

**NATURAL RESOURCES COMMISSION**  
**Minutes - February 21, 1996**

**MEMBERS PRESENT**

Michael Kiley, Chair  
Patrick Ralston, Secretary  
John Goss  
Joseph Siener  
Jerry Miller  
Damian Schmelz  
Steve Cecil  
Cynthia Baker  
Terri Moore  
Mary Titsworth

**NATURAL RESOURCES COMMISSION STAFF PRESENT**

Stephen Lucas	Hearings
Bill Teegarden	Hearings
Cheryl Hampton	Hearings

**DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT**

Jack Costello	Executive Office
David Herbst	Executive Office
Paul Ehret	Executive Office
Louise Krick	Executive Office
Eric Myers	Executive Office
Lori Kaplan	Chief Legal Counsel
Angila Prather	Legal Counsel
Mary Davidsen	Legal Counsel
Mary Ann Habeeb	Legal Counsel
Virginia Simone	Legal Counsel
Ihor Boyko	Legal Counsel
Barbara Nardi	Legal Counsel
Ben Hubbard	Forestry
Tom Lyons	Forestry
Sandra Derringer	Forestry
John Bacone	Nature Preserves
Lee Casebere	Nature Preserves
Bill Bakeis	State Parks and Reservoirs
Bruce Whiting	State Parks and Reservoirs

Mike Neyer	Water
Ken Smith	Water
Julie Perry	Water
Dan McGuckin	Fish and Wildlife

### **GUESTS PRESENT**

Jack Johnson	Bernie Fallon
Mark Sutherfield	Pat Moore
Tom Dustin	Jane Dustin
Pat Barrett	Jim Barrett
Dan McInerny	Gladys Stanton
Linda Brown	Marc Brown
Michael Ruppert	Jeffery Stant
Tim Maloney	Karen Stanton Gentry

### **MONTHLY REPORTS**

Michael Kiley, Chair, called to order the regular meeting of the commission at 10:10 a.m., EST, in the Indiana State Museum, 202 North Alabama, Indianapolis, Indiana. With the presence of eleven commission members, the chair observed a quorum.

Jerry Miller moved to approve the minutes of the January 24, 1996 meeting. The motion was seconded by Damien Schmelz and approved by voice vote of the commission. Patrick Ralston gave the Director's Report. He noted that several divisions were holding their annual meetings, often within state parks, and he had enjoyed speaking with personnel during the annual meetings. Ralston also said that 517 DNR employees have received raises beyond the cost-of-living increases.

The Director reported upon a legislative breakfast which was hosted to showcase the new Indiana State Museum. The first component of the new museum site will be an IMAX Theater.

Ralston reported that he will Chair the Great Lakes Commission meeting set for Indianapolis in May. In this capacity, the Director is hoping to meeting with President Clinton in the spring.

Jerry Miller, Chairman of the Advisory Council for Lands and Cultural Resources, provided his report. Miller announced that he has been re-elected chair of the council, and as such, he will continue to serve as a member of the Natural Resources Commission. Miller said all items from the agenda were recommended for approval to the Commission, but the provisions for horse use were amended.

Jack Costello, Deputy Director for the Bureau of Lands and Cultural Resources, circulated a listing of legislation pending before the Indiana General Assembly which is of particular concern to the DNR. He also distributed copies of "Preserving Indiana," the quarterly publication of the division of historic preservation and archeology. He focused upon page three of the publication which describes a new archeological data base.

Joe Siener, Chairman of the Advisory Council for the Bureau of Water and Resources Regulation, reported his council did not meet in February.

David Herbst, Deputy Director for the Bureau of Water and Resource Regulation, described the new shooting range program to be funded through Pittman-Robertson. He also presented the new "voluntary land stamp" to help with the acquisition of fish and wildlife properties through the Heritage Trust.

Chairman Kiley expressed hopes that the Commission might meet in northwestern Indiana during the May meeting. Reports would be anticipated concerning the very serious difficulties associated with commercial fishing for yellow perch, as well as beach closings due to bacterial contamination. Other issues pertaining to Lake Michigan might also be considered.

Paul Ehret, Deputy Director for the Bureau of Mine Reclamation, said his staff was busy preparing for the May 5 meeting of the Interstate Oil and Gas Compact Commission. This important event occurs annually and circulates among the petroleum producing states.

## **DIVISION OF NATURE PRESERVES**

### **Consideration of the Dedication of James M. And Patricia D. Barrett Oak Hill Nature Preserve, Allen and Dekalb Counties**

John Bacone, Director of the Division of Nature Preserves, presented this item. He said that the proposed nature preserve is an 87 acre parcel located in Allen County and Dekalb County. The property is owned and managed by Acres, Inc., and was a gift from James and Patricia Barrett. According to Bacone, Little Cedar Creek winds through the property, which includes high-quality examples of mesic upland forest and floodplain forest on its way to Cedar Creek. He recommended the property be dedicated as a nature preserve.

Jane Dustin spoke in favor of the dedication. She noted she was personally familiar with the qualities of the tract and that her honor in recommendation its dedication "is added to by my knowledge of the site and because Jim Barrett is the author of the Indiana Nature Conservancy Act." She then introduced James Barrett and his wife, Pat.

Tom Dustin also spoke in support of the dedication. He thanked James Barrett for his service in developing the nature preserves law. He reflected to the commission, "This is

indeed a landmark full circle action that you are taking." Tim Maloney of the Hoosier Environmental Council also offered "enthusiastic support for establishing the conservancy district and for naming it in honor of the Barretts."

Jim Barrett said it was a "pleasure to work on the Act and with John Bacone, Lee Casebere, and the other members of the division of nature preserves." He reflected that the Act contained several innovative provisions, including a recognition that environmental quality served the state's economic needs.

Chairman Kiley said he was "very much aware of the contributions" that Jim and Pat Barrett had made to "preservation of the environment and to the State of Indiana." He said he hoped to attend the ceremony on site when the nature preserve is formally dedicated.

Terri Moore moved to approve the dedication of James M. and Patricia D. Barrett Oak Hill Nature Preserve located in Allen and Dekalb Counties. The motion was seconded by Damien Schmelz. Upon a voice vote, the motion carried.

## **DIVISION OF FORESTRY**

### **Review of Implementation and Consideration of Amendments to Policy for Recreational Horse Use on Department of Natural Resources Properties**

Ben Hubbard of the Division of Forestry presented this item. He explained that for consideration was the review of a 1994 policy for recreational horse usage on DNR properties. Hubbard said that the 1994 policy was being recommended for continuation with four relatively minor amendments.

Pat Moore, President of the Indiana Trail Riders Association and a Director of the Indiana Horse Council, said she was "very pleased we can have input on this. We're proud of our partnership that we have with the DNR." She said she agreed with the policy as set forth in the commission packet.

John Goss moved to approve the "Policy and Guidelines for Recreational Horse Use" (amended December 1995) as set forth in the commission packet. The motion was seconded by Joe Siener. Upon a voice vote, the motion carried.

## **DIVISION OF STATE PARKS**

### **Consideration of a Request from Landowners for an Easement through a Portion of Spring Mill State Park**

Marian England of the division of state parks presented this item. She explained that Danny and Lee Ann Burton are the joint owners of 4.19 acres of land south of SR 60 and

adjoining Spring Mill State Park. An easement is apparently needed across the park so the Burtons can access their property. England reflected, however, that another option for access is also being explored simultaneously which may make the easement unnecessary. She asked that the commission approve the easement as set forth in the packet, but with the condition that another preferable arrangement yet be pursued by the division of state parks.

Damian Schmelz moved to approve an access across Spring Mill State Park in favor of the Burtons according to the terms more specifically set forth in the commission packet. The approval was subject, however, to another more favorable arrangement to the department of natural resources which was currently being explored. The motion was seconded by Steve Cecil. Upon a voice vote, the motion carried.

### **Status Report on IDNR's Commitment to Quality Initiative; Summary of 1995 Accomplishments as Well as Goals for 1996**

Eric Myers, TQM Director, presented this item. He explained that the department was dedicated to the pursuit of total quality management. Myers outlined the efforts to date and highlighted the pioneering efforts by the division of reclamation. He presented graphics and outlined the TQM goals for 1996.

## **NATURAL RESOURCES COMMISSION DIVISION OF HEARINGS**

### **Consideration of Report, Findings of Fact, and Nonfinal Order of the Administrative Law Judge in the Matter of Gladys Stanton v. Department of Natural Resources, Administrative Cause Number 90-221W; and Department of Natural Resources v. Gladys Stanton, Administrative Cause Number 90-233W**

William Teegarden, Administrative Law Judge, introduced this item. He explained that two cases are at issue. He said that his findings affirmed the denial of a permit to Gladys Stanton for an after-the-fact permit to place a residence in the floodway. No one objected to these findings (90-221W). As a result, this case is not before the commission for review.

Judge Teegarden said the DNR filed objections to his findings in the second case (90-233W) in which the agency sought to require the removal of the residence and the imposition of a charge, if the residence is not removed in a timely fashion. The second case is before the commission for oral argument.

The ALJ said that he found the DNR did not mislead Stanton as to the need for a permit. He found in favor of Stanton, however, on the basis that a "charge" is based upon the existence of a viable "infraction." Since the statute of limitations is two years, and since

the enforcement was initiated more than two years after the house was placed in the floodway, the DNR's claim would be barred by the statute of limitation.

Mary Davidsen spoke as attorney for the DNR. She argued that at issue is a residence which would be covered with 26 feet of water during a 100-year frequency flood, the regulatory standard. Even during a ten-year frequency event, the residence would be under water. In fact, the Ohio River flood of 1937 was even more severe than the predicted 100-year flood event. She argued that a statute of limitation was intended to prevent "stale claims," but each day a house remained in a floodway constituted a separate threat to life and human safety. Each day constituted a separate offense. In the alternative, she argued that if a statute of limitation did apply, the period should be ten rather than two years. She asked that the findings be remanded to the ALJ with instructions to write new findings.

Michael Ruppert urged that the decision of the ALJ be affirmed. He said the DNR only took enforcement against his client, Gladys Stanton, because she was an elderly woman who would have difficulty defending herself. Ruppert said the ALJ decision was "courageous" and would help restore equity and fairness. To continue with the enforcement action would diminish the value of the property and would impair his client's ability to sell the residence.

Patrick Ralston moved to approve the findings and nonfinal order of the ALJ. The motion was seconded by Damian Schmelz.

The commission then proceeded to discussion. Mary Titsworth urged that the clear statutory language reflected that the maintenance of a residence in a floodway was a continuing violation. Because every day the residence remained in the floodway was a separate offense, and because the residence yet remained there, the statute of limitation had no applicability.

Ralston withdrew his motion. Schmelz withdrew his second.

Mary Titsworth move to reverse the administrative law judge in administrative cause number 90-233W and to remand the case with instructions to find the placement of the residence was a continuing violation. The motion was seconded by Jack Arnett. Upon a voice vote, the motion carried unanimously.

The Chair requested that counsel for the DNR draft proposed substitute findings in accordance with the commission vote and that the case be returned to the agenda at the first opportunity.

**Consideration of Report of Public Hearing and Recommendation of Rule for Final Adoption of Amendments Governing Revegetation Standards of Success for Nonprime Farmland Under Indiana SMCRA; Administrative Cause Number 95-135R; LSA #95-221**

Steve Lucas, Hearing Officer, presented this item. He said that for consideration were noncontroversial amendments to the Indiana SMCRA rules to govern revegetation on nonprime farmland. He recommended the amendments be given final adoption.

Joe Siener moved to give final adoption to the amendments to Indiana SMCRA rules governing revegetation on nonprime farmland as recommended by the hearing officer. The motion was seconded by Terri Moore. Upon a voice vote, the motion carried.

**Consideration of Report and Recommendation for Final Adoption of Rule Amendments Governing Blaster Certification (310 IAC 12); Administrative Cause Number 94-381R; LSA #95-306(F)**

Bill Teeguarden, hearing officer, explained this item. He said that presented for consideration were amendments to the rules governing blaster certification pursuant to Indiana SMCRA. He said no adverse comments were received to the proposal at public hearing, and he recommended them for final adoption.

Damian Schmelz moved to give final adoption to the amendments governing blaster certification as recommended by the hearing officer. The motion was seconded by Patrick Ralston. Upon a voice vote, the motion carried.