’ve heard a lot of weasel words about biological resources,” but “the first word I heard is there’s no proof” of any environmental harm. He noted that Jim Ray spoke about stress to the lake caused by human usage but questioned what would be the consequences of the rules. He asked whether the NRC was proposing to “stop humans.”

Chairman Kiley closed the discussion item by expressing appreciation for those in attendance and for the insights already shared. He said an “ample opportunity” for public comment would be afforded as the rule-adoption process moved forward.

LEGAL PROCEEDINGS

NRC DIVISION OF HEARINGS

Consideration of Report of Hearing Officer, Including Findings and Proposal to the Natural Resources Commission as to Its Recommendations to the U. S. Army Corps of Engineering in the matter of *Petition for Rate Increase by Pleasure Craft Marina*. Administrative Cause Number 01-098P.

Jennifer Kane, Hearing Officer, presented this item. She said the petition by the Pleasure Craft Marina was governed by a Commission nonrule policy document approved in 1998. Authority for the final decision on rates rests with the U.S. Army Corps of Engineers.

Kane indicated Pleasure Craft Marina was granted a rate increase for the 2000 boating season and now seeks an additional rate increase for 2002 of \$400 to an annual individual slip rate of \$2,150. The increase would be 22.8%. As anticipated by the nonrule policy document, the DNR analyzed comparable slips at other public and private marinas and determined the average to be \$1,912. The DNR stated it would not support Pleasure Craft’s request for a \$400 increase but would support a \$200 increase to \$1,950—an amount above average for comparables but within the range of similar boat slips. She said she concurs with the DNR recommendation.

Kane said the item was previously scheduled for consideration by the NRC during its August 22 meeting. The item was continued at Pleasure Craft’s request on the basis the rate recommended by the DNR and the Hearing Officer is insufficient, most notably because the company has a costly winter icing problem. Pleasure Craft more recently

determined, however, to accept the recommended \$200 increase. On this basis, Kane urged the Commission to recommend approval by the Corps of a \$200 slip rate increase that would total \$1,912 annually.

Damian Schmelz moved to recommend to the Army Corps of Engineers an increase to \$1,912 for the annual slip rates charged by Pleasure Craft Marina. Jane Anne Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of Recommended Report of the Natural Resources Commission in the matter of the *Petition for the Creation of the Falling Waters Conservancy District*. Administrative Cause Number 01-122C (Porter Circuit Court Cause Number 64C01-0104-CP-3414).

Jennifer Kane, Hearing Officer, presented this item. She said the Falling Waters Conservancy District is proposed for all purposes under IC 14-33-1-1 except for flood prevention and control and for the storage of water for augmentation of stream flow. She said the Porter Circuit Court found the petition for the creation of the conservancy district conformed to statutory requirements and referred the petition to the Natural Resources Commission to make recommendations and a report.

Kane explained the land within the proposed conservancy district boundaries is hilly terrain with shallow lakes or kettles—glacial remnants. The proposed district would eventually include approximately 394 homes. She noted the development does not eliminate tillable land. Falling Waters will also incorporate forests, green space, and open areas in connection with storm water management.

Kane said the attorney for Petitioner, Dave Hollenbeck, presented sufficient evidence to make findings in regards to the proposed purposes. Kane recommended the Commission adopt her report as the Commission's Report to the Porter Circuit Court.

Damian Schmelz moved to approve the Hearing Officer's report and findings regarding the Petition for the Creation of the Falling Waters Conservancy District. Jerry Miller seconded the motion. Upon a voice vote, the motion carried.

Consideration of Hearing Officer's Report of Public Hearing, Analysis, and Recommendation for Final Adoption of 312 IAC 23-3-5, Authorizing Modification of Certification of Indiana State Historic Rehabilitation Tax Credit. Administrative Cause Number 01-033W. LSA #01-91(F).

Jennifer Kane, Hearing Officer, presented this item. She said 312 IAC 23-3 governs standards for certifications by the Division of Historic Preservation and Archaeology that are required in order for a person to qualify for the state historic rehabilitation tax credit. According to IC 6-3.1-16-7(a), a taxpayer is entitled to a credit against state tax liability in the taxable year in which the taxpayer completes the preservation or rehabilitation of historic property and obtains the certifications required.

Kane said the proposed final rule adds 312 IAC 23-3-5 to authorize modification of an approved certification. The Division may seek a modification based upon an allegation of misrepresentation, fraud, or similar good cause through a complaint filed with the Natural Resources Commission. Perhaps more importantly, 312 IAC 23-3-5 would also allow acceleration or deferral for when an individual exercises the credit. This flexibility is critical because the credit is dependent upon a gross state credit being approved by the Indiana General Assembly, and legislation can increase or decrease the gross credit for a particular year. Kane recommended final adoption be given to 312 IAC 23-3-5 as presented.

Jerry Miller moved to give final adoption to the addition of 312 IAC 23-3-5. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

Consideration as to Preliminary Adoption of Amendments to 312 IAC 18-3-12, Which Governs Standards for the Control of Larger Pine Shoot Beetle by Adding Counties to the Quarantine Area. Administrative Cause Number 00-240L.

Jennifer Kane also presented this item. She explained the proposed rule adds Brown, Fayette, Hendricks, and Owen Counties to the growing list of counties declared to be generally infested with larger pine shoot beetle and subject to quarantine.

Kane said the existing rule language at 312 IAC 18-3-12 lists the counties under quarantine. With approval of the proposed additions, there would be 55 Indiana counties under quarantine. Since more than half of Indiana's counties would be quarantined, the proposed rule would list those counties not subject to the quarantine rather than those that are. She also explained that, effective August 27, an emergency rule was approved by Director Macklin to place Brown, Fayette, Hendricks, and Owen Counties under quarantine on a temporary basis. The emergency rule would apply until the permanent rule can be considered for final adoption.

Jane Anne Stautz moved to give preliminary adoption to amendments to 312 IAC 18-3-12 to expand the pine shoot beetle quarantine. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

Information Item (and Invitation for NRC Instruction to Staff) With Respect to Fish and Wildlife Biennial Rule Amendments—Summary of Public Comments; Administrative Cause Number 00-050D; LSA #01-102

Steve Lucas presented this item on behalf of Sylvia Wilcox, Hearing Officer. He indicated Wilcox was unavailable because she was conducting adjudicatory proceedings in Evansville. Lucas said when the Commission gave these rules preliminary adoption, the members asked that comments received at public hearing be shared with them before recommendations were made as to final adoption. As a result, Wilcox organized the public comments and included them in the report currently before the NRC. He said Gwen White was present to field any immediate questions. If any Commission member had questions or comments that needed further consideration, Lucas said he or White would pass them along to professionals in the DNR's Division of Fish and Wildlife or to

the NRC's hearing officer. No comments or questions were, however, offered by the Commission. Lucas then indicated the intention was to bring a full report and recommendations by the hearing officer back to the Commission for final action during the October 2001 meeting.

ADJOURNMENT

At 8:36 p.m., EST, the meeting adjourned.

FUTURE MEETINGS

October 23, 2001, 10:00 a.m., (The Garrison, Ft. Benjamin Harrison State Park, Indianapolis, Indiana)

November 27, 2001, 10:00 a.m., (The Garrison, Ft. Benjamin Harrison State Park, Indianapolis, Indiana)